

IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL APPEAL (DB) No.390 of 2011

Arising Out of PS. Case No.-1 Year-1994 Thana- JAMALPUR RAIL P.S. District- Munger

- 1. JATAN YADAV S/O LATE TRIBHUWAN YADAV R/O VILLAGE-MAHRNA, P.S- DHARAHARA, DISTT.- MUNGER.
- 2. PYARE YADAV S/O LATE TRIBHUWAN YADAV R/O VILLAGE-MAHRNA, P.S- DHARAHARA, DISTT.- MUNGER.
- 3. MANOJ YADAV S/O SRI CHAMAK YADAV R/O VILLAGE- MAHRNA, P.S- DHARAHARA, DISTT.- MUNGER.
- 4. KISHORE YADAV S/O SRI CHAMAK YADAV R/O VILLAGE-MAHRNA, P.S- DHARAHARA, DISTT.- MUNGER.
- 5. ARUNA DEVI W/O LATE KAILASH YADAV R/O VILLAGE-RAMBIHARIPUR, P.S- KHARAGPUR, DISTT.- MUNGER.

... .. Appellant/s

Versus

THE STATE OF BIHAR BIHAR

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 465 of 2011

CHAMAK LAL YADAV S/O Late Tribhuban Prasad Yadav R/O Village - Mahrna, P.S. - Dharahra, Distt. - Munger

... .. Appellant/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 508 of 2011

DASHRATH PD. YADAV @ DASHRATH YADAV, Son of Late Tribhuwan Pd. Yadav, Resident of Village Maharana, P.S. Dharhara, District Munger.

... .. Appellant/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

Appearance :  
(In CRIMINAL APPEAL (DB) No. 390 of 2011)

For the Appellants : Mr. Alok Kumar Sinha, Senior Advocate  
Mr. Ajay Kumar Thakur, Advocate  
Mr. Bhola Kumar, Advocate



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|-------------------------------------------|---------------------------------------|
|                                           | Mr. Premchand Yadav, Advocate         |
|                                           | Mr. Ankesh Kumar, Advocate            |
| For the State :                           | Mr. D.K. Sinha, APP                   |
| (In CRIMINAL APPEAL (DB) No. 465 of 2011) |                                       |
| For the Appellants :                      | Mr. Alok Kumar Sinha, Senior Advocate |
|                                           | Mr. Bhola Kumar, Advocate             |
|                                           | Mr. Premchand Yadav, Advocate         |
|                                           | Mr. Ankesh Kumar, Advocate            |
| For the State :                           | Mr. Sujeet Kumar Singh, APP           |
| (In CRIMINAL APPEAL (DB) No. 508 of 2011) |                                       |
| For the Appellants :                      | Mr. Alok Kumar Sinha, Senior Advocate |
|                                           | Mr. Bhola Kumar, Advocate             |
|                                           | Mr. Premchand Yadav, Advocate         |
|                                           | Mr. Ankesh Kumar, Advocate            |
| For the State :                           | Km. Shashi Bala Verma, APP            |

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**CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI**  
**and**  
**HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)**

**Date : 06-03-2024**

At the outset, it is relevant to mention here that appellant no.5, namely, Kailash Yadav of Criminal Appeal (DB) No.390 of 2011 died on 07.09.2020 during pendency of the appeal and his wife, namely, Aruna Devi filed I.A. No.1 of 2023 with a prayer to pursue/pairvi Criminal Appeal (DB) No.390 of 2011, which was allowed on 13.12.2023.

2. These appeals have been filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') against the judgment of conviction dated 08.04.2011 and order of sentence dated 13.04.2011, passed by learned A.D.J.-FTC-II, Munger in connection with Sessions Trial No.611 of 1994, arising out of Jamalpur G.R.P. Case No.1/94, whereby all the



appellants have been convicted for the offence punishable under Sections 302/149 of the Indian Penal Code and appellants Dashrath Yadav and Kailash Yadav (since deceased) were also found guilty for the offence punishable under Section 27 of the Arms Act.

2.1. All the appellants have been sentenced to undergo imprisonment for life under Sections 302/149 of the Indian Penal Code and a fine of Rs.10,000/- (ten thousand) each and in default of payment of fine, the appellants have been sentenced to undergo R.I. for three months. Appellants Dashrath Yadav and Kailash Yadav (since deceased) have further been sentenced to undergo R.I. for three months and a fine of Rs.1,000/- (one thousand) each for the offence punishable under Section 27 of the Arms Act and in default of payment of fine, Dashrath Yadav and Kailash Yadav (since deceased) have been sentenced to undergo R.I. for one month. Both the sentences were directed to run concurrently.

