
(2006) 01 PAT CK 0016
In the Patna High Court
Case No : Criminal Appeal No. 463 of 1987

Upendra Yadav and Others	Vs	APPELLANT
The State of Bihar		RESPONDENT

Date of Decision : 09-01-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 109, 147, 148, 149, 302

Citation : (2006) 2 PLJR 374

Hon'ble Judges : Navin Sinha, J;Aftab Alam, J

Bench : Division Bench

Advocate : K.K. Mandal and P.K. Singh, for the Appellant; Lala Kailash Bihari Prasad, for the Respondent

Final Decision : Dismissed

Judgement

Aftab Alam

1. Out of the eight appellants on whose behalf the appeal was filed, Mushahru Yadav, (appellant No. 2) died during its pendency. Hence, the appeal insofar as he was concerned abated. (See order, dated 28.4.2004) and it survives with regard to the remaining seven appellants. Among the remaining appellants, Upendra Yadav (appellant No. 1) stands convicted under sections 302, 324 and 148 of the Penal Code and sentenced to undergo rigorous imprisonment for life for committing murder, R.I. for three years for causing grievous hurt and R.I. for two years for rioting. Bhupi Yadav @ Bhupendra Yadav (appellant No. 3), Maheshwari Yadav (appellant No. 4) and Kali Yadav (appellant No. 5) are convicted under sections 302/149 and 147 of the Penal Code and sentenced to undergo R.I. for life and one year respectively for the two offences. Pratap Yadav (appellant No. 6) and Rajendra Yadav (appellant No. 8) are convicted under sections 324 and 148 of the Penal Code and sentenced to undergo R.I. for three years and two years respectively for the two offences. Dharendra Yadav (appellant No. 7) is convicted under sections 323 and 148 of the Penal Code and sentenced to undergo R.I. for two years each for the two offences. There was

another accused Brijketu Yadav facing trial with the seven appellants. He was charged under sections 302/149 and 147 of the Penal Code. He was, however, acquitted of the charges because apart from the informant no other prosecution witnesses named him before the trial court. The prosecution case was instituted on the basis of the statement of Shankar Yadav (PW 6) made before the Officer-Incharge of Madhepura P.S. at Madhepura hospital on 27.6.1976 at 6.30 P.M. The police officer went to Madhepura hospital on receipt of an O.D. slip, intimating him that a number of people, including Upendra Yadav (appellant No. 1) had arrived at the hospital with injuries on their person. The statement of Shankar Yadav was recorded by the Officer Incharge as fard-e-bayan (Ext. 1) and a formal F.I.R. incorporating it was drawn up later on the same day at 8 P.M.

2. In his statement before the police Shankar Yadav (PW 6), the brother of the deceased Bhupendra Yadav stated that at about 3.30 in the afternoon on that day a pair of bullocks belonging to Raghuni Yadav grazed the greens and vegetable grown in his Bah, lying adjacent west of his house and then the loose cattle came to the Aangan of his house and ate away the wheat that was spread out for drying. He caught the two bullocks and tethered them at his Darwaza. A little later Mushhari Yadav (appellant No. 2, now deceased) came there and demanded that the two bullocks be released, giving the threat that otherwise the consequences will be serious. He (the informant) replied that the bullocks would be released only on payment of compensation for the loss caused by them. At this stage Bhupendra Yadav (appellant No. 3), son of Mushhari Yadav called back his father stating that his (informant's) brother was grazing his two buffalos at the embankment and they would go there and bring back those buffaloes to their house. The informant further stated that thirteen accused persons (named by him) including the seven appellants, variously armed with bows and arrows, Bhala, Farsa and lathi proceeded from the village towards the embankment where his brother Bhupendra Yadav (deceased) was grazing his two buffaloes and tried to forcibly drive away the cattle. The informant alongwith his brothers Sheonath Yadav (PW 3), Mahendra Yadav (PW 5), his cousin Budhan yadav (not examined) and neighbour Khokhan Yadav (PW 2) also went there and urged the accused to desist from such high handed acts. Then accused Raghuni Yadav ordered his men to shoot and kill (the members of the prosecution party). Thus urged, Upendra Yadav (appellant No. 1), shot an arrow hitting Bhupendra Yadav (the deceased) in his abdomen. He fell down on the spot. Then Rajendra Yadav (appellant No. 8) shot an arrow hitting the informant (PW 6) in his waist that remained stuck to his body while he made the statement before the police. Shivendu Yadav (PW 3) was hit on his head by Lathi by Dhirendra Yadav @ Jamun Yadav (appellant No. 7) and Mahendra Yadav (PW 5) was hit by Pratap Yadav (appellant No. 6) by Farsa on his head and right hand. Upendra Yadav (appellant No. 1) shot another arrow hitting Lattar Yadav (PW 4) on the right side of his rib-cage. He shot yet another arrow hitting Khokhan Yadav (PW 2) on the right side of his rib-cage. Budhan Yadav was hit on his left shoulder by an arrow shot by Chotelal Yadav (not before the court). On hulla a number of people

