

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.940 of 2018

Arising Out of PS. Case No.-43 Year-2011 Thana- BHARGAMA District- Araria

Rajendra Yadav S/o Late Jagdish Yadav, R/o Vill.- Tonaha Jahad, P.S.-
Bhargama, District- Araria.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 880 of 2018

Arising Out of PS. Case No.-43 Year-2011 Thana- BHARGAMA District- Araria

1. Kailash Kumar Yadav @ Kailash Yadav and Anr S/o Badri Yadav resident of Village Tonha Jahad, P.S. Bhargama, District - Araria.
2. Mithilesh Yadav @ Mithalesh Yadav @ Akhilesh Yadav @ Akhalesh Yadav S/o Late Chandradev Yadav resident of village - Belodih, P.S. Murliganj, District Madhepura.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 931 of 2018

Arising Out of PS. Case No.-43 Year-2011 Thana- BHARGAMA District- Araria

Badri Yadav son of Late Janak Yadav, resident of Village- Tonaha Jahad, P.S.
Bhargama, District- Araria.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 940 of 2018)

For the Appellant/s	:	Mr. Ravindra Kumar, Advocate Mr. Rajesh Roy, Advocate Mr. Manoj Kumar, Advocate Mr. Sandeep Kumar Pandey, Advocate
For the State	:	Mr. Sujit Kumar Singh, APP
For the Informant	:	Mr. Shashi Bhushan Kumar, Advocate



(In CRIMINAL APPEAL (DB) No. 880 of 2018)

For the Appellant/s : Mr. Kumar Dharendra Pratap Singh, Advocate
Mr. Diwanshu Kumar, Advocate

For the Respondent/s : Mr. Sujit Kumar Singh, APP

(In CRIMINAL APPEAL (DB) No. 931 of 2018)

For the Appellant/s : Mr. Sandeep Kumar Pandey, *Amicus Curiae*

For the Respondent/s : Mr. Sri Ajay Mishra, APP

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 14-05-2024

The present appeals have been filed under Section-374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as 'Cr.P.C.') challenging the impugned judgment of conviction dated 13.06.2018 and order of sentence dated 14.06.2018 passed by the learned 3rd Additional District and Sessions Judge, Araria, in connection with Sessions Trial No. 1151/2012, T.R. No.64/2017 (arising out of Bhargama P.S. Case No. 43/2011) by which all the appellants have been convicted and appellant/convict Rajendra Yadav has been sentenced to undergo rigorous imprisonment for life with a fine of Rs. 50,000/- (fifty thousand) for the offence punishable under Section- 302 of I.P.C. In default of payment of fine, the convict will have to undergo further one year imprisonment. He has further been sentenced to undergo rigorous imprisonment for three years with a fine of Rs. 5000/- (five thousand) for the offence punishable under Section- 27 of the Arms Act. In default of payment of fine, he will have to



under further imprisonment for six months. The sentences have been directed to run concurrently. Appellants/convicts Badri Yadav, Kailash Yadav and Mithilesh Yadav @ Akhilesh Yadav have been sentenced to undergo rigorous for life with a fine of Rs.50,000/- (fifty thousand) each for the offence punishable under Section -302/149 of I.P.C. In default of payment of fine, the convicts will have to further undergo one year imprisonment. They have also been sentenced to undergo rigorous imprisonment for 2 years and 6 months with a fine of Rs.5000/- each for the offence punishable under Section-148 of I.P.C. In default of payment of fine, they will have to undergo further imprisonment for three months each. All the sentences have been directed to run concurrently.

2. At the outset, it is relevant to note that Mr. Amarnath Jha, learned counsel, earlier appearing for the appellants, states that he has already given no objection to the appellants. However, nobody has filed appearance in Cr. Appeal (D.B.) No. 931 of 2018, which is pending for hearing since long. The present appeal is of the year 2018 and out of three appeals, in one appeal, appellant/convict is in custody for more than 12 years. Therefore, we have no option, but to proceed with the matter and, therefore, we have requested Mr. Sandeep Kumar



Pandey to assist the Court in the matter and, with his consent, he is appointed as *Amicus Curiae*.

