

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1107 of 2012

Arising Out of PS. Case No.-375 Year-2009 Thana- MAKHDUMPUR District- Jehanabad

1. Vijay Yadav.

2. Awadhesh Yadav.

Both sons of Sri Kameshwar Yadav, R/o Village-Bansrajbigha, P.S.-
Makhdumpur, District-Jehanabad.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

Criminal Appeal (DB) No. 1029 of 2012

Arising Out of PS. Case No.-375 Year-2009 Thana- MAKHDUMPUR District- Jehanabad

1. Ram Pravesh Yadav S/o Late Rohan Yadav Resident of
Village- Bansrajbigha, P.S.- Makhdumpur, Distt.- Jehanabad.

2. Sadhu Yadav S/o Sri Daroga Yadav Resident of Village-
Bansrajbigha, P.S.- Makhdumpur, Distt.- Jehanabad

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

Appearance :

(In Criminal Appeal (DB) No. 1107 of 2012)

For the Appellant/s : Mr. Syed Ashfaque Ahmad

For the Respondent/s : Mr. Ashwani Kumar Sinha (APP)

(In Criminal Appeal (DB) No. 1029 of 2012)

For the Appellant/s : Mr. Vikram Deo Singh, Advocate

For the Respondent/s : Mr. Paras Nath, Advocate

Mr. Ashwani Kumar Sinha (APP)

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

And

HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL)

Date : 27-02-2018

Heard learned counsel for the appellants and

learned APP for the State.



2. The aforesaid two appeals have been preferred against the judgment and order of conviction dated 05.10.2012 and order of sentence dated 06.10.2012 passed by the Adhoc Additional District and Sessions Judge-II, Jehanabad in Sessions Trial nos. 475 of 2010/ 309 of 2010 arising out of Makhdumpur P.S. Case no. 375 of 2009 whereby learned trial court acquitted the accused Ledu Mochi, Jitendra Paswan and Pratima Devi of the charges levelled against them under Sections 302, 394/34 of the Indian Penal Code and 27 of the Arms Act and convicted the appellants namely, Vijay Yadav, Awadhesh Yadav, Ram Pravesh Yadav and Sadhu Yadav for the offence punishable under Sections 302/34 and 394/34 of the Indian Penal Code and further convicted the appellants namely, Vijay Yadav and Awadhesh Yadav under Section 27 of the Arms Act. The aforesaid appellants have been sentenced to undergo R.I. for life and were also slapped them with a fine of Rs. 10,000/- each and in default of payment of fine, to further undergo R.I. for one year under Section 302 of the IPC. The appellants, namely, Vijay Yadav and Awadhesh Yadav have further been sentenced to undergo R.I. for three years and were also slapped them with a fine of Rs. 2,000/- each and in default of payment of fine, to further undergo S.I. for six



months under Section 27 of the Arms Act. All the aforesaid appellants have further been sentenced to undergo R.I. for ten years and were also slapped with a fine of Rs. 5,000/- each and in default of payment of fine to undergo R.I. for one year for the offence under Section 394/34 of the I.P.C. However, all the sentences of the appellants were directed to run concurrently.

3. The factual matrix of the case is that Makhdumpur P.S. Case No. 375 of 2009 was instituted under Sections 394, 302, 120(B)/34 of the Indian Penal Code and 27 of the Arms Act against accused Vijay Yadav, Awadhesh Yadav, Ram Pravesh Yadav @ Up Mukhiya, Sadhu Yadav and Sudamia Devi on the basis of fardbeyan of Upendra Kumar S/o Late Bangali Prasad, recorded on 17.12.2009 at around 09:30 PM at Referral Hospital, Makhdumpur by S.I. U.K. Singh, S.H.O. Makhdumpur, district-Jehanabad with the allegation, in succinct that his brother Ravindra Kumar was having two wives, first wife is the daughter of Kameshwar Yadav resident of village-Bansraj Bigha O.P. Tehta. She has filed Maintenance Case against him which is pending in the court. Her brother Vijay Prasad Yadav had convened a Panchayati to settle the matter. He and his brother Ravindra



