

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.648 of 2013

Arising Out of PS. Case No.-51 Year-2010 Thana- MEDNI CHAUKI District- Lakhisarai

Babloo Yadav, Son of Sigho Yadav, Resident of Village - Abgil Rampur
Hussena, P.S. - Medni Chawki, District – Lakhisarai.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s : Mr. Uma Shankar, Advocate

For the Respondent/s : Mr. Ajay Mishra, APP.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE PRAKASH CHANDRA

JAISWAL

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE PRAKASH CHANDRA
JAISWAL)**

Date : 22-01-2019

Heard learned counsel for the appellant and learned
APP for the State on this criminal appeal.

2. This criminal appeal has been preferred against the
Judgment and Order of conviction dated 22.03.2013 and Order
of sentence dated 23.03.2013 passed by Adhoc Additional
Sessions Judge-V, Lakhisarai in Sessions Trial No. 300 of 2011
arising out of Medni Chawki P.S. Case No. 51 of 2010 whereby



the learned trial court convicted the accused Babloo Yadav for the offence punishable under Sections 302, 387 and 504 of the Indian Penal Code and Section 27 of the Arms Act and sentenced him to undergo life imprisonment and also slapped him with the fine of Rs. 10,000/- and in case of default of payment of fine to further undergo S.I. for six months under Section 302 of the Indian Penal Code, further sentenced him to undergo R.I. for five years and also slapped him with the fine of Rs.5000/- and in case of default of payment of fine to further undergo S.I. for four months under Section 387 of the Indian Penal Code, further sentenced him to undergo S.I. for one year under Section 504 of the Indian Penal Code and further sentenced him to undergo R.I. for three years and also slapped him with the fine of Rs.3000/- and in case of default of payment of fine to further undergo S.I. for three months under Section 27 of the Arms Act. All the sentences were directed to run concurrently.

3. Factual matrix of the case is that Medni Chawki P.S. Case No. 51 of 2010 was instituted under Sections 384, 302 and 504 of the Indian Penal Code and Section 27 of the Arms Act against the accused Babloo Yadav on the basis of the written report dated 23.11.2010 of Shiv Balak Tanti, S/o



Ramcharitra Tanti with the allegation in succinct that on 23.11.2010 at 08:30 PM, Babloo Yadav armed with pistol and rifle arriving at the door of the informant started resorting indiscriminate firing and slating him and asked him to come out of the house blaming that he had not given extortion money of Rs. 50000/- for the land purchased by him in Diara. Whereupon the informant bolting the door from inside scaringly climbed on the roof. He resorted 20-25 rounds of firing targeting his house and in course of retreat he resorted firing on the chest of his father, sitting on the chawki in the dalan and then left the scene. Sustaining injury his father died on the spot instantly. His elder brother Radhe Tanti, middle brother Ram Briksh Tanti, Sister-in-law Karpuni Devi and co-villager Begul Tanti and Dorha Tanti witnessed the occurrence. There was moon lit night and bulb in the house and solar lamp on the door of the house of the informant was flashing at the time of occurrence.

4. Aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted charge-sheet against the accused Babloo Yadav.

5. On receiving the chargesheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence and committed the case to the court of sessions and



after commitment and on transfer finally the case came in the seisin of Adhoc Additional Sessions Judge-V, Lakhisarai for trial.

6. Charge against the accused Babloo Yadav was framed under Sections 387, 504 and 302 of the Indian Penal Code and Section 27 of the Arms Act. Charges were read over and explained to him by the Court to which he 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, Radhe Tanti as PW-1, Dhorho Tanti as PW-2, Shiv Balak Tanti as PW-3, Ram Briksh Tanti as PW-4, Begul Tanti as PW-5, Dr. Ram Pravesh Prasad who has conducted the autopsy of the cadaver of the deceased as PW-6 and I.O. Gautam Kumar as PW-7. Out of the aforesaid witnesses, PW-2 and PW-5 turned hostile. Prosecution has also filed and proved some documents by way of documentary evidence in the case.

8. Statement of the accused was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence. Accused neither adduced any ocular nor documentary evidence in buttress of his case.



9. After hearing the parties and perusing the record, the learned trial court passed the aforesaid Judgment and Order of conviction and sentence as detailed in the earlier paragraph.

10. Being aggrieved and dissatisfied with the aforesaid Judgment and Order of conviction and sentence, convict Babloo Yadav has preferred this Criminal Appeal.

