

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.932 of 2017

Arising Out of PS. Case No.-33 Year-1998 Thana- BETTIAH CITY District- West
Champaran

=====

Abdul Rahman @ Abdul Rahman Khan, Son of Nek Mohammad Khan, R/o
Village-Basant Tola, P.S.-Bettiah Town, District-West Champaran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

with

CRIMINAL APPEAL (DB) No. 893 of 2017

Arising Out of PS. Case No.-33 Year-1998 Thana- BETTIAH CITY District- West
Champaran

- =====
1. Hari Yadav, Son of late Ram Deyal Yadav, Resident of Village-Basant Tola,
P.S.-Bettiah Town, District-West Champaran.
 2. Birjhan Yadav @ Virjan Yadav @ Bijan Yadav, Son of Ramnath Yadav,
Resident of Village-West Kargahiya, P.S.-Bettiah Town, District-West-
Champaran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

with

CRIMINAL APPEAL (DB) No. 1072 of 2017



Arising Out of PS. Case No.-33 Year-1998 Thana- BETTIAH CITY District- West
Champaran

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1. Lalan Yadav, Son of Late Sukhari Yadav, Resident of Village-Basant Tola, P.S.-Bettiah Town (Kalibag O.P.), District-West Champaran.
 2. Harendra Yadav @ Harendra Mahto, Son of Late Pateya Mahto, Resident of Village-Chanpatiya, P.S.-Shikarpur, District-West Champaran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 932 of 2017)

For the Appellant/s : Mr. Bashisth Narayan Mishra, Advocate
Mr. Brij Kishor Mishra, Advocate

For the State : Mr. Abhimanyu Sharma, APP

(In CRIMINAL APPEAL (DB) No. 893 of 2017)

For the Appellant/s : Mr. Sheo Jee Mishra, Advocate
Mr. Ram Adya Singh, Advocate

For the State : Mr. Abhimanyu Sharma, APP

(In CRIMINAL APPEAL (DB) No. 1072 of 2017)

For the Appellant/s : Mr. Umesh Chandra Verma, Advocate
Mr. Hemant Ray, Adv.
Mr. Abhishek Kumar, Adv.
Ms. Rashmi Jha, Adv.

For the State : Mr. Abhimanyu Sharma, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and

HONOURABLE MR. JUSTICE KHATIM REZA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)



Date : 10-04-2024

These clutch of appeals, viz., Cr. APP. (DB) Nos. 932 of 2017; 893 of 2017 and 1072 of 2017 have been heard together and are being disposed of by this common judgment.

2. There are five appellants in all, namely, Abdul Rahman @ Abdul Rahman Khan, Hari Yadav, Birjhan Yadav @ Virjan Yadav @ Bijan Yadav, Lalan Yadav and Harendra Yadav @ Harendra Mahto.

3. We have heard Mr. Bashishth Narayan Mishra, Mr. Ram Adya Singh, Mr. Sheo Jee Mishra and Mr. Umesh Chandra Verma, the learned Advocates for the appellants in the three appeals.

4. In all the three appeals, the State is represented by Mr. Abhimanyu Sharma, the learned APP.

5. All the appellants have been convicted under Section 302/34 of the Indian Penal Code and



Section 27 of the Arms Act, 1959, *vide* judgment dated 04.07.2017 passed by the learned Additional Sessions Judge, F.T.C.-II, Bettiah (West-Champaran) in Sessions Trial No. 356 of 1998 / 602 of 1998, arising out of Bettiah Town P.S. Case No. 33 of 1998. By order dated 07.07.2017, they have been sentenced to undergo imprisonment for life, to pay a fine of Rs.10,000/- each for the offence under Section 302/34 of the IPC and to undergo R.I. for three years, to pay a fine of Rs. 5,000/- each for the offence under Section 27 of the Arms Act. In default of payment of fine, the appellants have been directed to undergo R.I. for three months on each count.

6. Both the sentences have been ordered to run concurrently.

7. One Prabhu Yadav is said to have been killed at the hands of the appellants. The FIR was lodged by the wife of the deceased, *viz.*, Kalawati Devi (P.W. 4). In her *fardbeyan*, which was registered at



her house on 23.01.1998, she had alleged that at about 11 O'clock in the night, when she along with her husband (deceased) and children were sleeping in the house, she heard the sound of people breaking the front door. The appellants entered into the house after breaking the front door. All of them were armed with weapons. They all caught her husband and asked him to indicate where had he kept the money. When her husband denied having kept any money in the house, the appellants dragged him out of the house to the *verandah* and then killed him by firing at him thrice. Many persons arrived at the place of occurrence on *hulla* raised by her. Some of them identified the appellants while they were running away from the place of occurrence. The cause for murder, according to P.W. 4, is the dispute with respect to auction of cycle stand in a cinema hall, which contract apparently was garnered by the deceased. The appellants had earlier also threatened the deceased of dire



consequences.