3. Heard Mr. Ravindra Kumar, assisted by Mr. Rajesh Roy, Manoj Kumar and Mr. Sandeep Kumar Pandey, learned counsels for the appellant, Mr. Sujit Kumar Singh, learned A.P.P. for the respondent State and Mr. Shashi Bhushan Kumar, learned counsel for the informant (in Cr. Appeal (D.B.) No.940 of 2018, Mr. Kumar Dharendra, assisted by Mr. Diwanshu Kumar, learned counsel for the appellants, Mr. Sujit Kumar Singh, learned A.P.P. for the respondent State (in Cr. Appeal (D.B.) No.880 of 2018 and Mr. Sandeep Kumar, learned *Amicus Curiae*, for the appellant and Mr. Ajay Mishra, learned A.P.P. for the respondent-State in Cr. Appeal (D.B.) No. 931 of 2018).

4. The brief facts leading to the filing of the present appeal are as under:

“On 08.05.2011, the informant was returning from Parsa Haat by his brother-in-law's motorcycle bearing Regn. No. BR 38 A-8010. After reaching the door of Satya Narayan Mandal, S/o Late Moti Mandal of his village at around at 6 O'clock, he was having a discussion about farming activities. All on a sudden 1. Rajendra Yadav S/o- Jagdeesh Yadav 2. Badri Yadav S/o- Late Janak Yadav 3. Kailash Yadav S/o- Badri Yadav 4. Shaili Devi, w/o Badri Yadav 5. Gajen Yadav S/o- Mohan



Yadav Vill- Jahad and 6. Badri Yadav's Son-in-law Mithilesh Yadav S/o- Not known, Vill- Belodih, P.S not known, Dist. Madhepura came there, out of whom Rajendra Yadav S/o Late Jagdeesh Yadav had a country-made rifle in his hand and others had sticks in their hands. They surrounded the informant and started beating him at Satyanarayan Mandal's door. During the fight Rajendra Yadav hit him on the head with the country-made rifle in his hand and others started beating at leg, hand, back etc. and he ran away screaming to save his life. Meanwhile, his elder brother Ramesh Yadav (Deceased) and Simindo Yadav too came from Parsa market and as soon as they arrived at the place, Rajendra Yadav shouted that the enemies have come upon which Badri Yadav pulled his brother Ramesh Yadav from the road and took him to his door. Meanwhile Rajendra yadav shot at his brother from close range on his chest by his country-made rifle. Seeing this, when Simindo Yadav tried to save him, other accused persons started beating him with sticks. Upon hearing the noise informant's brother Rajendra Yadav, Manoj Yadav S/o Mahendra Yadav, (illegible) Yadav S/o- Parmeshwari Yadav, Sikandar Yadav S/o- Kameshwari Yadav and many other people came hearing the sound of firing. Seeing people coming, all the accused persons ran away. Then the went out with other people present and saw that his brother Ramesh Yadav had died due to bullet injury. The informant picked up his deceased brother's dead body and brought it home.”

5. After filing of the F.I.R., the investigating agency carried out the investigation and, during the course of investigation, the Investigating Officer recorded the statement of



the witnesses and collected the relevant documents and thereafter filed the charge-sheet against the accused. As the case was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions.

6. Learned advocates appearing for the respective appellants have submitted that there is a delay in sending the F.I.R. to the Magistrate Court and the appellants have been falsely implicated in the occurrence in question. Though the informant has stated that six accused persons named in the F.I.R. came with weapons and assaulted the informant as well as one Samindo and they sustained injuries, the injury report of the aforesaid persons were not produced before the Court nor the Doctor was examined. It is further submitted that the informant and Samindo Yadav are not the eye-witnesses, despite which they were projected as eye-witnesses by the prosecution. The aforesaid witnesses are near relatives of the deceased and, therefore, their deposition is required to be scrutinized carefully. It is submitted that looking to the major contradictions in the depositions of the so called eye-witnesses, it can be said that they are not trustworthy and, therefore, their depositions be discarded. At this stage, it is also submitted that P.Ws. 2, 3 and 4 are projected as eye-witnesses to the occurrence by the prosecution,