3. The factual matrix of the present case is as under:

3.1. Fardbeyan of Rajneeti Prasad Yadav came to be recorded on 17.01.1994 at Dharhara Railway Station at 12:00 Noon in presence of witnesses, namely, Suresh Yadav, Malkhu Yadav, Kauri Yadav and Bhola Yadav wherein he has stated that on 16.01.1994, his brother-in-law, namely, Hardeo Yadav who works



in Jamalpur Rail Factory came to Dharhara Station by a train which arrives at 07:30 in the evening. It is further stated in the fardbeyan that the informant, Suresh Yadav, Malkhu Yadav, Kauri Yadav and Bhola Yadav had come to purchase some household articles at Station Bazar from before. The said persons started to go to their homes with Suresh Yadav. It is alleged that when they reached near Pulia, they saw appellants Jatan Yadav, Chamak Lal Yadav, Dashrath Yadav, Pyare Yadav, Manoj Yadav, Kishore Yadav and Kailash Yadav (since deceased). It is further alleged that appellant Dashrath Yadav was carrying a country made pistol whereas Chamak Lal Yadav was carrying a rod and rest appellants were carrying lathi and gun. The appellants surrounded the informant and others. Dashrath Yadav caught Hardeo Yadav and thereafter Chamak Lal Yadav assaulted Hardeo Yadav by means of iron rod and Hardeo Yadav fell down on the ground. His right leg was broken. It is further alleged that thereafter Dashrath Yadav fired by country made pistol which hit on the temple of Hardeo Yadav and he died on the spot.

4. After registration of the FIR, the Investigating Officer started the investigation and during the course of investigation, he had recorded the statement of the witnesses and thereafter filed charge-sheet against the appellants/accused before the concerned



Magistrate Court. As the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the same to the Court of Sessions where the same was registered as Sessions Trial No.611 of 1994.

4.1. During the course of trial, the prosecution had examined nine witnesses and thereafter statement of the accused under Section 313 of the Code came to be recorded. After conclusion of the trial, the Trial Court passed the impugned judgment against which the appellants have preferred the present appeals.

5. Heard Mr. Alok Kumar Sinha, learned Senior Counsel assisted by Mr. Bhola Kumar, Mr. Ajay Kumar Thakur, Mr. Premchand Yadav and Mr. Ankesh Kumar for the appellants and Km. Shashi Bala Verma and Mr. Sujit Kumar Singh, learned APP for the State.

6. Learned counsel for the appellants would mainly submit that there is delay in lodging the FIR. Except PW-6, all witnesses are relatives of the deceased. It is further submitted that all the witnesses examined by the prosecution are chance witnesses. Learned counsels for the appellants submit that appellants, Dashrath Yadav and Kailash Yadav (since deceased) were in the service of Bihar Police and on the date of occurrence,



they were on duty. It is further submitted that at the place of occurrence, there was no source of light and the night was dark. Learned counsels for the appellants also drawn the attention of the Court regarding contradictions in the statement of the prosecution witnesses. The Investigating Officer has stated in his evidence that he received information about the occurrence by Station Master of Dharahra Railway Station through telephone and he made entry in the Station Diary but such Station Diary has not been brought on record in this case. It is also argued that the informant has stated in his evidence that he submitted a written application to Station Master of Dharahra Railway Station in the morning of 17.01.1994 and the said written application was sent by the Station Master to G.R.P. Jamalpur, but the same has not been brought on record which creates a serious doubt on the veracity of the prosecution case. Learned counsels, therefore, urged that the medical evidence also does not support the case of the prosecution and hence, these appeals be allowed and the impugned judgements passed by the Trial Court be quashed and set aside.

7. On the other hand, learned APPs. have vehemently opposed the present appeals by contending that that the witnesses have supported the prosecution case and, therefore, the Trial Court



has not committed any error while passing the impugned judgements.

8. We have considered the submissions canvassed by learned counsel for the parties. We have also gone through the evidence produced by the parties before the Trial Court. At this stage, we would like to refer the depositions given by prosecution witnesses as well as defence witnesses before the Court.

