

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1109 of 2017

Arising Out of PS. Case No.-77 Year-2004 Thana- RAGHOPUR District- Supaul

Sanjay Yadav, Son of Bachcha Yadav, R/o Village- Narha, P.S.- Raghapur,
District- Supaul.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 973 of 2017

Arising Out of PS. Case No.-77 Year-2004 Thana- RAGHOPUR District- Supaul

Rajendra Yadav, son of Late Agam Lal Yadav, resident of village - Narha, P.S.
- Raghapur, District - Supaul.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 975 of 2017

Arising Out of PS. Case No.-77 Year-2004 Thana- RAGHOPUR District- Supaul

Pritam Yadav, Son of Late Agam Lal Yadav, Resident of Village- Narha, P.S.-
Raghapur, District- Supaul.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 1107 of 2017

Arising Out of PS. Case No.-77 Year-2004 Thana- RAGHOPUR District- Supaul

Bachcha Yadav @ Bacha Yadav, Son of Late Agamlal Yadav, R/o Village-
Narha, P.S.- Raghapur, District- Supaul.

... .. Appellant/s

Versus

The State of Bihar



... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 1111 of 2017

Arising Out of PS. Case No.-77 Year-2004 Thana- RAGHOPUR District- Supaul

Ramu Yadav, Son of Bachcha Yadav, R/o Village- Narha, P.S.- Raghapur,
District- Supaul.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 1134 of 2017

Arising Out of PS. Case No.-77 Year-2004 Thana- RAGHOPUR District- Supaul

Ranjay Yadav, Son of Bachcha Yadav, R/o Village Narha, P.S. Raghapur,
District-Supaul.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Vijay Kumar Sinha, Advocate Mr. Arvind Kr. Srivastava, Advocate Mr. S.K. Bhatnagar, Advocate Mr. Shashikant Yadav, Advocate Mr. Krishna Murari Prasad, Advocate Mr. Kumar Shivam Sinha, Advocate
For the Respondent/s	:	Mr. Ajay Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 30-04-2024

All the appeals [Criminal Appeal (DB) No.
1109; 973; 975; 1107; 1111 and 1134 of 2017] have



been heard together and are being disposed off by this common judgment.

2. All the appellants (six in number), viz., Sanjay Yadav, Rajendra Yadav, Pritam Yadav, Bachcha Yadav, Ramu Yadav and Ranjay Yadav have been convicted under Sections 323, 342 and 302/149 of the Indian Penal Code *vide* judgment dated 29.06.2017, passed by the learned Additional Sessions Judge-I, Supaul in Sessions Trial No. 268 of 2005/ 185 of 2005. By order dated 12.07.2017, they have been sentenced to undergo imprisonment for life, to pay a fine of Rs. 20,000/- each and in the event of non-payment of fine to further suffer custody for two months for the offence under Section 302/149 IPC. For the offence under Section 323/149 IPC, the appellants have been sentenced to undergo imprisonment for one year, to pay a fine of Rs. 500/- each and for the offence under Section 342/149 IPC, the appellants have been sentenced to undergo imprisonment for one year and to



pay a fine of Rs. 200/- each.

3. The sentences have been ordered to run concurrently.

4. One Uma Shankar Yadav is alleged to have been killed at the hands of the appellants including one Sudhir Yadav who is reported to be dead on 26.07.2004. The father of the deceased, viz., Luchai Yadav (PW-3) had lodged the *fardbeyan* on 26.07.2004 only that his son/ Uma Shankar Yadav along with Arvind Kumar (PW-2) had gone to see their field. No sooner had they reached near the house of appellant/ Bachcha Yadav, he and the other appellants and others surrounded his son and Arvind Kumar and started assaulting them. His son was assaulted by *farsa* on his head, as a result of which he became seriously injured. Arvind Kumar was assaulted by *lathi* and he too was injured. Because of the assault on the son of the informant, he became unconscious. On *hulla* raised by the onlookers, Domi Yadav (PW-1), Amarendra Yadav



(PW-4) and one Gajendra Yadav (not examined) came to the place of occurrence. They saw the appellants including one Sudhir Yadav. The cause of occurrence was old enmity as also the protest made by the informant and the deceased regarding the cattle of the accused persons/ appellants often straying in their fields and damaging their crops.