however, from the deposition given by P.W. 10 Bhola Singh, who was the 1st Investigating Officer, it is revealed that he had recorded the statements of the informant Mahesh Yadav and Simindo Yadav only and thereafter he was transferred and the charge of investigation was handed over to another officer namely Arvind Kumar Yadav. Surprisingly, Arvind Kumar Yadav has also not been examined by the prosecution. It is further submitted that thereafter P.W. 9 Dev Raj Ray took over the charge of investigation on 30th of June, 2011 and from the deposition of the said witness, it is revealed that the said I.O. has recorded the statements of the other so-called eye-witnesses only on 01.08.2011. It is, thus, contended that Rajendra Yadav, Bindeshwari Yadav, Garib Yadav and Manoj Yadav are not the eye-witnesses. Even otherwise, there are major contradictions in their deposition and, therefore, the Trial Court ought to have discarded the depositions given by the aforesaid witnesses. Even P.W.11, the doctor Binod Bisnoi who had conducted the *post mortem* of the dead body of the deceased, has stated that the *post mortem* was conducted on 09.05.2011 and the said witness has further stated that the time elapsed since death is within 48 hours. Learned counsels, therefore, submitted that the medical evidence does not support the version given by the informant and



the so called eye-witnesses.

6.1. Learned advocates for the appellants, therefore, urged that the Trial Court has committed grave error while recording the judgment of conviction and order of sentence. Therefore, this Court may quash and set aside the same and thereby allow all the appeals.

7. On the other hand, learned counsel for the informant and the learned Additional Public Prosecutors have opposed the appeals filed by the appellants. It is submitted that P.W.1 to P.W.5 and P.W. 7 are the eye-witnesses to the occurrence in question and all of them have supported the case of the prosecution. The specific allegation is levelled against the appellant Rajendra Yadav that he fired from his country-made rifle and the bullet hit the chest of the deceased causing his death. The medical evidence also supports and corroborates the case of the eye-witnesses. The Investigating Officers have also deposed the manner in which the investigation was carried out by them and, therefore, there is ample material on record which suggests that the appellants have killed the deceased. It is further submitted that the prosecution has also proved the motive on the part of the appellants to kill the deceased and thereby the prosecution has proved the case against all the appellants beyond



reasonable doubt. Hence, no error is committed by the Trial Court while passing the impugned judgment and order. Learned counsels for the respondents, therefore, urged that all these appeals be dismissed.

8. We have considered the submissions canvassed by the learned counsels for the parties. We have also perused the evidence of prosecution witnesses and also perused the documentary evidence exhibited.

9. At this stage, we would like to appreciate the entire evidence led by the prosecution before the Trial Court.

10. Before the Trial Court, prosecution examined 11 witnesses.

11. P.W. 1 is Simindo Yadav. He has stated in his examination-in-chief that the incident took place one and a half years ago at 06:00 p.m. He was returning from Parsa Haat when he saw that Badri Yadav, Kailash, Shaili Devi, Mithilesh Yadav, Rajendra and Gajen Yadav were present at the door of Badri Yadav. Badri Yadav had caught hold of Ramesh and ordered to shoot him. Ramesh was shot at and he died. The witness was also beaten. Police had come to the place of occurrence. *Post Mortem* was done. He claims to identify all the accused persons by face and identifies accused Rajendra Yadav present in Court.



11.1. In his cross-examination, he has stated that the incident took place on Choukaria road. It was the time of sunset. The occurrence had taken place all of a sudden. On commotion, about 150 persons had assembled, including Sikandar, Girbar, Manoj etc. Before he reached the place of occurrence, 5-6 persons were present. After he reached, only two males and several ladies had arrived. The occurrence continued for 10 minutes. The accused who fired had fled away. He had raised alarm. The deceased Ramesh had received injury in his chest. He had not seen any other injury on his body. A little blood had spilled on the ground. A little blood had spilled on the clothe also. He, Girbar, Sikandar, Manoj, Garib Dav had tried to save Ramesh. He had also received 3-4 *lathi* blows. Other who had tried to save had not received any injury. The police had been informed after 1-1.5 hours after the incident. Police had reached the place of occurrence at about 10-11 hours in the night. When the police arrived, he and the informant Mahesh Yadav were present there. He was discussing about the occurrence with the informant till the police came. *Fardbeyan* was recorded at the door as well as at the police station. Police had recorded his statement at that night. He had given his statement both at the door as well as at the police station. He has stated in para-16 that



the accused had fired with a country-made rifle, 2-21/2 hands in length. The reason behind the occurrence is an election-dispute in which Rajendra had threatened, but no case was lodged for the same, not even in the Gram Kutchery. He has denied the suggestion to have falsely deposed and that due to village politics the accused persons were falsely implicated in the present case.

