

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.221 of 2017

Arising Out of PS. Case No.-38 Year-1998 Thana- ALOULI District- Khagaria

1. Ghuran Yadav
 2. Makeswar Yadav
 3. Shivu Yadav
All sons of Dhanashu Yadav,
All residents of Village- Chhilkauri, P.S.- Akauli, District- Khagaria.
- Appellant/s
- Versus
- The State of Bihar
- Respondent/s
-

with

CRIMINAL APPEAL (DB) No. 170 of 2017

Arising Out of PS. Case No.-38 Year-1998 Thana- ALOULI District- Khagaria

1. Anil Yadav, Son of Late Garib Yadav
 2. Ashok Yadav, Son of Late Garib Yadav
Both resident of Village- Chhilkauri, P.S.- Alauli, District- Khagaria.
- Appellant/s
- Versus
- The State of Bihar
- Respondent/s
-

Appearance :

(In CRIMINAL APPEAL (DB) No. 221 of 2017)

For the Appellant/s : Mr. Ram Sumiran Rai, Adv.

For the Respondent/s : Mr. Dilip Kumar Sinha, APP

(In CRIMINAL APPEAL (DB) No. 170 of 2017)

For the Appellant/s : Mr. Ram Sumiran Rai, Adv.

For the Respondent/s : Mr. Dilip Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 01-09-2023

The appellants Ghuran Yadav, Makeswar Yadav

@ Maekeshwar Yadav and Shivu Yadav in Criminal Appeal



(DB) No. 221 of 2017 have assailed the judgment and order of conviction in Sessions Trial No. 188A of 2000 whereas, the appellants/Anil Yadav and Ashok Yadav in Cr. Appeal (DB) No. 170 of 2017 have assailed the judgment of the Trial court in Sessions Trial No. 188 of 2000.

2. Since, both the Sessions Trials were conducted for the murder of one Rambadan Yadav and Sahadeo Singh, both the appeals have been heard together.

3. However, on going through the records of these cases, we have found that the paper-book of Sessions Trial No. 188A of 2000 has been prepared but no Paper-book has been prepared for Sessions Trial No. 188 of 2000.

4. Be that as it may, considering that same witnesses have appeared before the Trial court, though in different sequence, we propose to hear both the appeals together.

5. We have heard Mr. Ram Sumiran Rai, the learned Advocate for the appellants in both the appeals



and Mr. Dilip Kumar Sinha, learned APP, for the state.

6. The appellant/Makeshwar Yadav @ Maekeshwar Yadav in Criminal Appeal (DB) No. 221 of 2017 has been convicted under Section 302 and 201 of the I.P.C. whereas appellants/ Ghuran Yadav and Shivu Yadav have been convicted under Section 302/149 and 201 of the I.P.C. vide judgment dated 17.01.2017 passed in Sessions Trial No. 188A of 2000 arising out of Allauli P.S Case No. 38 of 1998 and vide Order dated 25.01.2017, they have been sentenced to undergo imprisonment for life, a fine of Rs. 5,000/- for the offence under Section 302/149 of the I.P.C. and R.I. for three Years with a fine of Rs. 5,000/- for the offence of 201 of I.P.C. For the offence under Section 201, in the event of non-payment of fine for the offences under Section 302, 149 and 201 I.P.C., the appellant have been directed to undergo simple imprisonment for six months for each of the aforementioned offence.

7. The appellants/Anil Yadav and Ashok Yadav in Criminal Appeal (DB) No. 170 of 2017 have been



convicted under Sections 302/149 and 201 I.P.C. vide judgment dated 16.1.2017 passed in Sessions Trial No. 188 of 2000, arising out of the same Allauli P.S Case No. 38 of 1998 and vide order dated 18.01.2017, they too have been sentenced to undergo imprisonment for life, to pay a fine of Rs. 5,000 for the offence under Section 302/149 I.P.C. and R.I for three years with the fine of Rs. 5,000/- for the offence under Section 201 I.P.C. The sentences under both the counts have the default clause. In the event of non-payment of fine, the appellants in this instance also have been directed to undergo simple imprisonment of six months for each of the two offences aforenoted.

