

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.229 of 2016
Arising Out of PS. Case No.-194 Year-2012 Thana- MANSI District- Khagaria

Ram Binay Yadav Son of Radhe Yadav Resident of Village- Thatha, Police Station Mansi, District Kahgaria.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :
For the Appellant : Mr.Viveka Nand Singh, Advocate
For the Respondent : Mrs. S.B.Verma, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 05-04-2023

The appellant has preferred this appeal under section 374(2) of the Code of Criminal Procedure against the judgment and order dated 19.01.2016 and 22.01.2016 passed by the learned Additional Sessions Judge-III, Khagaria, in Sessions Trial No. 339 of 2013, arising out of Mansi P.S. Case No. 194 of 2012, whereby and whereunder the appellant Ram Binay Yadav has been convicted and sentenced as under :-

Convicted under Sections	Imprisonment	Fine (Rs.)	In default of fine
302 of the IPC	Imprisonment for life	10,000/-	-
Section 27 of the Arms Act	No separate sentence	-	-



2. Heard Mr. Viveka Nand Singh, learned counsel appearing on behalf of the appellant and Mrs. Shashi Bala Verma, learned Additional Public Prosecutor for the State.

3. It is the prosecution's case, as disclosed in the '*fardbeyan*' (Ext-2) of the informant (P.W.-8), that at 5:00 A.M. in the morning of 11.11.2012, the informant's, son Biral Yadav (deceased) had gone out of his house to ease himself. In the meanwhile, at about 5:30 A.M., the informant proceeded towards his '*Bathan*' (cattle shed) from his house. He saw his son (the deceased) returning after easing himself, 50 yards north of the house of one Naresh Yadav. In the meanwhile, the persons named in the First Information Report, Kailash Yadav, Krishna Yadav, Awadh Yadav, Ram Binay Yadav (the appellant herein) and Bilash Yadav intercepted the deceased and they resorted to indiscriminate firing upon him. The deceased sustained bullet injuries and in order to save his life, he ran towards his house. The accused persons, however, encircled him and they again fired several shots in the body of the deceased, consequent upon which, he died at the place of occurrence. Further allegation in the '*fardbeyan*' is that the miscreants attacked the informant also and shot fires at him. The informant sustained a bullet injury in his abdomen. He explained the genesis of occurrence as pending land



dispute between Bindu Yadav, Kailash Yadav and Radhe Yadav, the informant being a '*Bataidar*' of Bindu Yadav, because of which the accused, Kailash Yadav was nurturing grudge against the informant and the deceased.

4. Based on the aforementioned allegation contained in the *fardbeyan*, the Mansi P.S. Case No. 194 of 2012 came to be registered for the offences punishable under Sections 324, 326, 307 and 302/34 of the Indian Penal Code and Section 27 of the Arms Act. It is noted here that it appears from the *fardbeyan* (Ext.-2) that the same was recorded on 11.11.2012 for the occurrence said to have taken place on the same day at 5:30 am. The police, upon completion of investigation, submitted charge sheet against the appellant for the offences punishable under section 324, 326, 307, 302 of the Indian Penal Code and Section 27 of the Arms Act while keeping the investigation pending against rest of the persons, named in the FIR. Cognizance was taken for commission of the offences punishable under Sections 324, 326, 307, 302 of the Indian Penal Code and Section 27 of the Arms Act.

5. The case was committed to the court of Sessions, whereafter the charges were framed for commission of the offences punishable under Sections 324, 326, 307 and 302 of the



Indian Penal code and Section 27 of the Arms Act on 17.01.2014. As the appellant denied the charge so framed, he was put on trial. At the trial, altogether 10 witnesses were examined. We consider it apt to note, at the outset, that out of 10 witnesses three, i.e., (P.W.-1), Pintu Yadav, (P.W.-4), Prakash Yadav and (P.W.-7), Bindu Yadav did not support at all the prosecution's case and accordingly, they came to be declared hostile at the instance of the prosecutions. P.W.-2, Rishidev Prasad Yadav, also did not support the prosecution's case to the extent the same related to the appellant's involvement in the commission of the offence. P.W.-5, Subhash Yadav, although not declared hostile, also did not support the prosecution's case against the appellant. His deposition is only to the extent that he had learnt that the deceased was shot dead and nothing more than that P.W.-9, Dr. Vidya Nand Singh, happened to be the doctor, who had conducted postmortem examination and P.W.10, Abhinandan Singh, the Investigating Officer of the case. Out of the above mentioned 10 witnesses, three supported the prosecution's case claiming themselves to be the eye witness, namely, (i) Binita Devi, the daughter of the informant and a sister of the deceased, (P.W.-3), (ii) Ganeshi Devi the wife of the informant (P.W.-6) and (iii) Sadeek Yadav, the informant himself (P.W.-8).