Kumar and his nephew Sanjay Kumar and brother-in-law of Ravindra Kumar namely, Lalan Prasad had went to Bansraj Bigha on 17.12.2009 at 10:00 AM to join Panchayati. Some other people also participated in the same, but in-laws of his brother did not oblige the verdict of the Panchayati and extending threatening of dire consequences to him and his family. Then they regressd to Jehanabad. They proceeded further from Jehanabad on motorcycle at 05:00 PM and arrived at Tehta around 05:30 PM, where they took refreshment. His brother insisted for following the route of Makhdumpur on regression to house. The younger brother-in-law of his brother namely, Awadhesh Yadav was overhearing their interaction. They proceeded from there after around ½ hour. Sanjay Yadav was driving the bike and his brother was sitting in the mid while he was sitting on the back of his brother. When they arrived at Chhariari bridge at around 06:30-06:45 PM, he spotted Vijay Yadav, Awadhesh Yadav, Ram Pravesh Yadav @ Up Mukhiya and Sadhu Yadav there, who intercepted their motorcycle by tying rope across the Bridge. Immediately, after halting the motorcycle, Vijay Yadav snatched the mobile phones of Sanjay Yadav and his brother and pulled down his brother Ravindra Kumar from the



vehicle and resorted firing on his head. Thereafter, Awadhesh Yadav resorted firing on his ribs. Sustaining injury, his brother fell down on the ground. Then Ram Pravesh Yadav @ Up Mukhiya assaulted him (informant) on his head by means of Butt of the pistol. Vijay Yadav asked other accused persons to spare them as he had eliminated his enemy. Thereafter, they fled away on his (informant) motorcycle towards Nawabganj. Then, he and Sanjay Yadav rushed to the police station dangling on the truck, then police rushed to the place of occurrence along with them and brought his brother to the hospital, but he was declared brought dead by the doctor. It is claimed by the informant that the aforesaid accused persons in collusion of first wife of his brother namely, Sudamia Devi, gunned down his brother and snatched the mobiles and motorcycle and also assaulted the informant on his head by means of Butt of the pistol over animosity.

4. The aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted chargesheet against the accused namely, Awadhesh Yadav, Ram Pravesh Yadav @ Up Mukhiya, Sadhu Yadav, Ledu Mochi, and Pratima Devi under Section 394, 302/34 of the IPC and Section 27 of the Arms Act showing the accused



Sudamia Devi as not sent up and accused Vijay Yadav absconding. I.O. submitted supplementary chargesheet against the accused Vijay Yadav and Jitendra Paswan.

5. On receiving the charge-sheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence against the aforesaid seven accused persons and also against accused Sudamia Devi and committed the case to the court of sessions and on transfer finally the case came in *seisin* of the Adhoc Additional District and Sessions Judge-II, Jehanabad for trial.

6. Charges against the aforesaid accused persons namely, Ram Pravesh Yadav, Sadhu Yadav, Ledu Mochi, Pratima Devi, Awadhesh Yadav and Vijay Yadav were framed under Sections 302, 394/34 of the Indian Penal Code and Section 27 of the Arms Act. Charges were read over and explained to them to which they pleaded not guilty and claimed to be tried.

7. To substantiate its case, in ocular evidence, the prosecution has examined altogether seven prosecution witnesses namely, informant Upendra Kumar as PW-1, Rudhan Kumari Sinha as PW-2, Sanjay Kumar as PW-3, Nagendra Kumar as PW-4, I.O. Umesh Kumar Singh as PW-5,



Dr. K.P. Singh who had examined the informant as PW.-6 and Dr. Binay Kumar who had conducted autopsy of the cadaver of the deceased as PW-7. The prosecution has also filed and proved some documents by way of documentary evidence.

