

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.853 of 2017

Arising Out of PS. Case No.-144 Year-1991 Thana- LAUKAHI District- Madhubani

Budhan Yadav Son of Late Asharfi Yadav, R/o Village- Kachnarwa, P.S.-
Laukhi, District- Madhubani, and present Address- R/o Village- Mahthaur,
P.S.- Andhramath, District- Madhubani.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 759 of 2017

Arising Out of PS. Case No.-144 Year-1991 Thana- LAUKAHI District- Madhubani

1. Sukhdeo Yadav and Ors Son of Late Rati Chandra Yadav,
2. Prem Lal Yadav, Son of Late Rameshwar Yadav, Both resident of Village-
Mahthaurgoth, P.S.- Audhramath, District- Madhubani.
3. Gudar Yadav, Son of Late Kalar Yadav.
4. Manager Yadav, Son of Late Asarfi Yadav, Both resident of Kachuarwa, P.S.
Laukhi, District- Madhubani.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 853 of 2017)

For the Appellant/s : Mr. Ramakant Sharma, Sr. Advocate
Mr. Lakshmikant Sharma, Advocate
Mr. Mayank Raj, Advocate
For the State : Mr. Sujit Kumar Singh, APP
Mr. Satya Narayan Prasad, APP

(In CRIMINAL APPEAL (DB) No. 759 of 2017)

For the Appellant/s : Dr. Rajesh Kumar Singh, Advocate
For the State : Mr. Sri Satya Narayan Prasad, APP

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

and

HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 13-03-2024



Both these appeals, filed under Sections- 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code', arise out of the impugned common judgment of conviction dated 17.05.2017 and order of sentence dated 20.05.2017 passed by the learned Presiding Officer, Fast Tract Court-I, Madhubani, in connection with Sessions Trial No. 20/1993/13/2017 (arising out of Laukahi P.S. Case No. 144/1991 corresponding to G.R. No.847/1991) whereby and whereunder the appellants have been held guilty for the offences punishable under Sections- 302/34 of the Indian Penal Code (hereinafter referred to as 'I.P.C.') and have been sentenced to undergo rigorous imprisonment for life and a fine of Rs. 5,000/- each and in case of default of payment of fine, they have to suffer six months R.I. in addition.

2. The prosecution story in brief is as under:

“On 21.08.1991 at about 09:00 a.m., the informant went to cultivate the field owned by Deo Lakhan Yadav, which is registered in the name of Chandu Narayan Chaudhary, situated at Kachnarwa, bearing Khata No. 190, Khesra No. 114 with Ram Chandra Paswan, son of Raghunandan Paswan, Bachche Lal Yadav, son of Dobhi Yadav, residents of Chichorwa, P.S. Laukahi, District-Madhubani and Sukti Mandal, son of Uchit Mandal, resident of Kakihiya (spademan). While they were engaged in cultivating the field, around 25-30 persons came variously armed with



Lathi, Bhala, Farsa and Gun. Accused Budhan Yadav was holding a Farsa, accompanied with Manager Yadav, Shivendra Yadav, Jugat Yadav, Kallar Yadav, Khattar Yadav, Hari Narayan Sah, Gudar Yaadav, Ram Narayan Shah, Indrajeet Yadav, Bade Lal Yadav, Ghuran Kamat, Chandra Dev Yadav, Sukhdeo Yadav and Premlal Yadav. Budhan Yadav gave a blow with Farsa on the feet of Sukti Mandal, as a result of which he fell down and thereafter Chandra Deo Yadav opened indiscriminate firing which hit Ram Chandra Paswan and thereafter all the accused persons started assaulting by means of Lathi and Farsa due to which the informant fell down injured. Some of the accused persons assaulted Bachche Lal Yadav. In the meantime, villagers, namely Deo Lakhan Yadav, Luchai Saw, Chhote Lal Yadav and Bindeshwar Yadav, all residents of Kachnarwa came at the scene shouting, upon which the accused persons started fleeing away from the field. These persons, with the help of villagers brought Sukti Mandal, the informant, Bachche Lal Yadav and Ram Chandra Paswan to hospital. Before they could reach hospital, Sukti Mandal had succumbed to injuries. The informant sustained injuries in his head, stomach, hands and near eyes. ”

3. Heard Mr. Ramakant Sharma, learned Sr. Advocate, assisted by Mr. Lakshmikant Sharma and Mr. Mayank Raj for the appellant and Mr. Sujit Kumar Singh, learned A.P.P. for the respondent-State in Cr. Appeal (D.B.) No.853 of 2017 and Mr. Rajesh Kumar Singh, learned advocate



for the appellants and Mr. Satya Narayan Prasad, Learned A.P.P. for the respondent-State in Cr. Appeal (D.B.) No. 759 of 2017.