8. On the basis of the afore-noted *fardbeyan*/statement of P.W. 4, a case *vide* Bettiah Town P.S. Case No. 33 of 1998, dated 23.01.1998, under Section 302/34 of the IPC and Section 27 of the Arms Act was registered for investigation against five of the appellants.

9. During the course of investigation, *charge-sheet* was submitted against six accused persons, which did not contain the names of appellant/Hari Yadav and Birjhan Yadav. Appellants/Abdul Rahman, Lalan Yadav, Harendra Yadav @ Harendra Mahto, Mukhiya, Amerika and Kishori were *charge-sheeted*. For the death of Amerika and Kishori and one Mukhiya having absconded, initially the Trial was held for appellants/Abdul Rahman, Lalan Yadav and Harendra Yadav @ Harendra Mahto, but later, appellants/Hari Yadav and Birjhan Yadav were also summoned under Section 319 of the Cr.P.C. and they also faced Trial



along with three of the appellants.

10. The Trial Court, after having examined six witnesses on behalf of the prosecution and none on behalf of the defence, convicted and sentenced the appellants as aforesaid.

11. The learned Advocates appearing for the appellants have argued that there is only one witness, viz., Kalawati Devi (P.W. 4), who has claimed to have seen the occurrence; but her deposition makes her claim also doubtful. Bipin Yadav, Satyadeo Yadav and Ambika Yadav (P.Ws. 1, 2 and 3 respectively) have not claimed to have seen the occurrence, but all three of them have only said that they had identified the appellants running away with weapons in their hand from the P.O. The deceased had suffered two gunshot injuries. In fact, there were three wounds detected by Dr. Sushil Kumar (P.W. 6), who had conducted the *post-mortem* examination, but two out of such wounds were communicating to each other. Taking advantage



of the three wounds apparently seen by P.W. 4, she improved upon her version at the Trial and attributed three gunshots to three different appellants. The learned Advocates have argued that this itself has made the deposition of P.W. 4 absolutely doubtful.

12. Apart from this, it has been argued that from the totality of the circumstances, it would appear that the deceased was killed because of some dispute amongst *dacoits* with respect to the rake-off.

13. Bipin Yadav (P.W. 1) is the own brother of the deceased, who stays next door. On hearing the gunshot, he came out of his house and saw around six to seven miscreants running away towards western direction. He had identified the appellants, who were armed with guns. Thereafter, he is said to have visited the *verandah* of the house of his brother (deceased) and found him fallen on the ground with gunshot injuries. He was also aware of the dispute between the deceased and the appellants with respect to the



cycle stand auction and the earlier threatening given to the deceased for having bagged the contract for collecting money at the cycle stand. However, when questioned about the earlier litigation between the parties, he expressed his complete ignorance and vehemently denied the suggestion to him that the deceased, perhaps, was murdered by his own associates, who were comrade-in-arms in some wrong doing.

14. Similar, statement has been made by Satyadeo Yadav (P.W. 2), a neighbour of the deceased, who had also reached the P.O. on the sound of gunfire. In the torchlight, which he carried with him, he identified the appellants. He, too, was aware of the dispute over the auction of cycle stand. In fact, he was the witness to the inquest proceedings (Ext. 1). His house is situated adjacent to the house of the appellants and the deceased. P.W. 4, who had been crying at the P.O. also told him about the appellants



having killed the deceased. He too has denied the suggestion that the deceased himself was a criminal and, perhaps, he was killed by his own associates over some dispute with respect to distribution of looted money/booty.

15. Ambika Yadav, again a neighbour (P.W. 3), claims to have reached the P.O. first in point of time. He has denied the suggestion that he was an accused in a case lodged by appellant/Hari Yadav and his father. He has also denied that the deceased had criminal antecedents.

16. From the perusal of the deposition of the afore-noted witnesses, three things appear to be very clear, viz., (i) that they are all neighbours of the deceased and the appellants; (ii) they had heard the sound of gunfire and (iii) all had come to the P.O. and had seen the appellants fleeing away.

17. It is important to note that there was no means of identification available on the road, where



the appellants were seen running away.

18. P.W. 2 had a torch in his hand, in the light of which he had identified the appellants. There was no electricity in the house of the deceased, which fact has been confirmed by P.W. 4, about which reference will be made later. Even P.W. 2 did not produce for the inspection of the I.O. the torch which was used for identifying the appellants. There was no chase by the villagers who had assembled at the P.O. for nabbing the miscreants/appellants. The appellants were no hired assassins but co-villagers.