12. P.W. 2 Garib Yadav has stated in his examination-in-chief that the incident took place one and a half years ago. It was evening. He had gone near the house of Badri Yadav to work as a labourer when he heard a noise and went at the place and saw that Badri Yadav, Rajendra, Gajendra, Akhilesh, Kailash, Shaili and Rajendra together were dragging Ramesh Yadav and brought him to the doorstep and said that this is the main culprit. On this, Rajendra Yadav fired at Ramesh Yadav on his chest with his country-made rifle. Ramesh fell down there itself and breathed his last. Police had come to the place and sent the dead body for *post mortem*. He has stated that he identifies the accused persons. Badri Yadav is present and Rajendra Yadav is in jail custody. He claims to identify him and others also.

12.1. He has stated in his cross-examination that it



was the month of Vaishakh-Jeth, however he cannot tell the date. He has given the description of the place of occurrence from para Nos. 3 to 7. He has stated in para-9 that when he reached the place of occurrence, Rajendra, Gajendra, Badri, Akhilesh, Kailash and Shaili Devi were present there. Sikandar, Girbar etc. had come after he reached. He heard the noise for about 5-10 minutes and then came to the place of occurrence. When he reached there, he had seen the accused person dragging at the door of Badri. He has stated in para-13 that the firing was made all of a sudden. He cannot tell as to how long the occurrence continued. He has denied the suggestion that he is the uncle of Mahesh. He has further denied to be the relative of informant Mahesh. He has further stated that police had reached at 03:00 a.m. The dead body was sent at that very time. He cannot tell when the p.m. came but the dead body was cremated next day evening. His statement was recorded by the police after 2-3 days of the incident. He cannot tell after how many days of the occurrence, the case was lodged. He has stated that police had not recorded his statement at the place of occurrence. Whose statements were recorded at the place of occurrence he is not aware as he had gone to feed his cattle. He cannot say whether police had gone to his house or not. He has also stated that police



had not recorded the statement of Mahesh in his presence. Rajendra and the wife of his younger brother Ramesh Yadav had contested Panchayat Election and both had lost the election. It is not a fact that the accused persons had committed no crime and he had given false evidence being the uncle of the informant. He has denied the suggestion that Ramesh Yadav had fired upon himself and thereby committed suicide.

13. P.W. 3 Manoj Yadav has stated in his examination-in-chief that the occurrence is of two years ago. The time was 06:00 p.m. Rajendra Yadav had fired upon Ramesh Yadav. Badri, Kailash, the witness Ahikesh and Gajendra were with Rajendra. Badri was having a stick in his hand and Kailash was having a spear. Akhilesh was armed with a Farsa. Rajendra had shot at Ramesh Yadav with his country-made rifle. He had died just after receiving gun injury. So many persons had assembled there. Darogaji had come and inquest report was prepared. His statement with regard to p.m. was recorded by Darogaji. He identifies Rajendra who is in judicial custody. He also identifies Badri and others.

13.1. In his cross-examination, he has stated that the name of his father is Mahendra Yadav also. He is also known as Garib Yadav. The incident had taken place on a road. He has



stated in para-4 that the incident of assaulting Mahesh Yadav had taken place 2-4 minutes after he reached at the place of occurrence. In para-6, he has stated that there was mark of one gun-shot injury on the dead body of the deceased. There was no other mark or sign of injury on his body. Police had come to the place of occurrence after one and a half hours. He cannot tell as to who had informed the police about the occurrence. Police remained at the place of occurrence for one hour. Police had left the dead body in the lane. The dead body was taken for p.m. next day. In the night, police had taken the statements of this witness, Mahendra, Samendra and Mahesh. This statement was recorded by the police. He has stated in para-8 that he did not try to save because the accused persons were waiving *Farsa*. He has stated that the deceased Ramesh was his cousin. The informant Mahesh is also his cousin. In para- 10 he has stated that the deceased was wearing a *Banian* and *Lungi*. The *Banian* was smeared with blood. The colour of *Lungi* was green. The blood had spilled over the ground. The police had not seized the blood-stained soil from the place of occurrence. He cannot tell whether the parties were on inimical terms from before. He is ignorant about what happened in Panchayat. They were supporting Raju Jha. The accused persons were supporting Niro Das. He has denied the



suggestion that the accused persons are innocent and they have been falsely implicated due to village politics. He has also denied the suggestion of giving false deposition, being the cousin of the informant.