9. PW-1, Suresh Yadav has stated in his examination-in-chief that occurrence took place six years and three months back at 08:00 P.M. After arriving at Dharahra Railway Station, he was going towards West with Kanhai Yadav, Malkho Yadav, Rajneeti Prasad Yadav and Hardeo Yadav. It is deposed that when they reached near railway bridge, they saw Kailash Yadav (since deceased), Chamak Lal Yadav, Kishore Yadav, Dashrath Yadav and two-three other persons. It is further deposed by PW-1 in his examination-in-chief that Kailash Yadav (since deceased) was carrying a gun whereas Dashrath Yadav was carrying a country made pistol and Chamak Lal Yadav was armed with iron rod. Chamak Lal Yadav assaulted Hardeo Yadav with iron rod on his right leg. Dashrath Yadav fired upon Hardeo Yadav with his country made pistol resulting into his death at the spot. It is also deposed that he fled away raising alarm.



9.1. During cross-examination, PW-1 has stated that on the day of occurrence, he had gone to Dharahra market for purchasing clothes alongwith his friends. This witness further stated in his cross-examination that distance between Dharahra Railway Station and market is 50 to 100 yards.

10. PW-2, Malkhu Yadav has stated in his evidence that the occurrence took place on 16.01.1994 at 07:00 P.M. He had gone for realisation of money from Biran Halwai. After taking money, he was returning with Kanhai Yadav, Suresh Yadav, Ramjee Yadav and Kapil Yadav. This witness further deposed in his examination-in-chief that when they reached at platform no.1, Hardeo Yadav also accompanied them. It is further deposed that Chamak Lal Yadav assaulted Hardeo Yadav on his right leg by means of rod and Dashrath Yadav fired upon Hardeo Yadav by his country made pistol on the temple of Hardeo Yadav resulting into his death. This witness further deposed in his examination-in-chief that he came back at the spot with the wife of Hardeo Yadav. This witness has further deposed that he alongwith Rajneeti, Bhola, Suresh and Kauri went to Dharahra P.S. but Dharahra police did not register the case and advised that Jamalpur G.R.P. will register the case.



10.1. PW-2 has stated in his cross-examination that he went to the shop of Biran Halwai for realisation of money. This witness has further stated in his cross-examination that deceased Hardeo Yadav is not his own brother-in-law. The night was dark on the date of occurrence. He reached at the door of Hardeo Yadav at 07:45 P.M.

11. PW-3, Dr. Arjun Prasad Singh conducted the post-mortem of the deceased on 17.01.1994 at 05:00 P.M and found following injuries on his body:

“(a) Lacerated oval wound on the right temple chest in front of and above right side 2” x 1” x brain cavity deep blood and clot were present in the wound of entry.

(b) Lacerated oval wound 3” x 1/2” x communicating to injury no.1 on left temporo parietal region (wound of exit). Brain substance was protruding through the wound.

(c) Fracture of right fibula and tibia bone over “lower third of right leg.”

The death was due to haemorrhage and shock as a result of above injury especially injuries to the blood caused by firearm. Injury no.3 caused by hard and blunt substances. Time elapsed since death 12 to 24 hours.



12. PW-4, Sanjay Kumar is a formal witness and he has proved fardbeyan and formal FIR.

13. PW-5, Bhola Yadav has stated in his examination-in-chief that the occurrence took place on 16.01.1994 at 07:30 P.M. Kauri Yadav, Rajneeti Yadav, Bhola Yadav and Suresh Yadav came at Dharahra Station for purchasing household articles. Hardeo Yadav reached at 07:30 P.M. They proceeded towards their homes. When they reached near bridge, Dashrath Yadav, Pyare Yadav, Chamak Lal, Kishore Yadav, Jatan Yadav and 5-6 others caught hold Hardeo Yadav. Chamak Lal assaulted on the leg of Hardeo Yadav and Dashrath fired upon Hardeo Yadav on his temple. Hardeo Yadav died at the spot.

13.1. This witness stated in his cross-examination that his fardbeyan was recorded on 17th January at 08:00 A.M. by G.R.P. It is stated by this witness in his cross-examination that Hardeo was his cousin.

