

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1000 of 2018

Arising Out of PS. Case No.-2 Year-2006 Thana- CHAINPUR District- Kaimur (Bhabua)

Surendra Yadav Son of Late Kuber Yadav, resident of Village- Kuruwarot,
P.S. Adhaura, District Kaimur Bhabhua Bihar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 758 of 2009

Subba Yadav son of Lal Yadav @ Lav Singh, Resident of Village Kanhanar,
P.S. Adhaura, District Kaimur (Bhabhua)

... .. Appellant/s

Versus

State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 198 of 2010

Ramchandra Yadav s/o late Lotan Yadav R/o Vill.- Dumarkon, P.S.- Chainpur,
Distt.- Kaimur

... .. Appellant/s

Versus

State of Bihar

... .. Respondent/s

Appearance :
(In CRIMINAL APPEAL (DB) No. 1000 of 2018)
For the Appellant/s : Mr. Jitendra Kumar Giri, Adv.
For the Respondent/s : Mr. Dilip Kumar Sinha, APP
(In CRIMINAL APPEAL (DB) No. 758 of 2009)
For the Appellant/s : Mr. Madhav Raj, (Amicus)
For the Respondent/s : Mr. Dilip Kumar Sinha, APP
(In CRIMINAL APPEAL (DB) No. 198 of 2010)
For the Appellant/s : Mr. Prabhakar Singh, 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 : 05-09-2023

All the three appeals have been heard together and are being disposed of by this common judgment.

2. We have heard Mr. Jitendra Kumar Giri for the appellant/surendra Yadav (Cr. App. (DB) No. 1000 of 2018) and Mr. Prabhakar Singh, learned advocate for appellant/Ramchandra Yadav (Cr. App. (DB) No. 198 of 2010).

3. Since nobody has appeared on behalf of appellant/Subba Yadav (Cr. App. (DB) No. 758 of 2009), we have requested Sri Madhav Raj, learned advocate to be the *Amicus*. Accepting our request, he has assisted us on behalf of appellant/Subba Yadav.

4. All the appellants have been convicted under Section 302/34 IPC. Appellants/Subba Yadav and Ramchandra Yadav were tried in Sessions Trial No. 121/9 of 2006 by the learned 1st Additional Sessions



Judge, Kaimur at Bhabua. They were convicted by judgment dated 21.07.2009 and by order dated 28.07.2009, they have been sentenced to undergo R.I. for life, to pay a fine of Rs. 10,000/- and in default of payment of fine, to further suffer R.I. for six months.

5. Since appellant/Surrendra Yadav absconded from the court premises, his trial was separated and he was ultimately tried in Sessions Case No. 121 of 2006 / Sessions Trial No. 598 of 2017 by the learned Fast Track Court, 1st, Kaimur at Bhabua.

6. The judgment of conviction of appellant/Surrendra Yadav is of 02.05.2018 and he has been sentenced to undergo imprisonment for life, to pay a fine of Rs. 50,000/- and in default of payment of fine, to suffer S.I. for one year by order dated 02.05.2018.

7. The witnesses examined in both the sessions trials are one and same but the sequence in which they were examined is different. For the sake of convenience, we shall be referring to the deposition of



witnesses in Sessions Trial No. 121/9 of 2006 challenged in Cr. App. (DB) No. 758 of 2009 and Cr. App. (DB) No. 198 of 2010.

8. The deceased of these cases is an Ex-MLA of the area who is alleged to have been hacked to death by the three appellants. The weapon of assault is stated to be *Kulhari* (a sharp cutting weapon used for felling trees) which all the appellants were wielding at the time of occurrence.