named in the fard-e-bayan assembled at the place of occurrence who too witnessed the assault by the accused. After the assault the injured were taken to Madhepura hospital on a bullock-cart but Bhupendra Yadav died on the way. The informant further stated that after the assault was over, he came to learn that in course of the occurrence Upendra Yadav (appellant No. 1) was also hit by an arrow that was shot by one of the members of the unlawful assembly. The statement recorded by the Officer was read out to him and on finding it to be correctly recorded he put his signature on it which was later marked as Ext. 2. From the fard-e-bayan it is evident that apart from Bhupendra Yadav who got killed in the occurrence, seven other members of the prosecution party, also received injuries at the hands of different accused persons.

3. The police after investigation submitted charge-sheet against all the thirteen accused named in the F.I.R. and all of them were summoned for trial. Upendra Yadav (appellant No. 1) was charged under sections 302, 324 and 148 of the Penal Code. Reghuni Yadav (not before the court) against whom the allegations is that he ordered his men to shoot and kill the members of the prosecution party was charged under sections 302/109 and Section 148 of the Penal Code. Mushahru Yadav (appellant No. 2), Bhupi Yadav @ Bhupendra Yadav (appellant No. 3), Maheshwari Yadav (appellant No. 4), Kali Yadav (appellant No. 5), Rajendra Yadav (appellant No. 8) and Sheonandan Yadav (not before the court) were charged under sections 302/149, apart from other minor sections of the Penal Code. The rest of the accused were charged under sections 307 or 324 depending upon the specific act attributed to them, apart from Sections 147, 148 etc. It is not clear why the six accused alone were picked-out for being charged u/s 302 with the aid of Section 149 of the Penal Code while the rest of the accused were charged on the basis of the specific overt acts allegedly committed by them.

4. Raghuni Yadav died in course of trial. The other three accused, namely, Ramchandra Yadav, Chotelal Yadav and Sheonandan Yadav appear to have absconded and their trial had to be separated. Resultantly, nine accused finally remained before the trial court out of whom Brijketu Yadav, as noted above, was acquitted by the judgment coming under appeal. The rest of the eight accused were convicted and sentenced as noted above.

5. The prosecution in order to prove its case examined ten witnesses. PW 10 is the I.O. PW 9 is the doctor who held post mortem on the body of the deceased Bhupendra Yadav. He proved the post mortem report (Ext. 4). PW 8 is the Medical Officer who examined the other injured people. He proved their injury reports which were marked as Exts. 3 to 3/5. The remaining seven witnesses from PWs 1 to 7 are all eye witnesses. It is noted above that in course of the occurrence seven members from the prosecution side had received injuries on their person. Out of the seven, Shankar Yadav, the informant was examined as PW 6. His two brothers Mahendra Yadav and Shivendu Yadav are PWs 5 and 3 respectively. Apart from them, two cousins of the informant, namely, Budhan Yadav and Lattar Yadav too had received injuries. Budhan Yadav was not

examined but Lattar was examined as PW 4. Another person receiving injury in that occurrence was Khokhan Yadav who was a neighbour of the informant. He was examined as PW 2. Two other witnesses were Deonarain Yadav (PW 1) and Kailash Yadav (PW 7) who had not received any injury in that occurrence. In other words, five out of the seven prosecution witnesses, that is to say, PWs 2 to 6 had actually received injuries in course of the occurrence.