14. PW-6, Kauri Yadav stated in his examination-in-chief that he had gone to Dharahra Bazar for purchasing goods alongwith Suresh Yadav, Malkhu Yadav, Rajneeti Yadav and Bhola Yadav. Hardeo Yadav came from a train. They proceeded together and reached near the bridge where he saw Dashrath Yadav, Chamak Lal Yadav, Jatan Yadav, Pyare Yadav, Manoj Yadav,



Kishore Yadav and Kailash Yadav (since deceased). It is further deposed that Chamak Lal assaulted Hardeo Yadav by means of rod in his leg and Hardeo Yadav fell down. Dasrath Yadav fired upon Hardeo Yadav on his temple resulting into his death.

14.1. PW-6 stated in his cross-examination that he did not say anybody about the occurrence in village Dharahra. PW-6 further stated that he made alarm in his village but nobody turned up to save except the family members of Hardeo Yadav. It is also stated by PW-6 in his cross-examination that there was light near the bridge. Fire was made from the distance of two hands. At the time of receiving firearm injury, Hardeo was facing East.

15. PW-7, Lagani Devi is the wife of the deceased Hardeo Yadav who has stated in her examination-in-chief that Rajneeti Yadav informed her that Dashrath, Jatan, Chamak Lal, Manoj Yadav, Kishore Yadav, Kailash Yadav (since deceased) and Jago Yadav have killed Hardeo Yadav. She went to the place of occurrence alongwith others and saw that her husband was dead. PW-7 further deposed in her examination-in-chief that there was a quarrel between her family and Jatan Yadav before the occurrence.

15.1. PW-7 stated in her cross-examination that she did not see the occurrence. It is also stated that all the accused persons were family members.



16. PW-8, Rajneeti Prasad Yadav is the informant of this case. He has stated in his examination-in-chief that the occurrence took place on 16.01.1994 at 07:30 P.M. He went to Dharahra market for purchasing vegetables alongwith Kauri Yadav, Bhaktu Yadav, Malkhu Yadav, Suresh Yadav and Bhola Yadav. Hardeo Yadav also accompanied them. PW-8 further stated in his examination-in-chief that Hardeo is his brother-in-law. It is further deposed that Dashrath caught hold Hardeo. Chamak Lal assaulted Hardeo on his leg by means of rod due to which Hardeo fell down. Thereafter Dashrath fired upon the deceased on his temple. Hardeo died at the spot. Kailash threatened to kill. PW-8 further stated that he informed the wife of Hardeo Yadav and thereafter they came to the place of occurrence and saw the dead body of Hardeo Yadav. They went to Dharahra Police Station to lodge the FIR, but the police refused to register the FIR. It is further deposed that he submitted a written report before Dharahra Station Master who informed the G.R.P., Jamalpur upon which G.R.P., Dharahra came at the place of occurrence and he gave his fardbeyan.

16.1. PW-8 has stated in his cross-examination that Dashrath Yadav was in service of Bihar Police and he was bodyguard of Ramashray Singh, M.P. Kailash Yadav (since deceased) also participated in the occurrence. This witness further



stated in his cross-examination that Hardeo Yadav was accused in the case of setting fire and theft.

17. PW-9, Basgit Ram is the Investigating Officer of the case. He has stated in his examination-in-chief that on 17.01.1994, he was posted at G.R.P. Jamalpur. He took charge of investigation of this case on 17.01.1994 and thereafter he went to the place of occurrence where he found the dead body of the deceased. It is further deposed that he prepared the inquest report and thereafter recorded the re-statement of the informant and statements of witnesses, namely, Suresh Yadav, Kauri Yadav, Bhola Yadav, Lagani Devi, Bateshwar Yadav, Arjun Prasad Singh and Malkhu Yadav. After completion of investigation, this witness submitted charge-sheet.

17.1. PW-9 has stated in his cross-examination that he received information about the occurrence by telephone and thereafter he made entry in the station diary. His attention was drawn by defence regarding the statement of prosecution witnesses recorded under Section 161 of the Code during the investigation.

18. In support of their contention, the defence has also examined two witnesses.

19. DW-1, Ramashray Prasad Yadav has stated in his examination-in-chief that in the year 1994, he was Member of the



Lok Sabha from Jehanabad Constituency. In the night of 14.01.1994 at about 10:00 P.M., he arrived Patna from Delhi and he saw his two bodyguards, namely, Dashrath Yadav and Naval Kishore Prasad. It is further deposed that appellant, Dashrath Yadav remained present with him till 18.01.1994.

