

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (SJ) No.304 of 2013

Arising Out of PS. Case No.-28 Year-2004 Thana- HASPURA District- Aurangabad

1. Bindeshwar Yadav, Son of Chulhai Yadav.
2. Nageshwar Yadav, Son of Chulhai Yadav.
3. Rajmahal Yadav, Son of Chulhai Yadav.
4. Dularchand Yadav @ Dular Yadav, Son of Shivdeep Yadav.
5. Shivdeep Yadav, Son of Late Santoshi Yadav.
6. Rajgovind Yadav @ Ram Govind Yadav, Son of Dhani Yadav.

All resident of Dilawarpur Tola, Muzaffarpur, P.S. Haspura, District -
Aurangabad, Bihar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Anjum Perveen, Advocate
Mr. Syed Arshad Alam, Advocate
Mr. Prafulla Kumar Jha, Advocate
For the Respondent/s : Mr. Anand Mohan Mehta, APP

CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA

ORAL JUDGMENT

Date: 21-11-2024

Heard Mr. Anjum Perveen, learned counsel for
the appellants assisted by Mr. Syed Arshad Alam and Mr.
Prafulla Kumar Jha and Mr. Anand Mohan Mehta, learned APP
for the State.

2. The present appeal has been filed under



Section 374(2) of Code of Criminal Procedure, 1973 (hereinafter referred as 'Cr.P.C') challenging the Judgment of conviction dated 25.03.2013 and order of sentence dated 30.03.2013 in Sessions Trial No. 342 of 2004 / 201 of 2010 passed by learned Adhoc Additional District and Sessions Judge-I, Aurangabad, whereby and whereunder the appellants have been convicted for the offence punishable under Sections 307/34 of Indian Penal Code and sentenced them to undergo rigorous imprisonment for seven years each and rupees five hundred fine has been imposed on each and in default for payment of fine, the appellants will further have sentenced to undergo one month imprisonment and all the appellants have been convicted under Section 148 of Indian Penal Code and sentenced for rigorous imprisonment for two years each with a direction that all sentences shall run concurrently.

3. The brief fact leading to the filing of the present appeal is that on the basis of written statement made by the informant, on 25.04.2004 at about 12 noon, Dev Govind Yadav (informant) along with his elder brother Shiv Govind Yadav and nephew Santosh Kumar were coming to their home from Dindir village and on their way when they reached in front of Raj Govind Yadav's house, then suddenly Bindeshwar Yadav,



Nageshwar Yadav, Rajmahal Yadav, Dularchand Yadav, Shivdeep Yadav and Raj Govind Yadav surrounded them and started beating the informant, his brother and nephew with *lathis, rods, punches and fists* and in the same sequence, Bindeshwar Yadav, who was holding a *Gadasa* (sharp edged metal weapon) in his hand, hit informant's elder brother Shiv Govind Yadav on the head, due to which he got injured and fell down on the ground. Further stated that all the accused persons beat the informant, his brother and nephew with the intention to kill them and when the informant shouted, people from his village came and when they approached, all the accused persons ran away. After this, the informant and his nephew Santosh Kumar with the help of the villagers took the informant's elder brother to the police station by carrying him on a cot.

4. Further on the basis of which a formal FIR, Hanspura Police Station Case No. 28 of 2004 dated 25.04.2004 was registered under Sections 341, 323, 324 and 307 of the Indian Penal Code. It appears from the perusal of the record that after the death of Shiv Govind Yadav, on 18.05.2004, Section 302 of IPC was also added in this case. On 21.07.2004, the investigating officer submitted a charge-sheet against Bindeshwar Yadav and Nageshwar Yadav under the same



above-mentioned sections and the investigation against the remaining four accused persons was continued. Again on 12.12.2004, a charge-sheet was submitted against the remaining four accused persons in this case under the same above-mentioned Sections. It is clear from the order dated 08.09.2004 that the learned Chief Judicial Magistrate, Aurangabad took cognizance against the accused persons Bindeshwar Yadav and Nageshwar Yadav under Sections 147, 341, 323, 324, 307 and 302 of the Indian Penal Code and transferred the case to the Court of the learned Sub-Divisional Judicial Magistrate, Aurangabad and the case of these two accused persons was committed by the learned Sub-Divisional Judicial Magistrate, Aurangabad to the Sessions Court on 22.11.2004. It also appears from perusal of the record that after the submission of the supplementary charge-sheet, by the order dated 12.01.2005, the learned Chief Judicial Magistrate, Aurangabad found *prima facie* offence against the remaining four accused persons and issue process of the offence against them in the same from and by the order dated 19.05.2005, the learned Sub-Divisional Judicial Magistrate, Aurangabad committed this case to the Sessions Court. After the commitment, both the cases were clubbed together in the court of the learned Sessions Judge,



Aurangabad by the order dated 02.06.2005 and in this case, charges were framed against the all the six accused persons on 16.08.2005.

