
(2018) 02 PAT CK 0070

In the Patna High Court

Case No : Criminal Appeal (DB) No. 264, 278 Of 1993

Brahmdeo Yadav And Ors

APPELLANT

Vs

State Of Bihar And Anr

RESPONDENT

Date of Decision : 09-02-2018

Acts Referred:

Indian Penal Code, 1860 — Section 149, 302

Citation : (2018) 2 PLJR 805

Hon'ble Judges : Vikash Jain, J;Dr. Ravi Ranjan, J

Bench : Division Bench

Advocate : Akhileshwar Pd. Singh, Bimal Kumar, Ashwini Kumar Sinha

Final Decision : Allowed

Judgement

1. The present criminal appeals are directed against the judgment of conviction dated 25.05.1993 and the order of sentence dated 26.05.1993 passed by Sri Dhirendra Nath Chakravarty, learned 7th Additional Sessions Judge, Bhagalpur, in Sessions Trial No. 153 of 1982/ 207 of 1988 whereby Indradeo Yadav, appellant no. 1 of Criminal Appeal (DB) No. 278 of 1993 has been convicted under Section 302 of the Indian Penal Code, while the appellant No. 2 Ram Niwas Yadav and the three appellants of Criminal Appeal (DB) No. 264 of 1993, namely, Brahmdeo Yadav, Ranjit Yadav and Rajendra Yadav have been convicted under Section 302 read with Section 149 of the IPC, and all the appellants have been awarded rigorous imprisonment for life.

2. At the very outset, it is noted that in view of the report of the Senior Superintendent of Police, Bhagalpur to the effect that Brahmdeo Yadav, appellant no. 1 of Criminal Appeal (DB) No. 264 of 1993 , has died, this Court by order dated 03.01.2018 has recorded that the present appeal so far as it concerns Brahmdeo Yadav appellant no. 1, stands abated.

3. According to the prosecution story, on 19.04.1981 at 1.00 P.M., the informant Budhi Ram Yadav (PW1) lodged a first information report alleging that earlier the

same day at 11 a.m., when he was going to Mathurapur Hat with Suresh Yadav (PW6), Padamdeo Yadav (PW4) and Ramgati Yadav (deceased) for purchasing seeds of maize crop, he was following about one rassi behind the others, and when Suresh, Padamdeo Yadav and Ramgati Yadav reached near the bathan in front of the house of Ganesh Yadav, then Dharmdeo Yadav (since deceased) and appellants Brahmdeo Yadav, Indradeo Yadav, Ranjit Yadav, Rajendra Yadav and Ram Niwash Yadav came out of hiding from the marai (hut) of cow-shed. Dharmdeo Yadav ordered the chopping off of the head of the deceased Ramgati Yadav, whereupon appellants Brahmdeo Yadav, Ranjit Yadav caught Ramgati Yadav and threw him on the ground. They ran towards the informant and his party along with a "303" gun, garansa and kudali, threatened them and told them to keep silent. Thereafter, Brahmdeo Yadav, Rajendra Yadav, Ranjit Yadav and Dharmdeo Yadav forcibly took Ramgati Yadav to the house, chopped off his head and brought back the trunk of the body and put it on the road. They also fired the "303" gun.

It was stated that about twenty years before this incident, there had been a murder in the family of Dharamdeo Yadav in which the informant was an accused. That apart, Ramgati Yadav had stood against Dharamdeo Yadav in the election for the post of Mukhiya, and this was also a cause of the enmity between the two families. Several persons of the village including Suresh, Paduman, Kapil, Ram Kishun, Gobardhan, Hari Ram, Ram Chandra and Hardwar had witnessed the occurrence.

4. During investigation, an inquest was held, and the post mortem examination conducted on the body of Ramgati Yadav, which revealed that he had died on account of haemorrhage, shock and asphyxia as a result of decapitation.

5. On completion of investigation, the investigating officer submitted charge sheet against the accused persons. Thereafter cognizance of the case was taken by the learned Magistrate and the case was committed to the Court of Session. Charges were framed against the accused persons, who pleaded their innocence.

6. Learned senior counsel for the appellants submits that the impugned judgment of conviction is illegal and unsustainable in law and the learned court below has failed to consider the evidence, facts and circumstances of the case in proper perspective. It is submitted that there are material contradictions in the evidence of the prosecution witnesses even with regard to the place and manner of occurrence and, hence, the very foundation of the prosecution case is shrouded in doubt. It is submitted that the prosecution's story is highly suspicious and unreliable. This is evident from various circumstances and also in the background of enmity between the parties. It is pointed out that all the prosecution witnesses, except official witnesses, are family members of the deceased, PW1 Budhi Ram is a brother of the deceased; PW2 Gobardhan Yadav is a bhagina of the deceased; PW3 Rajendra Yadav is a son of the deceased; PW4 Padamdeo Yadav is also a son of the deceased; PW5 Ramawatar Yadav is a bhagina of the deceased and PW6 Ram Suresh Yadav is a bhagina of the

deceased. Similarly, the appellants are also all family members being the grandsons of one Ram Lakhan Yadav except one of them, namely Ram Niwas Yadav (son of Brahmdeo Yadav), is a great grandson of the said Ram Lakhan Yadav.