6. The doctor (PW 9) stated before the court that he found the following ante mortem injuries on the body of Bhupendra Yadav:

"One incised penetrating wound 3/ 4" long x 1/4" broad x abdominal cavity deep 3" right to oblicus over abdomen. On opening the abdomen an arrow as intact in the injury injuring two coils of small intestine passing through and through and injuring the mesentery and huge quantity of blood was present in the peritoneal cavity. There was also collection of huge quantity of blood posterior to the peritoneum injuring the renal vessels. There was also present seventeen pieces of stones in the right kidney with hydro-nephrosis of the right kidney."

7. He further stated that in his opinion death was caused due to shock and haemorrhage specially due to the injury to the mesentery blood vessels and right renal blood vessels. He took out the arrow and the kidney-stones and handed them over to the police. The presence of the kidney-stones seems to have given some food for thought to the cross-examiner who questioned the doctor a great deal in that regard. In reply to his questions the doctor said that in the present case the kidney was diseased and besides the stones there was hydro-nephrosis that caused pressure and led to various complications like renal failure and hypertension. He further said that each of those complications was in itself dangerous to life. He went on to say that in such diseased condition a person was more vulnerable to shock. He, however, clarified that he was not in a position to give any opinion as to whether the deceased would have survived or not with such injury if the kidney was healthy. He further stated, in reply to a question from the cross-examiner, that survival was not possible if the loss of blood was more than 33% but said that in the present case he did not weigh the actual loss of blood. He further stated that in the present case the loss of blood had caused shock, resulting to death.

8. Leaving aside the statement with regard to the diseased state of kidney of the deceased the first part of the doctor's evidence, to my mind, leaves no room for doubt that Bhupendra Yadav died as a result of the injuries caused to his intestinal coils, mesentery, and the blood vessels of the mesentery and the kidney and the medical evidence, thus, corroborates and confirms the manner of death of Bhupendra Yadav as stated by the prosecution.

9. The other doctor (PW 8) informed the court about the injuries found on the person of Shankar Yadav (PW 6). His injury report (Ext. 3) showed that he received an arrow injury, simple in nature on the lateral side of his waist; The injury report of Khokhan Yadav, (Ext. 3/3) showed that he received an arrow

injury, simple in nature on the right lateral side of chest. The injury report (Ext. 3/2) of Shivendu Yadav (PW 3) showed that he received a simple injury by Lathi on his head. The injury report (Ext. 3/5) of Latter Yadav (PW 4) showed an arrow injury, simple in nature on the right, lateral side of the chest. The injury report (Ext. 3/1) of Mahendra Yadav (PW 5) showed that he received a simple injury by Farsa on upper portion of right forearm and another grievous injury with heamatonia and cut of underlying occipital bone in the occipital region on right of mid-line and the injury report (Ext. 3/4) of Budhan Yadav (not examined) showed an arrow injury simple in nature on the upper part of chest in front of left axilla. The medical reports thus, further confirm the prosecution case that six members from the prosecution side, including five PWs (PWs 2 to 6) received injuries by arrows, Farsa and Lathies in course of the occurrence.

10. Turning now to the ocular evidence, PW 1 came before the trial court to say that at the time of the occurrence he was grazing cattle near the place of occurrence. He saw a group of persons, variously armed, coming to the place where Bhupendra Yadav was grazing his two buffaloes, In the group he identified Pratap Yadav (appellant No. 6), Upendra Yadav (appellant No. 1), Raghuni Yadav (dead), Ramchandra Yadav (not before the court), Dhirendra Yadav (appellant No. 7), Maheshwari Yadav (appellant No. 4), Chotelal Yadav (not before the court), Kali Yadav (appellant No. 5) and Sheonandan Yadav (not before the court). They tried to forcibly drive away Bhupendra's buffaloes who resisted their action. At that time the other members of the prosecution party, including the informant (PW 6) and PW 4 also arrived there. The witness further said that a fight took place between the two sides and after it was over he went to the P.O. and found that a number of persons on the prosecution side lay on the ground with injuries on their person. He later came to learn that Bhupendra Yadav died on way to the hospital. He is evidently not a witness to the grazing of the greens and vegetables and the wheat by Raghuni's bullocks but he said that he came to learn about it later on and that the assault took place as a result of the earlier occurrence.

