

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.949 of 2018

Arising Out of PS. Case No.-840 Year-2016 Thana- BIHTA District- Patna

Shashi Bhushan Yadav @ Holi Yadav, son of Krishna Yadav, Resident of
Village- Doghara, P.S.- Bihta, District- Patna.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Dilip Kumar Tandon, Advocate
For the State	:	Mr. Abhimanyu Sharma, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and

HONOURABLE MR. JUSTICE JITENDRA KUMAR
CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE JITENDRA KUMAR)

Date : 08-07-2024

The present appeal has been preferred against the impugned judgment of conviction and order of sentence dated 10.07.2018 and 12.07.2018, respectively passed by Ld. Additional Sessions Judge-I, Danapur, Patna in connection with Sessions Trial No. 230 of 2017, arising out of Bihta P.S. case No. 840 of 2016 dated 31.10.2016, whereby the sole appellant has been found guilty of offence punishable under Section 302 of the Indian Penal Code and Section 27 of the Arms Act and sentenced to undergo imprisonment for life under Section 302 of the Indian Penal Code and to undergo rigorous imprisonment for three years for the offence Punishable under Section 27 of the Arms Act. Both the sentences have been directed to run concurrently.



2. The FIR bearing Bihta P.S Case No. 840 of 2016 was registered on 31.10.2016 at 17:45 O'clock on the written report of the informant against three accused persons namely, Shashi Bhushan Yadav @ Holi Yadav, Krishna Yadav and Sonu Kumar for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act.

3. The prosecution case as per the written report of the Informant dated 31.10.2016 addressed to Officer-in-Charge Bihta Police Station at 10:00 O' Clock in the morning is that the Informant had gone to Porev market for his personal work and after completion of the work, he was coming back by motorcycle at 3:30 PM. At about 4:00 PM when he reached near the house of Bajrangi Yadav at village Doghra, he saw that all the accused persons, as named in the FIR and residents of village Doghra, were abusing Bajrangi Yadav. One Ashwini Kumar @ Bablu Kumar, who is the cousin of Bajrangi Yadav, was trying to mediate and diffuse the quarrel. The Informant also came down from the motorcycle, but in the meantime, Shashi Bhushan Yadav @ Holi Yadav fired from his gun at Ashwini Kumar @ Bablu Kumar, who is uncle of the Informant. Consequently, Ashwini Kumar fell down on the ground and all



the accused persons fled away firing. Upon *hulla* raised by the Informant, several persons came to the P.O. The informant took Ashwini Kumar to Referral Hospital, Bihta for treatment with the help of some persons, but he was declared dead by the doctor.

4. After registration of the FIR, the investigation commenced and charge-sheet bearing No. 19 of 2017 dated 04.02.2017 was filed against the appellant/Shashi Bhushan Yadav @ Holi Yadav under Section 302 read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act; keeping the investigation pending against other co-accused persons. Subsequently, cognizance was taken and charges were framed against the sole accused facing the Trial.

5. During trial, the following seven witnesses were examined on behalf of the prosecution:

- (1) **P.W.-1** – Raj Kishore Yadav
- (2) **P.W.-2** – Anil Kumar
- (3) **P.W.-3** – Bajrangi Yadav (cousin brother of the deceased)
- (4) **P.W.-4** – Satyendra Kumar Yadav @ Pappu Yadav (Informant)
- (5) **P.W.-5** – Dr. Narendra Kumar Mishra
- (6) **P.W.-6** – Rabindra Kumar (Investigating Officer)
- (7) **P.W. 7**- Upendra Rajak

6. The prosecution brought on record the following documentary evidences also:



- (i) **Ext. 1, Ext. 1/1 and Ext. 1/2-** Signature of witnesses Anil Kumar, Raj Kishore Yadav and Bajrangi Yadav on the written report.
- (ii) **Ext. 2** – Signature of the informant on the written report
- (iii) **Ext. 3** – Postmortem report
- (iv) **Ext. 4** - Endorsement of Sub Inspector Subhash Kumar on written report
- (v) **Ext.5, Ext. 5/1-** Signature of Sub Inspector Subhash Kumar on formal FIR
- (vi) **Ext. 6-** charge-sheet
- (vii) **Ext. 7-** Inquest report
- (viii) **Ext. 7A and 7B-** Signature of witnesses Satyendra Kumar @ Pappu Kumar and Bajrangi Yadav on inquest report.
- (ix) **Ext. 8-** Chalan report of dead body of the deceased.

