

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1172 of 2018

Arising Out of PS. Case No.-23 Year-2015 Thana- GHOSWARI District- Patna

Nitish Yadav @ Nitish Kumar S/o Kedar Yadav, Resident of Village- Tartar,
Jagir Tola, P.S.-Ghoshwari, District-Patna.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ramakant Sharma, Sr. Adv.

For the Respondent/s : Mr. Abhimanyu Sharma, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 27-07-2023

1. We have heard Mr. Ramakant Sharma, the learned Senior Advocate for the appellant and Mr. Abhimanyu Sharma, the learned APP for the State.
2. Mr. Sharma has opened his argument with an aphorism that the witnesses may lie but the circumstances will not.
3. He has build up the case of the appellant on this premise.
4. The appellant is alleged to have shot dead the deceased. He has been convicted under Section 302 of the



Indian Penal Code and 27 of the Arms Act vide judgment dated 12.07.2018 passed by the learned 1st Additional District & Sessions Judge, Barh at Patna in Sessions Trial No. 457 of 2016 arising out Ghoswari P.S. Case No. 23/2015 and vide order dated 17.07.2018 has been sentenced for R.I. for his life with a fine of Rs. 20,000/- for the offence under Section 302 of the Indian Penal Code and R.I. for three years along with a fine of Rs. 10,000/- for the offence under Section 27 of the Arms Act. In the event of failure to deposit the fine, the appellant has been directed to suffer further rigorous imprisonment for nine months. The sentences have been ordered to run concurrently. The amount of fine collected from the appellant has been directed to be deposited in the State Treasury.

5. The F.I.R. has been lodged by the father of the deceased, who has been examined as PW2 at the trial. He has alleged that on 14.04.2015 at about 2 'O' Clock in the day when he was about to go to the market along with the deceased and PW1, he sent a message to the deceased to come back home as he had gone near Durga Temple situated



next to the barn of PW2. When the deceased did not come, then PW2 along with his family members came out of the house at around 2.10 P.M. and started waiting for the deceased to come so that he could accompany PW2 as also PW1 to the market. In the meantime, because of the delay, PW2 along with PW1 and others moved ahead and saw that one Kedar Yadav and his son Nitish Yadav (the appellant) were engaged in verbal a duel with the deceased. When PW2 moved a bit ahead, he heard Kedar Yadav order his son Nitish Yadav to kill the deceased. On such exhortation, the appellant (Nitish Yadav) is said to have fired from a close distance near the ear of the deceased which led to his instantaneous death. When PW2 and others again moved forward, they were threatened by the accused persons of dire consequences. The appellant and his father thereafter fled away. By the time PW2 reached the exact place where the deceased had fallen injured, the deceased had already died. Because of the pandemonium at that time, many persons of the neighbourhood arrived and with their help, the dead body was brought to the darwaza of PW2. Later,



the police arrived. He has further stated in the fardbeyan that the cause of occurrence is that the appellant and his father wanted the deceased to marry a person of their choice and for that purpose the deceased was abducted but the deceased could anyhow extricate himself from their clutches, which had angered the father and son duo, who had threatened the deceased that he shall be done to death.

6. On the basis of the aforementioned fardbeyan statement recorded 4.30 P.M. by Sub-Inspector of Police, namely, A.K. Singh (not examined), Ghoswari P.S. Case No. 23/2015 dated 14.04.2015 was registered for investigation under Section 302, 115 and 34 of the Indian Penal Code.

7. It appears that after investigation, chargesheet was submitted against both the accused persons but for some reason, which has not been explained either by the appellant or the State, only the appellant (Nitish Yadav @ Nitish Kumar) was put on trial. The Trial Court, after having examined eight witnesses on behalf of the prosecution including the doctor and the I.O., convicted and sentenced the appellant as aforesaid.



8. The conviction of the appellant is primarily based on eye-witness account by Nandlal Yadav (PW2), who is the father of the deceased and Rajeshwar Yadav (PW1), who is the elder brother of the deceased. Two other witnesses, namely, Guddu Yadav and Tarun Yadav@ Arun Yadav (PWs 3 and 4 respectively) have testified to the fact that when they reached at the place of occurrence on the sound of firing, they found the deceased fallen dead and they brought the dead body from the place of occurrence to the darwaza of PW2 where the police had arrived later.
9. Dr. Uma Shankar Singh (PW5), who has conducted the autopsy has found two gunshot wounds communicating to each other; the wound of entry being on the left side below the ear. He has also found charring near the wound of entry. Both the wound of entry and exit were found to be communicating to each other. The left and right temporal bones were found to be fractured. There was fracture of right occipital bone as well. The brain matter was found to be protruding out. The time fixed by PW5 of the death from the postmortem report was between 12 to 36 hours. The cause



of death was opined to be hemorrhage and shock due to cardiac/respiratory failure because of gun-shot wounds. No bullet or pellet was recovered from the dead body.

