

**(2008) 01 PAT CK 0065**

**In the Patna High Court**

**Case No :** Criminal Appeal No's. 699, 744, 771 and 893 of 2006 (DB)

Doctor Yadav and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

**Date of Decision :** 15-01-2008

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 164  
Penal Code, 1860 (IPC) — Section 148, 149, 302

**Citation :** (2008) 56 BLJR 1092 : (2008) CriLJ 1299 : (2008) 2 PLJR 738

**Hon'ble Judges :** Shiva Kirti Singh, J;Shailesh Kumar Sinha, J

**Bench :** Division Bench

**Advocate :** Kanhaiya Prasad Singh and Sunil Kumar Sharma, in Cr. Appeal No. 699 and 744 of 2006, Rana Pratap Singh, Sumant Singh, Ashish Kumar and Tarkeshwar Prasad Verma, in Cr.Appeal No. 771 and 893 of 2006 and Ranjeet Kumar Singh-2 and Pawan Kumar Singh, for the Appellant; Ashwini Kumar Sinha, for the Respondent

## Judgement

Shiva Kirti Singh and Shailesh Kr. Sinha, JJ.—All the four appeals arise out of the same judgment dated 25th day of July, 2006 and order dated 27th July, 2006 passed by learned Additional Sessions Judge, F.T.C. II, Khagaria, in Sessions Case No. 363/2000/SC 326/2000 and therefore, they have been heard together and are being disposed of by this common judgment.

2. All the nine appellants have been tried together and convicted for the offence u/s 148/302/302 read with Section 149 of the I.P.C. For the offence u/s 148 of the I.P.C., they have been sentenced to undergo R.I. for two years and for the offence u/s 302 and also for the offence u/s 302 read with Section 149 of the I.P.C., they have been awarded life imprisonment. All the sentences have been ordered to run concurrently.

3. The prosecution case as appearing from the Fardbeyan of P.W. 1 Bijay Kumar Yadav recorded on 15.4.1999 at 4.30 P.M., in short, is to the effect that on the same date, Mintu Yadav, aged about 15 years, son of the informant, and Ramraj

Yadav, son of Ram Dular Yadav, aged about 10 years (nephew of the informant) had taken away buffaloes for grazing purpose at about 9 A.M. to the east of the village in Kothiya bahiyar Kalyani Diyara. After some time, the informant also went to cut green grass in the same bahiyar. At about 2.30 P.M. Mintu Yadav and Ramraj Yadav were coming back from bahiyar and were seated on their respective buffaloes. When they reached near the field of Ramakant Yadav, then all the 13 named accused, including nine appellants and four to five unknown persons came from south. Accused Ram Bahadur Yadav (now dead) and appellant Mantu Yadav pulled down Mintu and Ramraj from the buffaloes and ordered for completing the work expeditiously. Kara Yadav @ Kamlesh Yadav, Brajesh Yadav and Mithilesh Yadav caught the hands and legs of Ramraj Yadav whereas appellant Shambhu Yadav, Jaldhari Yadav, Nawin Yadav and Doctor Yadav caught the hands and legs of Mintu Yadav. Appellants Shubhash Yadav and Shankar Yadav used the axes in their hands on the neck of Mintu whereas appellant Neti Yadav and Hareram Yadav used their axes on the neck of Ramraj to cut his neck. Both the boys shouted. At that time, the informant saw Duro Devi (P.W.5), the mother of the deceased Ramraj, who was coming from the west searching for her son. On hearing the cries of the two boys, Duro Devi came running and saw the occurrence. All the accused after committing the crime ran towards south. Then the informant and P.W.5 went near the two boys and found bleeding injuries on their necks and bodies and both were found dead. On their shouting, people working in the bahiyar, namely, Balmiki Yadav (P.W.3) and Hareram Yadav (P.W.2) also came running and saw the accused persons while they were fleeing away. The reason for the occurrence was said to be the murder of brother of Shubhash Yadav, one day prior to the alleged occurrence.