7. After closure of the prosecution evidence, the appellant was examined under Section 313 Cr.PC confronting him with incriminating circumstances which had come in the prosecution evidence, so as to afford him an opportunity to explain those circumstances. During this examination, he stated that he had heard the prosecution evidence. However, he did not explain those circumstances. But he has stated that the prosecution evidence is false. He also claimed to be innocent. But, no evidence was adduced by him in his defence.

8. The learned Trial Court after appreciating the evidence on record and considering the submissions of the parties found that the appellant had caused the death of Ashwani Kumar @ Bablu Kumar by causing fire arm injury on his chest. Accordingly, the impugned judgment and order were



passed.

9. We have heard learned counsel for the appellant and learned APP for the State.

10. Learned counsel for the appellant has submitted that the impugned judgment of conviction and order of sentence passed by learned Trial Court is not sustainable either in law or on facts. The Trial Court has not applied its judicial mind and has failed to properly appreciate the evidence on record. He has further submitted that no occurrence had ever taken place as alleged by the prosecution and the prosecution has failed to prove the P.O. There are many discrepancies and contradictions in the statements of the witnesses. The private witnesses, it was urged, are partisan and interested and no independent witnesses were examined.

11. However, learned APP defended the impugned judgment of conviction and order of sentence submitting that there is no illegality or infirmity in the impugned judgment and sentencing order. The prosecution case has been well proved beyond reasonable doubts against the appellant.

12. We have perused the material on record and given thoughtful consideration to the submissions advanced by both the parties.



13. The main question for our consideration is whether the prosecution has proved its case against the appellant beyond all reasonable doubts.

14. Coming to the evidence of the prosecution, we find that **the informant/Satyendra Kumar** has been examined as **P.W.-4**. He, in his **examination-in-chief**, has reiterated the statement as made in his written report. During his **cross-examination**, he has deposed that Bajrangi Yadav is the maternal brother of his father and as such, he is his uncle. He has further deposed that he returned with the dead body at 9:00 PM and the dead body was cremated at Haldi Chapra. The dead body was taken to Danapur Hospital for postmortem in a hired jeep. During visit from Bihta to Danapur, chowkidar Ramswaroop Paswan was also with them. It took 30 minutes to reach from the P.O to Bihta Hospital and about 45 minutes to Bihta Hospital. He has further deposed that no document was prepared at the place of occurrence in his presence. The Dy. S.P. had visited the place of occurrence. He did not find any sign of firing at the door of Bajrangi Yadav. He only had recorded the statements of Kameshwar Yadav, Chandeshwar Yadav and Anil Yadav. The postmortem was conducted at about 8:30 PM in the night.



15. The property of the deceased is looked after by his two brothers, who have not been examined by Police. One of his brothers is in job and other brother is a farmer. He has denied the suggestion that murder of the deceased had not taken place at the door of Bajrangi Yadav and he had not visited the place of occurrence. He has also denied the suggestion that the Accused persons had enmity with Bajrangi Yadav and that is why, they have been falsely implicated.

16. P.W.-1, Rajkishore Yadav, is son of Bajrangi Yadav. In his **examination-in-chief**, he has deposed that at 4:00 pm on 31.10.2016, he was at his home. Shashibhushan Yadav @ Holi Yadav, Krishna Yadav and Sonu Kumar armed with weapons were abusing his father/Bajrangi Yadav at his door. Anil Yadav, Satyendra Yadav @ Papu Kumar tried to mediate and in the meantime, the appellant fired at the deceased by his gun, hitting the left side of his chest leading to his fall on the ground. He was taken to Bihta Hospital where he was declared dead. In his **cross-examination** he has stated that the deceased is his uncle. Police came in the evening at 7.00 PM and had seen the blood fallen on the ground. He has denied the suggestion that occurrence had not taken place at the place as stated by him.