6. The prosecution also proved at the trial following documentary evidence:-

- (i) Exhibit – 1 - Postmortem report of the deceased.
- (ii) Exhibit – 2 – *Fardbeyan*
- (iii) Exhibit -3 and 3/1 – Seizure list.
- (iv) Exhibit 4 – FSL Report
- (v) Exhibit 4/1 – Counter signature on the FSL report.

7. The prosecution also got exhibited material exhibit, i.e., blood stained vest of the deceased.

Upon closure of the evidence of the prosecution's witnesses, the appellant was examined by the trial court under Section 313 of the Code of Criminal Procedure by explaining to him the circumstances, which were emerging against him on the basis of the evidence of the prosecution's witnesses. In response to the opportunity given to him to explain the circumstances of the case, he has denied all such circumstances explained to him.

8. Mr. Vivek Nand Singh, learned counsel appearing on behalf of the appellant has submitted that the finding of conviction recorded by the trial court is erroneous. The trial court has not objectively taken into account the manifest contradictions in the evidence of the witnesses, who claimed



themselves to be the eye witnesses. He has submitted that P.W. 3 (Binita Devi), for the first time at the trial, claimed herself to be an eye witness to the occurrence. During the course of investigation, she had not disclosed to the police that she was an eyewitness to the occurrence as would be evident from the evidence of the Investigating Officer read with the evidence of P.W. -3 herself in paragraph-59. Attention of the Investigating Officer was drawn to the evidence of P.W.-3 in this regard. He has accordingly submitted that P.W.-3 is neither an eye witness nor a reliable witness. He has secondly submitted that P.W.-6, the informant's wife, though claimed to be an eyewitness to the occurrence, it is evident from the disclosure made by the informant himself in his FIR that none except the informant was present when the occurrence had taken place.

9. He has further submitted that the evidence of P.W.-7 (informant) is wholly unreliable for the reason that, according to him, he had sustained one bullet injury in his abdomen, but there is absolutely no evidence adduced at the trial to support this part of the prosecution's case that the informant had sustained any fire arm injury. He has submitted that the charge for commission of the offence punishable under Section 307 of the Indian Penal Code was framed against the appellant in the wake



of the accusation that the informant had sustained injury in his abdomen. The said part of accusation/charge has not been found proved by the trial court in the absence of any evidence adduced in support thereof, and accordingly, the appellant has been acquitted by the trial court of the charge of commission of offence punishable under Section 307 of the Indian Penal Code.

10. He has further argued that there is no injury report nor any chit of paper is available on record of the trial court to demonstrate that the informant had received any injury. No proof of his treatment has been brought on record by the prosecution at the trial. He has accordingly submitted that the manner of occurrence, as alleged in the First Information Report and set out during the course of trial, has not at all been proved, and thus the entire case against the appellant becomes doubtful. He has argued that the appellant ought to have been given benefit of doubt by the trial court in view of absence of any cogent evidence and in the background of contradictory evidence of the prosecution's witnesses. He has, referring to the postmortem report (Exhibit -1), submitted that time elapsed since the death of the deceased at the time of postmortem examination has been found to be within 24 hours. The postmortem examination was conducted at 9:20 a.m. He has submitted that in such



circumstance, the chance of the deceased having been killed in the previous night cannot be ruled out.

11. Learned Additional Public Prosecutor appearing on behalf of the State, on the other hand, has submitted that the finding of conviction recorded by the trial court does not require any interference in view of the consistent evidence of the eye witnesses, i.e., P.W.-3, P.W.-6 and P.W.-8. Since the evidence of the said eyewitnesses is corroborated by the medical evidence, the finding of the trial court, in the facts and circumstances of the case, cannot be said to be suffering from any legal infirmity, she contends.

12. We have perused the impugned judgment of the trial court as well as the lower court records, which were called for and are available. We have given our thoughtful consideration to the rival submissions advanced on behalf of the appellant and the State. We consider it apt to notice, at the outset, that it has been specific case of the prosecution, as disclosed in the FIR by the informant (P.W.-8), that he had not only seen the occurrence taking place, he himself had sustained bullet injury in his abdomen. It is evident from the prosecution's evidence that the part of the prosecution's case that the informant had sustained injury could not at all be proved by the prosecution at the trial by



any evidence. The trial court, after having analyzed the evidence on record, while dealing with the charge punishable under Section 307 of the Indian Penal code, held as under: -

“.... So far the charges U/S 324, 326 and 307 IPC framed against the accused is concerned, he is acquitted of these charges as the injury report of Sadeek Yadav has not been filed and exhibited by the prosecution and the I.O. (P.W. 10) at page no. 16 of his deposition has stated that he tried to obtain the injury report of Sadeek Yadav but could not get the same.”

