
(2016) 03 JH CK 0015
In the Jharkhand High Court
Case No : Cr. Appeal (DB) No. 370 of 2005

Rajendra Yadav

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 02-03-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 147, 148, 149, 302 149, 323

Citation : (2017) 1 AIRJharR 250 : (2016) 4 ECRC 471 : (2016) 4 JBCJ 112

Hon'ble Judges : Mr. D.N. Upadhyay and Mr. Ratnaker Bhengra, JJ.

Bench : Division Bench

Advocate : Mr. B.M. Tripathi, Senior Advocate and Mr. Navin Jaiswal with Mrs. Nutan Sharma, Advocates, for the Appellants (in Cr. Appeal (DB) No. 615 of 2015); Mr. A.K. Sahani, Advocate, for the Appellants (in Cr. Appeal (DB) No. 682 of 2015); Mr. S.K. Ughal and Mr.

Final Decision : Dismissed

Judgement

D.N. Upadhyay, J.—Criminal Appeal (DB) No.370 of 2005 has been preferred by appellant Rajendra Yadav @ Raju Yadav against the judgment of conviction and order of sentence dated 25.02.2005 and 03.03.2005 respectively passed by the Addl. Sessions Judge, Fast Track Court-VIII, Giridih in connection with S.T. Case No.247 of 1999 corresponding to G.R. Case No.753 of 1998 arising out of Jamua P.S. Case No.41 of 1998 whereby appellant Rajendra Yadav @ Raju Yadav has been held guilty for the offence punishable under Sections 147, 148, 323/149, 302/149 and 120B of the Indian Penal Code and sentenced to undergo R.I. for life under Section 302/149 of the Indian Penal Code but no separate sentence for the remaining offences for which he has been held guilty has been inflicted.

2. Criminal Appeal (DB) Nos.615, 630, 682 and 717 of 2015 have been preferred against the judgment of conviction and order of sentence dated 05.08.2015 and 06.08.2015 respectively passed by the Addl. Sessions Judge-I, Giridih in connection with Sessions Trial No.32 of 2000 whereby all the appellants have

been held guilty for the offence punishable under Sections 302/149 and 148 of the Indian Penal Code and sentenced to undergo R.I. for life and to pay fine of Rs.10,000/- each. In case of default in making payment of fine further S.I. for one year but no separate sentence under Section 148 of the Indian Penal Code has been inflicted.

3. Since aforesaid appeals are arising out of one and same Jamua P.S. Case No.41 of 1998, all the appeals have been taken up together and disposed of with this common judgment.

4. It is further made clear that evidence of witnesses shall be referred by naming them instead of referring prosecution witness number because seven witnesses are common in both the sessions trial and they are material witnesses.

Dr. Kaushalendra Kumar PW8 and Ganeshi Devi PW9 have not been examined in Sessions Trial No.32 of 2000. Sahdeo Yadav @ Mahto PW8, Ganesh Prasad Vishwakarma PW9, Dr. Sunil Kumar Singh PW10, Arvind Choudhary PW11 are the witnesses who were not examined in earlier Sessions Trial No.247 of 1999.