11. The rest of the prosecution witnesses PWs 2 to 7 supported the prosecution case in its entirety. They also named all the appellants and the other accused in the case with the exception of Brishketu Yadav whose name was taken only by the informant (PW 6). The six prosecution witnesses have supported the prosecution case in all its details and the ocular evidence coupled with the medical evidence leaves no room for doubt that an occurrence, as stated by the prosecution, took place in which the accused took part and that led to the death of Bhupendra Yadav by injuries caused to him by an arrow and the other members of the prosecution party also received injuries by arrows Farsa and Lathies etc.

12. The prosecution evidence is so over whelming that Mr. K.K. Mandal, learned counsel appearing for the appellants did not seriously challenge that an occurrence of the nature as alleged by the prosecution in fact took place. He,

however, sought to give a different genesis to it. Mr. Mandal submitted that the assault took place on the embankment and tried to construct a different case for the defence. He submitted that the strips of land on the two sides of the canal were the property of the Irrigation Department and those were settled for grazing of cattle by auction by the Government Department, Raghuni Yadav, one of the accused, had taken settlement of the canal land from the Irrigation Department and the deceased was unauthorisedly grazing his cattle there, according to Mr. Mandal, the grazing of cattle by Bhupendra Yadav was objected to by the settler of the land and his men and that led to a quarrel and a fight between the two sides resulting in the death of Bhupendra Yadav. According to him, it was the members of the prosecution party who were the aggressors in the episode in which Upendra Yadav (appellant No. 1) also received an injury by arrow.

13. In support of its case the defence also examined some witnesses (DWs 1 to 4). I am unable to give any credence to the defence story for the simple reason that it does not travel beyond the realm of pure conjecture and there is absolutely no materials to support it for a moment. Mr. Mandal laid some emphasis on the statement of PW 1 where he said that a fighting took place between the two sides but he over-looks the previous sentence of the witness where he said that the accused tried to forcibly drive away his buffaloes on which Bhupendra resisted and that led to the fight. Moreover, there is no evidence to show that Bhupendra Yadav was grazing his cattle over a piece of land that was lawfully settled in favour of the accused and that was in their physical possession. Some suggestions in this regard were indeed made to the informant (PW 6). He admitted that the strips of the land on the two sides of the canal used to be settled in those days by the Irrigation Department but he did not know in whose favour the canal lands were settled in that year. He never admitted that the buffaloes were grazing on any settled land.

14. On a careful examination of the evidence on record including the testimonies of defence witnesses it is impossible to find and hold that the buffaloes of Bhupendra Yadav were grazing on a piece of land that the accused had taken on settlement from the Irrigation Department and that the piece of land was under their possession. In any event, there is nothing to show that Bhupendra Yadav or for that matter the other members of the prosecution party who arrived there and received injuries at the hands of the accused were carrying any arms. On the other hand the accused had gone there to seize the cattle and to bring those back, fully armed with the conventional weapons like bows, arrows, Farsa, Lathies etc. I am, therefore, unable to accept the submission that it was the members of the prosecution party who were the aggressors and the death of Upendra Yadav and the injuries to the prosecution witnesses were caused by the appellants acting in their self defence.

15. Mr. Mandal then submitted that it was undeniable that Upendra Yadav (appellant No. 1) too had received an arrow injury. He pointed out that the injury

of Upendra Yadav was referred to in the F.I.R. itself and the I.O. (PW 10) had also said that he went to the Madhepura hospital on getting an O.D. slip from there intimating that a number of people from the prosecution side and Upendra Yadav had arrived in the hospital with injuries on their person. He further referred to para 2 of the deposition of the I.O. from which it appears that he arrested Upendra Yadav (appellant No. 1) in the hospital where he lay in injured condition. Mr. Mandal submitted that it was obligatory for the prosecution to explain the injury received by Upendra Yadav and the failure to explain his injury should lead to the rejection of the prosecution case.

