

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.248 of 2015

Arising Out of PS.Case No. -255 Year- 2002 Thana -GOGRI District- KHAGARIA

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1. Umesh Yadav son of Late Dineshwar Yadav
2. Makuni Yadav son of Late Fuchaya Yadav
3. Prahalad Yadav son of Late Police Yadav. All resident of village- Shergadh, P.s.-
Gogari, Dist.- Khagaria.

.... Appellant/s

Versus

1. The State of Bihar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Alok Kumar Chaudhary,
Mr. Kulanand Jha, Advocates

For the Respondent/s : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 13-02-2018

Appellants, namely, Umesh Yadav, Makuni Yadav and Prahalad Yadav have been convicted for an offence punishable under Section 307/34 IPC and each one has been directed to undergo RI for 4 years as well as to pay fine of Rs. 1000/- in default thereof, to undergo SI for one month additionally, appellant, Umesh Yadav under Section 27 of the Arms Act and sentenced to undergo RI for 2 years and fined of Rs. 500/- in default thereof, to undergo SI for one month, additionally with a further direction of offset of with regard to period having been undergone during course of trial in accordance with Section 428 CrPC relating to Sessions Trial No. 371/2003 vide judgment of conviction dated 08.04.2015 and order of sentence dated 10.04.2015, by the Additional Sessions Judge-2nd, Khagaria.

2. PW-2, Maletri Yadav filed a written report on



14.12.2002 at about 1.45 PM disclosing therein that on the same day at about 9:00 AM, Becho Yadav, Makuni Yadav, Prahlad Yadav began to cut bamboo from his bamboo cluster whereupon they were forbidden by him. In the aforesaid background, Becho Yadav fired from his gun causing injury over his head (right side) as well as right hand. He became injured. Then thereafter, Umesh Yadav came and fired from his rifle but missed his aim, as a result of which none sustained injury. After hearing sound of firing, so many villagers came and have witnesses the occurrence. Seeing the villagers, accused persons ran away.

3. After registration of Gogri PS Case No. 255/2002 followed with an investigation as well as submission of charge-sheet only against these appellants on account of their appearance while Becho Yadav remained out of grip, whereupon the trial commenced and concluded in a manner, subject matter of instant appeal.

4. Defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 CrPC is that of complete denial of the occurrence. It has also been pleaded that both the parties are Gotias and on account of land dispute, they have been falsely implicated in this case. However, neither oral nor documentary evidence has been adduced in defence.

5. In order to substantiate its case, prosecution had



examined altogether 4 witnesses who are PW-1, Maliya Devi, wife of informant/injured, PW-2, Maletry Yadav, injured/informant, PW-3, Jagdanand Jha, Investigating Officer and PW-4, Dr. Santosh Kumar Dokaniya. As stated above, neither oral nor documentary evidence has been adduced on behalf of defence.

6. Learned counsel for the appellant while challenging the judgment of conviction and sentence has submitted that learned lower court while recording such finding did act in mechanical manner and so, the judgment impugned is fit to be set aside. In order to substantiate such plea, it has been submitted that right from the initial version coupled with examination of PWs-1 and 2, it is apparent that so many villagers assembled at the time of occurrence and that being so, their presence would have been on behalf of prosecution. That means to say, non examination of independent witness that too without any cogent explanation, happens to be major deficiency in the prosecution case, more particularly, in the background of the fact that both the parties are Gotias and there happens to be admission at the end of injured as well as his wife that the lands are not at all partitioned by metes and bounds. It has also been submitted that when the evidence of PWs-1, and 2 has been minutely gone through, it is apparent that the accused persons have cut away 20-30 bamboo from the aforesaid bamboo cluster but, the



prosecution is absent whether it was removed or not and in the aforesaid background, there should have been seizure of the aforesaid bamboo. From the evidence of the Investigating Officer, PW-3, it is apparent that no seizure has been made. In its continuity, it has also been submitted that from the perusal of the evidence of PW-3, it is apparent that he had not found sign of bamboo cut from the alleged bamboo cluster and so, the motive, as assigned by the prosecution, is found not at all substantiated by the objective finding of the Investigating Officer. In the same breath, learned counsel for the appellants while referring the evidence of the Investigating Officer has submitted that from perusal of the evidence, it is apparent that place of occurrence is not the bamboo cluster where allegedly, PW-2 has sustained injury while PW-1 as well as PW-2, informant himself had claimed to have sustained injury in the field over which bamboo cluster stood, so place of occurrence is found demurrable .

