

(1997) 11 PAT CK 0016

In the Patna High Court

Case No : Criminal Appeal No. 160 of 1986 (DB)

Brij Nandan Yadav and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 11-11-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 326

Citation : (1998) 1 PLJR 1

Hon'ble Judges : N.N. Singh, J;N. Pandey, J

Bench : Division Bench

Advocate : P.N. Pandey and Ambika Bhagat, for the Appellant; Lala Kailash Bihari Prasad, for the Respondent

Final Decision : Dismissed

Judgement

N. Pandey, J.—All the Appellants have been convicted for the offence u/s 302 read with Section 149 I.P.C. and sentenced to undergo rigorous imprisonment for life. Appellant Govind Yadav was further convicted u/s 148 and rest of the Appellants u/s 147 I.P.C. But there is no separate sentence.

2. The case of the prosecution, in brief, is that on 13.8.1984 at about 4 p.m. while deceased Ramji Yadav got down from a bus at Ramgarh Chowk and started proceeding towards Dakstan, all the accused persons variously armed with lathi, khanti and iron rod surrounded the deceased and assaulted him with their respective weapons. Informant Rameshwar Yadav (P.M. 4) having noticed the cruel act of the accused persons raised alarm whereupon Paras Nath Yadav, Arjun Yadav, Baleshwar Yadav, Balmiki Yadav and several others arrived and saw the Appellants chasing and assaulting the deceased Ramji Yadav. It is further alleged when Ramji Yadav fell down, all the accused persons fled away. Ultimately, at about 8 p.m., Ramji Yadav succumbed to the injuries in the hospital. Cause of incident, as disclosed in the first information report is land dispute. It is stated that deceased Ramji Yadav had purchased four bighas of land from the brother of

Appellant Govind Yadav. But the accused persons including Govind Yadav were not allowing Ramji to take possession.

3. The Appellants in their defence pleaded not guilty and stated that they have been falsely implicated.

4. The prosecution, as would appear from the narration of the facts brought on the record, examined altogether six witnesses. Out of them, P.W. 4 Rameshwar Yadav is the informant who has supported, the prosecution case as narrated in the first information report. P.W. 1 Arjun Yadav, P.W. 3 Paras Nath Yadav, and P.W. 5 Baleshwar Yadav are the eye witnesses and have fully supported the statement of the informant either made in the Court or in the first information report. P.W. 2 Dr. P.B. Lal is the doctor who had held autopsy of the deceased and had found as much as nine injuries on the person of the deceased. In his opinion, the death of the deceased was due to shock and haemorrhage caused as a result of the injuries.

5. P.W. 6 Awadhesh Kumar Singh is the Investigating Officer who after recording the first information report visited the place of occurrence which is at a distance of 100 yards from Ramgarh Chowk. The I.O. has also found trail of blood right from Khandah to the pond. He also examined the eye witnesses including P.W. 4, informant who had supported the prosecution version before him.

6. From a bare reference to the statement of P.Ws. 1, 3 and 5, it would appear that they have fully supported the prosecution version. No material in our view, was pointed out to doubt the credibility of these witnesses. It has also come in evidence that at the time of occurrence, all these witnesses including P.W. 4 were hardly at a distance of 100-200 yards from where the accused persons were assaulting Ramji. The occurrence in this case, as would appear from the first information report, took place at about 4 p.m. Therefore, having regard to the facts and circumstances of the case, there cannot be any doubt that these witnesses including the informant had seen the accused persons assaulting Ramji with their respective weapons.

7. Mr Pandey, Senior counsel appearing for the Appellants, pointed out that this appeal so far it is with respect to Appellant Govind Yadav, has become infructuous as he died in the year 1988 itself during the pendency of this case. He further contended since at the time of trial, Appellant No. 5 Bijay Yadav was aged 16 years, therefore, the Additional District and Sessions Judge, Munger, had no jurisdiction to try his case. The trial of this Appellant was to be carried out under the provisions of Juvenile Justice Act by a Juvenile Court. The concerned Additional District and Sessions Judge having not been vested with the power to conduct the cases under the Juvenile Justice Act, had no jurisdiction to try the cases against Appellant Bijay Yadav and record conviction. He contended that from a bare reference to the copy of the statement of Appellant Bijay Yadav, u/s 313 Code of Criminal Procedure. it would appear that the learned Judge had recorded his age as on 28.2.1986 as 16 years. Therefore, definitely on the day of