9. Lalbrat Singh Kharwar, who is the son of the deceased and has been examined as P.W.9 in Sessions Trial No. 121/9 of 2006 had lodged the FIR on 03.01.2006, at about 4.50 PM alleging that a day before i.e. 02.01.2006 in the evening hours while the deceased was sitting at his *Khalihan* situated about 1 KM away from the house, the appellants came and talked to him. After talking to him for ten minutes, they accompanied the deceased towards the village. In the meantime, some animals strayed in the gram field and P.W.9 along



with one Kundal Singh (P.W.5) became busy in shepherding out those cattle from the field. The deceased and the appellants had moved for about 100 yards and when they reached near the field of one Pyarey Lal, the deceased shouted for help. P.W.9 rushed towards the direction from where his father (deceased) had been shouting. He saw the appellants running towards eastern direction with their respective weapons viz. *Garasa* and *Kulhari*. He saw that his father had been hit by those weapons as a result of which he was seriously injured. On *hulla*, many persons of the neighborhood and of the village including Ramashish Kharwar (P.W.1), Nandkishore Kharwar (P.W.2) and Jawahar Kharwar (not examined) came. Because of the police station situated at a distance from the P.O., there was inordinate delay in informing the police about the occurrence.

10. According to P.W.9, there was no communication facility in the village. The cause of



occurrence, according to P.W.9, is the general dispute between Yadavas and Kharwars. As a result of political dispute, the possibility of the deceased having been killed was also not ruled out. The deceased had been an Ex-MLA and he may have had offended many.

11. On the basis of the aforementioned *Fardbeyan* statement of P.W.9, Chainpur P.S. Case No. 2 of 2006 dated 03.01.2006 was instituted for investigation for offences under Sections 302/34/120B IPC against the appellants.

12. The FIR was signed by one Jawahar Singh Kharwar about whom it has been noted earlier that he has not been examined at the trial.

13. The police after investigation submitted charge-sheet against all the appellants whereupon the case was committed to the Court of Sessions.

14. Since appellant/Surendra Yadav had absconded from the court premises, he was tried separately.



15. The learned Trial court in Sessions Trial No. 121/9 of 2006 examined 12 witnesses on behalf of the prosecution. In the trial of appellant/Surendra Yadav also, same number of witnesses were examined. In both the instances, the Trial court found that the appellants had killed the deceased because of political enmity.

16. The learned advocates appearing for the appellants have submitted that the accusation is absolutely false which gets reflected from the inordinate delay in lodging the FIR. Though some explanation has been given for the late filing of the FIR but, according to the learned advocates appearing for the appellants, the explanation is not worth buying. It has further been submitted that the appellants have been named by P.W.9 only for the reason of caste rivalry in the area. The deceased admittedly represented the local constituency and had his support base amongst people of *Kharwar* caste. The assailants/appellants are from Yadav community who are generally inimically opposed



to *Kharwars* and therefore the opposition to the deceased.

17. Though the witnesses, it has been asserted, have been rather consistent in seeing the appellants running away from the P.O. wielding their respective weapons but such witnesses have not come out with correct version. A deeper look at their deposition would demonstrate, Mr. Parbhakar Singh, learned advocate asserts, that they could not have seen the occurrence for themselves. It has thus been suggested that the deceased, because of the enmity which he had generated as a Member of the Legislative Assembly representing a particular constituency, was killed sometimes in the evening of 02.01.2006 and when his dead body was seen by his son and others, the opportunity was grabbed by them for framing the three appellants who come from a particular community and who may not have been on cordial terms with the family of the deceased and P.W.9.



18. Mr. Dilip Kumar Sinha, learned APP, on the other hand, has submitted that such conjectural arguments has no place in criminal law. P.W.9 and his associates had immediately rushed to the P.O. when the deceased was still surviving and almost contemporaneously they saw the three persons/appellants who had talked to the deceased a little while ago running away after executing the crime. The deceased was found to have been injured with cut injuries at various places which was only possible with the weapons which the appellants were carrying. That they talked to the deceased for a while and also accompanied him towards the village cannot absolve the appellants from the charge as their conduct of running away from the P.O. is inexplicable.