7. Furthermore, it has also been submitted that from the evidence of PW-2, it is evident that he was shot at from a distance of 2 Lagga. One Lagga happens to be that of 6 ½ hands, that is to say, 13 hands. One hand happens to be 1 ½ Ft, that means to say, more than 20 Ft. Doctor (PW 4) had found blackening margin and so as per Modi Jurisprudence, the same should be within one meter and so, it contradicts the manner of assault. So the cumulative effect did not



justify the manner of occurrence as well as genesis of occurrence and that being so, in spite of examination of PW-2, injured, it may be conclusively held that prosecution has failed to substantiate its case.

8. On the other hand, learned APP while supporting the finding recorded by the learned lower court has submitted that by examining PW-4, it is evidence that PW-2 had sustained gun shot injury and for that, there happens to be proper identification of co-accused, Becho Yadav to be the assailant and during course thereof, there was presence of these appellants and so, their activity suggests applicability of Section 34 IPC with the aid of which, the appellants have rightly been convicted. Furthermore, it has also been submitted that though there happens to be disclosure at the end of the prosecution that Umesh Yadav arrived armed with rifle which he fired though had not struck over anybody but his involvement in such manner rightly been perceived by the learned lower court whereupon, he properly been convicted with the aid of Section 34 IPC as well as 27 of the Arms Act and that being so, judgment of conviction and sentence recorded by the learned lower court happens to be fit for confirmation.

9. In order to properly appreciate the evidence on record, first of all, evidence of PW-4, doctor is taken. PW-4 had examined PW-2, injured on 14.12.2002 at 2:00 PM and found the



following:-

1. One lacerated wound with blackened margin 1/6"x1/6"x skin deep clotted blood at wound and hard feeling under skin at right side scalp X-ray advised. X-ray shows opaque substance to be pellet. Injury, simple in nature caused by fire arm. Wound of entry.
2. One lacerated wound 1/6"x1/6"x skin deep blackened on right fore-arm, clotted blood at wound and hard feeling around the wound. X-ray shows pellet. Injury simple in nature cause by fire arm. Age within 12 hours.

10. As per 'A TEXTBOOK OF MEDICAL JURISPRUDENCE AND TOXICLOGY, 24TH EDITION' by Modi, (543), the distance of tattooing has been disclosed as so far handgun is concerned, upto 60 CM, Rifle upto 75 CM, shotgun upto 100-300 m, and that being so, as the evidence of PW 4 suggests that it happens to



be a gun by which PW-2 had sustained injuries, on account thereof, it must be within 1 metre and its impact is to be perceived after disclosing the evidence of PW-1 as well as PW-2.

11. PW-1 is the wife of PW-2. She had deposed that on the alleged date and time of occurrence, she was at her house. On hearing hue and cry coming from near bamboo cluster she rushed and found Umesh Yadav, Becho Yadav, Prahlad and Makuni engaged in cutting bamboo from her bamboo cluster. They forbidden them whereupon, they abused and then Becho fired at her husband causing injury over right side of his head as well as forearm and Umesh also fired but did not cause any injury to anybody. Makuni and Prahlad were also armed with three Not. They have also fired but did not cause injury to anyone. Then thereafter, she took her husband to the hospital for treatment. Identified the accused. During cross-examination at para-1, she had stated that accused persons are her Gotias. She had further stated that there happens to be separate bamboo cluster belonging to her as well as the accused persons. Her share happens to be from western side. She had further stated that they have not quarreled on that very score at an earliest. She had gone after hearing alarm. Her husband was raising alarm. He was shouting “been assaulted”. When she reached at the place of occurrence, there was no cutting of bamboo. Accused persons were standing. All the four



accused persons were shouting to assault. They shouted for ½ hour. At that very time, 10-20 persons came but she is unable to disclose their identity. In para-2, she had stated that first of all Becho Yadav shot at. Firing was made near the bamboo cluster. Her husband fell down at that very place itself. Blood had fallen down on the ground. After firing, accused persons fled away. In para-3, she had stated that place of occurrence was shown to the police and during course thereof, police had also found blood stain.