4. Learned counsels appearing for the appellants have mainly submitted that the prosecution has withheld the examination of the Investigating Officer and the informant of the case, namely Thakai Yadav, without giving any explanation for the same. It is stated that neither the place of occurrence has been established nor the inquest report has been proved or brought on record. Out of 13 prosecution-witnesses, P.W's. 1, 2 and 3 have been declared hostile, P.W's. 9, 10, 11 and 12 have been tendered and P.W. 4 is a formal witness. Evidence of P.W.'s. 7 and 8 have been expunged. Even the injured witness, P.W. 5, has not supported the prosecution case in his cross-examination. There are contradictions in the deposition of the prosecution-witnesses. Conviction has been based only on the evidence of P.W.6. Thus, in the present case, though the prosecution has failed to prove the case against the appellants beyond reasonable doubt, the learned Trial Court has recorded the conviction of the appellants/accused and, therefore, the impugned order be quashed and set aside.

5. On the other hand, learned A.P.P's. have opposed these appeals. It is mainly submitted that the present is a case of



brutally assaulting and killing a person. It is also submitted that the benefit of faulty investigation or non-examination of certain witnesses or technical discrepancy should not be given to the accused. As such, when the prosecution has proved the case of murder of a person against the appellants/accused beyond reasonable doubt, the learned Trial Court has not committed any error while passing the impugned judgment and order. They, therefore, urged that in the interest of justice both these appeals be dismissed.

6. After filing of the F.I.R., the investigating agency carried out the investigation and during the course of investigation, the Investigating Officer recorded the statement of the witnesses and collected the relevant evidence and thereafter filed the charge-sheet against the accused persons for the offences punishable under Sections- 147, 148, 149, 447, 302, 323, 324 and 307 of the I.P.C. and 27 of the Arms Act. As the case was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions where the same has been registered as Sessions Trial No. 20/1993/13/2017

7. We have considered the submissions canvassed by the learned counsels for the parties.

8. We have also perused the materials placed on



record and the evidence led by the prosecution and the defence.

9. With a view to prove the charges levelled against the appellants/accused, the prosecution had examined 13 witnesses. Defence has also examined 1 witness.

10. P.W's. 1, 2 and 3 have been declared hostile. P.W's. 9, 10, 11 and 12 have been tendered and P.W. 4 is a formal witness. Evidences of P.W.'s. 7 and 8 have been expunged. Even the injured witness, P.W. 5, has not supported the prosecution-case in his cross-examination.

11. P.W. 6 is Bachchey Lal Yadav. He has stated that about 15.5 years ago, he was ploughing the field of Dev Lakhan at the time of incident (9:00 a.m.) along with Ram Chandra Paswan, Thakai Yadav and Sukti Mandal. In the meantime, Budhan Yadav came with a group of 25-30 people. Budhan Yadav was himself carrying Pharsa; Ghooran Kamat, Manager Yadav, Jugut Lal, and Gudar were carrying wooden logs; Premlal and Sukhdev were carrying Guns. He has further stated that after reaching the spot, Budhan Yadav hit the left leg of Sukti Mandal with Pharsa which caused Sukti to fall down and thereafter everyone started beating him and Premlal and Sukhdev opened fire, the bullets of which hit PW-6, Ramchandra and Thakai. After the accused ran away seeing the



nearby villagers approaching, PW-6 along with others took Sukti and other injured to hospital, however, Sukti succumbed to injuries on the way. PW-6 has described the chronology of events and assaults. PW-6 further states that they found Thakai unconscious and blood oozing out of his left hand and right thigh. Immediately after Thakai, Sukti also fell down to the ground becoming unconscious with blood oozing out of his body too. PW-6 also states that there were approximately 25-30 rounds of gunshots and he along with others only ran away after the first 3-4 rounds. PW-6 further states that Premlal and Sukhdev had fired approximately 15 rounds and 10 rounds respectively. Thereafter, as stated, PW-6 became unconscious along with Ram Chandra, and Thakai and he regained consciousness only 2 to 2.5 hours later in hospital. Ram Chandra and Thakai regained consciousness 10 and 15 days respectively after the incident. P.W. 6 has also stated that he continued to be admitted in the hospital for 3 days. He met the police authorities 10/12 days after his return from the hospital at the place of occurrence at around 2.30 to 3:00 p.m. in the day.

