

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1116 of 2012

Arising Out of PS. Case No.-130 Year-1989 Thana- MURLIGANJ District- Madhepura

Niranjan Yadav @ Niranjan Prasad Yadav @ Wakil Yadav son of Late Dip
Nayayan Yadav Resident of Village- Manahra, P.S.- Murliganj, District-
Madhepura.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

Criminal Appeal (DB) No. 978 of 2012

Arising Out of PS. Case No.-130 Year-1989 Thana- MURLIGANJ District- Madhepura

Arjun Yadav Son of Late Dip Nayayan yadav Resident of Village- Manahra,
P.S.- Murliganj, District- Madhepura.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Bikram Deo Singh, Adv. Mr. Radha Mohan Singh, Adv.
For the Informant	:	Mr. Arvind Kumar sinha, Adv.
For the Respondent/s	:	Mr.Ashwani Kumar Sinha, Adv. Mr. S.B. Verma, (APP)

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT



(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date : 03-05-2018

We have heard the parties and have perused the records of this case.

The appellants have preferred these appeals assailing the judgment of conviction dated 05.09.2012 and order of sentence dated 14.09.2012 passed by Additional Sessions Judge-1st, Madhepura, Sessions Trial No. 63 of 1991 arising out of Murliganj P.S. Case No.130 of 1989 by which they have been convicted for the offences punishable under Sections 235 of the Cr.P.C and have been sentenced to undergo rigorous imprisonment for life and fine of Rs. 50,000/- each under the charge under Section 302 of the IPC and in default of payment of fine they have further been directed to undergo rigorous imprisonment for three years, each.

Prosecution case is based upon fardebyan of the informant recorded by Sub-Inspector, Muraliganj P.S. on 20.11.1989 at about 8.30 at village, Manahara giving rise to the Murliganj P.S. Case No.130/89 dated 20.11.1989 instituted under Sections 302/34 of the Indian Penal Code.

Informant in his fardbeyan has stated that on 20.11.1989 at about 6 a.m., he was going to harvest his paddy crops along with his relatives Bimal yadav and others and as they reached



near the house of Niranjana Yadav, having a gun in his hand, who was sitting at his Darwaza with his brothers, Arjun Yadav, Abhinandan Yadav and 4-5 unknown persons, they began to abuse them and on their protest, Arjun Yadav and Abhinandan Yadav ordered to shoot them upon which Niranjana Yadav fired upon the informant but the bullet hit the forehead of Bimal Yadav and he died on the spot. On alarm being raised by them, the accused persons fled away. The cause of occurrence was land dispute between Niranjana Yadav and the informant. The informant has stated that occurrence was witnessed by Bindeshwari Yadav, Bhogilal Yadav, Raj Kishore Yadav, Suresh Yadav, Bhumi Yadav and many others who had assembled there.

The police investigated the case and submitted charge-sheet against all the F.I.R. named accused and later on Chief Judicial Magistrate took cognizance on 14.02.1990 and case was committed to the court of Sessions. Charges were framed under Sections 302/34 of the I.P.C. which was denied by the appellants and they claimed to be tried.

Accused, Abhinandan Yadav was declared absconder and his trial was separated and trial proceeded against the present two appellants and altogether 9 witnesses were produced on behalf of the prosecution. One defence witness was also



produced and examined by the defence.

P.W. 7, Ram Narain Yadav, is informant and in his deposition, he has stated that on 20.11.1989 at about 6 a.m., he was going to harvest his paddy crops along with his relative Bimal Yadav and as he reached near the house of the Niranjana Yadav, Niranjana Yadav, Arjun Yadav, Abhinandan yadav and 4-5 unknown persons were sitting there and Niranjana Yadav was having a gun and upon seeing him, Niranjana Yadav started abusing them and when protested Arjun Yadav and Abhinandan Yadav instigated him to shoot upon which Niranjana Yadav fired at him and he bowed down and bullet hit head of Bimal Yadav and he died on the spot. Niranjana Yadav again fired but somehow he escaped. Due to land dispute between the parties, attempt was made to kill him. He has named Bhogilal, Suresh, Bindeshwari, Raj Kishore and Bhumi who had witnessed the occurrence. He has proved fardbeyan which has been marked as Exhibit 2.

