

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.555 of 2017

Arising Out of PS. Case No.-199 Year-2014 Thana- BAKHTIYARPUR District- Patna

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1. Raj Kumar Yadav
 2. Girdhari Yadav @ Gairdhari Yadav, Both S/o Ramashish Yadav,
 3. Nitish Yadav, S/o Devan Yadav, All residents of Village- Champapur,
P.s.- Bakhtiyarpur, District- Patna.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Yogesh Chandra Verma, Sr. Adv. Mr. Ansul, Adv. Mr.Madan Prasad Singh No-2, Adv.
For the Respondent/s	:	Mr.Sri Ajay Mishra, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE NANI TAGIA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 29-11-2023

1. Heard Mr. Y.C. Verma, the learned Sr.
Advocate assisted by Mr. Ansul, the learned
Advocate and Mr. Madan Pd. Singh No-2, the
learned Advocate for the appellants. The State has
been represented by Mr. Ajay Mishra, the learned



APP for the State.

2. The appellants were put on Trial for having murdered one Sinodhi, who was coming back home with his pick-up van on which cattle were loaded.
3. The allegation against the appellants is of having stopped the vehicle by using a Tractor whereupon the appellant/ Nitish Yadav tried to bring the deceased down from the Tractor. In the process, he shot at him, which hit him on his nose. Thereafter, appellants /Raj Kumar Yadav and Girdhari Yadav are said to have fired, which led to the death of the deceased.
4. The judgment and order of conviction and sentence is dated 08.03.2017/16.03.2017 passed by learned Additional Sessions Judge -II, Barh in Sessions Trial No. 659 /2015 arising out of Bakhtiyarpur P.S. Case No. 199/2014 whereby, the appellants have been convicted for the offence under Sectionss 302/34 of the IPC and Section 27 of the Arms Act and have been sentenced to undergo



imprisonment for life and to pay a fine of Rs. One Lakh for the offence under Sections 302/34 of the Indian Penal Code and R.I. for seven years and to pay a fine of Rs. Fifty Thousand for the offence under Section 27 of the Arms Act.

5. The informant of this case is the son of the deceased, who has been examined as PW9. In his fardbeyan statement, which was recorded at 3.30 P.M. on 25.08.2014, he has alleged that the vehicle which was being driven by his father (deceased) was intercepted by a Tractor and appellant / Nitish Yadav fired at the nose of the deceased and the appellants/ Raj Kumar Yadav and Girdhari Yadav fired on his body. Thereafter, the accused persons / appellants fled away. The deceased died immediately. The accused persons also took away Rs. 50,000/-, which the deceased was carrying with him. In the meantime, the police party arrived and the F.I.R. was registered.

6. The informant (PW9), though has supported



the prosecution case during the Trial but there are certain inconsistencies, which have been pointed out in his deposition, which strike at the root of the case.

7. On the basis of the fardbeyan referred to above, a case vide Bakhtiyarpur P.S. Case No. 199/2014 was registered for investigation for the offences under Sections 302, 394, 120B and 34 of the IPC and Section 27 of the Arms Act.

8. The appellants were chargesheeted and thereafter put on trial.

9. The Trial Court, after having examined twelve witnesses on behalf of the prosecution and none on behalf of the defense, has convicted and sentenced the appellants as aforesaid.

10. It has been urged on behalf of the appellant that it would be borne out from record that the dead body of the deceased was found lying on four-lane at Champapur. The inquest report and the time of lodging of the FIR are contemporaneous i.e. at 3.30 P.M. The story narrated by PW9 becomes



suspect only if the evidence of the Investigating Officer (PW11) is scrutinized with some circumspection. According to him, the information about killing of a person on the four-lane at Champapur was received in the police station on 25.08.2015 in the afternoon with no further details. PW11 was informed by the Officer-in-Charge of the Police Station and police party proceeded for the place of occurrence. However, before the police party had reached the place of occurrence, one Tractor driver was spotted fleeing away in a suspicious circumstances. He tried to speed away the vehicle on seeing the police party. He was arrested and from his possession, a country made pistol and two live cartridges were recovered apart from a mobile telephone. The afore-noted person was arrested, who incidentally is one of the appellants, namely, Nitish Yadav. His arrest was at 4.30 P.M. (Ext-4). Thus the yarn spun by PW9 that the police party arrived within three minutes of the occurrence



and after ten minutes, appellant / Nitish Yadav was arrested while fleeing away, becomes doubtful. Even the story narrated by PW9 has its own faultlines. If the fardbeyan was registered at 3.30 P.M. and roughly at the same time, the inquest report was prepared, the timeline given by PW9 about arrest of appellant / Nitish Yadav would not fit in the scheme of prosecution version. Appellant / Nitish Yadav appears to have been arrested about an hour later, who is said to have made a confession before the police. Based on such confession, the other two appellants were arrested.

11. On this score, it has been urged on behalf of the appellants, the entire story of the prosecution is false.

12. Mr. Ansul has gone to the extent of dubbing PW9 a complete liar and he not having seen the occurrence himself. The reason suggested for afore-noted conclusion is that if PW9 would have been aboard on the pick-up van where the deceased



was killed, he also would not have been spared. He would also have definitely made some attempts at saving his father. If nothing else, he would have been shooed off by the miscreants.