10. Mr. Abhimanyu Sharma, the learned counsel for the State has submitted that with such clear assertion of the father of the deceased, who along with his another son (PW1) saw the appellant firing at the deceased, there is no reason to disbelieve the prosecution case. The accusation against the appellant further gets confirmed by the medical testimony which clearly reveals that the deceased was shot in his ear from a close range leading to fracture of entire occipital region and which had resulted in the brain matter oozing out of the head of the deceased. Shortly thereafter, the F.I.R was registered and the dead body was sent for post-mortem examination. There could be no clear evidence than this and therefore the Trial Court has rightly convicted and sentenced the appellant as aforesaid.

11. From the FIR (Ext. 6), it appears that the same was recorded by S.I. A.K. Singh, who has not been examined at the Trial nor any explanation has been offered



for his non-examination. If the narrative of PW2 (informant) is to be believed, he saw the appellant engaging with the deceased from a distance and thereafter saw the appellant firing at the deceased. However, such statement does not appear to be correct for the reason that the dead body was found in a lane to the north of the house of PW2. We say so for the reason that the inquest report (Ext. -5) describes that the dead body was lying in the lane towards the northern side of the house of PW2. The inquest report also was prepared by same person, namely, A.K. Singh and not the investigator/Mukesh Sharma/PW7. The time of inquest is 4 'O' Clock in the afternoon on 14.04.2015.

12. Two things appear to be clear from the two documents, namely, the F.I.R. and the inquest report that the inquest was prepared before the F.I.R. was lodged and that both the documents were prepared by S.I./A.K. Singh, who has not been examined. The other consequential inference is that the inquest was prepared at the place where the deceased had first fallen down and the same was signed by PW1, PW2 and one Dayanand, who has not been



examined. Till such time, there was no idea that the deceased had been shot dead by the appellant on the exhortation of his father/Kedar Yadav, who though was chargesheeted but not put on trial.

13. The falsity of the claim of the prosecution further gets exacerbated by the fact that the police came to the house of PW2 where the F.I.R. was registered at 4.30 P.M. in which definite role was assigned to the appellant and his father with a motive, which has not been proved at all. We are conscious of the fact that the motive is not relevant in a murder case, which has been witnessed by the people but when the motive is introduced and is not proved or found to be false, it definitely causes dent in the claims of the prosecution of coming out with the correct story.

14. PW2 in the fardbeyan has categorically stated that the appellant and his father wanted the deceased to marry somebody else and for that purpose, the deceased was abducted but he ran away from their captivity which actually had angered the father and son as a result of which the deceased was killed. However, the afore-noted story



could not be developed by the prosecution as PW1, who is the son of PW2 and brother of the deceased has not adverted to any such story of abduction or kidnapping of the deceased for the purposes of marriage which ultimately failed. Why this story then ? It is the guesswork of PW1 and PW 2 that perhaps the deceased would have been killed at the hands of the appellant and his father who are their neighbours and have their cattle house somewhere near their house.

15. The reasons for this is really difficult to seek.

16. In the afore-noted background facts, we find that Rajeshwar Yadav (PW1), who as noted above, is the brother of the deceased has categorically deposed that the police had arrived only after the dead body was brought from the place of occurrence to the house and that on the sound of firing nobody except them and perhaps PW3 and 4 sometimes later arrived even though the place is dotted by the houses of villagers who are known to PW1 and 2.

17. The other aspect of the matter which assumes significance is that according PW2, while the deceased was



being brought to the darwaza of their house, blood was trickling down on the ground which was spotted by the I.O. also, but the same was neither collected nor sent for any chemical/forensic examination. When the police had arrived at the house of PW 1 and 2, there was a congregation of the villagers but none of them have been chosen by the prosecution to be put on the witness stand to support its case.