16. I am unable to accept the submission. Curiously no evidence is led with regard to the actual injury suffered by Upendra Yadav and his injury report is not on the record. From Ext. "C" which is a certified copy of his injury report it appears that he received an injury 3 1/2" above right elbow joint. The injury was apparently simple and minor in nature and the prosecution can in no way be held responsible for not explaining it for the simple reason that no explanation was sought in that regard from any of the prosecution witnesses, including the informant (PW 6). In this connection we have examined the depositions of the PWs carefully and I find that no question was put to any of the prosecution witnesses with regard to the injury said to have been suffered by Upendra Yadav. The prosecution cannot, therefore, be blamed for non-explanation of the injury even if there was any on the person of Upendra Yadav.

17. Mr. Mandal then submitted that the case did not fall u/s 302 of the Penal Code and it should be held to be a case of culpable homicide not amounting to murder. Learned counsel submitted that Upendra Yadav (appellant No. 1) had shot a single arrow hitting Bhupendra Yadav. He did not repeat the shot to Bhupendra and the two more arrows shot by him were aimed at two other members of the prosecution party. He submitted that it was a case of a single shot/blow that unfortunately led to the death of Bhupendra Yadav in his diseased condition which was not known to anyone.

18. In support of his submission learned counsel relied upon two decisions of the Supreme Court in (1) State of U.P. Vs. Jodha Singh and Others, and (ii) Trilok Singh Vs. State (Delhi Administration), and a decision of a bench of this court (iii) in Sudhu Bhogta Vs. State of Bihar, Mr. Mandal also tried to take advantage of the medical evidence according to which the deceased had a highly diseased kidney and suffered from kidney-stones and hydronephrosis.

19. In my view the decisions cited by Mr. Mandal are quite different on facts and have no application to the case in hand. An arrow hitting the abdomen of a person is sufficient in the normal course of nature to cause death and a shot by arrow need not be repeated to ensure the death of the victim. As regards the medical evidence it is already noted above that regardless of the diseased kidney Upendra Yadav died as a result of the injuries caused by the arrow. The diseased kidney is really a red herring and quite irrelevant so far as his cause of death is concerned. I am, therefore, satisfied that the manner of death of Upendra Yadav

squarely constitutes an offence of murder punishable u/s 302 and it cannot be classified as a case of culpable homicide, not amounting to murder. The conviction of Upendra Yadav (appellant No. 2) u/s 302 for causing the death of Upendra Yadav and his conviction u/s 324 for causing grievous injuries to Budhan Yadav and Lattar Yadav and his conviction u/s 148 of the Penal Code need not be interfered with.

20. Coming now to appellant Bhupi Yadav (appellant No. 3), Maheshwari Yadav (appellant No. 4) and Kali Yadav (appellant No. 5), Mr. Mandal submitted that their conviction for the offence of murder read with Section 149 of the Penal Code was quite unjustified. Learned counsel submitted that the unlawful assembly was formed with the sole object to seize and bring back the buffaloes of the informant that Bhupendra Yadav was grazing and he maintained that the common object of the unlawful assembly remained unchanged till the end. Learned counsel pointed out that even though the other accused including the three appellants put to use their respective weapons but those were used only to cause simple injuries to the other members of the prosecution party and their exercise was only to the extent of overcoming the resistance against seizing the cattle and bringing it back. The three appellants did not use their weapons even to cause any grievous injuries, much less, in an attempt on the life on any member of the prosecution party.

21. I think that in this submission Mr. Mandal is on firm ground. The submission finds support from a decision of the Supreme Court in Sukhbir Singh Vs. State of Haryana, I accordingly find and hold that the convictions of Bhupi Yadav @ Bhupendra Yadav, Maheshwari Yadav and Kali Yadav, appellants 3, 4 and 5 under sections 302/149 cannot be sustained and all the appellants must be held to be accountable for the specific overt acts committed by them. The conviction of appellants 3, 4 and 5 under sections 302/149 of the Penal Code is accordingly set aside.