14. P.W. 4 Rajendra Yadav has stated that the occurrence took place two years ago at 06:30 p.m. When he heard a noise coming from the door of Badri, he went there and saw that a quarrel was going on between Mahesh and Badri versus Rajendra. When Ramesh came, Badri and other accused persons dragged Ramesh to the Badri's doorstep. Rajendra shot at Ramesh Yadav which hit his chest and Ramesh died. The accused persons Badri, Kailash, Mithilesh, Shaili Devi, Rajendra Yadav and Gajendra Yadav were present there. They (prosecution side) took the dead body home. When the police came, inquest report was prepared and p.m. was done at Sadar Hospital, Araria. Rajendra was having a gun in his hand from which he fired while other accused persons were having sticks. He has stated that he identifies accused Badri and Rajendra Yadav who are present. He has claimed to identify others. He has further stated that he does not remember the date and time when he had heard noise from his house. There are 6-7 houses between his house and the house of Badri. The houses of Satya Narain,



Fochu, Mahadeo and Bishundeo fall in between. The commotion continued for 20-25 minutes. Then he proceeded from his house. At that time he was alone at his house. He again states that his children were present at the house. Mother Savitri, wife Beena Devi and Mukesh Yadav, his son all had heard the noise and gone to the place of occurrence. It took him 10 minutes to reach the door of Badri. When he reached the place of occurrence, Ramesh Yadav was alive. Ramesh was shot at. About 20-50 persons were present there. He did not notice as to who others came after him at the place of occurrence. He has further stated that 2-4 minutes after he reached the place of occurrence, the injured died. He and others lifted the dead body with their hands and took to the house. Mahesh Yadav, Bindeshwari and he himself had taken the dead body. Police was informed on the mobile phone of his brother at 7 to 7:30 hours. He does not remember the mobile number. But it was a Micromax mobile. Police from Bhargama P.S. reached the place of occurrence after one to one and a half hours at about 09:00. Police came to his house and recorded the statements of Mahesh, this witness and Bindeshwari. Police returned to Bhargama from there itself. Police took the dead body for p.m. in the night itself on a tractor. He does not know whether the police took the dead body to



Sadar Hospital or to the police station. The dead body was returned after *post mortem* in the morning. P.W. 1 is his cousin and P.W. 2 is his uncle. He cannot tell whether it was a gun or a rifle from which the deceased was shot at. Accused persons were the supporters of Raju Jha. He and others had also voted in favour of Raju Jha. There was no enmity with the accused persons from before. It is a fact that an altercation had taken place during Panchayat Election. Before this, accused persons had not committed any crime. He has denied the suggestion that he had given false deposition, being the brother of the informant and has falsely implicated the accused persons.

15. P.W. 5 is the informant Mahesh Kumar. He has stated that Rajendra Yadav hit him with the butt of the rifle. Others assaulted him with stick and iron rod. When he raised alarm to save, Ramesh came to his rescue upon which Rajendra shot at him with rifle. The bullet hit his chest. Ramesh died at the place. Police was informed. Police reached after two hours. He gave his *fardebayan* which bears his signature and he identifies the same (Ext-1). The police prepared the inquest report which also bears his signature and he identifies the same (Ex-2). Then the police took the dead body to Araria for p.m. He claims to identify all the accused persons.