19.1. In his cross-examination, DW-1 stated that Dashrath Yadav was his bodyguard in the year 1994. Whenever Dashrath Yadav proceeded on leave, he did not take permission from him.

20. DW-2, Satish Kumar Sinha stated in his examination-in-chief that he was posted in Ranchi Police Wireless between 30.12.1993 to 2007. He has further deposed that the Investigating Officer of this case had recorded his statement and inquired about Kailash Yadav (since deceased). Kailash Yadav (since deceased) was posted at Ranchi as Police Constable.

20.1. DW-2 in his cross-examination stated that attendance of Kailash Yadav (since deceased) was never made in his office. He was In-charge of Ranchi Wireless Office. The employees used to come and go with his permission. The attendance register does not get destroyed.

21. We have re-appreciated the entire evidence led by the prosecution as well as the defence before the Trial Court. It



would emerge from the record that there is delay in lodging the FIR. For the alleged occurrence which took place on 16.01.1994 at about 07:00 P.M., FIR was lodged on 17.01.1994 at about 12 hours. The prosecution has failed to explain the said delay in lodging the FIR though the so called eye witnesses were present at the place of occurrence. It transpires from the deposition of the Investigating Officer that he received the information about the occurrence through Station Master of Dharhara Railway Station on telephone and, therefore, he made necessary entry in the Station Diary. However, it is relevant to note that the said Station Diary has not been brought on record. It further transpires from the record that the informant has stated in his deposition that he submitted a written application to Station Master of Dharhara Railway Station in the morning of 17<sup>th</sup> January, 1994 and the said written application was sent by the Station Master to G.R.P. Jamalpur but the same has not been brought on record which creates a serious doubt on the veracity of the prosecution case.

22. At this stage, it is relevant to observe that the conduct of the informant and other so called eye witnesses was also not natural. Except PW-6, all the so called eye witnesses are near relatives of the deceased despite which they did not inform the police immediately after the occurrence took place.



23. From the *fardbeyan* given by the informant, it is revealed that the informant has alleged that the appellants surrounded the informant and others and accused Dashrath Yadav caught Hardeo Yadav and thereafter Chamak Lal Yadav assaulted Hardeo Yadav by means of iron rod. Hardeo Yadav fell on the ground. His right leg was broken and thereafter Dashrath Yadav fired by country made pistol which hit on the temple of Hardeo Yadav and he died on the spot. From the evidence of PW-3, the doctor, it is revealed that the firearm injury sustained by the deceased can be caused if the firing is made from a distance of four feet. He has further stated that such injury may be caused if the deceased was in standing or sitting position. Thus, we are of the view that the version given by the so called eye witnesses is not supported by medical evidence.

24. It is specific case of the defence that some of the appellants were not present at all at the place of occurrence and they claim *alibi*. For the said purpose, two defence witnesses were examined by the defence. From the deposition of the defence witnesses, it can be said that some of the accused were present at other places. At this stage, it is relevant to note that PW-9, the Investigating Officer in his deposition has stated that he had received the representation from one Ramashray Prasad Yadav



(DW-1) in which he has stated that Dashrath Yadav was present with him in the meeting at some other place. He also got information that Kailash Yadav was posted at Ranchi as Police Constable and, therefore, DW-2 Satish Kumar Sinha has also informed about the said aspect to the Investigating Officer. The Investigating Officer made necessary entry in the case diary and verified the aforesaid aspect.

25. It is also the case of the defence that because of the land dispute, they have been falsely implicated in the occurrence in question.

26. We also found major contradictions and discrepancies in the deposition of the prosecution witnesses and we are of the view that the so called eye witnesses are in fact chance witnesses and their presence at the place of occurrence was doubtful.

27. In the facts and circumstances of the present case, we are of the view that the prosecution has failed to prove the case against the appellants beyond reasonable doubt, despite which the Trial Court has recorded the order of conviction. Hence, the impugned judgment is required to be set aside.

28. Accordingly, the judgment of conviction dated 08.04.2011 and order of sentence dated 13.04.2011, passed by



learned A.D.J.-FTC-II, Munger in connection with Sessions Trial No.611 of 1994, arising out of Jamalpur G.R.P. Case No.1/94 are set aside. All the appellants are on bail. They are discharged from the liabilities of their bail-bonds.

29. The appeals are allowed.

**(Vipul M. Pancholi, J.)**

**(Sunil Dutta Mishra, J.)**

Sanjay/-

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