5. The prosecution case, as it appears from the fardbeyan of Dhaneshwar Yadav recorded on 10.05.1998 at 14.00 hours, is that a meeting was organised in the village in presence of Block Agricultural Officer Suresh Prasad, Block Health Officer Balmukund Sahay, Panchayat Sewak Munnu Ram Hembrom to elect Meth (head) and list of labourers was also placed in the meeting. In course of the meeting, exchange of hot words took place between Sahdev Yadav and Barhan Yadav and therefore, tension cropped up and the meeting was postponed. The villagers who had come to attend the meeting, started proceeding to their destination. In the mean time, appellant Barhan Yadav (in Cr. Appeal (DB) No.717 of 2015) exhorted Sukhdeo Yadav to detain Dharam Yadav and assault him. No sooner Dharam Yadav reached near the house of Sukhdeo Yadav, he was surrounded by appellants Sukhdeo Yadav, Lakhan Yadav, Rajendra Yadav, Ashok Yadav, Sudama Yadav (dead), Hari Yadav s/o late Raghunath Yadav and they all started assaulting Dharam Yadav by means of lathi. In course of assault Sukhdeo Yadav told to kill Dharam Yadav where after Rajendra Yadav @ Raju inflicted lathi blow on back of head of Dharam Yadav, Hari Yadav inflicted blow by means of lathi on frontal portion of head, Ashok Yadav inflicted blow on the belly whereas Sudama Yadav assaulted Dharam Yadav by means of stone. Dharam Yadav died at the spot after sustaining injuries. The informant, who happens to be son of deceased along with Ramchandra Yadav, Govind Yadav, Suresh Yadav, Munna Yadav and Sakaldev Yadav ran to save his father but till then appellant Lakhan Yadav (in Cr. Appeal (DB) No.615 of 2015) took out pistol and opened fire. Appellants namely Hari Yadav s/o Gulab Yadav, Sahdeo Yadav and Binod Yadav (in Cr. Appeal (DB) No.682 of 2015) surrounded Sakaldeo Yadav and caused him assault by means of lathi. The miscreants then hurled a threat, whosoever would try to intervene, he would be shot at.

6. On the basis of fardbeyan of Dhaneshwar Yadav Jamua P.S. Case No.41 of

1998 under Sections 147, 148, 149, 323, 337, 307 and 302 of the Indian Penal Code against all the named accused was registered. Investigation was carried out and charge sheet was submitted and accordingly cognizance was taken.

7. Since other appellants were not available, case of appellant Rajendra Yadav @ Raju Yadav was committed to the court of sessions and registered as S.T. No.247 of 1999. Charges under Sections 147, 148, 323/149, 337/149, 302/149 and 120B of the Indian Penal Code were framed to which he pleaded not guilty and claimed to be tried.

In S.T. No.247 of 1999 altogether nine witnesses were examined and the learned Addl. Sessions Judge placing reliance on the evidence and documents, held appellant Rajendra Yadav @ Raju Yadav guilty and inflicted sentence, as indicated above.

8. Attendance of remaining appellants was secured and again case of those appellants was committed to the court of sessions and registered as S.T. No.32 of 2000. Charges under Sections 323/149, 337/149, 307/149, 302/149 and 120B of the Indian Penal Code were framed against all the eight appellants. Appellant Lakhan Yadav stood further charged for the offence punishable under Section 148 of the Indian Penal Code and 27 of the Arms Act whereas remaining seven accused stood charged for the offence punishable under Section 147 of the Indian Penal Code. Since the appellants did not admit the charge, they were put on trial.

9. To substantiate the charges prosecution has examined altogether eleven witnesses whereas appellant Sukhdeo Yadav got examined himself as DW1. The learned trial judge, considering the evidence and documents available, held all the eight appellants guilty for the offence punishable under Sections 302/149 and 148 of the Indian Penal Code and inflicted sentence, as indicated above. The learned trial judge has recorded acquittal for rest of the offences.

10. The material witnesses in both the cases are Mahendra Yadav, Suresh Yadav, Sakaldeo Yadav (injured eye witness), Govind Yadav, Munna Lal Yadav, Ramchandra Yadav and Dhaneshwar Yadav (informant).

11. The appellants have assailed the impugned judgment mainly on the ground that trial judge has erred in holding the appellants guilty under Section 302 with the aid of Section 149 of the Indian Penal Code. It is admitted case of the prosecution that a meeting was convened to elect meth (head) and it was attended by the appellants, the informant party and other villagers. Due to some reason or the other, election for the meth (head) was not completed and the people present in the meeting dispersed and started proceeding to their respective destinations. There was no question of unlawful assembly and therefore, question of common object to commit murder of any one did not arise. The common object of that lawful assemblage was to elect a meth (head). At the time of returning, on the way, if some occurrence took place, each individual accused would be held liable for the individual overt act committed by him. The