19. We have examined the evidence of all the witnesses at the trial. The first thing which has struck us to be unnatural is the delay in lodging the F.I.R. We do reckon that mere delay in lodging the



F.I.R., when explanation for the same is offered, would not result in the prosecution case being completely demolished but, in the present case, the facts speak for themselves. The deceased was waiting in the *Khalihan* which was situated about a kilometer away from the village-home of the deceased. His son Lalbrat Singh *Kharwar* (P.W.9 and Kundal Singh (P.W.5) were also present nearby. The appellants, according to P.W.9, came from some direction and chatted with the deceased for about ten minutes. The deceased was not forced to leave with the appellants. In fact, the appellants and the deceased returned to the village. Had there been any intention of the appellants in taking the deceased to a desolate place for killing him, they would not have been village-bound. This is one aspect of the matter.

20. Secondly, we have noticed that it was only on the cries of help of the deceased that P.Ws.5 and P.W.9 rushed to the P.O. This presupposes that the deceased was alive and had not died instantaneously. If



he could seek help which was audible from such a long distance, he would have surely named the appellants before P.W.9 and P.W.5. No attempt was made to rescue to deceased who was still surviving and gasping for breath. Even if the hospital was situated at some distance, something must have been done, if the narration is correct, by the son and the associates of the deceased to at least stop the deceased from bleeding and thereby preventing any neurogenic shock.

21. The deceased had been a public figure and therefore it cannot be said that his family members would not have been aware about any hospital or clinic nearby which could have been approached. Assuming that the deceased died instantaneously, the most natural conduct of P.W.9 or the other witnesses, who are somehow or the other related or associated with the deceased, would have been to bring the dead body either to *Khalihan* or to take it back to the village home for performing the last rites. Leaving the dead body in



the middle of field for whole of the night is something what does not appear to be a natural conduct of the family members and the kith and kin of the deceased.

22. Testing the circumstances from a different angle, according to P.W.9, Jawahar Kharwar, who is of the signatories of the FIR was sent to inform the police on the next day. Had Jawahar Kharwar been examined at the Trial, we could have garnered some evidence with respect to the timing of the information given to the police. The police did not have any clue about the names of the assailants. This gets reflected from the deposition of the I.O./P.-12/Sanjay Kumar Sinha, who in his Examination-in-Chief has stated that on 03.01.2006 in the afternoon, he learnt a rumour that the deceased has been killed. Had Jawahar Kharwar actually gone to the police to inform or would have communicated the police station through any other means, the name of the assailants would have been available with the police. The police arrived at the P.O.



where the dead body was lying at about 4.30 in the afternoon. Sometimes later, the inquest was performed and a report was made. The postmortem was conducted on 03.01.2006 only but at 10.30 in the night. The time of occurrence as fixed by Dr. Kanhaya Pd. Singh (PW-10) is 24-36 hours.

23. Though the postmortem report is quite in consonance with the accusation hurled against the appellants viz. of their having attacked the deceased by means of *Garasa* and *Kulhari* but, it means nothing in the background of the P.W.9 and others having seen the dead body from very close quarters and for a long time before reporting it to the police, when they would have known the number and nature of injuries.

24. There is yet another aspect which sends us doubting about the correctness of the version. The appellants had come to the deceased with *Kulhari* and *Garasa* as if they had come to some jungle to fell trees. The *Khalihan* where the deceased had been sitting and



where the appellants had chatted with him is situated next to the gram field. We get this idea from the P.O. as disclosed in the deposition of witnesses. The appellants would surely have been asked the reason for coming and sitting in the *Khalihan* along with the deceased when they were armed with sharp cutting weapons. That also, when the deceased, according to the suggestions given during Trial, was a person with political and criminal background, who had irked many and there existed a chasm between the two communities, one of which was being represented by the deceased.

25. These background facts would surely have prompted the relatives of the deceased, specially his son, to have at least questioned the reason and purpose for the appellants to have come to meet the deceased. If these associates of the deceased did not question the appellants in the beginning, they ought to have had raised eyebrows when the appellants accompanied the deceased towards the village.



