

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.401 of 1995

Arising Out of PS. Case No.-311 Year-1984 Thana- DULHIN BAZAR District- Patna

1. Ganesh Yadav
2. Bhuwan Yadav @ Ram Bhuwan Yadav both sons of Late Ram Swarath Yadav, resident of Village - Nawada, P.S.- Dulhin Bazar, District- Patna.
3. Chandeshwar Yadav son of Late Baleshwar Yadav, resident of Village - Pansuhi, P.S.- Dulhin Bazar, District- Patna.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Awadesh Kumar, Advocate Mr.Shashank Shekhar, Advocate
Amicus Curiae	:	Mr.Amish Kumar, Advocate
For the Respondent/s	:	Mr.Jayshankar Pd.Singh, APP

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

and

HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 22-07-2022

The present appeal has been preferred against the judgment of conviction and the order of sentence dated 14.12.1995 passed by the 9th Additional Sessions Judge, Patna in Sessions Trial No.617 of 1987, arising out of Bikram (Dulhin Bazar) P.S. case No.311 of 1984, whereby and whereunder the appellants have been convicted under Sections 302/149 and 148 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for life under Section 302/149 of the Indian Penal Code and two years under Section 148 of the Indian Penal Code. The sentences have been ordered to run concurrently.



2. By order dated 25.02.2022, passed by a co-ordinate Bench of this Court, the present appeal has stood abated against appellants Sadal Yadav and Govardhan Yadav as they have died during pendency of this appeal. This appeal is now confined to appellants namely Ganesh Yadav, Bhuwan Yadav and Chandeshwar Yadav.

3. Heard learned counsel for the appellants, learned A.P.P. appearing for the State. This Court has also benefited from the able assistance given by Mr. Amish Kumar, Amicus Curiae as appointed by order dated 25.02.2022, passed by a Co-ordinate Bench of this Court.

4. Prosecution case, in brief, is that the fard-beyan of informant Mahesh Yadav was recorded by S.I. S.D. Pandey, wherein he has narrated that on 24.09.1984 at about 11:00 A.M., the informant along with co-villagers had gone to village Noorika for construction of dam. Singheshwar Yadav had accompanied him to the site. At about 4:00 P.M., the informant along with his uncle Singheshwar Yadav (deceased) were coming back to the village via watching their field. No sooner did they reach near Ahra, one Kishundeo Yadav along with few unknown persons came over there. One of the unknown persons wanted to catch hold of neck of



Singheshwar Yadav, as a result the towel fell down on the earth. The informant saw a mob near Bandh shouting Maro-Maró and they were also running towards the informant and Singheshwar Yadav. These accused along with several other were identified with weapons in their hands. The informant and Singheshwar Yadav took to their heels where upon accused Shital Yadav opened fire from his gun causing injury to the informant in the right elbow. Accused Akhilesh Yadav, Bhola Yadav and Dhuri Yadav opened fire from their pistol and gun aiming at Singheshwar Yadav. Singheshwar Yadav hid himself by the side of ridge to save himself from the desperate gun-shot firing. Singheshwar Yadav again tried to run away when he was caught hold by accused Shital Yadav and Gowardhan Yadav. Accused Chandeshwar Yadav also came over there and threw Singheshwar Yadav in the field of Munshi Yadav. By the time the remaining accused persons came over there. Accused Surendra Yadav, Digree Yadav and Ghamandi Yadav began to assault Singheshwar Yadav (deceased) on the neck by means of Pandhariya. The informant began to raise an alarm which attracted co-villagers to the place of occurrence. The accused persons began to shout Naxalwari Zindabad. The head of Singheshwar Yadav was chopped off and accused Akhilesh Yadav wrapped the head in the Gamcha and they proceeded towards



village Sarkuna by shouting slogan of Lal Salam Zindabad. After departure of the accused, the informant went near the dead body of Singheshwar Yadav and saw the truncated body. The motive behind the occurrence is alleged to be the land dispute with accused Akal Yadav from before.

5. On basis of the fard-beyan of the informant, Bikram (Dulhin Bazar) P.S. case No.311 of 1984 was registered against thirteen accused persons. The investigation proceeded and the police submitted charge-sheet against them, showing seven of them as absconder. The jurisdictional Magistrate took cognizance of the offences and then committed the case to the Court of Sessions. Charges were framed against the appellants. The appellants pleaded not guilty and claimed to be tried.

6. During trial, the prosecution examined altogether seven witnesses, namely, Shiv Mangal Yadav (P.W.1-full brother of deceased Singheshwar Yadav), Chandeshwar Yadav (P.W.2), Ramjiwan Yadav (P.W.3-hearsay witness), Dr. Ratnakar Pd. Srivastava (P.W.4- conducted post-mortem on the dead body of Sidheshwar Yadav), Mahesh Yadav (P.W.5-informant of the case -cum-injured witness), Ravindra Kumar (P.W.6) and Ram Poojan Kumar (P.W.7-formal witness). The prosecution has brought on record the Inquest report (Ext-6) and the post-mortem report (Ext-



2). The defence has examined three witnesses, namely, Rameshwar Prasad (D.W.1), Ram Sakal Prasad (D.W.2) and Vijay Kumar (D.W.3).

