

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.659 of 2015

Arising Out of PS. Case No.-42 Year-2010 Thana- JADIA District- Supaul

Barun Yadav Son of Shri Ram Yadav resident of village - Harinaha, P.S. Jadia,
District - Supaul

... .. Appellant

Versus

The State Of Bihar

... .. Respondent

Appearance :

For the Appellant/s : Mr. Vivekanand Singh, Advocate
For the Respondent/s : Mr. Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH)

Date : 16-05-2023

This appeal has been preferred by the appellant under
Section 374(2) of the Code of Criminal Procedure, putting to
challenge the impugned judgment of conviction dated 02.06.2015
and order dated 10.06.2015, passed by learned Additional
Sessions Judge-II, Supaul, in Sessions Trial No. 332 of 2010,
arising out of Jadia P.S. case no. 42 of 2010, whereby the
appellant has been convicted and sentenced as under:

Criminal Appeal (DB) No. 659 of 2015				
Appellant	Conviction under Section	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
Barun Yadav	324 of the Indian Penal Code	R.I. for three years	--	--
	307 of the Indian Penal Code	R.I. for ten years	10,000/-	--
	302 of the Indian Penal Code	R.I. for life	10,000/-	--



2. All the sentences have been ordered to run concurrently.

3. It is the prosecution's case in nutshell as disclosed in the *fardbeyan* of the informant (PW-7) that her father-in-law Shiv Ram Yadav (the deceased) had three sons viz. Arun Yadav (PW-8), Tarun Yadav (PW-2) and Barun Yadav (the appellant). Consequent upon disputes raised by the appellant, Shiv Ram Yadav (the deceased) had partitioned the joint family property in equal shares amongst the coparceners. On 15.08.2010 at about 03:30 am, when the informant was sleeping with her daughter in her house and, her father-in-law, Shiv Ram Yadav (the deceased), brother-in-law, Arun Yadav (PW-8) with his son Raj Kumar and the daughter of Arun Yadav, Arti kumari (aged eight years, PW-3) over a *machaan* made of bamboos at the door, PW-3 suddenly came crying to tell the informant that his uncle (the appellant) was assaulting her grandfather (Shiv Ram Yadav) and Raj Kumar (son of Arun Yadav also a deceased) with *dabia* (a sharp cutting heavy weapon). The informant and her daughter Puja rushed towards the *machaan* and noticed the appellant, Ashok Yadav and another person inflicting *dabia* blows over the deceased Shiv Ram Yadav, Raj Kumar and Arun Yadav. On alarm being raised by the informant and her daughter, the villagers assembled and saw the accused persons



fleeing away. The reason behind the occurrence as mentioned in the FIR was that the appellant was not satisfied with the share allotted to him and used to demand a further amount of Rs. 50,000/- as his share. In the previous night, accused Ashok Yadav along with an unknown person had been seen taking meal in the house of the appellant, who too was involved in the commission of the offence.

4. The police upon completion of investigation, submitted its chargesheet for the offences punishable under Sections 302, 307 and 324 of the IPC. The court, after taking cognizance of the offences committed the case for trial. The trial court framed the charges for commission of the offences punishable under Sections 302, 307 and 324 of the IPC. As the appellant denied the charge and claimed to be tried, he was put on trial.

5. At the trial the prosecution examined altogether fourteen witnesses, out of whom PW-1, Kapil Dev Yadav; PW-2, Tarun Yadav; PW-5, Dhanik Lal Yadav; PW-6, Lukhia Devi; PW-10, Binod Yadav; PW-11, Chandeshwari Yadav and PW-12, Ganeshi Yadav. Be it noted that Tarun Yadav (PW-2) is the husband of the informant and according to the prosecution's case, as on the date of occurrence, he had gone to Punjab for earning his



livelihood. The doctor, who had conducted the post-mortem examination, came to be examined as PW-13 and the I.O. as PW-14. The prosecution brought on record documentary evidence also at the trial, viz., inquest report (exhibit-3), formal FIR (exhibit-2), signature of Nutan Devi (the informant) on *fardbeyan* (exhibit-1) and, signature of Manoj Kumar Yadav on the *fardbeyan* (exhibit-1/A). After closure of evidence of the prosecution's witnesses, the appellant was questioned under Section 313 of the CrPC by the trial court, explaining the evidence emerging against him based on the depositions of the prosecution's witnesses. The appellant answered in negative. The trial court after having evaluated the evidence adduced at the trial reached at a conclusion that the prosecution was able to establish beyond all reasonable doubts the charge of murder against the appellant. The trial court held the appellant guilty of the offences punishable under Sections 302, 307 and 324 of the IPC and sentenced the appellant to imprisonment and fine as has been noted hereinabove.