5. Based on the afore-noted *fardbeyan* statement of PW-3, Raghopur P.S. Case No. 77 of 2004 was registered for investigation on 26.07.2004 under Sections 147, 148, 149, 323, 326 and 307 of the IPC initially. However, after the death of Uma Shankar Yadav, Section 302 IPC was added.

6. The police after investigation submitted charge-sheet against the appellants, whereupon they were put on Trial.

7. The Trial Court, after having examined six witnesses on behalf of the prosecution, convicted and sentenced the appellants as aforesaid.



8. On behalf of the appellants, it has been argued that the case is absolutely false as the informant has not come out with the true version of the occurrence. He himself had not seen the occurrence, which would be apparent from a bare reading of the FIR lodged by him. However, during the Trial, he claims to have been present at the time of assault and he only claimed to have brought the deceased, who was still surviving, to Simrahi Hospital for preliminary treatment; whereafter the deceased was referred to higher hospital at Saharsa.

9. Likewise, it has also been urged on the basis of the evidence on record that even the presence of Arvind Kumar (PW-2), Amarendra Yadav and Bijendra Yadav (PWs. 4 and 5 respectively) is also doubtful.

10. The doctor, who had conducted the postmortem examination has not been examined nor the postmortem report has been proved.

11. The Investigator of this case has also not



investigated the case properly inasmuch as he did not seize the blood-stained earth or any other incriminating material at the place of occurrence. In fact, he did not even bother to enquire about the counter-version of the occurrence lodged by appellant/ Bachcha Yadav.

12. Lastly, it has been submitted that appellant/ Bachcha Yadav was also injured in the occurrence and he had lodged an FIR *vide* Raghapur P.S. Case No. 78 of 2004 against the members of the present prosecution party and about which there is no reference in the subject FIR lodged by PW-3. This completely improbablises the prosecution version with respect to the injuries on Bachcha Yadav and others from his side. It has, therefore, been argued that perhaps because of some dispute over cattle straying in the field of the prosecution party, an occurrence took place in which both the sides participated in the fight, which was not witnessed by many and, unfortunately, the deceased died and appellant/ Bachcha Yadav received injuries.



Taking advantage of the injuries received by the deceased being serious in nature, a false case was instituted, attributing specific overt roles to the appellants, particularly, appellants/ Sanjay Yadav and Bachcha Yadav. Sanjay Yadav is the son of Bachcha Yadav.

13. The learned counsel for the State, however, has submitted that no doubt there are certain crevasses in the prosecution version but the very fact that the deceased was brought to Simrahi Hospital for treatment and was referred to Saharsa where the deceased succumbed to the injuries, proves the fact that an occurrence had taken place in which the deceased was assaulted on his head. The accusation against the appellants is very specific. According to the evidence of the witnesses, the deceased was first assaulted by appellant/ Ramu Yadav, which did not hit him. Later, appellant/ Sanjay Yadav is said to have given a *farsa* blow on the head of the deceased, which proved fatal.



Thereafter, Arvind Kumar (PW-2), an associate of the deceased, was also assaulted. Many persons of the neighbourhood as also PWs. 1, 4 and 5 arrived at the scene and saw the occurrence. In fact, only PWs.- 4 and 5 along with one Gajendra brought the deceased, while he still survived, to Simrahi Hospital and then took him to Saharsa Hospital where he died in the night of the occurrence. The postmortem was performed on the next day at 8:00 AM and it was found that the injury on the head of the deceased was the cause of death.

14. We have examined the evidence of the witnesses in some detail.

15. The occurrence is of the year 2004.

16. From the reading of the *fardbeyan* of PW-3, who is the father of the deceased, it becomes very clear that he had not seen any part of the assault or else he would have said so. His specific statement in the FIR is that his son/deceased and Arvind (PW- 2) had gone to see their agricultural field when both of them were



assaulted. The occurrence took place in front of the house of appellant/Bachha Yadav. It was only fortuitous that Domi, Amrendra and Bijendra arrived at the place of occurrence, who brought the deceased to Simrahi hospital for preliminary treatment.