15.1. In his cross-examination, he has stated that he does not remember the exact date or day. The incident took place on 08.05.2011. He has further stated that at the time of occurrence he was returning from Parsa Haat on a motorcycle belonging to his brother-in-law bearing Regn. No. BR-38-8010. He was himself driving the motorcycle, though he has no driving licence. It was the time of sunset. The occurrence continued for half an hour. When he reached there, Rajendra Yadav, Manoj, Mahendra, Shivendu, Girbal etc. were present. So many persons reached there after the incident also, such as Mahadeo, Sadanand, Budhai Yadav. The police was informed on his brother Rajendra's phone at 06:30 p.m. Police came at 09:00 p.m. When the police came, the dead body had already been brought to the door. Police remained there for two hours. The police party consisted of 15-16 persons. *Panchnama* was prepared at the police station, but he cannot say as to whose statements were recorded. Thereafter, they cremated the dead body. Police again came next day. He cannot say as to whose statements they recorded that day. Though he had given his statement on the date of occurrence in the evening, but he was again interrogated. Rajendra was having a country-made rifle. He has further stated that Akhilesh was having an Iron rod. Badri



and Shaili Devi were having stick, Kailash and others were having stick and Iron rod. Rifle was 2/5 hand long. Rod was also of the same length. The police could not recover these articles because the accused persons had already fled away. He has stated that the deceased was his full brother who had received the bullet injury. He has stated that Rajendra is his full brother. Rajendra had contested election and had threatened to teach a lesson after the election is over. The accused persons had not committed any crime with him. The incident had taken place all of a sudden. Huge quantity of blood had spilled over the ground. The clothes were also blood-stained. What items the police seized, he does not know. He has denied the suggestion of giving false deposition or of falsely implicating the accused persons.

16. P.W. 6 Ram Sevak Mandal has not supported the case of the prosecution and has been declared 'hostile' by the prosecution.

17. P.W. 7 Satya Narain Mandal has not supported the prosecution-case. He has stated that he has no personal knowledge of the occurrence nor he had heard about the said incident.

18. P.W. 8 Bindeshwari Yadav has stated in his examination-in-chief that Mahesh Yadav has lodged the present



case. The occurrence took place on 2011 at the time of sunset. His son was shot at by Rajendra Yadav at the door of Badri Yadav. His name was Naresh Yadav. He died due to bullet injury. He saw at the place of occurrence that Rajendra Yadav, Gajendra Yadav, Badri Yadav, Shaili Devi, Kailash Yadav and Akhilesh Yadav. He had gone there on hearing the noise. Firing was made in his presence. Police had come to the place of occurrence after the incident of firing. His statement was also recorded. He identifies Rajendra Yadav who is present and claims to identify others also. Second Rajendra is his son and is a witness in this case.

18.1. In his cross-examination, he has stated in para-3 that he had heard the noise at 05:30 in the day and he reached the place of occurrence within 10-15 minutes. Besides him, about 5-7 persons are in his family. All of them came on hearing the noise. He further adds that only male members had come. Garib Das, Manoj Yadav, Suvindo Yadav, Sikandar Yadav and Rajendra Yadav S/o Bindeshwari Yadav had come. Aforesaid persons had reached the place of occurrence before him. When he reached, he saw 40-50 persons there. He can name a few of them such as Sachidanand, Dinesh Yadav etc. He has specifically stated in para 5 that the firing took place in his presence. The



moment bullet hit the deceased, he fell down. There was a mark of injury in his chest. The police was informed by some inmate of his family. He had not given any information. Police had reached at 06:00 p.m. and remained there for one hour. Police returned. One person took the dead body next day on a tractor. He had not gone with the dead body. However, 5-6 persons had gone, such as Raj Narayan Yadav, Janardan, Ashok Yadav, Anil Yadav (illegible), Mandal and Birbal Yadav. Police had recorded his statement at 05:30. The statements of Rajendra Yadav, Garib Das, Manoj Yadav, Suvindo Yadav and Bindeshwari Yadav were recorded the same day. Police took his statement twice, i.e. on the date of occurrence and after 3-4 days. Police had come to the place of occurrence only once. He has stated that Mahesh Kumar Yadav is his son who has lodged the case. There was enmity with the accused persons due to *Panchayat* election. He has denied the suggestion that Ramesh Yadav was not killed by the accused persons rather someone else had killed him due to rivalry as he had criminal background. He has also denied the suggestion that due to election dispute the accused persons were falsely implicated in the present case. He has also denied the suggestion that he had not himself seen the occurrence.