6. Mr. Vivekanand Singh, learned counsel appearing on behalf of the appellant has argued that it is evident that out of fourteen witnesses, eight are hearsay witnesses whose evidence has no evidentiary value. The finding of conviction is apparently based on the evidence of highly interested witnesses including the



informant (the minor daughter of the injured Arun Yadav), namely, Arti Kumari (PW-3) and the Injured witness Arun Yadav (PW-8). He has argued that since the animosity amongst the coparceners arising of partition in the joint family property is said to be the genesis of occurrence, the evidence of Arun Yadav should be seen by this Court with utmost circumspection. He has submitted that though PW-8, Arun Yadav, according to the prosecution's case, had sustained injuries in the occurrence, no injury on Arun Yadav could be proved at the trial. He has, therefore, submitted that the evidence of PW-8 becomes highly suspicious, there being no evidence to prove that he infact had sustained any injury. He has accordingly submitted that despite the fact that the prosecution miserably failed to prove the charges beyond all reasonable doubts, the trial court based on inadequate evidence has recorded the finding of conviction. He has submitted that PW-3 is a child witness who appears to be tutored as can be seen from the pattern of her deposition. Referring to her deposition in paragraph-2 that the fact that she had stated only such facts in her examination-in-chief as was told by PW-8. Mr. Singh has submitted that she is apparently a tutored witness.

7. Mr. Sujit Kumar Singh, learned Additional Public Prosecutor for the State has on the other hand submitted that the



trial court has rightly recorded the finding of conviction based on the evidence of the eyewitnesses. He has submitted that animosity arising out of dispute over the respective shares of the joint family property upon partition cuts both ways and appears to be the apparent reason why the appellant committed the ghastly murder of his father and son of his full brother. He has submitted that since PW-8, an injured witness has fully supported the prosecution's case, who has been consistent in his deposition, his evidence can not be doubted. He has also submitted that the I.O. has proved during the course of the trial that PW-8 was hospitalised, receiving treatment for the injuries sustained by him in the occurrence and that this witness had shown mark of injury to the learned trial court in course of his deposition at the trial.

8. We have perused the impugned judgment and order of the trial court and we have given out thoughtful consideration to the rival submissions made on behalf of the parties. From the deposition of the prosecution's witnesses, it is evident that PW-1 is not an eyewitness to the occurrence, who reached the place of occurrence after the occurrence had taken place. He is, however, a witness to the fact that the dead body of the deceased Shiv Ram and Raj Kumar were lying and PW-8, Arun Yadav was injured. He clearly deposed that at the trial he had seen injuries on the person



of PW-8. PW-2, the husband of the informant is also a hearsay witness, who was in Punjab earning his livelihood on the date when the occurrence had taken place. He also proved the fact that PW-8 had sustained grievous injuries. PW-3 is a child-eyewitness. From the lower court's records it transpires that before examining PW-3, the trial court had put certain questions to her and based on her response had formed an opinion that she was able to understand, make statement and answer accordingly, to the court. She (PW-3) deposed at the trial that the occurrence had taken place in her presence when she was sleeping with her father (PW-8). She had seen the appellant slitting the two deceased persons with *dabia*. She further deposed that thereafter he had started assaulting his father (PW-8) with *dabia*, whereafter she rushed to inform the informant.

9. It is noteworthy that the defence did not avail the opportunity to cross-examine PW-4, Sitaram Yadav. In his evidence PW-4 deposed that when he had gone to urinate in the night, after having heard some hullah, he had rushed to the place of occurrence and had seen, with the aid of the torch, the appellant fleeing away from the place of occurrence. After reaching the place of occurrence, he had seen that Shiv Ram Yadav and Raj Kumar were killed, whereas PW-8 had sustained injuries on his



shoulder, arms and back. He also deposed that there were five injuries on the person of PW-8.