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

12. It is submitted by learned counsel for the appellant that as per the written report, it is only the informant who was present in his house at the time of occurrence and climbing on the roof witnessed the occurrence. But in quite contradiction to the aforesaid written report, informant has stated in his examination-in-chief that besides him his two brothers namely Radhe Tanti (PW-1) and Ram Briksh Tanti (PW-4) have also witnessed the occurrence by climbing on the roof. Moreover, Radhe Tanti (PW-1) and Ram Briksh Tanti (PW-4) have not supported the factum of witnessing of the occurrence climbing on the roof as stated by the informant rather PW-1 Radhe Tanti has stated in his examination-in-chief that on arrival of the



appellant at the place of occurrence and resorting indiscriminate firing, he bolted the door from inside scaringly and PW-4 Ram Briksh Tanti has not whispered about witnessing the occurrence from the roof. Thus, PW-1 and PW-4 do not happen to be eye witness of the occurrence and aforesaid vital and material contradiction between the testimony of the aforesaid witnesses creates serious doubt about the prosecution case. It is further submitted that as per the witnesses' account around 100 independent witnesses witnessed the occurrence but none of the aforesaid witnesses barring PW-2 Dhorho Tanti and PW-5 Begul Tanti who also turned hostile, has been examined by the prosecution. Thus, aforesaid inconsistent ocular testimony of the aforesaid witnesses also does not stand corroborated by any independent witness of the occurrence. It is further submitted that as per the witnesses' account, blood had fallen on the earth as well as on the bed on which the deceased was sitting, but I.O. has not found any blood at the place of occurrence. It is also submitted that as per the account of the informant, there were 10 marks of the firing on the wall of his house, but I.O. has not found any mark of firing on the wall of the house which utterly rules out the place of occurrence and creates doubt about the prosecution case. Thus, the prosecution has utterly and



miserably failed to substantiate the prosecution case and bring home the charges levelled against the appellant beyond all reasonable doubts by adducing consistent, trustworthy, reliable and worth credence evidence. Hence, aforesaid judgment and order of conviction and sentence passed against the appellant is liable to be set aside and the appellant is entitled to be acquitted.

13. On the other hand, learned APP for the State advocating the correctness and validity of the impugned Judgment and Order of conviction and sentence submitted that the informant and his two brothers namely PW-1 Radhe Tanti and PW-4 Ram Briksh Tanti have consistently supported the prosecution case and aforesaid consistent ocular evidence also stands corroborated by the medical evidence. Though there is some laches on the part of the I.O. in not making recovery and seizure of the objective evidence on the place of occurrence but due to laches of the I.O. entire prosecution is not liable to collapse and learned trial court correctly appreciating the facts and evidence available on record has rightly passed the impugned Judgment and Order of conviction and sentence which is liable to be upheld and this criminal appeal is shorn of merit and is liable to be dismissed.

14. From perusal of the record, it appears that to



substantiate its case, prosecution has examined altogether five material witnesses in the case. Out of them, PW-2 Dhorho Tanti and PW-5 Begul Tanti have turned hostile. PW-3 Shiv Balak Tanti happens to be the informant of the case. From perusal of the testimony of the informant, it appears that the informant has made an abortive bid to support the prosecution case by stating in his examination-in-chief in consonance to the prosecution case as adumbrated in the written report that at the time of occurrence, Babloo Yadav started resorting indiscriminate firing arriving at his house armed with pistol and rifle. He also slated him blaming him of not giving extortion money of Rs.50000/- for purchasing the land in Diara. Then three brothers rushed to the roof of the house scaringly and witnessed the firing from the roof. The bulb was flashing there. Babloo Yadav gunned down his father Ram Charitra Tanti who died on the spot instantly sustaining injury. Then Babloo Yadav made good his escape towards East. But from perusal of the aforesaid testimony of the informant, it appears that his aforesaid statement appears to be in quite contradiction to the prosecution case as as per the prosecution case as adumbrated in the written report, it is only the informant who on arrival of the appellant and resorting firing rushed to the roof bolting door from inside and witnessed



the occurrence from the roof. But in quite contradiction to the aforesaid prosecution case, informant has stated in his aforesaid testimony that along with him his two brothers also rushed to the roof and witnessed the occurrence. Aforesaid statement of the informant as given in his examination-in-chief also does not stand corroborated by his two brothers namely PW-1 Radhe Tanti and PW-4 Ram Briksh Tanti as PW-1 Radhe Tanti has stated in his examination-in-chief that on arrival of Babloo Yadav and gunning down his father, he, his brothers Shiv Balak Tanti and Ram Briksh Tanti rushed inside the house and bolted the door from inside. He has not stated about rushing to the roof and witnessing the occurrence from the roof. PW-4 Ram Briksh Tanti has not stated about rushing of the informant Shiv Balak Tanti (PW-3) and Radhe Tanti (PW-1) to the roof and witnessing the occurrence by them rather in his examination-in-chief he has stated that on resorting firing by the appellant, they rushed on the roof, he has not taken the name of other persons besides him who had rushed to the roof at the relevant time. He has also not stated about witnessing of occurrence by him from the roof. Thus, the aforesaid vital and material contradiction between the testimony of the aforesaid three witnesses creates serious doubt about witnessing of the occurrence by them climbing on the



roof.