4. P.W.9 Md. Shujauddin recorded the Fardbeyan of the informant Bijay Kumar Yadav (P.W.1) and took up the investigation. He recorded the statement of some of the other witnesses, prepared inquest report of the two dead bodies, vide Exts.7 and 7/1. The dead bodies were kept under a Pakar tree on two cots and, according to the entry in the inquest report, the place was in Kalyani bahiyar. The I.O. was shown another place about 500 yards south of that place in Ghogha bahiyar where allegedly the actual assault had taken place on two boys. According to the I.O., the actual place of occurrence was 3/4 Kms. south-east of Village Kothiya situated in Ghogha bahiyar near the field of Sagar Yadav. He saw some blood fallen on the ground on that place but did not seize the same. After completing investigation, the I.O. submitted charge sheet against all the 13 named accused persons and one non-F.I.R. accused Pramod. The trial of Pramod and two named accused Kamlesh alias Kara and Brajesh were held separately. As appears from the judgment under appeal, one Mithilesh, the named accused, could not be put on trial as he absconded and another named accused Rambahadur died in course of trial. The remaining nine accused persons, who are the appellants in these four appeals, denied the charges levelled against them. After trial, they have been convicted and sentenced by the judgment and order under appeal.

5. The prosecution, in order to prove its case, has examined altogether nine witnesses. P.W.1 Bijay Yadav is the informant, who had claimed to be the only eye-witness, besides P.W.5 Duro Devi. In court Bijay Yadav did not support the prosecution case and was, therefore, declared hostile. P.W.2 Hareram Yadav was named in the Fardbeyan as a person, who came running along with P.W.3 Balmiki Yadav and saw the accused persons fleeing away. In court P.W.2 claimed to be the eye-witness but his such claim has been contradicted by the Investigating Officer (P.W.9) and he has been disbelieved by the trial court for good reasons. This witness has given the relationship of the two deceased and the witnesses amongst themselves. P.W. 3 Balmiki Yadav has also turned hostile and is of no help to the prosecution. P.W. 4 Ramnandan Yadav and P.W.5 Duro Devi are two remaining witnesses upon whom the prosecution has placed reliance. Their evidence will be discussed in some detail later. P.W.6 Pinki Devi is the wife of P.W.1 and Gotani (sister-in-law) of P.W.5. She has also turned hostile. P.W.7 Sunil Kumar Sinha "Mukul" is a formal witness. As a Judicial Magistrate, he has recorded the statements of P.Ws.2 and 3 u/s 164 Cr.P.C. He has proved those two statements as Exts.1 and 2. P.W.8 Dr. Purushottam Prasad Sinha held autopsy of the dead body of deceased Ramraj Kumar and the same has been marked as Ext.3. P.W.9 Md. Shujauddin, as indicated earlier, is the Officer-in-Charge of Khagaria Muffasil P.S., who has recorded the Fardbeyan and conducted investigation in this case.

6. The general defence of the accused persons is that they are innocent and have been falsely implicated. In course of cross-examination, it has been suggested that actually the two deceased were killed by one Shankar Yadav and Jichhu Yadav, who succeeded in creating suspicion against the accused persons and got them implicated in this case. On behalf of the appellant Hare Ram Yadav, a specific plea of alibi has also been taken. D.W.1 Krishna Mohan Prasad has proved minutes in a proceeding book and signature of accused Hare Ram on the same as Exts.B and B/1 and has been examined to support the plea of alibi. D.W.2 Palat Yadav has been examined to claim that on 15.4.1999 he was working as Head Mistri in brick-kiln and on that date P.W.1 Bijay Yadav and P.W.2 Hareram Yadav had also worked with him from 8 A.M. to 5 P.M. D.W.3 Shrawan Yadav has also stated that before him as well as before the police, P.W.2 Hareram Yadav had stated that he had not seen the occurrence.

7. On behalf of the appellants Doctor Yadav (Cr.Appeal No. 699 of 2006) and Nawin Yadav (Cr.Appeal No. 744 of 2006), it was submitted that P.W.4 Ramnandan Yadav is not named as a witness in the Fardbeyan, the earliest version of the occurrence and, further, in court he has named only four persons- Hareram Yadav, Shubhash Yadav, Neti Yadav and Shankar Yadav, as persons whom he saw committing the occurrence and assaulting the two deceased. These four persons are appellants in Cr. Appeal No. 893 of 2006. P.W.4 has not supported the prosecution case that the deceased were on buffaloes and were dragged down by some of the accused, caught by others and then assaulted by the aforesaid four persons. It has further been submitted on behalf of appellants

Doctor Yadav and Nawin Yadav that P.W.5 Duro Devi has named the remaining seven appellants in one capacity or other as the persons involved in the occurrence, but has not named appellants Doctor Yadav and Nawin Yadav. In substance, the submission on behalf of these two appellants is that there is no legal evidence brought on record against these two appellants and they have been wrongly convicted by the trial court only because they have been named in the Fardbeyan attributed to P.W.1 when in court P.W.1 has chosen not to support the prosecution case and has disowned the Fardbeyan by stating that his signature was obtained by the I.O. on a plain paper.