19. What is further noticeable is that nothing was looted away from the house of the deceased. The door of the house was also not found to be broken by the Investigating Officer, who had come to the P.O. for recording the FIR.

20. These two aspects of the case throw some light on what may have happened. Coupled with this, the exact identification of the appellants by P.W. 4, a



Pardanashin lady, carrying a pregnancy, certainly means that the appellants were known to the family or to the deceased from before.

21. Exhibits- A, B and C put forth on behalf of the appellants are judgments of cases in appeal, where the appellants had challenged the judgment of acquittal of the deceased.

22. The deposition of P.Ws. 1, 2 and 3, therefore, with respect to earlier enmity, is not believable.

23. There is no rebuttal of the afore-noted documentary evidence on record.

24. Precisely for this reason, it has been argued that apart from others, the appellants also have been named by P.W. 4 in the FIR.

25. On a further analysis of the evidence, it appears that though all the five appellants were named by P.W. 4, three others were also *charge-sheeted*,



namely, Mukhiya, Amerika and Kishori. It has come on record through the mouth of the Investigator (P.W. 5) that Amerika and Kishori were no outsiders but associates of the deceased, who were killed in a police encounter and in respect to which, a case also has been lodged.

26. P.W. 4 not naming Amerika and Kishori or Mukhiya, therefore, becomes very conspicuous, especially seen in the background of the suggestions given to all the witnesses that the deceased perhaps was murdered because of some dispute over the rake-off.

27. The Investigator had also noted, during the course of investigation, a number of criminal cases against the deceased but without any details about the status of such cases.

28. This takes us to the deposition of P.W. 4/informant and the wife of the deceased. At the trial, she has supported the prosecution version, but has



made a conscious effort to make her statement very specific about the actual roles played by the appellants. At the Trial, she abandoned the story of breaking the door by the appellants. She has only stated that because of the banging of the door, it got opened and the appellants entered the house and asked the deceased to indicate where the booty was kept. This was the time when the deceased and P.W. 4 started shouting for help. The appellants then dragged her husband to the *verandah* and fired at him thrice. In this context, she has, for the first time, stated before the Trial Court that appellant/Lalan fired at the right ear of the deceased; whereas the shot fired by appellant/Abdul Rahman hit the deceased below his left ear. Appellant/Hari Yadav is said to have shot at the deceased in his chest. The deceased died instantaneously. Shortly thereafter, Bhikhu Yadav, Ambika Yadav (P.W. 3), Satyadeo Yadav (P.W. 2), Gowardhan Yadav, Sampu Yadav, Suresh Yadav,



Upesh Yadav etc. came and all of them saw the appellants running away. About a month before the occurrence, the appellants had threatened to kill the deceased because of the dispute over the auction of the cycle stand in Ajanta Cinema Hall. The police, according to P.W. 4, had come to her house at about 1 O'clock in the night.

29. P.W. 4, in her cross-examination, has disclosed about most of the appellants and the witnesses being her neighbours. Immediately after the deceased was shot at, the appellants had run away.

30. It may be noted that P.W. 4 in her *fardbeyan* had only stated about the five appellants and none else with no details of the roles played by them.

31. The Investigator (P.W. 5) had gone to the P.O. to record the *fardbeyan* of P.W. 4. He did not find any sign of any forcible entry in the house. In his presence, persons, who had gathered there were



talking amongst themselves that the deceased was a man of questionable antecedents and had currently been undergoing prosecution under Section 395 of the IPC. Persons of questionable antecedents used to visit the house of the deceased. He has specifically stated before the Trial Court that he had tried to know about the criminal antecedent of appellant/Hari Yadav, but found none on record. On the contrary, he had learnt that Hari Yadav had some enmity for a long time with the deceased and perhaps for than reason, he was falsely framed in the case. He had also referred to the investigation papers and had recollected that he had noted down that the deceased was a veteran criminal and that Amerika Yadav and Kishori Yadav, who too were *charge-sheeted* in this case, were killed in a police encounter in connection with Lauriya P.S. Case No. 14 of 1998. Both the afore-noted slain *dacoits* were associates of the deceased. It was also recorded by the Investigator that appellant/Harendra Yadav @



Harendra Mahto, who was a co-brother of the deceased, at some point of time, resided with the deceased in his house. It was reliably learnt by the Investigator that on the date of the occurrence, criminals had collected at the house of the deceased and people of the neighbourhood had heard the sound of three gunshots. The talk in the village was that the criminals were in dispute with regard to the distribution of the looted property.

32. The Investigator (P.W. 5) has also stated before the Trial Court that on enquiry, he had learnt that the deceased had land dispute with all the appellants and, therefore, they were falsely framed in this case.

