

(2015) 10 PAT CK 0098

In the Patna High Court

Case No : Criminal Appeal (DB) Nos. 137, 141, 151 and 160 of 2013

Bakhori Yadav and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 16-10-2015

Acts Referred:

Arms Act, 1959 — Section 27(1)
Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 149, 302

Citation : (2015) 10 PAT CK 0098

Hon'ble Judges : Anjana Prakash and Rajendra Kumar Mishra, JJ.

Bench : Division Bench

Advocate : Ramakant Sharma, Sr. Advocate, Dharmendra Kumar Singh and Rajesh Kumar, Advocates, for the Appellant; Abhimanyu Sharma, APP, for the Respondent

Final Decision : Allowed

Judgement

Anjana Prakash, J.—These four appeals arising out of the same judgment have been heard together. Appellant Bakhori Yadav of Criminal Appeal (DB) No. 137 of 2013, Appellant Sahajanand Yadav of Criminal Appeal (DB) No. 141 of 2013, Appellants Sudama Yadav, Sheoji Yadav, Sidheshwar Yadav of Criminal Appeal (DB) No. 151 of 2013 and Appellant Dinesh Yadav of Criminal Appeal (DB) No. 160 of 2013 have been convicted under Section 302/149 I.P.C. and sentenced to R.I. for life and a fine of Rs. 60,000/-, in default of which S.I. for six months as also under Section 27(1) of the Arms Act and sentenced to R.I. for five years and fine of Rs. 1000/- each, in default of which again sentenced to S.I. for three months by the Ad hoc Additional Sessions Judge-1, Patna in Sessions Trial No. 480 of 2008 (Trial No. 445 of 2012) arising out of Dhanrua P.S. case No. 116 of 1994 (G.R. case No. 3420 of 1994) by judgment dated 1.2.2013/8.2.2013.

2. The case of the prosecution according to P.W.5 Lal Babu Yadav is that on the evening of 27.8.1994 at around 5.00 p.m. he and his uncle Rajendra Yadav

(deceased) had gone to a pond to bathe their buffaloes, in course of which an altercation took place between Appellant Dinesh Yadav who attempted to stop them from taking the buffaloes through a gali which resulted in an ugly scene. Then all the Appellants gathered with arms and chased them till the door of the deceased Rajendra Yadav where Dinesh Yadav snatching the gun from the hands of Sidheshwar Yadav aimed and shot at him, due to which he died. This information was given on the next day i.e. on 28.8.1994 at 9.30 a.m.

3. During trial the prosecution examined seven witnesses. P.W.1 Vinod Yadav is an eye witness and son of the deceased, who was aged around 17 years at the time of occurrence. He stated that on 27.8.1994 while he was studying he came out of the house on hulla and saw his father running towards the house being chased by the Appellants. When he had reached the door, Sudama Yadav gave orders to kill and while the deceased was attempting to close the door Dinesh Yadav snatched the fire arm from Sidheshwar Yadav and shot at him, due to which he fell down. A number of persons gathered on hulla but the accused persons fled away. A little later the deceased died. As for the description of his house he stated that the main door faced west and the accused and the prosecution belong to the same family and there was land dispute between them. He stated that the Choukidar used to live about 8-10 houses away in the same village. As for the "gali" in front of his house he stated that about 10 steps the road turned towards east and 40-45 steps later it turned north, again which went straight towards west and out of the "Basti" 200 yards away. From the west another road went to the Chamartoli which was 200-250 yards. The same road went towards the south and the house of Brij Lala Yadav was situated at the end and towards his north was the house of Appellant Dinesh Yadav. It appears from his description that there were number of houses in the vicinity and the area was highly populated. He stated that as soon as he opened the door he saw the firing and his father falling down at which a number of co-villagers came. No one went to inform the Police Station. He further stated that his relatives came to his house and stayed over night and that his brother had gone to the Police Station, the next morning. His attention was drawn to the earlier statement that he had not taken the name of Appellant Bakhori Yadav, which fact the Investigating Officer P.W. 6 corroborated. Importantly he does not speak about the presence of the Informant with the deceased.

