

(2015) 03 PAT CK 0040
In the Patna High Court
Case No : Criminal Appeal (DB) No. 87 of 1992

Namdhari Yadav and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 26-03-2015

Acts Referred:

Arms Act, 1959 — Section 27
Criminal Procedure Code, 1973 (CrPC) — Section 144, 145
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302

Citation : (2015) 3 PLJR 235

Hon'ble Judges : A.K. Lal, J.; Dharnidhar Jha, J.

Bench : Division Bench

Advocate : Arbind Kumar Tiwary and Upendra Prasad Yadav, for the Appellant; Abhimanyu Sharma, APP, Advocates for the Respondent

Final Decision : Allowed

Judgement

A.K. Lal, J.—This appeal has been preferred against the judgment of conviction and order of sentence dated 27.4.1992 passed by the learned 2nd Additional Sessions Judge, Munger, in Sessions Trial No. 392 of 1983 by which all the appellants have been sentenced to rigorous imprisonment for life under Sections 302/149 of the Indian Penal Code (hereinafter referred to in short "I.P.C.") for causing murder of Uchit Yadav. Appellant Nos. 2 and 6 have been further found guilty under section 148 of the I.P.C. and sentenced to undergo rigorous imprisonment for two years and the remaining appellants have been convicted and sentenced to undergo rigorous imprisonment for one year for the offence punishable under section 147 I.P.C. and appellant No. 6 has been further found guilty and sentenced to rigorous imprisonment for two years under section 27 of the Arms Act. It has been directed that all the sentences will run concurrently.

2. During the pendency of this appeal, appellant No. 1 Namdhari Yadav, appellant No. 2 Mohan Yadav, appellant No. 4 Rajendra Yadav and appellant No. 5 Jagadish Yadav died and as such, the appeal on their behalf has been abated vide order

dated 10.11.2014. The appeal now survives only on behalf of appellant No. 3, Prem Yadav and appellant No. 6, Dharamdeo Yadav.

3. The prosecution case, according to the F.I.R. of Sangrampur P. S. case No. 76 of 1981 is that on 15.8.1981 at about 5/6 A.M. the informant, Ajablal Yadav (P.W. 10) along with his cousin Uchit Yadav (deceased) went to see his field situated in mouza-Kharui and found that Chaturi Yadav (since deceased) was armed with gun, Dharamdeo Yadav armed with pistol, Namdhari Yadav armed with pistol, Mohan Yadav armed with lathi and spade, Prem Yadav armed with lathi and bhala, Jagadish Yadav armed with lathi and bhala and Rajendra Yadav were there. Mohan Yadav was cutting the ridge of the field. The informant and his cousin Uchit Yadav (deceased) asked not to do so. This infuriated the accused and they started abusing both of them and Namdhari Yadav instigated the co-accused to kill. Thereafter, Chaturi Yadav shot fire with his gun to Uchit Yadav which proved fatal and he died there. The informant ran towards the village raising alarm. It has been claimed that Krityanand Yadav (P.W. 1), Kapil Yadav (P.W. 2), Bhula Yadav (not examined), Mahabir Yadav (P.W. 4), Ashok Yadav (P.W. 3) and others witnessed the occurrence.

4. The defence of the accused, as it appears, is that the place of occurrence was the land in possession of the accused Mohan Yadav. On 15.8.1981 at about 5/6 A.M. he was standing near the hut on the place of occurrence land with Budhan Yadav and chowkidar, Paras Paswan, when a mob of 15/16 persons came making shouts and began to demolish the hut made on the place of occurrence. Accused Mohan Yadav identified Ganesh Yadav, Bal mukund Yadav, Nago Yadav, Ajablal Yadav (P.W. 10), Paris Yadav, Lakhan Yadav, Krityanand Yadav (P.W. 1), Ashok Yadav (P.W. 3), Arjun Yadav, Uchit Yadav (deceased) and Kapil Yadav (P.W. 2) in the mob and the rest of the members of the mob were unknown. Ganesh, Krityanand, Ajablal and Lakhan were armed with gun. They began to demolish the hut and Lakhan Yadav shot dead Uchit Yadav on the spot. Mohan Yadav received gun shot injury made by Ganesh Yadav. Ajablal fired shot at Bodhan Yadav causing injury to him. It has also been alleged that Ranjana Kumari also received fire shot injury. All the injured from the defence side were also admitted in the Sadar Hospital, Munger, for treatment where their treatment was made. Accused Namdhari was admitted in Kharagpur Hospital.

5. After investigation chargesheet was submitted, cognizance was taken and the case was committed to the court of sessions where charges were framed against the accused which they denied and claimed to be tried. After the trial they have been convicted and sentenced as aforesaid.