admitted case of prosecution is that none of the appellants were armed with any lethal weapon and they had not assembled to commit offence. Since there was difference of opinion in the meeting, exchange of hot words between two factions had taken place. At the time they were proceeding to their respective houses, some incident occurred in which Dharam Yadav was subjected to assault by accused persons who are named in the First Information Report and they are Sukhdeo Yadav, Rajendra Yadav @ Raju Yadav, Ashok Yadav, Hari Yadav s/o Raghunath Yadav and Sudama Yadav (now dead). Abetment by Barhan Yadav was made to cause assault and he uttered to kill Dharam Yadav but did not participate in the assault. If the evidence brought on record is admitted to be correct, no offence under Section 302/149 of the Indian Penal Code is made out and the appellants against whom allegation of assault is there, hardly be convicted under Section 325 of the Indian Penal Code. Dr. Kaushlendra Kumar who had conducted post mortem examination on the dead body of Dharam Yadav has described the injuries which he had noticed and the injuries are:

(a) bruise over left side of the chest transversally placed from nipple of posterior axillary line 6" X 1?".

(b) abrasion over upper part of the abdomen left side 1" X 1?".

(c) Lacerated wound ?" X ?" X ?" over the posterior aspect of left parietal region of the scalp.

(d) occipital region of the scalp was depressed.

It is argued that only two lathi blows were given to the deceased and stones were pelted upon him. Finding of the trial court is highly erroneous and liable to be set aside.

Appellants namely Hari Yadav s/o Gulab Yadav, Sahdeo Yadav, Binod Yadav (in Cr. Appeal (DB)No. 682 of 2015) and Lakhan Yadav (in cr. Appeal (DB)No. 615 of 2015) have come up with another defence. The learned counsel has submitted that occurrence took place in two parts. In the first part of the occurrence exhortation was made by appellant Barhan Yadav who ordered Sukhdeo Yadav to cause assault to Dharam Yadav. Thereafter Sukhdeo Yadav, Rajendra Yadav, Ashok Yadav, Hari Yadav s/o Raghunath Yadav and Sudama Yadav surrounded Dharam Yadav and caused assault to him by means of lathi and stone. The informant was very sure in his fardbeyan that Dharam Yadav was killed by those persons at the spot. If the informant is correct in his version, there was no scope for him to intervene to save the life of his father Dharam Yadav. At best, it could be said that the informant and his companions when proceeded to see the dead body of Dharam Yadav, they were threatened. The prosecution has now introduced second part of the occurrence by saying that Lakhan Yadav opened fire but it did not hit anyone. Hari Yadav s/o Gulab Yadav, Sahdeo Yadav and Binod Yadav hurled threats and caused assault to Sakaldeo Yadav by means of lathi. At this juncture, it is pointed out that no injury report regarding assault caused to Sakaldeo Yadav has been brought on record and therefore no

conviction either under Section 307/34 or under Section 323/149 of the Indian Penal Code should have been recorded. It is admitted case of the prosecution that these four appellants did not take part in the first part of the occurrence and they did not cause assault to deceased. In the circumstances stated above, they could not be held guilty for the offence of murder with the aid of Section 149 of the Indian Penal Code. Their presence at the place of occurrence could not be considered as member of that unlawful assembly which was allegedly formed at the spot for committing murder of Dharam Yadav. In the circumstances stated above and the evidence available on record, the conviction and sentence recorded under Section 302/149 of the Indian Penal Code against aforesaid four appellants is liable to be set aside. It is further pointed out that appellant Lakhan Yadav further stood charged under Section 27 of the Arms Act but it was not proved by the prosecution and therefore he stood acquitted. Hari Yadav s/o Gulab Yadav, Sahdeo Yadav and Binod Yadav were not charged for the offence punishable under Section 148 of the Indian Penal Code and therefore, conviction and sentence recorded against them is highly erroneous and they are not liable to be convicted under Section 148 of the Indian Penal Code. The charge for the offence punishable under Section 147 of the Indian Penal Code was framed but no conviction has been recorded for that offence. Since appellant Lakhan Yadav has been acquitted from the charge framed under Section 27 of the Arms Act, question of committing rioting with deadly weapon also goes away and therefore, the conviction recorded under Section 148 of the Indian Penal Code is liable to be set aside.