8. On behalf of the remaining appellants, it was submitted that P.W.4 Ramnandan Yadav is own brother of husband of P.W.5 Duro Devi, but he is not named as a witness in the Fardbeyan. Further, if he had been present at the time of the alleged occurrence, he would also have been examined as a witness by the Investigating Officer, but this witness has claimed in his cross-examination that he was never examined by the Investigating Officer. Hence it has been submitted that P.W.4 cannot be relied upon as an eye-witness. It has been highlighted that according to this witness, the occurrence took place in an entirely different manner in which only four accused persons, as noticed above, who are appellants of Cr.Appeal No. 893 of 2006 participated. It has been submitted that the presence of this witness at the time and place of occurrence is doubtful even on the basis of his own deposition that he had gone to attend the call of nature in mid-noon at about 1.30 P.M. It was submitted that in villages this is not the usual time for grown-up persons to attend the call of nature and clearly he is a chance witness as per his own claim and was not examined by the Police. He is a close relation of two deceased and as such an interested witness.

9. On a careful scrutiny of the evidence of P.W.4 in the light of the submissions made above, we find merit in the aforesaid submissions and the claim of P.W.4 that he saw the alleged occurrence is not found free from doubt.

10. So far as P.W.5 Duro Devi is concerned, she is no doubt a named witness in the F.I.R. and mother of one of the deceased Ramraj Yadav. She has claimed that both the deceased had gone out of their house with buffaloes at about 10 A.M. and when, as usual, her son did not come to have his lunch till 1.30 P.M., then she went out at about 2 P.M. in his search. First, she went towards east in Kalyani bahiyar where she did not find her son, then she went towards Ghogha bahiyar. She saw her son and other deceased Mintu coming with their buffaloes and from behind them the accused persons came. Both the deceased were brought down from their buffaloes by accused Ram Bahadur (since dead) and appellant Mantu Yadav. Thereafter Mintu Yadav was assaulted with axe by Shubhash Yadav and Shankar Yadav. Deceased Ramraj was similarly assaulted with axe by appellant Neti Yadav and Hare Ram Yadav. According to her, Karu Yadav exhorted the other accused to complete their assault expeditiously and to run away. Jaldhari Yadav, Shambhu Yadav, Mithilesh Yadav, Brajesh Yadav and two to four unknown persons were involved in catching hold of two boys. After

the occurrence, the accused persons ran away. She has stated that she is not aware as to why the accused persons had committed the offence. She has also admitted that her co-villager Jichhu Yadav is in jail in connection with the murder of one Ranjo Yadav, brother of appellant Shubhash Yadav, which had taken place one day earlier to the present occurrence. According to her, the son of Jicchu Yadav is also a criminal and she was not aware as to where he resides and in how many cases Jicchu Yadav is an accused. Her attention was drawn to her earlier statement before the I.O. that she had not stated that when she did not find her son in Kalyani bahiyar, then she went to Ghogha bahiyar and that her son was coming with buffalo and Mintu was also with him or that the two accused persons had pulled down the two deceased from the buffaloes. The I.O. (P.W.9) has contradicted her by deposing in paragraph 20 of his deposition that P.W.5 had not stated that her son was coming with buffaloes along with deceased Mintu and had not stated that the accused persons had pulled down her son from the buffalo.

11. In cross-examination P.W.5 has replied that in her village most of the persons keep cows and buffaloes and they take their cattle for grazing to Ghogha bahiyar. They take the cattle early in the morning for grazing and come back by 8 A.M. After having food by 10 A.M., they again take the buffaloes for grazing and come back at the time of sunset. On the basis of the aforesaid statement of P.W.5, it has been submitted that the usual time for return of the two deceased could only be the time of sunset because they had gone to graze their cattle at about 10 A.M. and hence the claim of P.W.5 that she became anxious because the boys did not come for lunch and her search for them for long in different bahiyars is not convincing. It was further submitted that she has avoided to name any independent person although she had admitted that several persons were engaged in harvesting of crops in the bahiyar. Further, she has taken an unnatural stand that she had no talks with any person at the place of occurrence. It was further submitted that in cross-examination she has stated in paragraph 23 that when she reached near her son at that time he was alive but she raised no hue and cry. It is intriguing that she has kept absolutely mum as to who shifted the two deceased on cots and brought the dead bodies to another place near a Pakar tree where the bodies were found by the I.O. at the time of inquest.