13. The prosecution's case, thus, that the informant had sustained bullet injury could not be established at the trial. It would also be apt, at this juncture, to notice the evidence of P.W.-8, Sadeek Yadav, to the extent the same relates to he having sustained firearm injury in the occurrence. In paragraph-26 of his deposition, he said that after having sustained firearm injury, he fell down and became unconscious and regained consciousness 10 to 15 days thereafter. In paragraph-27, he further deposed that, after having sustained firearm injury, he did not talk to any person. He remained unconscious in a hospital at Begusarai and after he regained consciousness at Begusarai, his statement was not recorded by the police. The evidence of P.W.-8 (the informant)



that he had become unconscious immediately after having sustained firearm injury, raises a reasonable doubt as to how his *fardbeyan* containing in great detail the manner of occurrence was recorded at 6:15 am. There is an L.T.I. said to be that of the informant available on the *fardbeyan*, which, according to him, was read over and explained to him.

14. The Investigating Officer, in his deposition in paragraph-15 in his cross examination at the trial, has mentioned that re-statement of the informant was recorded on 11.02.2013, i.e., three months after the date of occurrence, because he was not available. He (Investigating Officer) did not make any attempt to enquire as to the place where the informant was being treated. According to him, the informant was treated by one Dr. Pawan Kumar, but he could not obtain any injury report from him. Dr. Pawan Kumar has not been examined. As has been noted hereinabove, the evidence of Investigating Officer (Paragraph - 9) is crucial on the point of presence of P.W.-3 at the place of occurrence. The Investigating Officer deposed in his evidence that during the course of investigation, P.W.-3 had disclosed that after she had returned to her house, she had heard the sound of fire, and thereafter, when she reached near the house of Naresh Yadav, she



had found the dead body of the deceased lying. Her father had described her about the occurrence.

15. In such view of the matter, there is substance in the submissions made on behalf of the appellant that it is not safe to treat P.W.-3 an eyewitness to the occurrence. There is apparent contradiction between her deposition at the trial and her statement recorded by the police under Section 161 of the Code of Criminal Procedure. Further, the evidence of P.W.-8, in our opinion, does not appear to be reliable in view of his conduct of his having disappeared after the occurrence without any explanation in the form of evidence coming forth. The case that the informant himself had sustained firearm injury has not at all been established at the trial. There is no evidence to suggest that he had received any treatment consequent upon the firearm injury, which he alleged in his *fardbeyan* to have sustained. So far as evidence of P.W.-6, the mother of the victim, is concerned, her claim that she was an eyewitness to the occurrence becomes doubtful in view of the evidence of Investigating Officer. In paragraph-21 of his evidence, the Investigating Officer specifically deposed that during the course of investigation, no person other than Sadeek Yadav (P.W.-8) had stated that he/she had seen the entire occurrence.



16. In view of the above discussion, none of the prosecution's witnesses, who had claimed to be the eye witnesses, appear to be reliable. It was therefore, not safe for the trial court to have recorded finding of conviction of the appellant based on the evidence of P.Ws. 3, 6 and 8 in view of the discussion noted above.

17. We cannot lose sight of the submissions made on behalf of the appellant that in the postmortem report, the time elapsed since the death of the deceased has been found to be within 24 hours. In such circumstances, the death of the deceased, before the alleged time of occurrence, cannot be completely ruled out. Situated thus, in our opinion, the finding recorded by the trial court requires interference in the facts and circumstances of the case. The appellant deserves to be acquitted of the charge of commission of offence punishable under Section 302 of the Indian Penal Code and Section 27 of the Arms Act by giving him benefit of doubt.

18. Accordingly, the impugned judgment of conviction dated 19.01.2016 passed by the learned Additional Sessions Judge-III, Khagaria, in Sessions Trial No. 339 of 2013, arising out of Mansi P.S. Case No. 194 of 2012, is set aside. Consequently, the order of sentence dated 22.01.2016 also stands set aside.



19. The appeal is allowed.

20. The appellant is in custody, let him be set at liberty
forthwith if not required in any other case.

(Chakradhari Sharan Singh, J)

(Rajiv Roy, J)

Jagdish/-

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