6. The prosecution has examined the following witnesses to prove its case. They are Krityanand Yadav (P.W. 1), Kapildeo Yadav (P.W. 2), Ashok Kumar Yadav (P.W. 3), Mahabir Yadav (P.W. 4), Chandrabhanu Kumar Singh (P.W. 5), Bhola Yadav (P.W. 6), Nabi Prasad Yadav (P.W. 7), Sumit Yadav (P.W. 8), Kailash Yadav (P.W. 9), Ajablal Yadav (P.W. 10), Mithlesh Kumar Yadav (P.W. 11), Ramchandra Yadav @ Ramlakhan Yadav (P.W. 12), Praphul Chandra Jha (P.W. 13), Ramnath Singh

(P.W. 14) and Dr. Harinandan Prasad (P.W. 15).

7. P.Ws. 1, 2, 3, 4, 7 and 8 have deposed as the eye witnesses to the occurrence. P.W. 10 is the informant and the cousin brother of the deceased. P.W. 5 is a formal witness who has proved the formal F.I.R. (Ext. 1). P.W. 6 is also a formal witness who has proved the inquest report (Ext. 2). P.W. 11 is also a formal witness who has proved the formal written report. P.W. 9 and P.W. 12 have been tendered. P.W. 13 and P.W. 14 are the investigating officers and P.W. 15 is the doctor who has held the post mortem examination on the body of the deceased and has proved the post mortem report (Ext. 4). Although P.Ws. 1, 2, 3, 4, 7 and 8 claimed to have witnessed the occurrence but they have admitted in their cross-examination that the investigating officer has taken their statement after quarter to two years and this statement also stands corroborated by P.W. 13, the investigating officer in paragraph-12 at page 69 of the paper book, who has stated that besides Ajablal Yadav (P.W. 10), no other witness made any statement before him till 22.7.1982, whereas, the date of occurrence is 15.8.1981 and there is no proper explanation for the delay in making their statement before the investigating officer.

8. P.W. 1 has admitted in paragraph-2 that he gave statement before the police after quarter to two years. He has also stated that a counter case was also lodged with regard to the same occurrence in which he is also an accused. He has also stated that after this occurrence Chaturi Yadav was killed in which Ajablal (P.W. 10), informant in this case, was convicted. P.W. 2 in paragraph-3 has stated that his statement was recorded by the police on the date of occurrence and again after quarter to two years as he has gone to Calcutta for his livelihood after twenty days of the occurrence. P.W. 2 is the son of the deceased. It has already been noticed that the investigating officer (P.W. 13) has stated that no other witness has given any statement till 22.7.1982 except Ajablal (P.W. 10).

9. P.W. 3 has admitted in paragraph-2 that he is also an accused in the counter case. He has made a statement before the police regarding the case within 3 hours of the occurrence and thereafter, after quarter to two years. In paragraph-5 he has admitted that in the counter case the allegation against him is that he caused injury to the accused Mohan Yadav, Bodhan Yadav and Ranjana Kumari.

10. P.W. 4 has also stated in paragraph-5 at page-31 of the paper book that he made a statement before the police after quarter to two years. He remained in the village even after the occurrence.

11. It appears that P.Ws. 1 to 4 have supported the prosecution case but they made their statement before the police officer after quarter to two years and there is no proper explanation for such belated statements. They have also admitted enmity with the accused. Their evidence does not inspire confidence and as such, their evidence is not fit to be relied upon.

12. P.W. 10 is the informant of this case. He has stated that on 15.8.1981 at 5/6 A.M. he was going to see his land situated in the western side of his house with Uchit Yadav (deceased). When he went near his field, he saw that Mohan Yadav was cutting the ridge of his field, Chaturi Yadav was armed with gun, Namdhari Yadav was armed with pistol, Dharamdeo Yadav was also armed with pistol, Jagadish Yadav was armed with lathi, Chedi Yadav was armed with lathi, Prem Yadav was armed with lathi, Rajendra Yadav was armed with bhala and Mohan Yadav was armed with lathi and spade. He asked Mohan Yadav not to cut the ridge of the field. Chaturi started abusing which was protested by his cousin Uchit Yadav (deceased). Thereafter, Namdhari Yadav asked the co-accused to kill. Chaturi Yadav shot fire which caused injury to Uchit Yadav, who succumbed to his injury on the spot. He ran to his house raising alarm. The occurrence was witnessed by Ashok Yadav (P.W. 3), Krityanand Yadav (P.W. 1), Bhulo Yadav (not examined), Mahabir Yadav (P.W. 4), Kapildeo Yadav (P.W. 2), Subhit Yadav (P.W. 8), Sakaldeep Yadav and others. He has further stated that after the occurrence the police officer came to the place where the dead body of Uchit Yadav was lying and he handed over the written information written by Ram Chandra Yadav. In his cross-examination he has stated that for the same occurrence a counter case was also lodged in which he was an accused. After the occurrence Chaturi Yadav was killed in which he has been convicted for life imprisonment and the appeal is pending in the High Court. In paragraph-8 he has stated that the Tetia Bamber Out Post is at a distance of more than half mile from the place of occurrence. He did not inform the police. The police came to the place of occurrence at 8 A.M. His fardbeyan was written by Ramchandra Yadav, which was given to the police officer.

