

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.450 of 2014

Arising Out of PS. Case No.-218 Year-1998 Thana- BIND District- Nalanda

Ramdeo Yadav S/o Late Tanik Yadav Resident of Village Rampurbigha, P.S- Bind, District- Nalanda.

... .. Appellant

Versus

The State Of Bihar

... .. Respondent

Appearance :

For the Appellant : Mr. Raj Bansh Dubey, Advocate

Mr. Abhishek Anand, Advocate

For the Respondents : Mr. Abhimanyu Sharma, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 26 -04-2023

This appeal has been preferred by the appellant under Section 374(2), putting to challenge the impugned judgment dated 28.03.2014 and order of sentence dated 02.04.2014 passed by learned 1st Additional Sessions Judge, Nalanda, in Sessions Trial No. 459 of 2011, arising out of Asthawan (Bind) P.S. Case No. 218 of 1998, whereby the appellant, Ramdeo Yadav, has been convicted and sentenced as under:

Criminal Appeal (DB) No. 450 of 2014				
Appellant Name	Conviction under Section	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
Ramdeo Yadav	302/34 of the Indian Penal Code	For life	50,000/-	Rigorous imprisonment for six months
	27 of the Arms Act	Rigorous imprisonment for four years	--	--



2. Today, we have delivered a judgment in Criminal Appeal (DB) No. 113 of 2016, filed by one Karu Yadav, a co-accused in the concerned Asthawan (Bind) P.S. case No. 218 of 1998. The said case had given rise to two Sessions Trials, i.e., Sessions Trial No. 491 of 2000 (State of Bihar v/s Karu Yadav and others) and the present Sessions Trial No. 459 of 2011 (State of Bihar v/s Ramdeo Yadav).

3. Karu Yadav of Sessions Trial No. 491 of 2000, preferred an appeal before this Court against the judgment of conviction recorded by the trial court in the said trial, giving rise to Criminal Appeal (DB) No. 113 of 2016, which has been allowed by a judgment delivered by this Bench today, upon giving him benefit of doubt. Though this appeal was heard side by side with Criminal Appeal (DB) No. 113 of 2016, a separate judgment is being delivered based on the analysis of the evidence adduced at the trial in Sessions Trial No. 459 of 2011.

4. We have heard Raj Bansh Dubey, learned counsel for the appellant and Mr. Abhimanyu Sharma, learned Additional Public Prosecutor for the State.

5. Based on the *fardbeyan* of Dharamveer Yadav [the Appellant in Criminal Appeal (DB) No. 194 of 2016], recorded at about 9:00 pm on 27.11.1998, an FIR was registered on



28.11.1998 disclosing commission of the offences punishable under Section 302 read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act against Ramdeo Yadav (the appellant in the present Criminal Appeal No. 450 of 2014), Karu Yadav (an appellant in Criminal Appeal No. 113 of 2016), Ramdhin Yadav, Arun Yadav and Anandi Yadav. The police had submitted charge sheet against all the five accused persons. It transpires from the records that the trial of the appellant-Ramdeo Yadav of Criminal Appeal (DB) No. 450 of 2014 had to be separated because of his prolonged absence at the stage of commitment of the case and rest of the persons, named in the FIR, were committed to the court of Sessions for trial. Karu Yadav (the appellant herein), Arun Yadav and Anandi Yadav were put on trial in Sessions Trial No. 491 of 2000, which finally came to be concluded by the judgment and order dated 10.12.2015/16.12.2015, passed by learned 6th Additional Sessions Judge, Nalanda at Bihar Sharif, holding the appellant-Karu Yadav guilty of the offences punishable under Section 302 of the IPC and Section 27 of the Arms Act. The trial court, by the said judgment of conviction dated 10.12.2015, had, however, acquitted co-accused Arun Yadav and Anandi Yadav. In the aforesaid backdrop the appellant Karu Yadav preferred the Cr. Appeal (DB) No.113 of 2016 against the order of conviction and sentence dated