4. P.W.2 Manoj Kumar is another son of the deceased, who stated that on the date of occurrence while he was at his door he saw Lalbabu Yadav and his father Rajendra Yadav running towards the house being chased by all the Appellants. As soon as his father entered into the house and attempted to close the door, Appellant Dinesh Yadav fired at him, on account of which he fell down and died. He stated that the accused persons were trying to take away his dead body and therefore it was removed to the courtyard. He also confirmed that the door was towards the west. He further stated that about 20-25 persons came after the occurrence who were well known. On the date of occurrence there were eight persons inside the house. He further stated that there was a mud pile in front of

the house about 4-5 feet high and that he had shown the Sahan to the Investigating Officer when he had come. He conceded that he was about ten years of age on the date of occurrence and it was the next day that the persons learnt about the occurrence when the police came. According to his evidence also it appears that the place of occurrence is a highly populated area. His attention was drawn to the earlier statement recorded under Section 161 Cr.P.C. that he had not stated that Appellant Bakhori Yadav had been seen with a gun. He also stated that all the accused persons and the prosecution were from the same family and there was land dispute between them.

5. P.W.3 Rampati Yadav is father of the Informant, who stated that on the date of occurrence while he was returning from the field he saw deceased Rajendra Yadav going with his buffalo and an altercation taking place between Dinesh Yadav and deceased Rajendra Yadav. The Informant was also along with them. Just then all the accused persons arrived with guns and started to chase Rajendra Yadav and aiming at him Dinesh Yadav fired, which hit him causing his death. He proves the fard beyan Exhibit 1/1. He describes his relationship with the rest of the witnesses and that only the family members were deposing in the case. He has conceded to his antecedents and that he was accused in cases of murder. About the house of Rajendra Yadav he stated that in front of the same there was an empty space which was bounded off with the wall of about 2-5 feet high. His attention was drawn to the earlier statement as to whether he had stated that the Informant was also with the deceased at the time of occurrence. He stated that when the deceased was being chased he was about 20-25 feet away from him and that all the accused belong to the same family.

6. P.W.4 Brahamdeo Yadav, the grand father of the Informant, aged about 85 years was not examined by the Trial Court because he was found incapable of understanding.

7. P.W.5 Lal Babu Yadav is the Informant, who repeated the occurrence as stated in the First Information Report with minor corrections, such as, that the deceased had pushed the family members inside the house and while he was closing the door Dinesh Yadav had shot at him, due to which he had died. He also stated that since the accused persons were trying to take away the dead body it had been removed to the courtyard. The motive for the occurrence was that earlier a case had been instituted in which Rajendra Yadav was the chief witness and the accused persons were pressurizing him not to depose and hence had killed him. From his evidence also it appears that the area is highly populated and the village was close to the main road. He stated that the rest of the witnesses had seen the occurrence from the window. From his cross examination it is not clear as to whether he was an eye witness or he had only seen his uncle having fallen on the ground.

8. P.W. 6 Ram Raj is the Investigating Officer, who stated that on 28.8.1994 he received certain information at 7.30 a.m. on account of which he went to the village of occurrence and recorded the fard beyan, inspected the place of

occurrence, prepared the seizure list and sent the dead body for postmortem examination. He describes the place of occurrence being the house of the deceased which opened from the west side. On the east there were three rooms and on the south two rooms. On the east the wall was about 8 feet high but there were no rooms and none of the rooms had roof on the top. However he does not describe the gali from where the chase had started and how far it was from the house of the deceased. Importantly he had stated that he did not find any one at the place of occurrence and none of the witnesses had shown the place from where they had seen the occurrence. He has been cross examined as to when he had received information about the occurrence to which he asserted that he had received a rumour at about 7.30 p.m.