5. The prosecution examined altogether 9 witnesses to substantiate the charges levelled against the appellants, out of them, PW-1 Radhika Devi, PW-2 Tetar Yadav, PW-3 Santosh Kumar, PW-4 Vijay Choudhary, PW-5 Naresh Yadav, PW-6 Upendra Kumar Singh, PW-7 Dr. Manoj Kumar Kaushik, PW-8 Dev Govind Yadav and PW-9 Shiva Kumar Yadav. As documentary evidence, the prosecution has marked the endorsement on the written application as Exhibit-1, the signature of Dev Govind Yadav on the written application as Exhibit-1/1, the formal FIR as Exhibit-2, the requisition for injury report of the Assistant Sub Inspector, Hanspura Police Station as Exhibit-3 and the injury report as Exhibit-4. The defence has neither produced any oral witness in its support nor presented any documentary evidence before the court.

6. PW-1 Radhika Devi knows nothing about the incident and this witness has been declared as a hostile witness by the prosecution. Similarly, according to PW-2 Tetar Yadav, he has no knowledge about the incident and this witness has also been declared as a hostile witness by the prosecution. In the



same sequence, PW-4 Vijay Chaudhary has said in his examination-in-chief that he does not know anything about the incident and he had not given any statement before the police, on this point the prosecution has declared this witness also as a hostile witness and in cross- examination this witness states that he is voluntarily giving his evidence. According to the PW-5 Naresh Yadav also, he does not know anything about the incident and this witness has said that he did not give any statement before the police.

7. PW-8 Dev Govind Yadav is the informant of the case and this witness has stated that the incident took place on 25.04.2004 at 12 noon stating that he was coming from the village Jinder and when he reached in front of the house of Raj Govind, Bindeshwar Yadav, Nageshwar Yadav, Shivdeep Yadav, Rajmohan Yadav, Raj Govind Yadav and Dularchand Yadav, total 6 accused persons surrounded his brother and the accused Bindeshwar Yadav, hit Shiv Govind Yadav with *Gadasa* (sharp edged metal weapon). This witness has confirmed the facts stated in his written report (Exhibit-1/1) to this extent, but immediately after this, the witness has stated that no one else was hurt. This witness has also stated that Shiv Govind Yadav was taken to Hanspura Police Station, from where he was sent



to Hanspura referral hospital for treatment. The witness has identified his signature on the written report as Exhibit 1 and at the end of the examination-in-chief, this witness has stated that his brother died during treatment. In the paragraph 2 of the cross-examination, PW-8 stated that at the time he came to the spot of the incident, his brother was dead and he saw his brother in an injured condition, his brother was unconscious and at that time there was a crowd of about fifty people. He heard about the incident from the same people, but from whom did he hear it, he does not remember the name. In paragraph 3 of cross-examination PW-8 states that from Hanspura, his brother was referred to P.M.C.H. and 17 days after the incident his brother died. He had a land dispute with the accused persons.

8. PW-9 Shiv Kumar Yadav is the son of the informant Dev Govind Yadav and stated that the incident took place around April 2004. PW-9 states that he used to study in Patna and Shiv Govind Yadav, his uncle was injured and was beaten by Bindeshwar Yadav and others and he was treated in Patna. PW-9 also stated that his uncle died during the treatment and there was injury on the head and PW-9 had heard that Bindeshwar Yadav and Rajmahal Yadav, Raj Govind Yadav, Shivdeep Yadav, Dularchand Yadav and Nageshwar Yadav had



attacked his uncle, this thing was told to the witness by the villagers. In cross-examination, PW-9 said that he has told what he had heard and he did not see the incident with his own eyes. He does not remember the name of the person from whom he heard about the incident and the police never questioned him about the incident.