10.12.2015/16.12.2015, whereas the informant-Dharamvir Yadav filed Cr. Appeal (DB) No.194 of 2016 against acquittal of Arun Yadav and Anandi Yadav. It is worthwhile mentioning that in the meanwhile the appellant Ramdeo Yadav faced trial in Sessions Trial No. 459 of 2011 and came to be guilty of the offences punishable under Sections 302/34 of the IPC and Section 27 of the Arms Act by the judgment dated 28.03.2014 passed by learned 1st Additional Sessions Judge, Nalanda at Biharsharif. He has sentenced for commission of the said offence accordingly by the trial court by an order dated 02.04.2014. As all the aforesaid three appeals arose out of the same occurrence and the same FIR, they were heard together with the consent of the parties. However, since the Criminal Appeal (DB) No. 450 of 2014 arises out of a separate trial, we have considered it appropriate to deliver separate judgment in the present appeal, based on the evidence adduced in Sessions Trial No. 459 of 2011.

6. Briefly narrated, the prosecution's case, as disclosed in the fardbeyan of the informant-Dharamveer Yadav recorded by the officer-in-charge Bind Police Station on 27.11.1998 about 9:00 pm, is that on the same day at about 9:00 am, when he was returning home after harvesting paddy crops with his brother Satendra Yadav (PW-6), his father Yaddau Yadav and his uncle Jai Ram Yadav (PW-4), suddenly, his co-villagers namely, Ramdeo



Yadav(the appellant), Karu Yadav, Ramdhin Yadav, all sons of Late Tanik Yadav, Arun Yadav and Anandi Yadav, both sons of Ramdhin Yadav, armed with country made rifle, came and Ram Deo Yadav shot at the informant's father with his countrymade rifle in the temporal region of the informant's father and, immediately thereafter, Karu Yadav also opened fire on the right side of the neck of the informant's father, who fell down and died instantaneously. They chased the informant, his brother and his uncle too for killing, but they managed to save their lives by fleeing away. Upon hearing the uproar made by the informant, his mother, sister and other villagers rushed towards the place of occurrence. The genesis of occurrence, as mentioned in the *fardbeyan*, was some old land dispute between the parties. The occurrence, according to the *fardbeyan*, had taken place at about 4:30 pm. Further, according to the *fardbeyan*, for the safety, the dead body of the deceased was brought from the place of occurrence (PO for short) and put in an open place in front of his *dalaan*. The *fardbeyan* to the aforesaid effect gave rise to Asthawan P.S. Case No. 218 of 1998 on 28.11.1998 for commission of the offences punishable under Section 302 read with Section 34 of the IPC and Section 27 of the Arms Act against the persons named in the FIR.



7. The police, upon completion of investigation, submitted chargesheet against all the named accused persons whereupon the cognizance was taken of the offence by order dated 24.02.1999. The case was thereafter transferred to the court of learned SDJM for commitment. As has been noted above, as the appellant Ramdeo Yadav did not appear for commitment for a substantial period, his records were separated and case of other four accused persons was committed to the Court of Sessions for trial, giving rise to Sessions Trial No. 491 of 2000.

8. The case of the present appellant was subsequently committed to the Court of Sessions giving rise to the Sessions Trial No. 459 of 2011. Charges were framed against the appellant for commission of the offence punishable under Section 302/34 of the IPC and Section 27 of the Arms Act. The appellant, however, denied the charges and claimed to be tried.

9. To bring home the charges framed against the appellant, the prosecution examined altogether nine witnesses, namely, Satyendra Yadav (PW-1), brother of the informant, Shayama Devi (PW-2), married sister of the informant, Dharamvir Yadav (PW-3), the informant, Parmeshwari Devi (PW-4), mother of the informant, Indu Devi (PW-5), aunt of the informant, Jairam Yadav (PW-6), a brother of the deceased and the uncle of the informant, Suresh Prasad Singh, the Investigating Officer (PW-7),



Surendra Prasad (PW-8), a pharmacist, who had brought the *postmortem* report from the hospital and Dr. Awadhesh Prasad Singh (PW-9), who formally proved the postmortem report prepared by another Doctor.