17. PW-2, Anil Kumar is son of Mahatma Yadav. In his **examination-in-chief**, he has deposed that occurrence had taken place at 3.30 PM on 31.10.2016. At that time, he was in his house and after hearing the *hulla*, he went to the house of Bajrangi Yadav and saw that Shashibhusan Yadav @ Holi Yadav was carrying a gun in his hand and Krishna Yadav and Sonu Yadav were carrying pistol and abusing Bajrangi Yadav. Satyendra Yadav @ Pappu Yadav was attempting to mediate. In the meantime, Shashibhusan Yadav fired at Ashwini Kumar by his gun, hitting left side of his chest, who immediately thereafter fell down on the ground and started struggling for life and all the three accused fled away firing. The injured was taken to Bihta Hospital where he was declared dead. In his **cross-examination**, he has deposed that his house is three yards away from the house of Bajarangi Yadav and in between of his house and Bajarangi's house, there are two houses. The deceased is his cousin (*Fufera Bhai*). Satyendra Kumar and the deceased are resident of Itwa and this witness is resident of Doghra which is one and a half kilometer away. He had not visited the police station, nor had he gone to Danapur Hospital. Police had visited the house of Bajarangi at night. He was not aware whether police had seized empty cartridges or blood



from the P.O. He had signed on the paper prepared by the police. He has denied the suggestion that no occurrence had taken place.

18. PW-3, Bajrangi Yadav, in his **examination-in-chief**, has deposed that the occurrence had taken place on 31.10.2016 at about 4.00 PM. He was at his home. He saw that Holi Yadav, Krishana Yadav and Sonu Kumar came to his door. Holi Yadav was carrying gun, Krishna Yadav and Sonu Kumar were carrying pistols. Pappu Yadav, Anil Yadav, Rajkishore Yadav and Babloo Kumar were separating them. Holi Yadav fired at the deceased by his gun and all the three accused fled away. Babloo Kumar was taken to Bihta Hospital by Jeep where the doctor declared him dead. In his **cross-examination**, he has deposed that accused persons are his villagers. Their houses are situated nearby towards the east. The deceased is his cousin (*Fufera Bhai*) and Pappu is his nephew. They are all residents of Itwan which is only one kilometer away from his house. On the date of occurrence, he had visited the hospital first and thereafter he had gone to police station with the informant. At the time of the firing, there were about 10-12 persons present at his door. All were standing on the road. The firing was done at a distance of ten feet at his door. However, it



did not hit his door. Blood had oozed out from the body of the deceased. He had denied the suggestion that no occurrence had taken place.

19. PW-5 is Dr Narendra Kumar Mishra who had conducted the postmortem examination on the dead body of the deceased. As per the postmortem report, the following *ante mortem* injuries were found.

“Lacerated wound 1cm x 1cm x chest cavity deep with blood clots and inverted margin and blackening around the the margin on sternocutaneous notch (**wound of entry**).

Lacerated wound ½” x ½”x chest cavity deep with blood clots and everted margin. Below and lateral to left nipple on chest (**wound of exit**)”

20. Rigor mortis was found present in neck and both upper and lower limbs. Time elapsed since death was within 24 hours from the postmortem examination.

21. In the opinion of **PW-5**, the death was caused due to hemorrhage and shock leading to cardio respiratory failure due to aforesaid *ante mortem* injuries caused by fire arm.

22. P.W.-6 – Rabindra Kumar is the Investigating Officer of the case. He, in his **examination-in-chief**, has deposed that after taking over the charge of investigation of the



case, he prepared the inquest report and also visited the P.O. The P.O was situated at the door of the house of Bauanand Yadav and Bajrangi Yadav. The P.O was surrounded by PCC cemented road to the east, brick house of Bajrangi Yadav to the west and house of Bauanand Yadav, son of Dharmendra Yadav to the south and house of Laxman Yadav to the north. In his **cross-examination**, he has deposed that inquest report was prepared by Upendra Rajak. He has denied the suggestion that investigation conducted by him was faulty.

23. P.W.-7/Upendra Rajak in his **examination-in-chief**, has deposed that he was posted as Sub-Inspector on 31.10.2016 at Bihta Police Station and on that day, he had prepared the inquest report of the deceased. The inquest report was signed by Pappu Kumar @ Satyendra Yadav and Bajrangi Yadav. Chalan of the dead body was also prepared by him. In his **cross-examination**, he has deposed that at the time of preparation of the inquest report, both the witnesses were present. He has further deposed that after preparation of the inquest report, he handed it over to the chowkidar for postmortem. The chalan of the dead body was prepared at 16:35 O' Clock. Satyendra Yadav @ Pappu Yadav and chowkidar were with the dead body.