18. With respect to the motive of the appellant; PW1 in his cross-examination has said that neither the appellant nor his father had ever come to his house or had talked to him or his father (PW 2) regarding fixing of marriage of the deceased with anyone of their choice. It was only later that PW1 could know the person in whom the appellant and his father were interested in getting married to the deceased. The person concerned was the sister-in-law of the sister of the appellant. This leaves us doubting whether the PW2 had come with the correct version with respect to him and PW1 having seen the occurrence from close distance.

19. The deposition of PW 3 and 4, who claimed to have



brought the dead body from the PO to the darwaza of PW 1 and 2 have also made discrepant statements which strike at the root of the prosecution case. According to them, blood was coming out of the body of the deceased and some of it was trickling down on the ground but none of the two persons (PWs 3 and 4) have said whether blood spots were there on the clothes which they had been wearing. They have also testified to the fact that but for them, nobody else from the village had come to the place of occurrence and when they had arrived at the place of occurrence, they found PW1 and 2 present there from before. This justifies the inference that neither PW1 nor 2, 3 and 4 were initially aware of the name of the assailants but only when the dead body was brought to the house and FIR was being recorded, the names of the appellant and his father were suggested to the police with a story behind the intention of the appellant and his father to eliminate the deceased. If neither the appellant nor his father had either talked to PW1 or 2 about the marriage of the deceased, where was the question of getting so angered at the deceased having not responded to



such request that he would be eliminated. We thus doubt the first version of PW2 with respect to the cause of occurrence.

20. The I.O. of this case, who has been examined as PW6 has categorically stated that the place of occurrence is a village lane to the north of the house of the deceased. In the western side of the house of the deceased is the house of Ramanand Yadav; in the south-eastern corner of the place of occurrence is a hut of the appellant and his father.

21. As has been noted by us, in the inquest report, the place where the dead body was found was the lane situated to the north of the house of the appellant. In his cross-examination, PW6 has categorically stated that from the house of the deceased, the place of occurrence is not at all visible. This falsifies the claim of PW2 and later PW1 that when they came out of their house, while waiting for the deceased to come and accompany them to market, they saw the deceased being engaged by the appellant and his father. The I.O. has candidly admitted that there was no blood found by him in the lane where the occurrence had taken place and he did not even consider it necessary to



investigate about the motive by talking to the person who was suggested to be married to the deceased or her family members.

22. PW1 had also not stated before the I.O. that the appellant and his father were having verbal duel with the deceased prior to the occurrence. He had also not specifically stated before the I.O. that the appellant had fired near the right ear of the deceased and after receiving the gun shot, the deceased was writhing in pain and his dead body was brought to his darwaza by the family members.

23. With this statement of the I.O., it is difficult to rely upon the deposition of PW1 and 2, especially with respect to their having seen the occurrence. What has then propelled them to falsely implicate the appellant is not known to us nor can be inferred from the evidence on record. But the fact remains that the prosecution has not been able to prove the case beyond all reasonable doubts.

24. The situation stands worst confounded with the non-recovery of the weapon of assault even when the appellant and his father are residents of a nearby hut and there is no



evidence on record to suggest that the appellant and his father had taken to heels. We do not find any evidence on record to indicate that any attempt was made by the villagers shortly after the occurrence to apprehend the appellant and his father. Who informed the police or under which circumstances, the police came at the place of occurrence when no information was given to them by either PW1 or 2 also remains unknown.

25. Under such circumstances, there would be some justification for holding that the deceased was found murdered on a village lane to the North of the house of the PW1 and 2 and the police on some information arrived there and prepared the inquest. Otherwise there would have been no reason for the PW1 and 2 to have signed the same before the registration of the FIR and suggesting the name of the appellant and his father in the FIR which was registered later. What had happened is not known to us as S.I. A.K. Singh has not been examined at the trial and the investigation has been carried out by PW6.

26. With these wedges and chinks in the story spun by the



prosecution, we cannot but reject the opinion of the trial court that it was the appellant only who had shot dead the deceased and nobody else.

27. The judgment and order of conviction is thus set aside and the appellant is acquitted of the charges levelled against him.

28. Since he is in custody, he is directed to be released forthwith unless his detention in custody is required in any other matter.

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

30. The records of this case be also returned to the trial court forthwith.

(Ashutosh Kumar, J)

(Vipul M. Pancholi, J)

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AFR/NAFR	AFR
CAV DATE	N/A
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