12. Learned A.P.Ps. appearing for the State have submitted that prosecution has proved its case beyond shadow of all reasonable doubts. There are seven eye witnesses who have fully supported the prosecution case. Dr. Kaushlendra Kumar has proved the post mortem report in Sessions Trial No.247 of 1999 and the post mortem report has formally been proved by medical officer in Sessions Trial No.32 of 2000 and that medical officer is Dr. Sunil Kumar PW10. No contradictions from mouth of any of the witnesses has been taken and therefore, non-examination of the Investigating Officer is not fatal. Since eye witnesses have given actual account of entire occurrence, non-examination of I.O. to prove the place of occurrence becomes immaterial. In both the sessions trial, all the appellants have rightly been held guilty and the impugned judgments of conviction and sentence need no interference.

13. Heard rival submissions and perused entire record of both the cases. After considering the evidence of eye witnesses namely Mahendra Yadav, Suresh Yadav, Sakaldeo Yadav, Govind Yadav, Munna Lal Yadav, Ramchandra Yadav and Dhaneshwar Yadav (informant) who have been examined in both the cases, we find that prosecution witnesses have unerringly proved that Dharam Yadav was killed near the house of Sukhdeo Yadav after he left the place of meeting. The evidence brought on record against appellants creates story that a meeting was convened to elect meth (head) and it was attended by the appellants, the deceased, the informant party and other villagers. Due to difference of opinion

among the villagers, the meeting was postponed and no election of meth (head) could be done. Thereafter, the villagers present in the meeting started proceeding to their respective destinations. In the mean time, one of the appellant Barhan Yadav gave order to Sukhdeo Yadav to cause assault to Dharam Yadav (deceased). Sukhdeo Yadav along with his associates Hari Yadav s/o Raghunath Yadav, Rajendra Yadav @ Raju Yadav, Ashok Yadav and Sudama Yadav caused assault to Dharam Yadav by means of lathi and killed him at the spot. The informant and his companion when tried to intervene, they were threatened and a fire was opened by appellant Lakhan Yadav but it did not hit any one. Post mortem report proved by the prosecution is sufficient to hold that death of Dharam Yadav was homicidal and he died due to head injuries caused to him by means of hard and blunt substance.

14. Now we have to decide as to which part of the occurrence was committed in prosecution of the common object of unlawful assembly, if formed after the meeting was over. On the basis of evidence available, it has already been indicated that Barhan Yadav gave order to Sukhdeo Yadav to cause assault to Dharam Yadav where after Sukhdeo and his associates Ashok Yadav, Rajendra Yadav @ Raju Yadav, Sudama Yadav, Hari Yadav s/o Raghunath Yadav participated in the assault and killed Dharam Yadav. Therefore, it could well be said that as soon as order was given by appellant Barhan Yadav, the companion accused namely Sukhdeo Yadav, Hari Yadav s/o Raghunath Yadav, Ashok Yadav, Rajendra Yadav @ Raju Yadav and Sudama Yadav formed an unlawful assembly with an intention to cause assault to Dharam Yadav. Since Dharam Yadav was done to death at the spot, it could be said that common object of the unlawful assembly was to that of committing murder of Dharam Yadav. Dharam Yadav was killed at the spot by those persons had firmly been affirmed by the informant and other witnesses. Therefore object of that unlawful assembly came to an end and hence, latter part of the occurrence in which appellants namely Hari Yadav s/o Gulab Yadav, Sahdeo Yadav, Binod Yadav and Lakhan Yadav had participated and the overt act committed by them was not the object of said unlawful assembly. Besides the above, appellants namely Hari Yadav s/o Gulab Yadav, Sahdeo Yadav, Binod Yadav and Lakhan Yadav had neither participated in causing assault to Dharam Yadav nor they had committed any overt act, before Dharam Yadav was killed. It is not a case that Dharam Yadav was alive and assault was going on, the informant and his companion were trying to extend help but they were obstructed and restrained by these appellants rather it is a clear cut case that Dharam Yadav was already killed and it was well within the knowledge of informant.