8. Two persons are said to have been killed by the appellants.

9. Gango Devi, the wife of the one of the deceased (Rambadan Yadav) lodged the F.I.R on 03.05.1998 at about 9.15 am at Panchayat Bhawan of Chhilkauri village alleging that the appellants had come to the Kirana Shop of her late husband in the evening of



02.05.1998. All of them were variously armed with lethal weapons. Her husband protested against the expletives uttered by the appellant and others. Thereafter, on the orders of one Garib Yadav (since deceased), appellant/Makeshwar Yadav fired from his country-made rifle, which hit the deceased on his head. In the meantime, one Sahadeo Singh (another deceased), who was coming back to his home, on seeing the occurrence, exclaimed that Rambadan who was physically handicapped ought not to have been killed. Co-accused/Garib Yadav then again exhorted appellant/Makeshwar to eliminate Sahadeo Yadav also otherwise he would go to the village and would tell all about the incident. On such exhortation, Makeshwar again fired from his weapon which hit Sahadeo Singh in his back, as a result which he also fell down. Later, the son of Sahadeo viz. Ranjit kumar, with the help of other villagers, brought him to Chhilkauri Camp from where he was taken to Sakarpura Hospital and from where he was referred to Begusarai Hospital but, on the way, Sahadeo also died. The dead body of her husband / Rambadan Yadav was but



dragged away by the accused persons.

10. The cause of occurrence as stated in the F.I.R. is that her late husband had taken the land of one Lal Babu Singh for cultivation which the accused persons wanted to cultivate. It was for this reason alone that the murders were committed.

11. On the basis of the aforementioned *fardbeyan* statement of Gango Devi (P.W.1), Allauli P.S Case No. 38 of 1998, dated 03.05.1998 was registered for investigation against the appellants under Section 148,149,302,201 of the I.P.C. and Section 27 of the Arms Act.

12. Be it noted that in the Sessions Trial No. 188A of 2000, six witnesses have been examined, viz. Gango Devi (P.W.-1), Dr. P.K Sinha, who conducted postmortem on the dead body of Rambadan Yadav (P.W.2); Ramcharan Yadav (P.W.3); Dr. Sajjan Kumar Pansari, who conducted the postmortem examination on deceased Sahadeo Singh; Ramsewak Yadav, another brother of deceased Rambadan Yadav (P.W-5) and Ranjit



Singh, son of deceased Sahadeo Singh (P.W-6). In the Sessions Trial No. 188 of 2000, in which appellants/ Anil Yadav and Ashok Yadav were tried, same witnesses were examined but, in different sequence. We would be referring to the depositions of the witnesses in Sessions Trial No. 188A of 2000 for the convenience.

13. As noted above, the wife of the deceased (P.W.1) claims to be the eye-witness to the occurrence as during trial, she has alleged that while she was at the Kirana shop of her late husband, the occurrence took place. According to her, the dead body was recovered after two to three days from a water-body situated near the village. She has supported the prosecution case that in her presence, her husband was shot dead whereas Sahadeo Singh was also fired upon who ultimately succumbed to the injuries. She claims to have seen the dead body of Sahadeo Singh. The same reason which she had narrated in the F.I.R about the cause for the occurrence was repeated by her during the trial.

14. Surprisingly, Dr. P.K Sinha (P.W-2), who



conducted the postmortem on Rambadan Yadav found the dead body to be headless. The postmortem was conducted on 05.05.1998. He had found one incised wound at the lower part of the neck. The trachea, oesophagus and the major blood vessels were damaged. The dead body had maggots all over. On the dissection of the dead body, P.W.2 found extravasation of blood clots. The cause of death was stated to be hemorrhage and shock due to incised cut wound caused by a sharp weapon. The time elapsed since death was fixed between three to five days of the postmortem examination since death.

15. The P.W.1 therefore cannot be said to have made a correct statement in the F.I.R. or during the trial about her having seen the occurrence.