P.W.1 Md. Nizam is a formal witness who has proved the formal F.I.R. as Ext. 1. P.W.2 Suresh Kumar Yadav who claims to be an eye-witness, has deposed that while he was returning after seeing his crops, he has witnessed the occurrence. P.W. 3, Bindeshwari Yadav, claims to be eyewitness



who has stated that at the time of occurrence, he was going to attend the call of nature. P.W.4, Bhogilal Prasad Yadav also claims himself to be an eye-witness. P.W.5, Raj Kishore Yadav has also claimed himself to be an eye-witness. P.W.6, Bhumi Yadav has also claimed himself to be an eye-witness who belonged to same village and saw the incident when he was going to attend the call of nature but he did not see as to who had fired resulting in death of Bimal Yadav.

P.W. 8 Dr. Rajeshwar Prasad Yadav is the Medical Officer in Sadar Hospital, Madhepura and conducted the postmortem report on the dead body of Bimal Yadav.

P.W. 9 Krishna Sagar Das who is the witness of the inquest report has proved the signature of the inquest report as Ext. 4 & 4/1.

The witnesses have been examined on behalf of the prosecution and all are eye witnesses. P.W. 2 who has claimed to be eyewitness in his cross-examination and has admitted that his village is one kilometer away from Manhara and he had gone to see his crops whereas PW 3 has stated that he belonged to Village Dumaria and his village is 2-3 kilometer away from Manhara village and P.W. 4 who is resident of village Dumaria has also stated that his house is about 2-3 kilometer away and



PW 5 has also stated that his village is 2-2 and half kilometer away from Manhara village. P.W. 6 has also claimed himself to be eye-witness and their presence at the place and time of occurrence cannot be doubted and their evidence is trustworthy and their presence at the place and time of occurrence has been explained by the witnesses.

P.W. 8 Dr. Rajeshwar Prasad Yadav who conducted the postmortem on the dead body of the deceased has found one lacerated wound inverted and charred margin size about 2 ½ “ x ½’ x 4” deep of the forehead which is the cause of death and one bullet was found in the cranial cavity which also supports the prosecution story with respect to the manner of occurrence as the informant has stated that charring has also been found near the wound which suggests that assault was made from a close range.

Appellants have denied the occurrence under Section 313 of Cr.P.C. and further stated that they have been implicated falsely because of land dispute. It is an admitted fact that informant and appellants are on litigating terms and there is pending land dispute between the parties in respect of land in the Manhara village on which both claimed their title and possession over the land. However, the court below has held that



title and possession over the land is in favour of Informant.

After hearing the parties and considering the material available on record and on appreciation of evidence as laid by the trial court, this court finds that there is no infirmity as far as judgment of conviction of appellant Niranjana Yadav @ Niranjana Prasad Yadav @ Wakil Yadav in Criminal Appeal (DB) NO. 1116 of 2012 is concerned. However, since the killing was not premeditated and was result of sudden provocation as such, his conviction is altered to 304 Part II and sentence is modified as period already undergone. However, as far as appellant Arjun Yadav in Criminal Appeal (DB) No. 978 of 2012 is concerned, prosecution has not been able to prove the charges of common intention of killing against him beyond reasonable doubt and as such he is entitled for benefit of doubt.

In the result Criminal Appeal (DB) No. 1116 of 2012 Niranjana Yadav @ Niranjana Prasad Yadav @ Wakil Yadav is dismissed with modification and Cr. App. (DB) No. 978 of 2012 Arjun Yadav is allowed. Appellant Niranjana Yadav @ Wakil Yadav in Cr. Appeal(DB) No. 1116 of 2012, is in jail custody he is directed to be released forthwith if not wanted in any other case. Arjun Yadav in Cr. App. (DB) No.978 of 2012 is on bail as such he is discharged from the liability of the bail bond.



Criminal Appeal (D.B) No. 1116 of 2012 is dismissed with modification and Criminal Appeal (D.B) No. 978 of 2012 is allowed.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	22.12.2018
Transmission Date	22.12.2018