17. During the Trial, improving upon his version, PW- 3 has claimed to be an eyewitness to the occurrence.

18. This completely corrodes his credibility as a truthful witness.

19. He has stated before the Trial Court that the first attack on the deceased was by appellant/Ramu Yadav but the attack got averted. Appellant/ Sanjay Yadav gave a *farsa* blow on the head of the deceased. Rest of the accused persons assaulted the deceased by means of *lathi*. It was at that time that Domi (PW- 1), Arvind (PW- 2), Gajendra (not examined) and many others arrived. He claims to have brought the injured/deceased to Simrahi Hospital, where the police



had also arrived and he had given his *fardbeyan* statement. From Simrahi, the deceased was sent to Saharsa. He was brought to Saharsa by Girdhari Yadav (not examined), who is noneelse but the son of PW- 3, Arvind Yadav and Gajendra Yadav.

20. What is noticeable in his deposition is that in his cross-examination, he has stated that when he went to the PO, he saw the deceased standing and all other persons had fled away.

21. He has further stated that he was present all along when his son was being assaulted. It took almost 15 minutes for the deceased to fall on the ground. Beyond that, all the statements made by PW- 3 are of general nature. When his son fell down on the ground, then the accused persons/appellants started assaulting Arvind also, who was accompanying the deceased. He was assaulted for four to five times. He had seen wounds on the body of Arvind at the PO only, but Arvind was never treated for those injuries. He has



further stated that Arvind brought a motorcycle to the place where assault had taken place and brought the injured/deceased on the said motorcycle. He has also admitted of having a very poor eyesight. If his deposition is seen and analysed carefully in some detail, it would appear that it is at quite a variance with his original statement in the *fradbeyan*.

22. Apart from this, the manner of occurrence and the sequence of events narrated by him is not in sync with the version of P.Ws. 1, 4 and 5, who had reached the place of occurrence immediately.

23. It is very interesting to note that PW- 1, who is the nephew of PW- 3, claims to have rushed to the PO alone. He was present at his house, which is situated far away from the place where the assault had taken place. He had proceeded for the PO on hearing *hulla*. This does not appear to be probable.

24. The other aspect of his deposition which needs to be noticed is that in his cross-examination, he



has stated that no sooner had he reached the place where the assault had taken place, he found the deceased lying in a pool of water. This belies his tall assertions that he had seen the actual part of the assault.

25. Arvind (PW- 2), according to the prosecution case, was all along with the deceased.

26. Surprisingly, PW- 1 did not find Arvind at all at the place of occurrence. After he had arrived, about 40-50 persons also came. PW- 1 claims to have stayed at the PO only for 2-4 minutes and thereafter fled away out of fear.

27. This explains for the divergence in the manner of occurrence as deposed by him.

28. He had not seen any part of the assault. Apart from this, in his long examination-in-chief and cross-examination, he has not spoken about the presence of PW- 3 (informant) at the place of occurrence. In fact, PW- 1, if he is to be believed, came



to the PO and when he saw the deceased lying in a pool of water, he ran away.

29. Arvind Kumar (PW- 2), who had accompanied the deceased to the field, has a totally different story to narrate. According to him, Sanjay Yadav assaulted by means of *farsa* which hit the deceased on his head. The second attack was made by Bachcha Yadav on the deceased. The appellants/Ranjan, Pritam, Ramu and one Sudhir started assaulting the deceased as well as him. Uma Shankar (deceased) had fallen down on the ground because of assault by *farsa*. Uma Shankar was, thereafter, brought on the road and then was taken to the hospital. In his deposition, he has also not referred to the presence of PW- 3/informant at the PO.

30. PW- 3, it must be noticed, had seen wounds on the person of Arvind. Though Arvind claims that he too was assaulted but does not state that he was injured in any manner. In fact he has not been treated



anywhere.

31. This makes the entire version doubtful, especially, that he had accompanied the deceased to the field where the assault had taken place.

32. As we have already noted, PW- 1 ran away from the PO after seeing the deceased in a pool of water. PW- 2 did not take the name of PW- 3 at the PO. He too is stated to have been assaulted but with no injury. Why was he spared?