12. P.W. 13 Dr. Jagdeo Mandal has stated that on 22.08.1991, he was posted as Medical Officer at Sadar Hospital, Madhubani. He had conducted the *post mortem* of the dead



body of Sukti Mandal at about 04:30 p.m. and found the following *ante mortem* injuries:-

“(i) One incised wound over left ankle joint region about 3"x2"x bond deep.

(ii) Bruise over left chest about 3"x1" with diffused swelling at the level of 3rd and 4th vertebra.

(iii) Bruise over left upper arm about 2"x1" with swelling.

On dissection:- noted the following-

(1) Sharp cutting of smooth muscle and tibial artery of left side of leg at ankle joint region.

(2) Fracture of 2nd 3rd and 4th deep left side of chest with laceration of left lung and plura chest cavity containing 1/2 pint of blood.

(3) Heart chamber empty or external viscera namely both lungs liver spleen, both kidney pale. Brain and maninges pale. Stomach containing about 2 ounce of food materials small and large intestine containing fical matter and gases. urinary bladder empty. .

Time since death and Postmortem held within 36 hours

Death in my opinion was due to heamarrahge and shock as a result of above mentioned injury caused by sharp and hard blunt substance. This postmortem report is written and signed by me.

This is marked Exht - 2.”

13. From the aforesaid evidence led by the prosecution, it is revealed that P.W. 1, P.W. 2 and P.W. 3 have been declared hostile whereas P.W.'s. 9, 10, 11 and 12 have been tendered and P.W. 4 is formal witness. Evidence of P.W.'s. 7 and 8 have been expunged. Even the injured witness, P.W. 5, has not supported the case of prosecution in his cross-examination, therefore, the case of prosecution rests on deposition given by



P.W. 6 and in fact the Trial Court recorded the conviction of the appellants/accused solely relying upon the deposition given by P.W. 6. If the deposition of P.W. 6 is carefully seen, it is revealed that the said witness has deposed in his cross-examination that when the assault was made on Thakai Yadav, the said witness alongwith others fled away from the field and when they returned, they saw that Sukti Mandal was not lying on the earth but Thakai Yadav was lying on the earth. At this stage, if the examination-in-chief of P.W. 5 is seen, he stated that Budhan Yadav gave *farsa* blow to Sukti Mandal on his left leg and, therefore, he fell down on the earth and thereafter Ghuran Kamat gave *lathi* blow to Thakai Yadav. Thus, from the deposition of the prosecution witnesses, it is revealed that there are major contradictions in their deposition. Even P.W. 6 has stated during cross-examination that Premlal Yadav and Sukhdeo Yadav fired indiscriminately and said witness also sustained injury and, therefore, he became unconscious. He regained consciousness after 2 to 2.30 hours. He further states that Ram Chandra Paswan also became unconscious. Ram Chandra Paswan regained consciousness after 10 days whereas Thakai Yadav regained consciousness after 15 days. Thus, it appears that as per the case of the prosecution, P.W.6, P.W. 5



Ram Chandra Paswan and Thakai Yadav sustained injuries. However, the injury certificates of the said witnesses were not produced before the Court nor the doctor, who had given treatment to the said injured persons, has been examined by the prosecution.

14. It is also relevant to note that informant Thakai Yadav has not been examined by the prosecution nor the prosecution examined the Investigating Officer. Inquest report of the deceased has not been proved or brought on record. Similarly, the place of occurrence has also not been established. Thus, in view of the aforesaid facts and circumstances of the present case, we are of the view that the prosecution has failed to establish the case against the appellants/accused beyond reasonable doubt, despite which, the Trial Court has passed the impugned common judgment of conviction and order of sentence against the appellants herein. Hence, the impugned common judgment of conviction and order of sentence is required to be quashed and set aside.

15. Accordingly, impugned common judgment of conviction dated 17.05.2017 and order of sentence dated 20.05.2017 passed by the learned Presiding Officer, Fast Tract Court-I, Madhubani, in connection with Sessions Trial No.



20/1993/13/2017 (arising out of Laukahi P.S. Case No. 144/1991 corresponding to G.R. No.847/1991) is quashed and set aside.

15.1 Since the appellant Budhan Yadav is in jail, he is directed to be released from custody forthwith, if his presence is not required in any other case.

15.2. All the other appellants are on bail. They are discharged from the liabilities of their bail-bonds.

16. Both the appeals stand allowed.

(Vipul M. Pancholi, J)

(Sunil Dutta Mishra, J)

K.C.Jha/-

AFR/NAFR	NAFR
CAV DATE	NA
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