10. The prosecution, in order to bring home the charge against the persons put on trial, exhibited following documentary evidence:-

Ext. 1	Signature of informant P.W. 5 Dharamvir Yadav on fardbeyan proved by him.
Ext. 2	Signature of Jairam Yadav (P.W. 4) on seizure list.
Ext. 2/1	Signature of Satendra Yadav (P.W. 6) on seizure list
Ext. 3	Signature of Nathun Pd. And Ram Lakhan Yadav on inquest
Ext. 4	Signature and writing of P.W. 7 Suresh Pd. Singh, I.O. on fardbeyan proved by him.
Ext. 4/1	Endorsement on fardbeyan by P.W. 7 Suresh Pd. Singh, I.O.
Ext. 4/2	Registration Endorsement.
Ext. 4/3	Proved formal FIR by P.W. 7 Suresh Pd. Singh
Ext. 5	Post mortem report of deceased Yadu Yadav
Ext. 6	C.C of the F.I.R. of Asthawa P.S. Case No. 87/88
Ext. 6/1	C.C of the final report of Asthawa P.S. Case No. 87/88
Ext. 7	C.C of F.I.R Sarmera P.S. Case No. 22 of 2000
Ext. 7/1	C.C of the final form of Saremera P.S. Case No. 22/2000
Ext. 8	C.C, of the F.I.R of Saksohra P.S. Case No. 6/06
Ext. 8/1	C.C of the final form of Saksohra P.S. Case No. 6/06
Ext. 9	C.C of the F.I.R of Sarmera P.S. Case No. 34/02
Ext. 10	C.C of the judgment of Cr. Appeal No. 500/90

11. After closure of the evidence of prosecution's witnesses, in compliance with requirement under Section 313 of the CrPC, the trial court gave the accused persons an opportunity to explain the circumstances emerging against them from the



evidence of the prosecution witnesses. The circumstance, however, were denied by them.

12. The trial court, after having appreciated and evaluated the evidence on record, held the appellant-Ramdeo Yadav guilty of the offence punishable under Section 302 of the IPC read with Section 34 of the IPC and Section 27 of the Arms Act

13. It has been argued on behalf of the appellant that there has been inordinate delay in lodging of the *fardbeyan* inasmuch as occurrences is said to have taken place at about 4:30 pm on 27.11.1998, the *fardbeyan* came to be recorded at about 9:00 pm, though the distance from the Police Station to the place of occurrence was hardly 5 Kms. He has emphasized that it is evident from the *fardbeyan* that the informant had gone to Bind P.S. for registration of FIR.

14. It has further been argued that though it is the specific case of the prosecution's witnesses that the dead body of the deceased was physically lifted from the place of occurrence to near the house of the deceased and the dead body was kept in an open place in front of *dalaan* of the informant, there is no evidence to the fact that any sign/mark was found to support the prosecution's case of lifting of the dead body and bringing it to the house of the deceased. It has also been argued that it has come in the evidence that the village is densely populated with nearly 500



residents, some of whom had assembled at the PO after the occurrence had taken place, but no independent witness came forward to support the prosecution's case that the dead body was lifted from the PO to be brought to the house of the deceased. It has further been argued that the deceased had criminal antecedents, as he was involved in criminal cases of serious nature and because of animosity with the appellant and other members of his family, they had falsely been implicated in the case.

15. The IO is said to have collected the blood stained soil from the place of occurrence, but the same was not sent for forensic examination. Accordingly, the prosecution miserably failed to establish at the trial the place of occurrence.