12. PW-2 is the injured/informant. During examination-in-chief, he had stated that while Becho, Makuni, Prahlad were engaged in cutting the bamboo, he forbade them over which, accused persons began to abuse. During same sequence, Becho who was armed with gun, fired with an intention to cause murder. He sustained injury over his right temporal region, right hand. Pellets are still embedded inside his body. Later on, Umesh came and he also fired at him by rifle but, he had not sustained injury therefrom. He, after sustaining injury, fell down. People who came on hearing sound of firing, lifted him to the police station and then to hospital. Exhibited the written report. During examination-in-chief at para-1, he had admitted status of both the parties to Gotias. In para-2, he had stated that while accused persons were cutting bamboo, he had himself seen. About 20-25 bamboos were already cut away and were



kept at that very place itself. Each bamboo was of 20 hand in length. Before his arrival all the bamboos were cut. After his arrival, no bamboo was cut rather both of them indulged in an altercation. The altercation took place for about 5 minutes and during course thereof, so many villagers came but he is unable to identify them on account of being injured. In para-3, he had further stated that he had shot at from a distance of 2 Lagga by Becho. One Lagga happens to be 6 ½ hands. After sustaining injuries, he fell down. Blood oozen out from the injury. He became unconscious. He regained sense at hospital. Place of occurrence was shown to the Investigating Officer. Blood was also shown to the Investigating Officer. Blood stained clothes were taken away by the Investigating Officer.

13. PW-3 is the I.O. He had deposed that after registration of case, he was entrusted with the investigation. He had issued requisition for examination of the injured and the victim was sent to hospital for medical examination. He recorded further statement of the informant. Inspected the place of occurrence. He had mentioned the place of occurrence to be bamboo cluster of informant lying at village, Sher. He had identified the aforesaid bamboo cluster as North-Ramji Yadav, South-Hareshwar Yadav, East-Sitaram Yadav, West-ditch and then road. Then had shown second place of occurrence which happens to be near kiosk of Ganpati Yadav lying



west to soiling road east to the house of informant where PW-2 had sustained fire arm injury and had further identified the same with specific boundary. After concluding the investigation submitted charge-sheet against these appellants. During cross-examination, nothing substantial has been procured.

14. From the evidence of PW-1 as well as PW-2, it is evident that they had categorically stated that PW-2 was shot at the place where bamboo cluster was. They have not stated that either they were chased by any of the accused/appellants or they ran away therefrom in order to save themselves. Then in that circumstance, having the place of occurrence near the kiosk of Ganpati Yadav happens to be a circumstance, more particularly, in the background of the fact that investigating officer had not disclosed the distance in between. Had there been fair play at the end of the prosecution, then in that event, the distance would have been exposed whether it happens to be adjacent one or it has got some distance. Apart from this, how the informant PW-2, had sustained injury at that very place, is not at all found explained at the end of PWs-1 as well as 2. That has got relevancy in the background of the fact that PW-4, doctor had found blackened margin which suggests contrary to the evidence as deposed by PW-2 who at para-2 of cross-examination stated that he was shot at from the distance of 2 Lagga. After all, it happens to be



bounded duty of the prosecution to support its case beyond all reasonable doubt. By such activity the doubt has cast upon genuineness, authenticity on manner of occurrence.

15. That being so, appellants are bound to avail the benefit of doubt which is found reasonably cropped up in the aforesaid facts and circumstances. Accordingly, the judgment of conviction and order of sentence recorded by learned lower court is set aside. Appeal is allowed.

16. Since all the appellants are on bail, they are discharged from the liability of bail bonds.

(Aditya Kumar Trivedi, J)

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