9. PW-3 Santosh Kumar is the son of the deceased Shiv Govind Yadav and it has been stated about the occurrence that on the date of the alleged incident, he was coming with his father Shiv Govind Yadav and the informant Dev Govind Yadav. PW-3 further stated that the incident occurred on 25.04.2004 at about 12 noon stating that he was coming from Dindi village with his father Shiv Govind Yadav and uncle Dev Govind. His father was walking ahead and he was walking at a distance of about one bamboo behind his father and this witness's uncle was walking at a distance of about two bamboos behind him. In para- 2, he states that his father reached near the house of Raj Govind who is known with the name Muzaffar in the village, then from Raj Govind's house, Bindeshwar Yadav with a *Gadasa* (sharp edged metal weapon), Nageshwar Yadav, Rajmahal Yadav, Dularchand, Shivdeep Yadav, Raj Govind and Dinanath all came out with lathis. In



para- 3, he has stated that the above-mentioned accused persons surrounded his father and started beating him and Bindeshwar Yadav hit his father on the head with a *Gadasa* (sharp edged metal weapon). The remaining accused persons hit him all over the body with *lathis*, due to which his father felt unconscious and fell down. In para- 4, he states that he was shouting, so Nageshwar hit him also with a *lathi*, then PW-3 brought his father to Hanspura police station where a case was registered. From the police station he was taken to referral hospital from where he was sent to P.M.C.H., where he was treated and after 15 days of admission, his father died. In this way, this witness has confirmed the prosecution case in his examination- in-chief. PW-3 has stated in paragraph- 3 of his cross examination that Bindeshwar did not file any case against him and the informant regarding the incident of that day. In para- 16, PW-3 stated that no blood or soil was seized from the spot of the incident. In para- 18 this witness has given the geographical details of the spot of the incident. At the end, this witness has denied the defence's suggestion that his uncle has filed a false case and no such incident took place.

10. PW-6 Upendra Singh is the Investigating Officer of this case. He has got marked the written application



of the informant as exhibit-1 and the formal FIR as exhibit-2. In paragraph 3, he stated that after the case was registered, he received the charge of investigation and after taking over the charge, he recorded the re-statement of the complainant and proceeded for the spot of the incident. This witness inspected the spot of the incident. PW-6 state that the spot of the incident of this case is the south road adjacent to the house of Raj Govind Yadav located in village Muzaffarpur and there is a thick palm tree on the roadside at the south east corner of the road. A hand pump was found bored near the house of Raj Govind Yadav and three high mangers made of mud was found. A big palm tree was found to the west of the house and the accused persons had surrounded the complainant side and had beaten them and injured them severely adjacent to the manger. North of the spot of the incident is Raj Govind Yadav's house, Vajjnath Sah's crop field and a canal is in the south, and there is a road in the east and the west. In this way, this witness has confirmed the spot of the incident. In para- 3, this witness states that he recorded the statements of Tetar Yadav, Naresh Yadav, Shiv Kumar Yadav, Vijay Chaudhary and the others. These people supported the incident. Shiv Govind Yadav's injury report was received from the referral Hospital, Hanspura on



04.05.2004. This witness has got marked the injury report requisition letter as Exhibit-3. In paragraph 4 this witness states that the complainant came to the police station on 12.05.2004 and told him about the case and that the injured was being treated at P.M.C.H. He died on 10.05.2004 which was informed by the complainant, then he submitted an application in the Court of the learned Chief Judicial Magistrate, Aurangabad for adding section 302 of the Indian Penal Code. The *fardbeyan* recorded in the PMCH presented by the complainant, which was recorded by the A.S.I. B.K. Singh of the Pirbahor police station who also issued the inquest report, this witness made that entry in his diary. He received the supervisory note of the Sub-Divisional Police Officer and after that charge-sheet no. 29 of 2004 was submitted on 21.07.2004 against the accused Nageshwar Yadav and Bindeshwar Yadav under Section 302 Indian Penal Code and the investigation was continued against the other accused persons. In paragraph 5, he states that he received the post-mortem report and thereafter he completed the investigation against all the accused persons and submitted a charge-sheet against them under IPC Sections 147, 341, 323, 324, 307 and 302. In paragraph 7 of cross-examination, he states that the complainant already had a land dispute with the accused



persons, which he has written in his diary. He had recorded the re-statement of the complainant at the police station and issued requisition letter for the injury report of the complainant. He sent him to the Hanspura Government Hospital for treatment. In the end this witness has rejected the defence's argument that his research is flawed.

11. PW-7 Dr. Manoj Kumar Kaushik was posted as medical officer at the referral hospital Hanspura on 25.04.04 and on the said date, he examined the injury of the injured Shiv Govind Yadav at five o'clock in the evening and found the following injuries: -

i. Lacerated wound of size- 1"X1/4" X Scalp deep over Rt. side of Vertex, Blood clot over wound present.