16. Even if we assume that the head of the deceased was chopped off after his dead body was taken away by the accused persons as claimed by P.W-1, then also the version of P.W.1 would not be correct for the reason that the Doctor did not find any gun shot wound on the body.



17. We do reckon that it was a headless body and the P.W.1 had claimed that the firing resorted to by appellant/Makeshwar Yadav had hit him in his head.

18. The other witnesses viz. Ramcharan Yadav and Ramsewak Yadav, P.Ws.3 and 5 respectively, are the brothers of the deceased/Rambadan Yadav. They have also narrated the same story which was told to them by P.W.1. Though they have also claimed to have seen the occurrence but on a deeper analysis of their deposition, it would appear that they had not seen the occurrence. With respect to the cause of the occurrence, same reasons were ascribed.

19. The postmortem examination on Sahadeo Singh was done on 03.05.1998 by Dr. Sajjan Kumar Pansari (P.W.4). He had found rigor mortis in all the limbs of the deceased/Sahadeo Singh. There was a gun shot wound on the body of the deceased/Sahadeo Singh which was found to be the cause of death. P.W.4 has clearly opined that the injuries found on the body of the deceased/Sahadeo Singh was caused by fire-arm and the



time fixed for death was 24 hours, counted from the date of the postmortem examination.

20. However, the son of Sahadeo Singh had a different story to narrate to the Trial court. Ranjit Singh (P.W-6), son of Sahadeo Singh, has stated about his having seen the deceased Rambadan carrying his father (Sahadeo Singh) on his shoulders and crying out loud that he had not killed Sahadeo Singh. However, Sahadeo Singh was brought to a nearby camp from where he was attempted to be taken to Begusarai Hospital but, on the way, he died. At the camp, P.W.6 asserted before the Trial court that late Sahadeo Singh had been killed by the deceased/Rambadan.

21. If this statement of the son, who had seen the occurrence, is to be believed then perhaps the entire prosecution case becomes unworthy of reliance. However, we have great difficulty in accepting his deposition to be true for the reason that he was the signatory to the *Fardebeyan* lodged by the P.W.1 (Exbt. 3).

22. With respect to the appellants/Ghuran Yadav



and Shivu Yadav in Cr. App. (DB) No. 221 of 2017 and appellants/Anil Yadav and Ashok Yadav in Cr. App. (DB) No. 170 of 2017, none of the witnesses have stated anything except for their being present at the P.O. with fire-arms.

23. It would also be necessary to refer to the deposition of the brothers of deceased Rambadan Yadav.

24. Ramcharan Yadav (P.W.3) has stated before the Trial court that he was at his house when he heard *hulla* at the *Kirana* shop of his brother. When he went to the P.O., he found the appellants abusing his brother. When a protest was made, appellant/Makeshwar fired from his weapon which hit the deceased/Rambadan in his head. Sahadeo, who had tried to intervene, was also shot dead.

25. However, in his cross-examination, a statement was made by him that he had no idea about any case having been lodged as Allauli P.S. Case No. 65 of 1998. In the same breath, he says that he was in the village when Rambadan (deceased no.1) disappeared from the village. However, later, he tried to make amends and



made a statement again that from the place from where Rambadan was taken away was very close to a local police camp but the police party had not arrived.

26. In fact, the claim of P.W.3 is that the police from the local camp had arrived at the scene of occurrence when Sahadeo was still alive. Precisely, for this reason, he was taken to Sakarpura Government Hospital and thereafter referred to Begusarai but, on way, he died.

27. The deceased/Rambadan had tried to run away shouting that he had not killed Sahadeo Singh was denied by him. In fact, suggestions were given to all the witnesses that deceased/Rambadan had killed his father for which a case was lodged and later the mother of Rambadan was also killed which also led to filing of a case by the sister of Rambadan. However, the Trial court has rightly disbelieved such suggestions as nothing was brought on record by the prosecution to indicate that any case was either decided with respect to the murder of the parents of the deceased/Rambadan or any case was pending against the deceased/Rambadan and his wife



Gango Devi (P.W.1) with respect to the murder of the parents of the deceased Rambadan.