22. The final position that emerges, thus, is that the conviction of Upendra Yadav, (appellant No. 1) under sections 302, 324 and 148 of the Penal Code is maintained unchanged. The conviction of Pratap Yadav and Rajendra Yadav (appellants 6 and 8) under sections 324 and 148 of the Penal Code and the conviction of Dhirendra Yadav @ Jamun Yadav (appellant No. 7) under sections 323 and 148 are similarly maintained unchanged. The rest of the three appellants, Bhupi Yadav (appellant No. 3), Maheshwari Yadav (appellant No. 4) and Kali Yadav (appellant No. 5) are convicted u/s 147 of the Penal Code.

23. Now comes the question of sentence and it poses certain dilemma before the court. The date of occurrence as noted above was 27.6.1976. The trial court pronounced its judgment on 31.8.1987. From the records of the case it appears that Upendra Yadav (appellant No. 1) has remained in jail for a period under two years and the rest of the appellants remained in jail for no more than a few weeks. The appeal came to this court in the year, 1987. All the appellants were granted bail on 22.9.1987. Since then they are on bail. The refection of the

appeal (with modification of conviction in the case of the three appellants) would sent them to jail for an offence committed thirty years ago. So far as Upendra Yadav (appellant No. 1) is concerned, his case on this score is beyond any consideration. He committed the murder of another human being and he must atone for the offence committed by him by one of the two punishments provided in law for that crime regardless of the time when the offence was committed. He must, therefore, suffer further imprisonment and complete his life term.

24. As regards the others, the matter is not without difficulty. One of the appellants Mushahru Yadav (appellant No. 2) whose age was shown as 55 years in the trial court judgment has died by this time. Maheshwari Yadav (appellant No. 4) whose age was recorded by the trial court as 63 years is not reported to us to be dead. He would now be eighty three years of age. The case of the others is not dissimilar. Some of them were young people at the time of the commission of the offence. They are now past their middle ages. Some others were in their middle ages; they would now be old men.

25. In the aforesaid circumstances we find it just and proper to substitute their punishments of imprisonment by fine, a fine that would pinch and that would remind them of the offence committed by them, instead of taking away some years of their lives. In the facts and circumstances of the case Pratap Yadav and Rajendra Yadav (Appellants 6 & 8) are directed to pay fine of Rs. 14,000.00 each u/s 148 I.P.C. and a further fine of Rs. 6,000.00 each u/s 324 I.P.C. (They shall thus pay a total fine of Rs. 20,000.00 each), Dharendra Yadav (appellant No. 7) is similarly directed to pay fine of Rs. 14,000/- under section 148 I.P.C. and further fine of Rs. 1,000.00 u/s 323 I.P.C. Bhupi Yadav, Maheshwari Yadav and Kali Yadav (Appellants 3, 4 and 5) are directed to pay fine of Rs. 5,000.00 each u/s 147 I.P.C. Out of the amount of fine Bhupi Yadav, Maheshwar Yadav and Kali Yadav would pay Rs. 5000/- each to the informant or his heirs. Pratap Yadav (appellant No. 6) and Rajendra Yadav (appellant No. 8) would similarly pay Rs. 15,000/- each to the informant or his heirs. Dharendra Yadav @ Jamun Yadav (appellant No. 7) would pay Rs. 5000/- to the informant or his heirs. The payment to the informant or his heirs, as the case may be, shall be made in cash before the trial court. The rest of the amount shall be paid as fine to the State. The aforesaid payments to the informant or his heirs, as the case may be, and to the State as directed above must be made by 15.3.2006, failing which the sentences of imprisonment imposed by the trial court against each of the appellants for their respective convictions as sustained by this court shall stand revived and the trial court shall take all steps to take them in custody to make them undergo the rest of the sentences. The appeal, subject to the above modification in conviction so far as appellants 3, 4 and 5 are concerned and the modification in sentence of appellants 3 to 8, is dismissed.

Navin Sinha, J.

I agree.