On palp of crackling & lacing over wound indicating fracture on underlying scalp bone.

The patient referred to Sadar Hospital, Aurangabad for x-Ray and needful treatment as patient was unconscious.

Age of Injury- within 12 hrs.

Nature of Injury- Reserved.

Nature of weapon- Hard and Blunt.

This injury report has been marked as Ext-4.

12. After closure of the prosecution evidence, the



appellants were examined under Section 313 of the Cr.P.C confronting them with incriminating circumstances which came in the prosecution evidence, so as to afford them opportunity to explain those circumstances. During this examination, they admitted that they had heard the evidence of prosecution witnesses against them. But they did not explain any circumstance, though they claimed that the prosecution evidence is false and they are innocent and have been falsely implicated.

13. Learned counsel for the appellants, at the outset, submits that the trial Court erred in convicting the appellants for the charges, despite having no material available on record, except for the oral evidence of prosecution witnesses. He next argued that he has falsely been implicated by the informant in a criminal case. There is vital contradiction in manner of occurrence and genesis of the case which has not been proved by the informant, as PW-7 has found only one wound on the head of Shiv Govind Yadav and in such a situation, the deposition of PW-3 cannot be believed, because he has exaggerated the incident in his deposition. PW-8 has said only this in his deposition that only Bindeshwar Yadav hit Shiv Govind Yadav with a *Gadasa* (sharp edged metal weapon), no other accused person had hit him. Thus, there is a clear



contradiction between PW-3 and PW-8. In this case, the prosecution has not even got the postmortem report and the inquest report marked as exhibits and here, prosecution witness no. 3 has said in paragraph-4 that his father died in PMCH, fifteen days after the incident. Whereas PW-8 says that he died seventeen days after the incident. PW-7 has found only one wound on the head of the injured Shiv Govind Yadav and in the entire situation it is not clear whether the injured Shiv Govind Yadav died because he was suffering from any disease or as a result of the injuries he sustained and in such circumstances Section 307 of the Indian Penal Code is not proved.

14. Learned counsel for the appellants further submits that PW-1, PW-2, PW-4 and PW-5 has been declared hostile. There is no eye witness, PW 3 being a son of the deceased he has also not seen the occurrence rather his statement is based on hearsay, another important witness (PW-8) who is the informant of the case and he is also not seen the occurrence. His statement is also based on hearsay. Other important witness is the Doctor (PW-7) who have examined the deceased, according to injury report there was one injury at the head and no injury is made by sharp cutting weapon. The deceased died rather after 15-17 days of the occurrence.



According to informant's (PW-8) statement, there was a huge mob of about fifty persons it was mentioned at para 2 of his statement. The learned Session Judge has relied upon the statement of (PW-3) by which the injury was done by *Gharasa*, but the medical report does not support this statement rather it goes against his statement. It is humbly submitted that there is no whisper anywhere by any witness that the accused persons have gathered there with an intention to assault the deceased. There is no statement by of any witness that they have gathered with the intention and planning to scuffle or to kill the deceased. Another very important thing is that the statement of PW-3 who happens to be the son of the deceased, his statement has been taken by the Police after more than seven days. As the occurrence took place on 25.04.2004 at 12:00 noon, but deceased dies on 10.05.2004 but during this period the prosecution did not take any step to take the statement of deceased and this aspect was not even discussed by the trial Court.

15. Learned counsel lastly submits that there was land dispute attributed between the parties and he also denied about the contents of the FIR though he has categorically stated that the contents of FIR have been written by the *Munshi* of the



Police station which have not been read over to him. Which shows that the story of assault by the appellants does not arise and from the careful discussion of each and every statement of PW's, it would transpires that there are full discrepancies in the statements of the PW's and in that case the benefit of doubt always goes in favour of the accused persons/appellants.

16. On the other hand, learned Additional Public Prosecutor has vehemently opposed the appeal and submits that there is direct allegation against the appellants, for assaulting Shiv Govind Yadav which resulted into his death. In view of the aforesaid statements and the evidence on record, learned trial Court has rightly convicted the appellants and the present appeal should not be entertained.

17. At this stage, I would like to appreciate the relevant extract of entire evidence led by the prosecution and defence before the Trial Court.