16. Before we advert to the evidence adduced at the trial by the prosecution and the defense, we need to point out that earlier the then learned Adhoc Sessions Judge had examined the Doctor and the IO in Sessions trial No. 491 of 2000, even for the present appellant, who was facing trial in Session Trial No. 459 of 2011. The trial court, i.e., the Court of 1st Additional and District Court, Nalanda at Biharsharif, noticed that the same could not have been done, there being two separate trials, though arising out of the same case, since they were not amalgamated. For the just decision of the case, the trial court kept on record of Sessions Trial No. 459 of 2011, the said depositions of the Doctor and the IO



without any objection from either of the sides, i.e., prosecution or the defense.

17. Learned Additional Public Prosecutor has submitted that as the eyewitnesses have fully supported the prosecution's case, there is no illegality in the finding recorded by the trial court and that there is no inconsistency in the evidence of the witnesses other than the eyewitnesses as regards the time of arrival of the police at the place of occurrence. She has submitted that the injuries and the medical evidence corroborates the prosecution's case that the deceased had received two firearm injuries, one in the occipital area and another in his neck. She accordingly contends that the finding of conviction does not suffer from any legal infirmity, requiring this Court's interference.

18. We have carefully perused the impugned judgment and order of the trial court as well as evidence adduced at the trial by both the sides. As has been noted above, the time of occurrence, according to the prosecution's case, is 04:30 p.m. at a place which was nearly one kilometer away from the house of the deceased.

19. PW-2, Shyam Devi, is the married sister of the informant and daughter of the deceased. She was married nearly 16-17 years before the date of occurrence. She deposed that the dead body of the deceased was lifted from the place of occurrence



by Jairam (PW-6), Dharmvir (PW-3), Satyendar (PW-1), her aunt and her mother Parmeshwari Devi (PW-2) and she herself. They had lifted the dead body of the deceased by clutching the hands and legs of the deceased, from the place of occurrence.

20. PW-3, in his evidence, deposed that after the occurrence, the informant's mother, sister and aunt had proceeded towards the place of occurrence and the informant, his brother, his uncle and so many villagers also proceeded towards the PO when they saw the accused persons fleeing away from the PO. He, too, deposed that the dead body of the deceased was brought to an open place near *dalaan* of the informant and kept on a cot. According to him, the police had arrived at the place of occurrence at 10:30 pm and when the police had reached the police station, other villagers of the village had also assembled. It is evident, thus, from the evidence of PW-4 that at least 20-25 persons had assembled near the dead body of the deceased, but none of them informed the dafadar or chowkidar of the village. He also deposed that the blood stained soil was also collected by the police from the place of occurrence.

21. It is noteworthy that no independent witnesses came forward at the trial to prove even this part of the prosecution's case that so many villagers had assembled at the place of occurrence. The blood stained soil is said to have been seized



from the place of occurrence. The IO, in his deposition, has clearly stated that the blood stained soil was not sent for forensic examination.

22. In our considered view, it was incumbent upon the prosecution to prove that the blood was that of the deceased. There are more than one circumstance, which cause genuine doubt as regards the place of occurrence. Firstly, for the reason that the dead body was not lying there and the same was shifted to the house of the deceased, according to PW-2, his daughter by clutching his (the deceased's) hands and legs. As has been noticed above, the distance between the place of occurrence and the place where the dead body of the deceased was taken was one kilometer. No trail of blood was found by the police from the place of occurrence to the place of house of the deceased. No villager came forward to prove the prosecution's case that the occurrence had taken place at the place of occurrence as alleged by the informant. The place of occurrence is said to have been a lonely place, but hardly one kilometer away from the house of the deceased, according to the prosecution's case. All circumstances seen conjointly, in our opinion, the place of occurrence becomes doubtful. This is for the further apparent reason that the police were informed at 09:00 pm, though the distance of the police station was only five kilometers away from the house of the



informant. The police reached the place of occurrence seven hours after the occurrence had taken place.