24. As far as non-examination of independent witnesses by the Prosecution is concerned, it is relevant to note that the people in general, more so, civilized people, are insensitive when crime is committed even in their presence. They keep themselves away from courts unless it is inevitable. This kind of apathy of the general public is indeed undesirable and unfortunate, but it is there everywhere, whether it is village, town or city. One can not ignore this handicap with which investigating agency has to discharge its duties. Moreover, the prosecution is not bound to produce all the witnesses. Material witnesses considered necessary by the prosecution for unfolding the prosecution story alone need be produced without unnecessary and redundant multiplication of witnesses. The observations of the Supreme Court in regard to non-examination of independent witnesses by the Prosecution may be referred to, to fortify our view.

25. In Appabhai & anr. Vs. State of Gujrat, AIR 1988 SC 696, Hon'ble Supreme Court has held as follows:

“10.It is no doubt true that the prosecution has not been able to produce any independent witness to the incident that took place at the bus stand. There must have been several of such witnesses. But the prosecution case cannot be thrown out or doubted on that ground alone. Experience reminds us that civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court



unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere whether in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. The court, therefore, instead of doubting the prosecution case for want of independent witness must consider the broad spectrum of the prosecution version and then search for the nugget of truth with due regard to probability if any, suggested by the accused. The Court, however, must bear in mind that witnesses to a serious crime may not react in a normal manner. Nor do they react uniformly. The horror stricken witnesses at a dastardly crime or an act of egregious nature may react differently. Their, course of conduct may not be of ordinary type in the normal circumstances. The Court, therefore, cannot reject their evidence merely because they have behaved or reacted in an unusual manner.”

[Also refer to Darya Singh Vs. State of Punjab, AIR 1965 SC 328; Yogesh Singh Vs. Mahabeer Singh & Ors (2017) 11 SCC 195; Sheo Pujan Tiwari Vs. State of Bihar 2016 (2) PCCR 187 and Dalip Singh Vs. State of Punjab, AIR 1953 SC 364]

26. With regard to private witnesses of the Prosecution being relatives of the deceased, it may be pointed out that that there is no bar in the law in examining family members or any other persons as witness who are related to the deceased. In fact, some times, only family members are found to be witnesses to an offence. Moreover, evidence of any family member cannot be discarded only on account of his or her relationship with the deceased. The evidence of such evidence has to be weighed on the touchstone of truth and at most, a court is required to take care and caution while appreciating their



evidence.

27. In Abhishek Sharma Vs. State (NCT of Delhi), 2023 SCC OnLine SC 1358, the Supreme Court has held as follows:

“24. It is important to appreciate the law on interested witnesses as enunciated by this court. In **Hari Obula Reddy v. The State of Andhra Pradesh**, a three-judge Bench has held that evidence of interested witnesses is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting sworn testimony. It cannot be laid down as an invariable rule that interested evidence can only form the basis of conviction if corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution. Suppose on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable. In that case, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon.”

28. Similarly in Yogesh Singh Vs Mahabeer Singh & Ors; (2017) 11 SCC 195, the Supreme Court has held as follows:

“28. A survey of the judicial pronouncements of this Court on this point leads to the inescapable conclusion that the evidence of a closely related witnesses is required to be carefully scrutinised and appreciated before any conclusion is made to rest upon it, regarding the convict/accused in a given case. Thus, the evidence cannot be disbelieved merely on the ground that the witnesses are related to each other or to the deceased. In case the evidence has a ring of truth to it, is cogent, credible and trustworthy, it can, and certainly should, be relied upon.....”



(Also refer to Mano Dutt and another Vs. State of Uttar Pradesh; (2012) 4 SCC 79; Daulatram Vs. State of Chhattisgarh, 2009 (1) JIJ 1; State Vs. Saravanan, (AIR 2009 SC 152); State of U.P. v. Kishanpal, (2008) 16 SCC 73; Namdeo Vs. State of Maharashtra, (2007) 14 SCC 150; State of A.P. Vs. S. Rayappa, (2006) 4 SCC 512; Pulicherla Nagaraju Vs. State of A.P., (2006) 11 SCC 444; Harbans Kaur Vs. State of Haryana; (2005) 9 SCC 195; Hari Obula Reddy and Ors. Vs. The State of Andhra Pradesh, (1981) 3 SCC 675 and Piara Singh and Ors. Vs. State of Punjab, (1977) 4 SCC 452.