28. The learned counsel for the appellants has submitted that with such background facts and P.W.1 having completely discredited herself, it cannot be believed that either P.W.1 or the other brothers of the deceased/Rambadan had seen the occurrence or had made correct statements at the trial. It is also difficult to conceive of a situation where many accused persons would be present at the P.O. with their fire-arms and Sahadeo Singh would attempt to intervene.

29. The occurrence is said to have taken place in the evening at a Kirana shop. But no independent person of the village has come forward to support the prosecution case.

30. The I.O. of this case has not been examined nor any explanation has been offered for his non-examination. Had he been examined at the trial, perhaps the real facts would have come to the fore. When were the appellants arrested or they surrendered to the process of



law thus remains unknown.

31. We have not been able to gather from the two judgments of the Trial court as to why two Trials were held. On looking at the records of this case, it appears that the appellants/Ghuran, Makeswar and Shivu were not sent up for trial in the first instance. We have also found from the records that a case was lodged vide Allauli P.S. Case No. 65 of 1998 against unknown villagers by the Officer-in-Charge of Allauli P.S. in which it was alleged that during the course of fight between the two groups of villagers, firing was resorted to. Because of such firing, one innocent person namely Sahdeo Singh was hit, who died while being taken to the hospital. Thereafter, Rambadan Yadav started shouting that he has not fired at Sahadeo Singh. Because of all this, about 20-25 unknown persons reached the P.O. and, on the presumption that Rambadan had fired as a result of which Sahadeo had died, started assaulting Rambadan and took him away. Later, the head of Rambadan was chopped off and the trunk was thrown in a water-body outside the village. The



head of Rambadan could not be found. After about four to five days, the headless body of Rambadan was found which was sent for postmortem examination.

32. What happened to this case remains completely unknown and no effort also was made by the Trial court, even though the certified copy of the F.I.R. referred to above, was on record, to enquire about the investigation of that case.

33. We have also found from the records that one Jamuni Devi @ Jiwachhi had lodged the F.I.R. against the deceased/Rambadan Yadav and others for killing her husband. Thus, the suggestion regarding the deceased and P.W.1 having killed the father of Rambadan was not a mere figment of imagination.

34. The whole case appears to have been conducted in a most shabby manner.

35. None of these facts were brought by the prosecution. In this background, we find that P.W.1, who is the wife of deceased/Rambadan and P.W.6/Ranjit Singh, who is the son of deceased/Sahadeo Singh, have



not made correct statements at the trial.

36. The learned counsel for the appellants therefore are correct in submitting that there could be some dispute with appellant/Makeshwar Yadav regarding cultivation of the land of Lalbabu Singh on rent but taking advantage of such dispute and also in order to save herself, the instant case was lodged, alleging that her husband had been killed by Makeshwar and others.

37. Thus finding no evidence against the appellants viz. Anil Yadav, Ashok Yadav, Ghuran Yadav and Shivu Yadav, their conviction is set aside and they are acquitted of the charges levelled against him.

38. Because of the divergent statements made by P.W.1 and P.W.6, the accusation against appellant/Makeshwar Yadav also appears to be doubtful.

39. Giving benefit of doubt to Makeshwar Yadav, he too is acquitted of all the charges.

40. All the appellants except Ghuran Yadav and Makeshwar Yadav in Cr. Appl (DB) No. 221 of 2017 are on bail. Their (Anil Yadav, Ashok Yadav, Shivu Yadav)



liabilities under the bail bonds stand cancelled.

41. Appellants/Ghuran Yadav and Makeswar Yadav are in jail. They are directed to be released on bail forthwith if they are not required/detained in any other case.

42. Both the appeals are allowed.

43. Let a copy of this judgment be sent to the Superintendent of the concerned jail for compliance and record.

44. The records of this case be also dispatched to the court below forthwith.

45. The interlocutory application/s, if any, are also stand disposed of.

(Ashutosh Kumar, J)

(Alok Kumar Pandey, J)

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AFR/NAFR	AFR
CAV DATE	NA
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