13. It appears from his cross-examination that the place of occurrence bearing plot No. 566 was the land in dispute between both the parties and a proceeding under Section 144 of the Code of Criminal Procedure (hereinafter referred to in short " Cr.P.C.) was going on in which the informant (P.W. 10) was also a party. Later on, the proceeding was converted into one under Section 145 Cr.P.C. A chowkidar was also deputed so as to the law and order could not be violated. 145 Cr.P.C. proceeding was decided against the informant and it was decided in favour of the accused Mohan Yadav, appellant No. 2 and the title suit is pending. It appears from the cross-examination that the informant along with others by forming unlawful assembly demolished the hut of Mohan Yadav erected on the aforesaid plot No. 566 and called Uchit Yadav from his house and he was killed by them and three more persons were also injured by the members of the mob of the informant party. After the occurrence Chaturi Yadav lodged a case and as retaliation the informant lodged a case against the accused and others. In paragraph-13 he has stated that after the death of Uchit Yadav, he fled away and went to his house within 10 to 15 minutes. The police officer came there. Sugiya Devi, wife of the deceased, came at the place of occurrence. He does not remember whether the police officer took her statement and of the chowkidar or not. In paragraph-14 he has stated that there was only one fire shot. When

Namdhari and Dharamdeo pointed out pistol, he fled away and the remaining persons remained at the place of occurrence. The occurrence took place at a distance of 50 yards from the house of Chaturi Yadav. The occurrence took place on the land bearing plot No. 566. It appears that the statement of P.W. 10 is not convincing and does not inspire confidence.

14. P.W. 7 Nabi Prasad Yadav has claimed to see the occurrence. He has stated that after altercation Chaturi Yadav fired which hit Uchit Yadav who fell down and died there.

15. P.W. 8, Subhit Yadav, has also stated that there was altercation between both the parties and at the instance of Ramdhari Yadav, Chaturi Yadav shot fire at Uchit Yadav who got injury and succumbed to the injury on the spot. In his cross-examination in paragraph-2, he has stated that Uchit Yadav (deceased) and Sakaldeep Yadav are the names of his brothers. The land on which Uchit Yadav was killed belonged to all the three brothers. He and Uchit Yadav did not transfer the land to Chaturi Yadav (since dead). Both of them had transferred the northern portion of the land to Chaturi Yadav. His brother Sakaldeep had transferred the land to the informant Ajablal Yadav. In paragraph-5 he has stated that he was in the adjacent land of the place of occurrence and he was working there since morning. He did not go to the place of occurrence. He saw the occurrence and went to his house. The co-villagers came there. Even thereafter he did not go to the place of occurrence. It appears from his evidence that his evidence is not convincing.

16. P.W. 13, Praphul Chandra Jha, has stated that on 15.8.1981 he was posted as Assistant Sub Inspector of Police in Tetia Bamber Out Post and received the written report at 8 A.M. written by Ajablal Yadav which was sent to the officer-in-charge of Sangrampur Police Station for lodging the case and forwarding the report in his pen and signature (Ext. 4). He was asked to investigate the case and he prepared the inquest report and sent the dead body to Munger for post mortem examination. He took the statement of the informant Ajablal Yadav. He inspected the place of occurrence. He found the dead body lying adjacent to the western side of the hut and also found blood stains which could not be taken as there was water and it was trampled. He handed over the charge of investigation to the officer-in-charge of Sangrampur Police Station. In paragraph-10 he has stated that the informant Ajablal (P.W. 10) did not state as to who had written the report. He has taken the statement of the informant Ajablal (P.W. 10). He handed over the investigation report to the police officer of Sangrampur Police Station. In the meantime, he searched for the witness Krityanand Yadav (P.W. 1), Ashok Yadav (P.W. 3) and others but they were not found for statement. Till 22.7.1982, no one gave the statement except Ajablal Yadav (P.W. 10). He has also stated that he took the statement of Sugiya Devi (wife of the deceased) but she has not been examined.

17. P.W. 14, Ramnath Singh, is the second investigating officer who has stated that he took the charge of investigation of this case on 8.3.1983. He took the

statement of the witnesses Krityanand Yadav (P.W. 1), Kapildeo Yadav (P.W. 2), Ashok Kumar Yadav (P.W. 3), and Mahabir Yadav (P.W. 4) and after completing the investigation he submitted the chargesheet. In his cross-examination he has stated that on 10.3.1983 he took the statements of Kritlal Yadav (P.W. 1), Ashok Yadav (P.W. 3) and Mahabir Yadav (P.W. 4).