occurrence i.e. 13.8.1984 this Appellant was aged about 14 years. He contended that though such a question was not raised on behalf of this Appellant before the court below, but having regard to the ratio laid down by the Apex Court in the case of Gopinath Ghosh Vs. The State of West Bengal, and Sheela Barse (II) and Others Vs. Union of India (UOI) and Others, as also of this Court in the case of Krishna Bhagwan v. The State of Bihar (1989 PLJR 507 F.B.) such a plea can be raised even at the appellate stage.

8. In our view, a bare reference to the copy of the statement of the accused u/s 313 Code of Criminal Procedure there remains no doubt that at the time of occurrence or even during trial, Appellant Vijay Yadav was a juvenile and, therefore, entitled for special treatment in accordance with the provisions of the Juvenile Justice Act.

9. Mr. Lala Kailash Bihari Prasad, learned Counsel for the State, however, contended that this Appellant should not be allowed to raise such a question at this stage. Because he had full knowledge at the time of trial that he was a juvenile. Therefore, such plea should have been taken at that stage. In support of his contention, he placed reliance on a decision of the Apex Court in the case of Abdul Mannan and others Vs. State of West Bengal, .

10. In our view, facts of the aforesaid case are quite different. In that case, trial was delayed due to the laches on the part of the Appellant in order to defeat the cause of justice. In the present case, there is no allegation that trial of the case was delayed at the instance of the Appellants nor that he had not disclosed his age during trial.

11. In the background of the facts noticed above, I have no option but to set aside the conviction and sentence of this Appellant Bijay Yadav and remand his case to the court of Chief Judicial Magistrate, Munger to get the matter disposed of under the provisions of the Juvenile Justice Act. Appellant Bijay Yadav is also directed to appear before the Chief Judicial Magistrate, Munger, on or before 24th November, 1997 so that all the necessary orders regarding bail and other formalities for trial can be passed. If he, however, fails to appear, as directed above, the Chief Judicial Magistrate, shall issue necessary orders for warrant of arrest etc.

12. Mr. Pandey, while submitting on behalf of Appellants Brij Nandan Yadav, Mahesh Yadav and Padarath Yadav, next contended that a bare reference to the prosecution story as well as statement of the witnesses, would indicate that the accused persons had no intention to commit murder of Ramji Yadav. Because in the opinion of the doctor, most of the injuries, except injury No. 8 are bruises and abrasions on arms and leg. That apart this is not the case of the prosecution that even after the deceased had fallen down, these Appellants assaulted him. Therefore, the submission is that having regard to the facts noticed above, it would not be proper to convict the Appellants u/s 302 of the Indian Penal Code. Reliance in this regard was made to a decision of the Apex Court in the case of

Parusuraman alieas Velladurai and others Vs. State of Tamil Nadu, and yet another decision in the case of Chanda Lal and Ors. v. State of Rajasthan at page 431 of the same volume.

13. In my view, the submission of Mr. Pandey in this regard appears worth considerable. Therefore, having regard to the facts, brought on the record, in my view, the conviction of these Appellants u/s 302 read with Section 149 of the Indian Penal Code can not sustain. Accordingly, I set aside the conviction of these Appellants u/s 302 read with Section 149 of the Indian Penal Code. However, since as per the medical evidence, it would appear that injury Nos. 7 and 8 were grievous in nature, therefore, they are convicted for the offence u/s 326 read with Section 149 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years each.

14. With the aforesaid modification of the conviction and sentences of the Appellants Brij Nandan Yadav, Mahesh Yadav and Padarath Yadav, this appeal is dismissed, but the conviction and sentence of Appellant Bijay Yadav is set aside since the case has been remitted back to the Chief Judicial Magistrate for disposal in accordance with the provisions of Juvenile Justice Act.

15. Appellants Brij Nandan Yadav, Mahesh Yadav and Padarath Yadav are on bail. Therefore, their bail bonds are cancelled and they are directed to be taken into custody forthwith to serve the remaining sentences.

N.N. Singh, J.

16. I agree.