26. In this context, we do not find the story of P.W.9 that he and Kundal (P.W.5) got busy shepherding out cattle from the field for them not to follow suit. These aspects form the portmanteau of the suggestions that the appellants have been wrongly framed.

27. True it is that no attempt has been made by the prosecution to chip in any evidence of prior enmity or any planning to avenge some old enmity against the deceased. However, the circumstances reflect that the delay in reporting the murder specially when the names of the assailants were known to P.W.9, the reasons must have been different than what has been suggested viz. the distance of the police station and lack of communication facilities.

28. Could it not have been a case of the deceased having been murdered at the dusk when P.W.9 and P.W.5 were not there? The dead body may have been spotted on 03.01.2006 only for P.W.9 to get active



and inform the police station. Even this supposition cannot be taken to a logical conclusion as nobody from the village had gone to the police station to inform the police about the occurrence. Most of the witnesses, who have claimed to have seen the appellants fleeing away, appear to be chance witnesses.

29. All of them came to the P.O., according to their own version, on the cries of the deceased. There could be no other circumstance which would have made the entire reporting about the occurrence to be any less suspicious. On top of it, nobody, not even P.W.9, who reached the P.O. as one of the first persons, saw the actual act of assault. We are also at a loss to understand that if so many persons had arrived at the P.O. and all of them saw an Ex-MLA being attacked so brutally and in their presence, the appellants ran away from the P.O. No attempt was made to nab them. After all, they were all on foot and did not have any vehicle to effect their retreat. They could have only gone to some



distance, either field-wards or towards village. In any case, it was very easy for the villagers to have nabbed them, specially when they were not armed with any fire-arm weapons.

30. There is nothing on record, specially in the deposition of the I.O., as to when were they arrested. The weapon of assault has neither been recovered nor any attempt appears to have been made by the I.O. to do so. The blood-stained earth was never seized. We are thus prompted to ask ourselves as to when did the murder takes place. The most surprisingly aspect is that for whole of the night and for good 12 hours on the next day, no attempt was made to provide first medical aid to the deceased.

31. All these aspects taken together give a different picture. The picture which emerges is that the appellants hail from a community which is at loggerheads with the community to which the deceased belonged. The deceased, in his political capacity and as a



representative of his caste, had offended many. Some of his foes might have found him unguarded in the field or towards the village when he would have been killed. The son of the deceased then took the opportunity of naming the appellants. This of-course is one of the possibilities.

32. In any view of the matter, if we take the circumstance of the appellants having come to the *Khalihan* of the deceased, of conversing with the deceased shortly before death, then accompanying the deceased towards village and then spotted by so many persons fleeing away while still holding their weapons in their hands, it would still leave some of the circumstances which could actually connect the appellants with the offence.

33. In this circumstance, there cannot be the only hypothesis of the guilt of the appellants of their innocence. For these reasons, we are prompted to give benefit of doubt to the appellants.



34. The judgments and orders of conviction in all the appeals are set aside.

35. The appellants are acquitted of all the charges levelled against them.

36. The appellants/Subba Yadav (in Cr. App. (DB) No. 758 of 2009) and Ramchandra Yadav (in Cr. App. (DB) No. 198 of 2010) are on bail.

37. Their liabilities under the bail bonds are canceled.

38. Appellant/Surendra Yadav (in Cr. App. (DB) No. 1000 of 2018) is stated to be in custody for approximately fifteen years. He is directed to be released from jail forthwith, if not wanted or detained in any other case.

39. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.



40. The records of these cases be also returned to the Trial Court forthwith.

41. Interlocutory application/s, if any, also stand disposed off accordingly.

42. Before parting, we express our happiness over the promptitude shown by Mr. Madhav Raj, learned Amicus, who be compensated with Rs. 2500/- towards his professional fee by the Patna High Court Legal Services Authority.

(Ashutosh Kumar, J)

(Alok Kumar Pandey, J)

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