23. PW-4, wife of the deceased, in her evidence, claimed that she had seen the accused persons fleeing away from the place of occurrence with rifles in their possession. She does not appear to be truthful in her deposition as, according to her evidence, she was in the house when the occurrence had taken place and the prosecution's witnesses Dharamvir, Satyendar and Jairam had come from the place of occurrence to tell the female members of the family that the accused persons had killed the deceased. It is highly improbable that the appellant would have waited till the eyewitnesses had gone to their houses after seeing the place of occurrence and returned back with their family members. Further, contrary to the evidence of her daughter, Shayama Devi (PW-2), PW-4 deposed that from Aahra Khanda, which is the PO, the dead body of the deceased was brought on a cot. The inconsistency in the evidence of PW-2 and PW-4, as regards the mode in which the dead body of the deceased was carried to the house from the place of occurrence, is of significance and renders the prosecution's case doubtful. There is yet another significant aspect in the evidence of PW-5, Indu Devi, the wife of PW-6. She deposed that after Dharamvir (PW-3), Satyendar (PW-1) and Jairam came to the house after the occurrence, no villager had come and all of them



had deliberated for five minutes. He deposed that no villager had come along with the family members of the deceased at the place of occurrence. She again deposed that the dead body was not carried on a cot or *chowki*, rather it was bodily lifted at about 07:00 pm from the place of occurrence. She further deposed that no villager had come near the dead body of the deceased nor the police nor any villager was examined by the police. PW-6, Jairam, in his evidence, deposed that he had returned to his house with the dead body of the deceased at 05:15 pm It is emphasized here that PW-5, Indu Devi, deposed in her evidence that the dead body was lifted from the place of occurrence at 07:00 pm, when it had already become dark. Contrary to this, PW-6, Jairam, testified that the dead body was lifted from the place of occurrence at 05:15 pm.

24. In his cross examination, the Investigating Officer could not mention the container in which the blood stained soil was preserved nor any such entry was made in the case diary. He further deposed that during the investigation, he had examined independent witnesses, i.e., the villagers of the village. None of them said as to when the deceased was killed and by whom. The Investigating Officer also deposed that the informant had told him the time of occurrence as 09:00 am on 27.11.1998.



25. On holistic appreciation of the evidence adduced at the trial, we notice apparent conflicts in the evidence of the witnesses on the point of the time when the dead body of the deceased was shifted by the witnesses from the PO to the house of the deceased. It is highly improbable that no person of the village would witness the dead body being lifted after having been killed and being taken to the house of the deceased located nearly one kilometer away from the PO. It is true that the evidence of the prosecution's witnesses cannot always be discarded on the ground that they are family members of the deceased and, therefore, interested witnesses, but in the present facts and circumstances, considering the absence of any independent witness to prove the place of occurrence, the manner of occurrence and the manner of shifting the dead body of the deceased from place of occurrence to the house of deceased, the entire prosecution's case becomes doubtful. The witnesses do not appear to be trustworthy. It emerges from the evidence of the witnesses that there was animosity between the family of the deceased and the persons named as accused in the FIR. In such background, the body of the deceased of having not been seen by any person other than family members of the deceased at the place of occurrence, though the occurrence is said to have taken place at 04:30 p., creates serious doubt over the prosecution's case.



26. In view of the discussions above, in our considered opinion, the appellant deserves to be acquitted by giving him benefit of doubt. Accordingly, the judgment of conviction dated 28.03.2014 and the order of sentence dated 02.04.2014, passed by learned 1st Additional Sessions Judge, Nalanda at Biharsharif, in Sessions Trial No. 459 of 2011, arising out of Asthawan (Bind) P.S. Case No. 218 of 1998, are set aside.

27. The appellant, Ramdeo Yadav, is in custody. Consequent upon his acquittal by the present judgment, let him be released forthwith, if he is not required in any other case.

28. This appeal is accordingly allowed.

Chakradhari Sharan Singh, J)

I agree.
Rajesh Kumar Verma, J:

(Rajesh Kumar Verma, J)

Nishant/-

AFR/NAFR	NAFR
CAV DATE	18.01.2023
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