18. On deeply studied and scrutinized all evidences and after considering the submissions made by the learned counsel for the respective parties, it appears that during the course of trial, the learned Trial Court pleased to absolve the appellants from criminal liability under Section 302 of the Indian Penal Code, but so far as Sections 307/34 and 148 of the



Indian Penal Code are concerned, the learned trial Court failed to scrutinize the evidence brought on record regarding deficiencies, drawbacks and infirmities crept during course of trial and passed the impugned judgment in complete ignorance of criminal jurisprudence. Moreover, there are discrepancies regarding the sequence of events and the presence of individuals at the scene of the incident as there are no eye witness, PW-3 is the son of the deceased and has stated in Para 1 that his father was walking in front of him at a distance of approximately one *baans* where the incident took place and his uncle was behind him at a distance of one *baans*. Hence there was quite some distance between them. It has been stated that Brindeshwar Yadav hit his father on his head with a *garasa* and rest of them hit him with *lathi* while PW- 7 Dr. Manoj Kumar Kaushik has not found any injury of a sharp weapon on the injured Shiv Gopal Yadav's person. Only one injury was found and no other wounds were found. PW-3 also stated that Nageshwar hit him with a *lathi* while there is no such injury report on the record. It is evident that either the PW-3 was not present at the place of occurrence or that he is not stating the true facts. Hence, his statement cannot be relied upon. PW-8 Dev Govind Yadav, stated in his cross examination that he has also not seen the



occurrence and there was a huge mob of about fifty persons as mentioned at para 2 of his statement. According to the injury report there was one injury at the head and no injury is made by sharp cutting weapon. Another very important thing is the statement of PW-3, who happens to be the son of deceased, his statement has been taken by Police after more than seventeen days and as the occurrence took place on 25.04.2004 at 12:00 noon, but deceased died on 10.05.2004 but during this period the prosecution did not take any step to record the statement of the deceased.

19. Further, it appears that there is vital material defect of the case which has not been proved by the prosecution as the absence of postmortem report with the record, the inquest report not being marked as an exhibit by the prosecution and the prosecution not presenting any such evidence which proves that the injury was inflicted on Shiv Govind Yadav on the date of the above incident which resulted in his death, is important and in its absence it cannot be said that the prosecution has been successful in proving case against the accused persons.

20. Hence, it is evident from Para 2 that PW-2 did not see the occurrence and he is a hearsay witness. He has stated in Para 3 that he did not write the written application



(FIR), rather it was written by the *munshi* on the order of *bada babu* of the concerned police station. He only put his signature on it and the FIR was not read over to him. As such, although the witness is the informant, he does not prove the First Information Report. It is important to note here that the injured Shiv Govind Yadav died due to the injuries sustained during assault. The inquest report was also prepared as stated by the Investigating Officer, PW-6. However, the postmortem report and the inquest report is not on the record. It is evident from the records of the trial Court that there was attempt to murder of Dev Govind Yadav and Santosh Kumar and charges under section 307/34 have been framed against the appellants and gone for trial when it is clear from the study of the entire evidence that neither there is any injury report on record of Dev Govind nor Dev Govind Yadav has said in his chief that anyone else was injured. In the same way, PW3 Santosh Kumar has also stated that Nageshwar had hit him with a *lathi* but there is no such injury report. In such a case the prosecution has not been able to prove the charge punishable under Section 307 of Indian Penal Code or under any other section beyond all reasonable doubt. The charge framed under Section 307 is as under:-

“That the appellants in furtherance of common intention did any act to cause



injury to Shiv Govind Yadav and Santosh Kumar by means of lathi with such intention and under such circumstance if by that act you had caused the death of the above persons you would have been guilt of murder and thereby committed an offence punishable under Sections 307/34 of the Indian Penal Code.”

21. Taking into consideration the entire material on record it can be constrained that there is no sufficient corroborating evidence i.e. either oral or documentary to convict the appellants. Therefore, conviction granted by the trial Court is not sustainable and is liable to be set aside. Further, the prosecution has miserably failed to prove the guilt of the accused persons/appellants for the charges levelled against them.

22. Hence, the impugned judgment of conviction dated 25.03.2013 and order of sentence dated 30.03.2013 passed by the learned Adhoc Additional District and Sessions Judge-I, Aurangabad in Sessions Trial No. 342 of 2004 / 201 of 2010 arising out of Hanspura P.S. Case No. 28 of 2004 against the appellants is set aside and the appellants are acquitted from the charges leveled against them. As the appellants are on bail, they are discharged from liability of their bail bonds.



23. Accordingly, the appeal stands allowed.

(Ramesh Chand Malviya, J)

Anand Kr.

AFR/NAFR	NAFR
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