He further invites attention to the deposition of the Investigating Officer (PW8), who has stated in paragraph 10 that he had recorded the statements of Kaleshwari Devi, Mangru Yadav, Ganesh yadav, Pashupati Yadav, Harirai Yadav, Ram Chandra Yadav, Haridwar Yadav and Kapil Yadav, but none of these people has been produced by the prosecution for examination. It is therefore submitted that the fact that independent witnesses have not been examined and the prosecution has only examined the family members creates serious doubt about the veracity of the prosecution case. Most significantly, according to the first information report, Brahmdeo Yadav, Rajendra Yadav, Ranjit Yadav and Dharmdeo Yadav forcibly took Ramgati Yadav to their house, chopped off his head and brought back the trunk of the body and laid it down on the road, whereas a different version has been narrated in the evidence of the informant. They are also said to have fired from the "303" gun but no charge has been made under the Arms Act.

7. Learned APP for the State, on the other hand, submits that the judgment of conviction has been passed after due consideration of the relevant facts, materials and evidences of the prosecution witnesses and the appellants have rightly been convicted and sentenced to rigorous imprisonment for life.

8. We have heard learned counsel for the parties at length, perused the lower court records and also considered the evidence and materials available on record. We are of the view that the prosecution has failed to prove its case against the appellants beyond all reasonable doubt. There are material contradictions with regard to the very foundational facts relating to the place and manner of occurrence, apart from other material contradictions and circumstances, which does not inspire confidence in the veracity of the prosecution story.

(i) In the FIR (Ext.6), the informant has clearly stated that on the order given by Dharamdeo Yadav, appellants Brahmdeo Yadav, Ranjit Yadav and Rajendra Yadav caught hold of the informant's brother, Ramgati Yadav, and threw him to the ground. They then turned upon the informant and others and threatened them with a "303" gun, garansa and kudali ordering them to keep silent, and thereafter Brahmdeo Yadav, Ranjit Yadav, Ram Niwas Yadav and Rajendra Yadav caught Ramgati Yadav, took him inside the Mukhiya's house and decapitated him. They then brought the trunk of the body and laid it on the road and fired the "303" gun. In his examination-in-chief, the informant PW1 has given a different version of the place and manner of occurrence of the crime wherein he has alleged that Indradeo Yadav beheaded Ramgati Yadav on the road, and has not said anything about any other person having participated in the beheading. The place of occurrence as well as the manner of occurrence is thus at variance in the

version of the informant as recorded in the first information report. In his cross-examination, the informant in paragraph 23 has described the occurrence in vivid detail, stating that while the neck of Ramgati Yadav was being severed by the appellant Indradeo Yadav, other appellants were sitting on him. The neck of Ramgati Yadav was severed completely, after which all the appellants went away, while the accused Ram Niwas Yadav ran away with the head which was bleeding profusely. In paragraph 24 of the deposition, however, he has stated that the appellants carried Ramgati Yadav to the Mukhiya's house and decapitated him inside the house and thereafter brought out the trunk of the body and laid it on the road. There is thus material variance in these versions.

(ii) The informant had stated in the first information report that he along with three persons, namely, Ramgati Yadav, Padamdeo Yadav and Suresh Yadav were going to Mathurapur Hat for purchasing maize seeds but the date of occurrence, namely, 19.04.1981 was a Sunday. The informant PW 1 stated that Mathurapur Hat was open only on Fridays and Mondays. PW4 Padamdeo Yadav also accepted that there was no Hat on the date of the occurrence.

(iii) The informant in his examination-in-chief has not made any statement alleging participation by the appellants other than Indradeo Yadav in the beheading of the deceased, which leaves the other seven incised injuries found on the dead body during autopsy unexplained. The PW3 too has not made any allegation of assault by the other appellants.