12. On behalf of the appellants, it was submitted that in the earliest version of the occurrence, as contained in the Fardbeyan, there was a clear and specific assertion that the occurrence has taken place in Kothiya bahiyar near the field of Ramakant Yadav, but the place of occurrence shown to the I.O. was in Ghogha bahiyar and that place appears not to be the actual place of occurrence for the reason that the I.O. did not find sufficient blood at that place to effect a seizure. But if the prosecution case would have been true, then there must be copious blood on account of the murder of two persons at the same place by cutting of necks with axes. The fact that the dead bodies had been shifted from the actual place of occurrence and were found kept on cots in Kalyani bahiyar near Pakar tree has also been highlighted as one of the reasons to doubt the correctness of

the place of occurrence, as given by the prosecution. It has further been submitted that if the dead bodies had been shifted from the place of occurrence innocently and without any wrong intentions, then the persons who had shifted the dead bodies should have been examined or at least their names should have been disclosed and reasons should have been indicated for their non-examination.

13. The medical evidence in this case relates to the death of Ramraj Yadav, one of the deceased, whose post-mortem report has been proved by P.W.8. It shows incised injuries on the neck and body of the deceased, which are apparently by sharp-cutting weapon. The post-mortem report of the other deceased could not be brought on record because the post-mortem examination of the other deceased was conducted by another Doctor, who could not be examined in course of trial. However, there is no doubt that the two deceased had been done to death by sharp-cutting weapon because the dead bodies were examined together even by the I.O., who prepared the inquest report at one place. Hence, the death of the two deceased is not an issue in this case. The two deceased appeared to have died due to sharp-cut injuries on their necks and other parts of the bodies. Such injury on two persons is bound to cause spilling of huge amount of blood, which must be capable of being seized by the Investigating Officer. As per the evidence of the I.O. (P.W.9), the place of actual occurrence shown to him was having some blood marks, but it was not fit to be seized. This stand as well as the change of the name of the bahiyar and shifting of the dead bodies without disclosing as to who shifted them and at what time and from which place, create some doubt regarding the place of occurrence, as alleged by the prosecution.

14. On a careful evaluation of the entire oral evidence, it is found that only P.W.5 Duro Devi has appeared as a probable eye-witness to the alleged occurrence. The question is whether her sole testimony as an eye-witness is of such a quality so as to inspire full confidence or not and whether she is fully and completely reliable for purposes of convicting the seven appellants of Cr. Appeals No. 771 of 2006 and 893 of 2006 or not. We have already noticed the evidence of other witnesses and found the same unreliable. The evidence of P.W.5 Duro Devi has also been noticed in detail. We find that it is not safe to accept her evidence alone for holding the appellants guilty of the offence, for which they have been charged. She is a lady, whose claim that she came out of the house for search of her son because he had not come to take food, does not appear to be totally acceptable when she had herself given out that the people go at about 10 A.M. with their cattle for grazing after taking food and return only at about sunset time. Her failure to give out the names of other persons near the place of occurrence, who were harvesting their crops, and her failure to disclose what happened after the accused persons had run away and she found her son still alive, also create some doubt regarding her presence at the place of occurrence soon after the alleged occurrence. For all the aforesaid reasons, it is not found safe to place reliance on P.W.5 as the sole eye-witness for the purpose of maintaining conviction against the appellants. As indicated earlier, some doubt arises even in respect of the place of occurrence, as alleged by the prosecution.

15. In the aforesaid circumstances, the three appellants, namely, Shambhu Yadav, Jaldhari Yadav and Mantu Yadav of Cr. Appeal No. 771 of 2006 and the four appellants, namely, Hare Ram Yadav, Shubhash Yadav, Neti Yadav and Shankar Yadav of Cr. Appeal No. 893 of 2006 are found entitled to benefit of doubt. Therefore, they are acquitted of all the charges on that basis. As discussed earlier, there is hardly any legal evidence against appellant Doctor Yadav (Cr. Appeal No. 699 of 2006) and Nawin Yadav (Cr. Appeal No. 744 of 2006), hence they are also entitled to acquittal in respect of all the charges. All the four appeals are, therefore, allowed.

The four appellants of Cr. Appeal No. 893 of 2006, namely, Hare Ram Yadav, Shubhash Yadav, Neti Yadav and Shankar Yadav appear to be in custody. Hence they are ordered to be released forthwith from jail custody, if they are not required in any other case. Other five appellants shall stand discharged from the liabilities of their respective bail bonds.