18. P.W. 15, Dr. Harinandan Prasad, held the post mortem examination on the dead body of Uchit Yadav and found the following ante-mortem injuries:--

"(1) One lacerated wound of inlet with inverted margins about 1" diameter in left side back intra scapular region in the 9th intercostals space.

On dissection the ante-mortem wound was confirmed. There was a hole in pericardium upper part of heart through and through along with laceration and hole on the lower part of left lung and anterior border of right lung. There was fracture of 3rd rib anterior aspect right side and pellet was found lodged in right side of chest second intercostal space anterior. There was blood clot found in thoracic cavity. The cause of death was injury caused by fire arm to the vital organ heart and lung and causing excessive blood loss. The post mortem examination has been marked as Ext. 5."

19. The defence has also examined four witnesses.

20. Learned counsel for the appellants has submitted that it has been alleged that Chaturi Yadav fired the shot causing fatal injury at the instance of Namdhari Yadav. Chaturi Yadav was killed prior to his trial. It has been alleged that Namdhari Yadav instigated Chaturi Yadav to kill the deceased. Namdhari Yadav died during the pendency of this appeal. There is no material to show that the other accused had common intention and no overt act has been made against them. Mohan Yadav is alleged to have been cutting the ridge and he also died during the pendency of the appeal. Mere fact that the accused were armed is not sufficient to prove common intention and court must give clear finding regarding nature of common object and the object was unlawful. In support of his contention he has relied on the decision in the case of Kuldeep Yadav and Others Vs. State of Bihar, and in the case of Shaji and Others Vs. State of Kerala, .

21. Learned counsel for the State has submitted that the prosecution has been able to show that Uchit Yadav was killed by Chaturi Yadav at the instance of Namdhari Yadav. It is also the case of the prosecution that all the accused formed an unlawful assembly and all the accused were armed with various weapons and Mohan Yadav was demolishing the ridge of the land of the informant. As such, they assembled there for cutting the ridge which was protested by the deceased and the occurrence has taken place in which the deceased, Uchit Yadav, was killed.

22. After hearing learned counsels for both the parties and on perusal of the records, it has been found that the witnesses other than the informant P.W. 10 did not give any statement before the investigating officer. The investigating

officer (P.W. 13) has stated that no witness made any statement before him till 22.7.1982, i.e., quarter to two years of the occurrence. P.W. 14, the second investigating officer, has stated that the witnesses claiming to have seen the occurrence made statement before him on 10.3.1983. They had given their statement at a belated stage after more than one and half years. It is not in dispute that Uchit Yadav was killed by fire arms. But the prosecution has not been able to prove the manner in which the deceased was killed by the accused. It has been noticed earlier while discussing the evidence of the eye witnesses that their statement was recorded by the investigating officer after quarter to two years. There was land dispute between both the parties which is evident from the evidence of P.W. 8, brother of the deceased (Uchit Yadav).

23. The learned trial court has also noticed that the statements of P.Ws. 1 to 4 were recorded at the fag end of the investigation. Even the brother of the deceased has made a statement before the police after quarter to two years, although he has admitted that he remained in the village for twenty days and thereafter he went to Calcutta for his livelihood. While discussing the evidence of the eye witnesses, like, 1 to 4, 7 and 8, we have found that they have not given a statement before the investigating officer although the investigating officer searched for the witnesses for recording their statement. The statements of these witnesses do not inspire confidence. The evidence of the informant (P.W. 10) is also not convincing. He has stated that he was with the deceased and went to the field and saw Mohan Yadav cutting the ridge of his land, but at the instance of Namdhari Yadav, Chaturi Yadav fired the shot which proved fatal. P.Ws. 1, 2, 3 and 4 have witnessed the occurrence and their names also find place in the written report submitted by P.W. 10. We do not find any justification why they did not make statement before the investigating officer soon after the occurrence. It appears that most of the witnesses were accused in the counter case and fearing being arrested in that case, they had avoided to make any statement before the investigating officer. It appears from the statement of the informant itself that there was land dispute between both the parties and 144 Cr.P.C. proceeding was also initiated against both the parties which was converted into one under Section 145 Cr.P.C. proceeding and the proceeding was decided in favour of the accused Mohan Yadav. The revision application filed by the informant was also dismissed and the Title Suit was pending between both the parties. It appears that there was no occasion for the accused to commit offence as alleged by the prosecution party.

24. Considering the facts and circumstances as stated above, in our opinion, the impugned judgment of conviction and sentence is not fit to be sustained. It is accordingly set aside. The appellant No. 3, Prem Yadav, and appellant No. 6, Dharamdeo Yadav, are discharged from the liabilities of their bail bonds.

25. In the result, the appeal is allowed.