33. We have already noted the *ante-mortem* injuries suffered by the deceased. Perhaps the three gunshot wounds on the body of the deceased led P.W. 4 to specify at the Trial about the specific roles played by each of the appellants. The Doctor (P.W. 6) clearly



opined that there were three wounds; but two gunshots. One bullet had pierced the body of the deceased and was stuck up in the entrails. The death was because of the gunshot wounds. The deceased had died instantaneously. The time of death was fixed almost contemporaneously with the time suggested by the prosecution.

34. Thus, the deceased died a homicidal death because of gunshot wounds.

35. Who killed him is the question, which begets an answer.

36. The Trial Court appears to have placed complete reliance on the deposition of P.W. 4 for the reason that she claimed to be an eye-witness to the occurrence and was supported by the deposition of three others, who saw the appellants running away from the P.O. with weapons in their hands.

37. With such evidence on record, *prima facie*,



it would appear to be an open and shut case that the appellants had come inside the house of the deceased and had killed him; but then, the gaps and wedges in the story makes the accusation very doubtful.

38. The prosecution has not been able to explain as to how the appellants entered the house of the deceased. There was no sign of forcible entry.

39. Had they visited the house of the deceased with the consent of the deceased and his wife? The identification of the appellants by P.Ws. 1, 2 and 3 is also rendered doubtful because of lack of any means of identification. It was a dark night, as told by one of the witnesses and the torch which was used for identifying them, was neither shown to the I.O. nor produced for the inspection of the Court.

40. The appellants are all neighbours with whom the deceased had land dispute.

41. With these facts on one side and the



objective findings of the Investigator that when he had visited the P.O., he had learnt that the associates of the deceased were unhappy with the sharing of the booty and that the associates had visited the house of the deceased on the day of the occurrence, makes the prosecution case somewhat difficult to be accepted without a demur.

42. The mendacity of P.W. 4 regarding past enmity with the appellants or their place of domicile has further created doubts about her being wholly reliable. From her evidence, it also does not appear that she had followed her husband when he was dragged outside the room. P.W. 4 had been sleeping with her children. She was pregnant also. Would she come out of the house in such a situation is the question which beckons an answer.

43. The enmity with the appellants had been continuing for a long time. There was no trigger-point on the day of the occurrence for the appellants to have



come and shot at the deceased. There is no sign of any forcible entry in the house. No attempt was made by the miscreants/appellants to search for any hidden property/booty. Nothing was taken away from the house. All these completely belie the suggestion that it was either burglary or a case of killing because of enmity.

44. The appellants had been fighting individual cases with the deceased. When and how, all of them came together, against the deceased to avenge enmity remains unknown.

45. In this background, the suggestions given to the witnesses regarding the deceased being a person of questionable antecedents and having dispute with his associates with respect to distribution of looted property becomes important.

46. On top of it, the Investigator being a complete outsider, had overheard from the persons assembled there that the deceased had been killed by



his associates because of the dispute over share of property.

47. The deceased was an accused in number of cases.

48. These facts, if seen in a rectilinear perspective, the accusation of the appellants is rendered much off the perpendicular.

49. For the afore-noted reasons, we are of the view that benefit of doubt has to be given to the appellants.

50. We, accordingly, set aside the judgment of conviction and order of sentence dated 04.07.2017 and 07.07.2017 respectively, passed by the learned Additional Sessions Judge, F.T.C.-II, Bettiah (West Champaran) in Sessions Trial Nos. 356 of 1998 / 602 of 1998, arising out of Bettiah Town P.S. Case No. 33 of 1998 and acquit the appellants, above-named, of the charges levelled against them.



51. The appellant, namely, Abdul Rahman @ Abdul Rahman Khan [Cr. Appeal (DB) No. 932 of 2017], appellant No. 1, namely, Hari Yadav [Cr. Appeal (DB) No. 893 of 2017] and appellant No. 1, namely, Lalan Yadav [Cr. Appeal (DB) No. 1072 of 2017] are in custody for the last nine years. They are directed to be set at liberty forthwith unless their detention is required in any other case.

52. Appellant No. 2, namely, Birjhan Yadav @ Virjan Yadav @ Bijan Yadav [Cr. Appeal (DB) No. 893 of 2017] and appellant No. 2, namely, Harendra Yadav @ Harendra Mahto [Cr. Appeal (DB) No. 1072 of 2017] are on bail. Their liabilities under the bail-bonds are discharged.

53. The appeals stand allowed.

54. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.



55. The records of this case be returned to the
Trial Court forthwith.

56. Interlocutory application/s, if any, also
stand disposed off accordingly.

(Ashutosh Kumar, J)

(Khatim Reza, J)

manoj/Praveen-II-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.04.2024
Transmission Date	16.04.2024