8. The statement of the accused persons was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence claiming themselves to be innocent. The aforesaid accused persons did not adduce any ocular or documentary evidence in buttress of their case.

9. Accused Jitendra Paswan and Sudamia Devi did not put their appearance in the case, hence, their trial was split up and subsequently on putting appearance by Jitendra Paswan, separate trial no. 163 of 2011 was started against him and charge against him was also framed. Accused Jitendra Paswan filed certified copy of FIR of Makhdumpur P.S. Case no. 172 of 1994 marked as Ext-A, certified copy of chargesheet submitted in Makhdumpur P.S. Case no. 110 of 2006 marked as Ext-B, certified copy of chargesheet submitted in aforesaid Makhdumpur P.S. Case no. 172 of 1994 marked as Ext-C and certified copy of FIR of Makhdumpur P.S. Case no. 110 of 2006 marked as Ext-D. Subsequently,



record of Sessions Trial no. 163 of 2011 was amalgamated in Original Trial no. 309 of 2010/ 475 of 2010.

10. After hearing the parties and perusing the record, the learned trial court passed the impugned judgment and order of conviction and sentence as detailed in the earlier paragraph.

11. Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction and sentence, the convicts have preferred the present Criminal Appeals.

12. The point for consideration in this case is, as to whether the prosecution has been able to bring home the charges levelled against the appellants beyond all reasonable doubts or not.

13. It is submitted by the learned counsel for the appellants that as per prosecution case, informant and Sanjay Yadav rushed to the place of occurrence dangling on the truck immediately after occurrence and informed the matter to the police and then police rushed to the place of occurrence along with them and brought the injured Ravindra Kumar to hospital where he was declared brought dead. But, I.O. has stated in his statement that the informant has not disclosed the name of any accused persons in the occurrence either at the place of



occurrence or on the police station. I.O. has also not found any empty cartridge at the place of occurrence. It is further submitted that as per the prosecution case, the appellants had intercepted the bike of the informant and gunned down his brother at Chhariari bridge by blocking the said bridge with the rope tying across the bridge, but the police has not found any rope at the place of occurrence, though, it had immediately rushed to the place of occurrence on getting information of the occurrence. The aforesaid aspects of the case creates serious doubt about the prosecution case and complicity of the accused persons in the occurrence. It is further submitted that FIR was lodged on 17.12.2009 at 10:00 PM but the same was sent to the court on 19.02.2009 i.e. after abnormal delay of two days and no plausible explanation has been assigned by the prosecution for aforesaid delay in sending the FIR to the court which also creates serious doubt about the prosecution case. It is further submitted that as per prosecution case, the appellants Vijay Yadav and Awadhesh Yadav resorted firing on the head and ribs respectively, of the deceased Ravindra Kumar by getting him down from the motorcycle and as per the account of informant, it was dark night and the light of the motorcycle was switched off by the



appellants at the time of occurrence. The aforesaid aspect of the case indicates that the appellants resorted firing upon the deceased from close range, but doctor has not found any burning or charring mark on the wound of the deceased which creates serious doubt about the prosecution case. It is also submitted that as per the prosecution case, the accused Awadhesh Yadav overheard the interaction between the informant and the deceased regarding the route to be followed by them for regressing to their house at Tehta bazar, but the occurrence took place at Chhariari bridge and there is no case of the prosecution that other appellants were also present in the Tehta bazar, so how they arrived at the place of occurrence preceding to the informant and deceased as no convenience is said to have been used by the appellants for arriving at the place of occurrence rather they decamped from the place of occurrence after the occurrence on the motorcycle of the informant. This aspect of the case also creates serious doubt about the prosecution case. It is further submitted that as a matter of fact, the deceased was killed by some unknown miscreants at the Chhariari bridge in the course of committing dacoity and the appellants have been falsely implicated in the case by the prosecution due to animosity between them over



filing of Maintenance Case by the accused Sudamia Devi sister of the appellants Vijay Yadav and Awadhesh Yadav, later on, in collusion of the police and that is why it made two days delay in sending the FIR to the court. Thus, the prosecution has utterly and miserably failed to substantiate the prosecution case against the appellants beyond all reasonable doubt by adducing trustworthy and reliable evidence. Hence, the impugned judgment and order of conviction and sentence passed against the appellants by the learned lower trial is liable to be set aside and the appellants are entitled to be acquitted.