(iv) PW2 Gobardhan Yadav is a chance witness and is also an attesting witness to the inquest report. However, his statement was not recorded at the relevant time but rather one month after the occurrence. From his evidence it appears that when he reached the place of occurrence, witnesses, namely, Ganesh Yadav, Pashupati Yadav, Sakaldeep Yadav, Hardwar Yadav and Bhim Yadav were present but none of these witnesses has been examined. This goes to show that the prosecution has withheld material witnesses who were present at the place of occurrence. PW 2 has also stated that the informant PW1 remained with the body of the deceased for an hour and thereafter left, while Janak and others still remained there but none of the other close relatives remained. This is in contradiction of the version of the informant PW1 who has stated in paragraph 23 of the evidence that none had accompanied him to the police station and he had left the trunk of the body of Ramgati Yadav in the custody of villagers, namely, Shiv Janam Yadav and Ram Awtar Yadav. In this regard, PW 3 Rajendra Yadav, son of the deceased, has stated in paragraph 8 of his deposition that by that time heavy rain had started, so he left the place of occurrence and went to his house where he remained. He says that he did not return to the place of occurrence even after the rain stopped but reached there at about 4 pm when the Daroga arrived. He has further stated that Shiv Pujan, Ram Awatar Yadav, Shiv Prasad and Kishun Yadav kept watch over the trunk of the body, whereas PW6 Ram Suresh Yadav, bhagina of the deceased, has stated that it was Ram Janam and Ram Awatar who kept watch over the body.

(iv) PW3 Rajendra Yadav, son of the deceased, has stated in paragraph 14 of his deposition that he had not gone along with the body of his father and not even participated in the last rites. His elder brother PW4 Padamdeo, and PW2 Gobardhan Yadav had gone for the same. It is, however, noteworthy that in the post mortem report, the names of PW4 Padamdeo and PW2 Gobardhan Yadav did not find place and it would appear therefrom that no family members had accompanied the body. PW3 has further denied in paragraph 5 of his deposition that anyone was sitting on the body of his father, which is in contradiction with the version of the informant PW1 who has stated in paragraph 23 that Brahmdeo, Ranjit and Rajendra were sitting on the body during the beheading.

(v) It appears rather improbable that PW3 Rajendra Yadav (son of the deceased), left the dead body of the deceased and went home and returned there much after the rain had stopped.

(vi) According to the evidence of the PW 7 Dr. H.I. Ansari who conducted the autopsy, the body of the deceased was brought to him by the Constable and the Home Guard which thus implies that none of the family members had accompanied the dead body to the post mortem house. This appears rather improbable. According to the post mortem report, apart from the injury on the neck of the deceased, seven incised injuries on the two hands and two post mortem injuries were also found, which remain unexplained if the prosecution version is to be accepted.

(vii) PW8 Lal Tudu, the Investigating Officer of the case, has stated in his deposition that he found a beheaded body lying on the earthen road by the side of marai (hut) of Ganesh Yadav. He found two cut marks of spade on the grass near the neck of the deceased and a trail of blood from the neck to the ditch, and the water in the ditch appeared to be red with blood. While bloodstained earth was seized from beneath the neck and elbow in the presence of Shiv Prasad Yadav and Krishna Yadav, it was not sent for chemical test. Also, neither of Shiv Prasad Yadav and Krishna Yadav was examined. He has stated in paragraph 11 that he did not find any mark of blood in the house of the accused. The Investigating Officer has further stated that he recorded the statements of Kaleshwari Devi, Mangru Yadav, Ganesh Yadav, Pashupati Yadav, Harrai Yadav, Ram Chandra Yadav, Haridwar Yadav and Kapil Yadav during investigation but none of these witnesses has been produced by the prosecution before the court. Even though the informant PW 1 has stated in the first information report that deceased Ramgati Yadav was forcibly carried inside the house where he was beheaded before the trunk of the body was brought out of the house and laid down on the road, the Investigating officer does not appear to have conducted any examination inside the house. It would, therefore, appear that the prosecution has withheld material witnesses and chosen to examine only the witnesses related to the informant.

(viii) The informant PW1 has stated in the FIR that Ram Niwash Yadav had threatened by firing a "303" gun but no charge under the Arms Act has been

framed against him which casts doubt upon this aspect of the prosecution case as well.

9. In the above circumstances, we are of the opinion that the prosecution has miserably failed to establish its case beyond all reasonable doubt. There is considerable doubt about the place of occurrence and there are conflicting versions whether the deceased was decapitated inside the house or on the road, and also about the manner of occurrence as there are conflicting versions whether Indradeo Yadav alone decapitated the deceased or whether Brahmdeo Yadav, Indradeo Yadav, Ranjit Yadav and Dharmdeo Yadav beheaded him together as claimed in the FIR. A number of witnesses, who were present at the place of occurrence whose statements were recorded by the investigating officer, have not been examined by the prosecution in Court which creates doubt that the prosecution has sought to withhold material independent witnesses in order to suppress the true version of the occurrence.

10. In the above circumstances, we are of the view that the appellants are entitled to the benefit of doubt and must accordingly be acquitted.

11. In the result, we allow both the criminal appeals. The impugned judgment of conviction and the order of sentence passed against the appellants are hereby set aside. They are accordingly acquitted and discharged from the liabilities of their bail bonds.