15. In view of the discussions made above, we do not feel inclined to sustain the judgment of conviction and order of sentence recorded against appellants namely Hari Yadav s/o Gulab Yadav, Sahdeo Yadav, Binod Yadav and Lakhan Yadav and the judgment of conviction and sentence recorded against them stands set aside.

So far the judgment of conviction and order of sentence recorded by the trial

judge in Sessions Trial No.32 of 2000 under Section 148 of the Indian Penal Code as against aforesaid appellants are concerned, that is unwarranted because no charge against appellant Hari Yadav s/o Gulab Yadav, Sahdeo Yadav and Binod Yadav under Section 148 of the Indian Penal Code was framed and without having been charged, they cannot be held guilty for said offence.

So far appellant Lakhan Yadav is concerned, we have already held that he is not guilty for the offence punishable under Section 302/149 of the Indian Penal Code and he has been acquitted for the offence punishable under Section 27 of the Arms Act, the conviction under Section 148 of the Indian Penal Code for committing rioting with lethal weapon could not be upheld. Accordingly, the judgment of conviction and sentence recorded under Section 148 of the Indian Penal Code against appellant Lakhan Yadav also stands set aside.

Appellants namely Hari Yadav s/o Gulab Yadav, Sahdeo Yadav, Binod Yadav and Lakhan Yadav are on bail, they are discharged from the liability of their respective bail bonds and set at liberty.

16. In the result, Cr. Appeal (DB) Nos. 615 and 682 of 2015 stand allowed.

17. We have indicated in preceding paragraphs that after the meeting for election of meth (head) was postponed, the villagers present in the meeting started proceeding to their destinations. When deceased Dharam Yadav reached near the house of Sukhdeo Yadav, appellant Barhan Yadav instigated to restrain Dharam Yadav and kill him where after Sukhdeo Yadav, Rajendra Yadav @ Raju Yadav, Ashok Yadav, Sudama Yadav and Hari Yadav s/o late Raghunath Yadav caused assault by means of lathi to Dharam Yadav and killed him. In course of assault, Sukhdeo Yadav had ordered to kill which was followed by appellant Rajendra Yadav @ Raju Yadav who inflicted lathi blow on head of Dharam Yadav. The evidence on record as discussed above, make it clear that appellant Lakhan Yadav, Hari Yadav s/o late Gulab Yadav, Sahdeo Yadav and Binod Yadav had not participated in causing assault to Dharam Yadav. Therefore, the occurrence of assault was participated by appellants namely Rajendra Yadav @ Raju Yadav, Hari Yadav s/o late Raghunath Yadav, Barhan Yadav, Ashok Yadav and Sukhdeo Yadav. The unlawful assembly, if formed at the instigation of Barhan Yadav, then it was formed by aforesaid appellants who caused assault to deceased Dharam Yadav. Considering aforesaid aspects of the matter and the evidence brought on record, we have segregated case of appellant Lakhan Yadav (in Cr. Appeal (DB) No.615 of 2015 and appellants Hari Yadav s/o late Gulab Yadav, Sahdeo Yadav and Binod Yadav (in Cr. Appeal (DB) No.682 of 2015 from the case of remaining appellants in Cr. Appeal (DB) No.370 of 2005, Cr. Appeal (DB) No.717 of 2015 and Cr. Appeal (DB) No.630 of 2015. In the result, we hereby sustain the conviction and sentence recorded against appellants Rajendra Yadav @ Raju Yadav, Hari Yadav s/o late Raghunath Yadav, Barhan Yadav, Ashok Yadav and Sukhdeo Yadav.

18. Accordingly, Cr. Appeal (DB) No.370 of 2005, Cr. Appeal (DB) No.717 of 2015

and Cr. Appeal (DB) No.630 of 2015 stand dismissed.

19. Bail bond of appellant Sukhdeo Yadav is hereby cancelled. He is directed to surrender before the convicting/successor court to serve out the sentence failing compliance the convicting/successor court shall take all efforts to secure his attendance by issuing processes against him.