14. On the other hand, learned APP advocating the correctness and validity of the impugned judgment and order of conviction and sentence, submitted that the informant Upendra Kumar and Sanjay Kumar who happen to be eye witness of the case have unanimously and consistently supported the prosecution case. Ocular evidence of the prosecution also stands corroborated by the medical evidence and learned lower court after correctly appreciating the facts and evidence on record has rightly passed the impugned judgment and order of conviction and sentence and the same is liable to be upheld and these appeals have no substance in it



and are liable to be dismissed.

15. From perusal of record, it appears that to substantiate its case, the prosecution has examined four material witnesses of the case. Out of them, PW-1 (Upendra Kumar) happens to be informant and brother of the deceased, PW-2 (Rudhan Kumari Sinha) second wife of the deceased, PW-3 (Sanjay Kumar) nephew of the deceased and PW-4 (Nagendra Kumar) also brother of the deceased. Out of the aforesaid witnesses, PW-2 (Rudhan Kumari Sinha) and PW-4 (Nagendra Kumar) do not happen to be eye witnesses of the occurrence. As PW-2 in paragraph 2 of her examination-in-chief has stated that at 06:45 PM on the date of occurrence, there was call from Upendra Kumar (PW-1) on the mobile phone of her *Gotni* about sustaining injury by her husband. On the said information, they rushed to the Makhdumpur hospital and found her husband dead while P.W.-4 (Nagendra Kumar) has stated in paragraph 1 of his examination-in-chief that on the date of occurrence, he was in service at Manesar Gurgaon. He got information about death of his brother on his mobile from his brother Upendra Yadav. He has also informed that Vijay Yadav and Awadhesh Yadav had gunned him down at Chhariari bridge. Moreover, PW-2 (Rudhan Kumari Sinha)



has stated in paragraph 2 of her examination-in-chief that when she rushed at Makhdumpur hospital on getting information of sustaining bullet injury by her husband, Upendra Kumar (P.W.1) divulged the entire occurrence to her, but PW-1 has not corroborated the factum of divulgence of the occurrence to said witness. Likewise, PW-4 (Nagendra Kumar) has also stated that Upendra Kumar (PW-1) had given information of death of his brother and gunning him down by Vijay Yadav and Awadhesh Yadav at Chhariari bridge on mobile to him, but Upendra Kumar (PW-1) has also not corroborated the factum of divulgence of the aforesaid occurrence to PW-4. Hence, for want of corroboration, the aforesaid evidence of the said hearsay witnesses is not admissible in evidence.

16. PW-1 (Upendra Kumar) and PW-3 (Sanjay Kumar) who claim themselves to be companion of the deceased at the time of occurrence and witnessed the occurrence though have made an abortive bid to support the prosecution case by giving statement in consonance with the prosecution case in their respective examination-in-chief, but as per prosecution case and account of the PW-1 and PW-3, Awadhesh Yadav had witnessed them taking tea at Tehta and



as per the prosecution case, he had overheard interaction between the deceased and PW-1 and PW-3 about following of the Makhdumpur rout for regressing to their house and as per the aforesaid case of prosecution and witnesses account, only Awadhesh Yadav had witnessed and overheard the said interaction between them, then how the rest three accused persons namely, Vijay Yadav, Ram Pravesh Yadav @ Up Mukhiya and Sadhu Yadav had arrived at the Chhariari bridge and by which convenience preceding to the arrival of the deceased, PW-1 and PW-3 there. The aforesaid question remained un-answered by the prosecution, which as per prosecution case, the accused persons decamped from the place of occurrence after the occurrence on the motorcycle of the informant snatching the same. It is not a case of the prosecution that the accused persons had left the place of occurrence on their own convenience as well as on the motorcycle of the informant. The aforesaid aspects of the case creates serious doubt about the prosecution case and credibility of the testimony of the aforesaid two witnesses.