33. Amarendra (PW- 4), though has tried to support the prosecution case, but his deposition makes his version equally doubtful. In his cross-examination, he has stated that when he went to the PO, nobody had come. It was only twenty minutes later that people stated arriving. He did not go near the place where the assault was taking place and about twenty-five persons had assembled, even though, according to him, the fight continued for about half an hour.

34. Similarly, the evidence of Bijendra Yadav



(PW-5) also does not inspire any confidence. According to him, Arvind and Uma Shankar (deceased) had gone to see the field on their motorcycle when they were attacked by the appellants including one Sudhir Yadav. This is not the prosecution case at all.

35. What is clearly noticeable is that P.Ws. 1, 2, 3 and 4 are related to each other. No independent person has been brought to the witness-stand to support the prosecution case.

36. The investigator (PW- 6), though visited the P.O. and found that the local vegetation had been trampled, but he did not bother to seize any incriminating article from the PO. He had taken the statement of the witnesses, but the inquest was performed by somebody-else. The witnesses to the inquest have also not been examined. He had received the postmortem on 22.09.2004. He had arrested the appellant/Bachha Yadav from hospital, but did not care to know the nature of the injuries suffered by him.



37. From his deposition, it appears that he had made a shoddy investigation, without caring to know as to what was the trigger point for the attack or the fight. The motive assigned in the *fardbeyan* is that there were voluble protests by the prosecution side for the animals of the accused persons straying in their fields. This was a regular affair. What had happened on the day of the occurrence, remains unknown.

38. On top of it, we find that none of the witnesses have spoken about the assault on appellant/Bachha Yadav. The counter version of the occurrence was filed in quick succession. Appellant/Bachha was arrested from the hospital, signifying that he too was injured in the occurrence.

39. If this be so, then the narration of all the witnesses regarding the manner of assault becomes very doubtful. It could be possible that only Bachha and the deceased had fought amongst themselves. Bachha was injured and the deceased, unfortunately, succumbed to



his injuries.

40. If this were not the case, then, perhaps, Arvind also would have been assaulted. If he would have been assaulted, he ought to have been treated for his wounds.

41. We do concede that these are all subjunctive inferences but to test the correctness of the prosecution version, one has to look at these inconsistencies which, by no means, has made the prosecution case very doubtful.

42. Times without number the Supreme Court as well as this Court has found that non-mentioning of the injuries on the side of the accused persons leads to the only inference that some vital information has been held back by the prosecution.

43. In ***Lakshmi vs. State of Bihar*** reported in ***(1976) 4 SCC 394***, which case also arose out of a conviction under Section 302/149 IPC, the Supreme Court had an occasion to consider the issue of non-



explanation of injuries sustained by the accused. It was held that under such circumstances a Court can draw the following inferences :-

(i) That the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

(ii) That the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and, therefore, their evidence is unreliable;

(iii) That in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

44. A similar view with regard to non-explanation of injuries has been taken by the Supreme Court in ***State of Rajasthan vs. Madho*** reported in ***1991 Supp. (2) SCC 396***; ***State of MP vs. Mishrilal (dead) & Ors.*** reported in ***(2003) 9 SCC 426*** and



***Nagarathinam & Ors. vs. State represented by
Inspector of Police*** reported in ***(2006) 9 SCC 57.***

45. For the afore-noted reasons, viz., doubting the presence of the witnesses at the place of assault, we find the evidence of the witnesses lacking in truth. The cack-handed investigation further confounds the issue.

46. For the afore-noted reasons, the appellants have to be given benefit of doubt.

47. While saying so, we have also taken note of the fact that even the postmortem report could not be proved and for no explicable reason, the Doctor has not been examined at the Trial.

48. Giving benefit of doubt to the appellants, their conviction under all the counts is set aside.

49. The appeals are allowed.

50. The appellants stand acquitted of the charges levelled against them.

51. Appellant/Sanjay Yadav is in jail. He is directed to be released from jail forthwith, if not



required or detained in any other case

52. The other appellants, viz., *Rajendra Yadav, Pritam Yadav, Bachcha Yadav, Ramu Yadav and Ranjay Yadav* are on bail. Their liabilities under their bail bonds are discharged.

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

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

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

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

Rajesh/Manoj

AFR/NAFR	NAFR
CAV DATE	NA
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