15. As per the account of the informant as given in Para-27 of his cross-examination, he had telephoned to the S.I. between 08-08:30 PM in the night, but he did not arrive there rather had arrived half hour later to the death. But public did not allow him to arrive near the dead body for 1½ – 2 hours. Then DSP arrived there in the night at 11 PM. By that time his written statement was not prepared. He handed over his written report to the DSP who in turn gave order of investigation to the SHO, Suryagadha. Aforesaid statement of the informant indicates that the police had not recorded the statement of the informant rather informant had given his written report to the DSP who in turn handed it over to the SHO, Suryagadha. But in quite contradiction to the aforesaid statement of the informant, PW-4 Ram Briksh Tanti who happens to be own brother of the informant has stated in Para-4 of his cross-examination that his statement was recorded before the police on the very date of occurrence at 08:30 PM i.e. at the time of occurrence. In Para-8 of his cross-examination, he has further stated that the police arrived at the place of occurrence 10-15 minutes later suo motu and recorded the statement of his brother Shiv Balak Tanti (informant) and his own. Moreover, as per the account of



aforesaid witness, the statement of the said witness and the informant was recorded immediately after the occurrence by the police arriving at the place of occurrence, but the aforesaid statement which must be the First Information Report has not been brought on record. Hence the aforesaid aspects of the case create serious doubt about the prosecution case.

16. Informant Shiv Balak Tanti (PW-3) has stated in Para-17 of his cross-examination that there was 8-10 marks of firing on the wall of the house. In Para-33 of his cross-examination, he has further stated that he had displayed the marks of firing on the wall to the I.O. But in quite contradiction to the statement of the informant, PW-1 Radhe Tanti has stated in Para-6 of his cross-examination that the bullet did not hit either to the cattle or the wall. Moreover, as per the account of I.O. (PW-7) as given in Para-18 of his cross-examination, he has not found any mark of firing in the house. As per the account of PW-1 as given by him in Para-17 of his cross-examination, blood had fallen from the person of his father on bed and cover and the same were drenched with blood. PW-4 has stated in Para-7 of his cross-examination that blood had fallen on the ground at a distance of 1 bitta. Informant has stated in Para-11 of his cross-examination that two projectile of the bullet was



found on the other portion of his roof. In para-32 of his cross-examination, he has also stated that on the 3rd day of occurrence, he had displayed aforesaid projectile to the I.O., but I.O. (PW-7) has not found any projectile of the bullet or blood either on the ground or on the bed and cover at the place of occurrence as in Para-15 and 16 of his cross-examination he has stated that he had not mentioned it in the case diary as what was found in the house. Had he recovered any necessary article regarding the occurrence such as empty cartridge, dead body, etc., he would have mentioned in the case diary. Hence, aforesaid statement of the witness and aforesaid aspect of the case creates serious doubt about the prosecution case and place of occurrence.

17. Informant (PW-3) has stated in Para-8 and 9 of his cross-examination that houses of Ramchandra Tanti, Bhushan Tanti and Hareram Tanti are located in between his house and that of Begul Tanti. In the course of firing, aforesaid house owners had arrived at the place of occurrence. Approximately 100 persons had arrived there responding firing sound. As the accused was having fire arm, hence none could dare to apprehend him. But none of the independent witness of the occurrence barring PW-2 Dhorho Tanti and PW-5 Begul Tanti have been examined by the prosecution who have turned hostile.



Prosecution has not ascribed any convincing and plausible reasons for non-examination of the aforesaid independent witness of the occurrence. From perusal of the record, it appears that PW-1 Radhe Tanti and PW-4 Ram Briksh Tanti happen to be own brothers of the informant and PW-3 Shiv Balak Tanti is the informant. Hence they happen to be interested witnesses of the case. Thus aforesaid inconsistent ocular evidence of the interested witnesses of the case does not stand corroborated by the independent witness of the occurrence.

18. It is settled principle of law that testimony of the interested witnesses should not be discarded outrightly rather it should be scanned and scrutinized cautiously and carefully and on cautious and careful scanning and scrutinizing of the testimony of the aforesaid three witnesses as discussed by us hereinabove, we find that their testimonies are full of vital and material contradictions regarding witnessing of the occurrence, presence of the objective evidence at the place of occurrence, recording of statement of the informant regarding the occurrence etc. and do not inspire out confidence to hold conviction of the appellant relying upon the same.

19. In the facts and circumstances of the case, we find and hold that the prosecution has utterly and miserably failed to



substantiate the prosecution case and bring home the charges levelled against the appellant beyond all reasonable doubts by adducing consistent, convincing, reliable and worth credence evidence. Hence, the impugned judgment and order of conviction and sentence passed by the learned trial court against the appellant is set aside and the appellant is acquitted of the charges levelled against him giving him benefit of doubt. As the appellant is in custody, he is directed to be released forthwith, if not wanted in any other case.

20. Accordingly, this criminal appeal is allowed.

(Rakesh Kumar, J)

(Prakash Chandra Jaiswal, J)

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AFR/NAFR	AFR
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