17. As per prosecution case and account of the informant, accused Ram Pravesh Yadav @ Up Mukhiya had assaulted on the head of informant by means of Butt of the



pistol. But, on perusal of testimony of the Dr. K.P. Singh (PW-6) and injury report of PW-1 marked as Ext-2, it appears that PW-1 was examined by the said doctor on the date of occurrence on 17.12.2009 at 07:30 PM and doctor had found skin deep simple injury on his head caused by hard and blunt substance and as per account of said doctor given in paragraph 5 of his cross-examination, the said injury may be caused by even falling on the ground, though, his fardbeyan was recorded on the said date at 09:30 PM and in the said fardbeyan, he has not whispered about his examination by the doctor by that time rather has stated that after the occurrence, he and PW-3 rushed to the police station which is located at 8 Km. from the place of occurrence, dangling on the truck and informed the police there and then the police arrived at the place of occurrence and rushed the injured to Referral Hospital, Makhdumpur, where he was declared brought dead by the doctor. He has also not stated in his examination-in-chief about his examination by the doctor by that time. The aforesaid case of the prosecution indicates that the informant had zeroed in on and was awfully busy to give information of the occurrence to the police and to save the life of the deceased and after demise of the deceased and giving his



fardbeyan to the police, he might have got himself examined by PW-6. So, million dollar question arises, as to how the informant got himself examined at 07:30 PM i.e. two hours ahead of giving of the fardbeyan. The aforesaid aspects also creates serious doubt about the prosecution case as well as credibility of PW-1.

18. As per prosecution case and account of PW-1 and PW-3, the appellants had intercepted the bike of the informant at Chhariari bridge by tying rope across the bridge, but the I.O. (PW-5) has not found any rope or any material meant for blocking the road at the place of occurrence. As per prosecution case, the appellant, Vijay Yadav had resorted firing on the head while Awadhesh Yadav on the rib of the deceased, but neither Dr. (PW-7) conducting the autopsy of the cadaver of the deceased has found any bullet embedded in the head or chest nor any wound of exit on the head or chest nor I.O. has found any empty cartridge on the place of occurrence. The aforesaid aspects of the occurrence creates serious doubt about the prosecution case and credibility of the aforesaid two witnesses.

19. As per the prosecution case and statement of PW-1 and PW-3, after the occurrence, they had immediately



rushed to the police station from the place of occurrence dangling on the truck. So, they must have divulged the occurrence to the police on the police station and disclosed the name of the appellants in the occurrence, but I.O. (PW-5) in paragraphs-7, 8 and 9 of his cross-examination has stated that Upendra Kumar (PW-1) and Sanjay Kumar (PW-3) had arrived at the police station and divulged that while they were coming by the motorcycle, his brother was injured by resorting firing. They had not taken the name of any of the accused persons involved in the occurrence at that time. He learnt on the place of occurrence that the miscreants had snatched the two mobiles and the motorcycle by injuring the victim. Upendra Kumar (PW-1) and Sanjay Kumar (PW-3) had even not disclosed the name of the perpetrators of the crime at the place of occurrence. The aforesaid aspects of the case also creates serious doubt about the prosecution case, credibility of the said witnesses and also about complicity of the appellants in the occurrence as had the appellants been involved in the occurrence, PW-1 and PW-3 must have divulged their name to the police immediately arriving at the police station, Makhdumpur after the occurrence or at the place of occurrence, but they have not done so.