7. Learned Counsel for the appellants has contended that the trial court has failed to appreciate the evidence available on record and has wrongly convicted the appellants. In support of his contention, learned counsel has submitted that the Investigating Officer has not been examined, which has caused prejudice to the appellants. It has further been submitted that as per the prosecution version, the informant claims that he had got injured. However, the prosecution has not brought on record any evidence which could reflect that the informant was also injured. This casts doubt on the entire version of the prosecution. The prosecution story is also belied by the fact that as per the deposition of P.W.4 (doctor, who conducted the post-mortem on the body of the deceased), there was no mud found on the body of the deceased during the post-mortem. He has further stated that had he found the body stained with mud, he would have mentioned it in his report. Whereas P.W.1 in his deposition has stated that the body of the deceased was stained with mud. Lastly, it has been submitted that when the statement of the appellants were being recorded under Section 313 of Cr.P.C., the allegation of assault attributed towards other



accused persons in the F.I.R. has been attributed to the appellants. As a result of which, the appellants have not got a fair opportunity to defend their case.

8. Learned A.P.P. appearing for the State has submitted that the judgment and order under challenge requires no interference by this Court. The prosecution has been able to establish and prove its case beyond all reasonable doubts.

9. After hearing the arguments advanced by both the sides and perusing the material available on the record, following issues arise for consideration:-

(i) Whether the non-examination of the Investigating Officer has prejudiced the trial of the appellants?

(ii) Whether the presence of P.W.5 at the place of occurrence is doubtful?

(iii) Whether there is inconsistency in the deposition of P.W.1 and P.W.4?

(iv) Whether the appellants had got a fair opportunity to defend their case?

10. In order to deal with the first issue, from perusal of the record, it appears that the prosecution has not examined the Investigating Officer as a prosecution witness. There are certain facts, which can be proved only by the Investigating Officer. The place of occurrence has also not been duly proved by the



prosecution, for the reason that the Investigating Officer of the case has not been examined in this case. The prosecution has not assigned any reason for withholding the evidence of the Investigating Officer. Had the Investigating Officer been examined, he would have stated about the place of occurrence and the presence of blood at the place of occurrence. In absence of the evidence of the Investigating Officer, the place of occurrence has not been duly proved in this case. The non-examination of the Investigating Officer in this case is fatal to the case of the prosecution.

11. So far the second issue is concerned, it is the case of the prosecution that the P.W.5 (informant), who claims to be the eye-witness to the occurrence, also got injured in the incident. The categorical statement has been made in the fard-beyan of the informant that accused Shital Yadav had opened gun fire causing injury in the right elbow of the informant. However, there is no iota of evidence, available on record, to show that the informant had sustained any injury during the course of occurrence. This material contradiction casts serious doubt on not only the genuineness of the statement made by the informant, but also on the presence of the informant at the place of occurrence at the relevant point of time.



12. As far as the third issue is concerned, on comparison of the statements of P.W.1 and P.W.4, it appears that both of them have deposed facts which are contradictory to each other. From the deposition of P.W.1, it appears that the deceased prior to his death was thrown on the ground of which the soil was wet. However, P.W.4 in his deposition has clearly stated that the body of the deceased was not soiled with mud. There is material contradiction in the deposition of P.W.1 and P.W.4 and, therefore, the evidence adduced by P.W.1 cannot be relied upon.

13. In order to deal with the fourth issue as formulated above, we have perused the questions put by the learned trial court at the time of recording of the statement of the appellants under Section 313 of Cr.P.C. We find that the learned trial court has asked questions from the appellants regarding the allegation of assault, which has been attributed to other accused persons in the F.I.R. Therefore, we are of the considered opinion that the appellants have not got fair opportunity to defend their case as put against them by the prosecution.

14. On the basis of the findings arrived at on the issues formulated above, we are of the considered opinion that there is no conclusive evidence to prove the guilt of the appellants and, therefore, conviction of the appellants is not sustainable in the



eye of law. The prosecution has failed to prove its case beyond all reasonable doubts.

15. Accordingly, the present appeal is allowed. The judgment of conviction and the order of sentence dated 14.12.1995 passed by the 9th Additional Sessions Judge, Patna in Sessions Trial No.617 of 1987, arising out of Bikram (Dulhin Bazar) P.S. case No.311 of 1984, is set aside. Since the appellants are on bail, they are discharged from the liabilities of their respective bail bonds.

(Sudhir Singh, J)

(Chandra Prakash Singh, J)

Narendra/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	01.08.2022
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