10. The defence chose not to cross examine PW-4. PW-4 (Dhanik Lal Yadav) is a hearsay witness to the occurrence who had reached the place of occurrence after hearing *hallah*. He had seen PW-8, Arun Yadav in injured condition.

11. PW-6 is the mother of the appellant. The mother of the appellant also supported the prosecution's case and claimed to be an eyewitness to the occurrence of the deceased being killed by the appellant. As regards the genesis of the occurrence, she deposed in paragraph-12 that the appellant used to make a demand of three lakh rupees after his share was allotted to him, consequent upon partition in the joint family property. She also deposed that there was pool of blood lying at the place of occurrence and that she had fainted after having seen the blood oozing out from the body of the deceased.

12. The informant (PW-7) fully supported the prosecution's case as was disclosed in her *fardbeyan* and the genesis of occurrence and in our opinion, she withstood the cross examination also.

13. PW-8, while supporting the prosecution's case and the fact that he had also sustained injuries, deposed that his



statement was recorded by the police 18-19 days after the date of occurrence. The reason why the statement of the injured witness was recorded 18-19 days after the date of occurrence is evident from the deposition of PW-14, the Investigating Officer. He deposed at the trial that the injured (PW-8) was sent to Triveniganj Hospital for treatment. It may be noted that PW-8 deposed in his evidence that from Triveniganj Hospital he was referred for further treatment to Purnia Hospital where he was treated. Before the statement of PW-8 was recorded by the police after the date of occurrence his relatives were accompanying him for 15 days during his treatment.

14. After having perused the entire materials on record, including the evidence of the witnesses at the trial, we notice that for the occurrence said to have been taken place on 16.08.2010 at 03:30 am, the *fardbeyan* of the informant was recorded at 06:15 am and the inquest report was prepared soon thereafter at 06:30 am. Prompt recording of *fardbeyan*, preparation of inquest report and registration of FIR normally obviates chance of false implication of a person upon due deliberation. The inquest report clearly suggests that the injury was caused by sharp cutting heavy weapon which corroborates the prosecution's case as disclosed in the FIR and subsequently at the trial. The post-mortem



examination also supports the prosecution's case of the ante-mortem injuries caused on the body of the deceased persons by sharp cutting weapon. The child witness, who is an eyewitness and was sleeping with her father at *machan* appears to be consistent in her deposition in whose presence the occurrence had taken place. PW-7, the informant has also proved the manner of occurrence and the circumstance in which she was informed by PW-3 about the occurrence. PW-8 is an injured eyewitness, who also, according to him had sustained injuries caused by sharp cutting weapon. Submissions made on behalf of the appellant that as no injury report proving injury on PW-8 could be brought on record by way of evidence and, therefore, the prosecution's case that PW-8 had not sustained any injury and was not an eyewitness, is not acceptable to this Court for the reason that the independent prosecution witnesses have clearly deposed at the trial that they had seen the PW-8 in injured condition, though they are not the witnesses to the injury having been caused by this appellant. It can not be said that in the absence of injury report having been proved at the trial, that the prosecution failed to prove that PW-8 had sustained injuries. PW-6, the mother of the appellant also supported the prosecution's case and clearly deposed that the appellant used to quarrel for a sum of Rs. Three lakhs after the



shares were allotted amongst the family members by the deceased, Shiv Ram Yadav. There appears to be no reason as to why mother of the appellant would support the case of the prosecution against him of having killed his father (husband of PW-6) and her grandson, Raj Kumar (the second deceased).

15. After having gone through the evidence of the prosecution's witnesses, we do not find any justifiable reason to doubt the veracity of the depositions made by the prosecution's witnesses at the trial in the facts and circumstance as noted above. In our view, based on the evidence of the prosecution's witnesses, the trial court has rightly held the appellant guilty of the offences punishable under Sections 302, 307 and 324 of the IPC for killing his father and his nephew in the wake of a dispute arising out of partition in the family and injuring PW-8.

16. We accordingly do not find any merit in this appeal which is accordingly dismissed.

(Chakradhari Sharan Singh, J)

(Rajiv Roy, J)

Nishant/-

AFR/NAFR	NAFR
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