20. From perusal of record, it appears that the FIR was lodged on 17.12.2009 at 10:00 PM, but the same was sent to the court after two days on 19.12.2009 and no plausible explanation has been assigned by the prosecution to explain the aforesaid delay in sending the FIR to the court. It is a case of the prosecution that there is animosity between the prosecution party and the appellants as the sister of the appellants Vijay Yadav and Awadhesh Yadav, who happens to be deserted first wife of the deceased, has filed Maintenance Case against the deceased and the appellants had extended threatening of dire consequences to the deceased and his family in the Panchayati organized on the date of occurrence, so the appellants might have been falsely implicated in the case by the prosecution party by concocting and setting up cock and bull story against the appellants taking advantage of hiatus of two days between lodging the FIR and sending it to the court due to aforesaid animosity as the PW-1 and PW-3 had not disclosed the name of the appellants in the occurrence to the police on earlier occasion at the time of giving information to the police and also at the place of occurrence.

21. As per the prosecution case, the appellants intercepted the bike of the informant (PW-1) and deceased on



the Chhariari bridge at around 06:30-06:45 PM on 17.12.2009 by tying rope across the bridge and the appellants Vijay Yadav, Awadhesh Yadav resorted firing upon the head and ribs respectively, of the deceased which proved fatal by getting him down from the motorcycle and as per account of PW-1 given in paragraphs 12 and 19 of his cross-examination, the accused persons had taken out the key of the bike and the light of the bike was switched off, there was dark at the time of occurrence and it was murky night at that time. The aforesaid aspects of the case candidly indicates that the appellants must have resorted firing upon the deceased from close range to avoid missing of target in the murk. So there must have been charring mark on the wound of the deceased. But, Dr. (PW-7) has not found any charring mark on the wound rather has found lacerated wound. The aforesaid aspects of the case eloquently indicates that the deceased was assaulted from a long distance and it goes to rule out the prosecution case and credibility of PW-1 and PW-3.

22. Attention of the PW-1 and PW-3 regarding contradiction between their statement given before the court and that given before the I.O. under Section 161 Cr.P.C. has been drawn by the defence in paragraph 14 and paragraph 19



respectively, of their cross-examination regarding assaulting on the head of the informant by means of Butt of the pistol by the appellant Ram Pravesh Yadav @ Up Mukhiya and resorting firing on the ribs of the deceased by appellant Awadhesh Yadav and witnessing of Awadhesh Yadav in Tehta at the time of taking tea by him. I.O. (PW-5) in paragraphs 31 and 32 of his cross-examination has corroborated the aforesaid contradiction. Thus, the aforesaid two witnesses appear to have taken altogether different stand before the court then before the I.O. under Section 161 Cr.P.C. regarding aforesaid material aspects of the case. Hence, they do not appear to be reliable and worth credence and their testimonies do not inspire our confidence to hold conviction of the appellants relying on the same.

23. In the aforesaid facts and circumstances of the case, we find and hold that the prosecution has utterly and miserably failed to bring home the charges levelled against the appellants beyond all reasonable doubts by adducing convincing, cogent, consistent and worth credence ocular and documentary evidence. Hence, the impugned judgment and order of conviction and sentence passed by learned trial court is set aside and the appellants are acquitted of the charges



levelled against them. As the appellants, Vijay Yadav and Awadhesh Yadav of Cr. Appeal (DB) no. 1107 of 2012 are in custody, they are directed to be released forthwith, if not wanted in any other case. While as the appellants, Ram Pravesh Yadav, and Sadhu Yadav of Cr. Appeal (DB) no. 1029 of 2012 are on bail, they are discharged from the liability of the bail bonds. Accordingly, the aforesaid two Criminal Appeals stand allowed.

(Dr. Ravi Ranjan, J)

(Prakash Chandra Jaiswal, J)

rohit/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	22-05-2018
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