9. P.W.7 Dr. Bishundeo Prasad stated that on 29.8.1994 he had conducted the postmortem examination of dead body of Rajendra Yadav, which had been brought to the P.M.C.H. at 7.00 p.m. on 28.8.1994. He had found the following injuries on his person:

- (i) Swelling of size 1"x1" was present on right chick.
- (ii) Pillet intrude of size 1/4"x1/4" was present on right forehead.
- (iii) Pillet intrude of size 1/4"x1/4" was present on right chick.
- (iv) Pillet intrude of size 1/4"x1/4" was present on left forehead.
- (v) Pillet intrude was present on three places on right arm in the circle of 4" diameter.
- (vi) Intrude of pillet was present on chest and abdomen.

Since the postmortem examination report was in a torn condition he was not in a position to give the exact details of timing.

10. The learned Counsel for the Appellants submits that the prosecution story has been engineered only with a view to rope the accused persons who belong to the same family and with whom the prosecution had land dispute. The fact that no independent witness has been examined to corroborate the prosecution story further creates a dent on the same. The further submission is that postmortem examination report does not support the prosecution case since the injuries found on the deceased does not corroborate the allegations of single firing.

11. On the other hand, the Counsel for the State submits that as many as four eye witnesses have deposed against the Appellants giving consistent story of the Appellants chasing the deceased and the Informant and thereafter shooting at the deceased, on account of which he fell down and died. There is no scope for any interference.

12. Having gone through the evidence of the prosecution, it is no doubt true that the four eye witnesses have consistently given a uniform story about the manner of occurrence but on close scrutiny we find a number of inconsistencies, which

give rise to suspicion as to whether the story that was retold by the witnesses was indeed true. To begin with, one finds that even though the occurrence had taken place on 27.8.1994 at 5.00 p.m., the report according to the Informant was only given on 28.8.1994 at 9.30 a.m. There is no explanation as to why there was undue delay of more than 16 hours in reporting and why none of the witnesses had gone to the Police Station to report the matter. The fard beyan was given only on the arrival of the police. We further find that the dead body had reached at the P.M.C.H. on 28.8.1994 at 7.00 p.m. when Dhanarua is merely 20 kilometers away. There was no reason as to why the dead body would reach after about 10 hours after the inquest was allegedly prepared at 10 a.m. This fact coupled with the entry of the Chief Judicial Magistrate that the First Information Report was received only on 29.8.1994 further gives rise to a suspicion about the recording of the fard beyan at the time purported to have been done.

13. Further we find that the prosecution case is that suddenly when the deceased had gone to bathe his buffalo an altercation had arisen between Appellant Dinesh Yadav and himself over taking of a way back home and then suddenly the rest of the accused persons are said to have arrived variously armed. We fail to understand as to how even while the altercation was taking place accused would gather with arms and since they all lived at different points of village as has been described by the witnesses. How and why they all gathered there and then started chasing the deceased is a mystery. There was no immediate cause for the same. If at all so many persons were armed, why would not they kill the deceased right at the spot instead of chasing him to his house, without any hindrance is an inexplicable. As per the description of the place of occurrence, the gali is lined by houses on both sides but not a single independent eye witness has appeared even as a corroborative witness. Moreover the evidence of the Investigating Officer that he did not find any pellet at the place of occurrence further creates a reasonable doubt as to the place of occurrence. The Postmortem examination report reveals that pellet injuries were found right from the head to the stomach and it was thus expected that if at all the deceased was fired at while closing the door some pellets would be found even on the door or around. How the witnesses could see the Appellant Dinesh Yadav firing from the other side of the deceased who was evidently blocking the way trying to close the door is not known. The target of the prosecution appears to be Appellant Dinesh Yadav who was on litigating terms with the Prosecution for the aforesaid reasons. Thus holding the evidence of the eye witnesses untrustworthy, we are inclined to allow all these appeals.

14. Hence, all these appeals are allowed and the Appellants of Criminal Appeal (DB) No. 137 of 2013, Criminal Appeal (DB) No. 141 of 2013 and Criminal Appeal (DB) No. 151 of 2013, who are on bail, are discharged from the liabilities of their respective bail bonds. Appellant Dinesh Yadav of Criminal Appeal (DB) No. 160 of 2013, who is in jail custody, be released forthwith if not wanted in any other case.