13. During the trial, another development took place, namely, one of the brothers of the deceased, claimed to be an eye-witness of the occurrence. He has been examined as PW8 but he has not been named by PW9 in the fardbeyan. Had the brother of the deceased been at the place of occurrence, he would surely have been a witness to the lodging of the FIR. According to his own version at the Trial, he was present at the place where appellant /Nitish Yadav was arrested. It was only later that he learnt that this arrest was in connection with the murder of his brother. Precisely for this reason, PW11 while talking about PW8 has specifically stated that he was not an eye-witness to the occurrence.

14. Apart from the above, it has been



pointed out to us that the pick-up van which was being driven by the deceased was loaded with buffaloes purchased by three of the persons of the village, namely, Anil Singh, Ganauri Singh and Indradeo Singh, who though were brought to the witness-stand as PWs. 3, 4 and 5 but they have expressed complete ignorance about the occurrence. According to the version of PW9, the father and son dyad had gone to the cattle-market to purchase cattle but the deal could not be finalized. Since the vehicle was being driven back empty, the deceased agreed to carry the purchased cattle by aforesaid three witnesses, namely, PWs. 3, 4 and 5. Their having shown complete ignorance about the occurrence means a lot especially with respect to the correctness of prosecution case.

15. Renu Devi, wife of the deceased, has been examined as PW6. Her statement is noticeable for the reason that though she claims to have learnt about the occurrence from her son (PW9) but she



has admitted of a dispute over the ownership of pick-up van, which was purchased by the deceased as also the appellant/Raj Kumar Yadav in partnership. It has been argued that this hints at the purpose and the motive for naming appellant /Raj Kumar Yadav and perhaps his associates.

16. The mother of the deceased (PW7) suggested a totally different story, namely, of her having told the Investigator that there were two other persons of the village with whom the deceased had enmity and who were responsible for the killing of the deceased. However, such statement could not be taken to any logical conclusion because the I.O. was never asked about PW7 having made such statement.

17. Thus, it has been argued that except for PW9, nobody had seen the occurrence. Even with respect to PW9, serious doubts have been raised for the reason which has been afore-noted as also for the reason that the medical evidence is not in total



sync with what has been testified by PW9. The injury on the nose of the deceased does not clearly appear to be a gunshot injury unless the bullet would have grazed through the nose of the deceased. Apart from this, as against the allegation of two gunshots fired by two other appellants, namely, Raj Kumar Yadav and Girdhari Yadav, there is only one gunshot injury with wound of entry and exit.

18. Another angle to the case has been suggested by the learned counsel for the appellants, namely, that if PW11 is to be believed for a while that the police party apprehended a person on suspicion, namely, appellant / Nitish Yadav with whom the deceased had no connection, he might have been made the scapegoat whose confession was extracted for reigning in appellant /Raj Kumar Yadav with whom the family was on inimical terms. Were all these efforts a ruse to turn in the appellant /Raj Kumar Yadav for forcing him to abandon his claim over the pick-up van which was



purchased in partnership with the deceased but the document in question bore the name appellant /Raj Kumar Yadav himself though the document in question bears the name of appellant /Raj Kumar Yadav as the owner ?

19. The vehicle which was used by the appellant / Nitish Yadav and others for leaving the place of occurrence after having executed the crime, has neither been seized nor exhibited. PW9 could not give any detail regarding the registration number of the pick-up van which was being driven by the deceased. If the murder had taken place on the pick-up van and the dead body was allegedly lying below the van, the vehicle, for sure, was a *corpus delicti*. That it was never thought of by PW11 or the police party to seize it as a material evidence also appears to be surprising.

20. In the totality of the circumstances therefore, we find that though PW9 has tried to connect the dots but the line created by him is rather



zig-zag and does not pass the muster on the scrutiny of his evidence.

21. To tie the strings together, (I) important witnesses whose cattle were loaded on the vehicle, in which the murder was committed, having gone hostile, (ii) PW8, another person later claiming to be an eye-witness of the occurrence and then having been proved doubtful and (iii) the doubts regarding the correctness of the deposition of PW9, the sole eye-witness of the occurrence as his deposition is full of inconsistencies, have cumulatively led to the prosecution case failing miserably. It could be for the purpose of pressurizing appellant /Raj Kumar Yadav for abandoning his claim on the pick-up van or the handy-work of the police in arresting a person on suspicion and then making him confess or perhaps the murder having taken place in some other transaction and the circumstance being used for the benefit of the family of the deceased.

22. One of the hostile witnesses, namely, PW2



claims to have witnessed the fight on the four-lane while he was standing on the railway tracks. Who were fighting and who were the aggressors is not known. Another co-villager (PW1) did not have any idea about the occurrence.

23. Thus, with such tergiversation of the witnesses and the yawning gap in the timelines of arrest of one of the appellants, on whose confession others were arrested and of recording of the fardbeyan as also the inquest report further confounds the issue.

24. We, therefore, do not deem it fit to accept the findings and the conclusion of the Trial Court, holding the appellants to be guilty.

25. The appellants have to be given the benefit of doubt.

26. The appeal succeeds.

27. The appellants are acquitted of the charges levelled against them.

28. All the appellants are said to be in jail.



They are directed to be released from jail forthwith unless their detention is required in any other case.

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

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

(Ashutosh Kumar, J)

(Nani Tagia, J)

sunilkumar/-

AFR/NAFR	NAFR
CAV DATE	N/A
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