29. In regard to **contradiction and discrepancies** in the deposition of prosecution witnesses, it is again relevant to point out that it is the settled position of law that minor discrepancies on trivial matters, not touching the core of the case; hyper-technical approach by taking sentences out of context from here or there; attaching importance to some technical errors committed by the investigating officer not going to the root of the matter, would not ordinarily permit rejection of the evidence as a whole. In the deposition of witnesses, there are always normal discrepancies, howsoever, honest and truthful they may be. These discrepancies are due to normal errors of observations; of memory due to lapse of time and mental disposition; shock and horror at the time of occurrence and threat to life. Therefore, it is the duty of the court not to attach undue importance to minor discrepancies unless they go to the heart of the matter and shake the basic version of the prosecution witnesses as the mental ability of a human being



cannot be expected to be attuned to absorb all the details of the incident. Minor discrepancies are bound to occur in statements of witnesses. In fact, minor discrepancies in deposition are indication that the witnesses are not tutored and they are truthful. In case of rustic witnesses coming from villages, court should not be oblivious of the fact that their behavioural pattern and perceptive habits are not attuned to sophisticated approaches familiar in courts. In this context, observations of Hon'ble Apex Court may be referred to:

30. In C. Muniappan & others Vs. State of T.N., (2010) 9 SCC 567, it was held by **Hon'ble Apex Court** as follows:

“71. It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses.....”

[Also refer to State of U.P. Vs. Krishan Master, (AIR 2010 SC 3071); Appabhai & Anr. Vs. State of Gujrat, AIR 1988 SC 696; Shivaji Sahebrao Bobade & Anr Vs. State Of Maharashtra (1973 AIR 2622); Sanjay Kumar Vs. State of Bihar 2019 SCC OnLine Pat 1077; State of Madhya Pradesh Vs. Dal Singh: (2013) 14 SCC



159; Smt. Shamim Vs. State (GNCT of Delhi), 2018 (4) PLJR 160; S. Govidaarju Vs. State of Karnataka, 2013 (10) SCALE 454; Narotam Singh vs. State Of Punjab And Anr. (AIR 1978 SC 1542); Leela Ram Vs. State of Haryana, (1999) 9 SCC 525; Subal Ghorai and Ors. Vs. State of West Bengal, (2013) 4 SCC 607 and Yogesh Singh Vs. Mahabeer Singh & Ors., (2017) 11 SCC 195].

31. Coming back to the prosecution evidence on record, we find that all the prosecution witnesses are truthful and trustworthy. There are no discrepancies or contradictions in their statements which go to the root of the prosecution case.

32. We have found that besides informant (P.W.-4), Satyendra Kumar Yadav @ Pappu Yadav), P.W.-1 Rajkishore Yadav, P.W-2 Anil Kumar and P.W-3 Bajrangi Yadav, were present on the place of occurrence and had witnessed the occurrence.

33. As per the testimony of the eye witnesses, the occurrence had taken place at the door of the house of Bauanand Yadav and Bajrangi Yadav. The investigating officer (P.W-6), has also found the P.O at the door of the Bajrangi Yadav and Bauanand Yadav.

34. Regarding the manner of the commission of the crime, the eye witnesses have testified that the appellant shot at the deceased by his gun hitting left side of his chest, as a consequence of which, he fell down on the ground. He was taken to Bihta Hospital, where he was declared dead. The oral



testimonies of the prosecution witnesses are corroborated even by medical evidence. P.W.-5/Dr. Narendra Kumar Mishra who conducted postmortem examination found two lacerated wounds on left side of chest: one being the wound of entry and other being wound of exit.

35. As such, the case of the prosecution is well proved beyond all reasonable doubts against the appellant and there is no illegality or infirmity in the impugned judgment. The Appellant has rightly been held guilty under Section 302 of the Indian Penal Code and under Section 27 of the Arms Act and appropriately sentenced to undergo imprisonment for life under Section 302 of the Indian Penal Code and imprisonment for three years under Section 27 of the Arms Act.

36. The appeal, accordingly, stands dismissed.

(Jitendra Kumar, J.)

I agree.

(Ashutosh Kumar, J.)

S.Ali/ravishankar/
Chandan

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