19. P.W. 9 Dev Raj Rai has stated that on



08.05.2011, he was posted at Bhargama Police Station on deputation. Bhargama P.S. Case No. 43 of 2011 was registered by SHO Bhola Singh. The witness took over the charge of investigation on 30.06.2011. Fardbeyan is in the pen and signature of Bhola Singh. Its pagination is also in his pen and signature (Ext-3). Formal FIR is also in his pen and signature (Ext-3/1). The witness recorded the statement of the friend of the informant Rajendra Yadav, Bindeshwari Yadav, Garib Yadav and Manoj Yadav. Before him, Bhola Singh had also carried out part of the investigation. The witness submitted the charge-sheet against Badri Yadav, Kailash Yadav, Akhilesh Yadav and Surendra Yadav under Sections 147, 148, 149 342, 323, 324, 302 504 & 514 of IPC and 27 of the Arms Act. Ramesh Yadav, brother of Mahesh Yadav, was killed by his accused brother when he was coming from Hatia. Para 1 to 21 of the case diary is in the handwriting of Bhola Singh. Para 22 was written by Arvind Kumar Yadav. Para 23 to 139 is in the handwriting of this witness. The place of occurrence is the door of Badri Yadav. The other place of occurrence is the door of Satya Narayan Mandal where assaults were made on the prosecution side. The accused had made firing at the door of Badri Yadav. Before that prosecution side was assaulted at the door of Satynarayan. He



was posted at Bhargama from April, 2011 to July, 2012. He had taken over the charge of investigation after one and a half months. He had noted down the date of inspection of the place of occurrence as 18.07.2011. He had gone at 12:20 in the night. He inspected the place and returned. He had inspected both the place of occurrence but did not find any incriminating article, though he tried a lot. He has stated that he had recorded the statements of the witnesses. He had recorded the statement of Rajendra Yadav first of all, at his house. He had recorded the statements of other witnesses the same day. He had recorded the statements of Rajendra Yadav, Bindeshwari Yadav, Garib Yadav and Manoj Yadav on 01.08.2011 at 12:00 noon. It took him two hours to record the statements. He is not aware whether his predecessor Bhola Babu had recovered two (illegible). He has no knowledge of seizure of the bullet of rifle. He has denied the suggestion that on the instruction of his superior officer, he had submitted a false charge-sheet.

20. P.W. 10 Bhola Singh is the first Investigating Officer. He has stated in examination-in-chief that on 08.05.2011, he was posted as the SHO of Bhargama Police Station. The *fardebayan* of Bhargama P.S. Case No. 43 of 2011 is in his pen and signature. Rajendra Yadav had also put his



signature in his presence as a witness. Informant Mahesh Yadav has also put his signature. He has identified his signature. He has also identified the pagination done in his pen and signature. He has also stated that the formal F.I.R. is also in his pen and signature. He had himself taken over the charge of investigation of the present case. During the course of investigation, he had visited the place of occurrence where the dead body of Ramesh Yadav was lying. He had prepared the inquest report which is in his pen and signature. This is a carbon copy of the original which has been prepared in the same process. The original copy he had sent to the doctor for the purpose of p.m. The 1st place of occurrence is the outhouse in front of the house of Satya Narain Mandal. The 2nd place of occurrence is the tin thatched house situated in the east of the house of (illegible) son of late Gagan Yadav where the deceased was shot dead. He brought the deceased to the door of his house. He had not found any incriminating article at the place of occurrence. In course of investigation, he had recorded the statements of informant Mahesh Yadav and Simando Yadav. After that he was transferred and he handed over the charge of investigation to Arvind Kumar Sao.

20.1. In his cross-examination he has stated that he



was at Bhargama from 15.08.2010 and had given the charge of investigation on 15.08.2011. The informant had informed about the occurrence on 08.05.2011. He does not remember the exact time. He does not remember the details of *Sanha* submitted. He had not mentioned about any *Sanha* in the case diary. He has stated that he got the information about the occurrence at 03:00 a.m. He has stated in para-5 that he stayed at the place of occurrence from 09:30 p.m. on 08.05.2011 to 02:00 a.m. on 09.05.2011. He, first of all, had recorded the statement of the informant. Thereafter he prepared the inquest report. He had not seized any bullet from the place of occurrence. He himself states that he had mentioned about registration of *Sanha* in para-10. He has stated in para-9 that formal F.I.R. was registered at the police station whereas *fardebayan* was recorded at the place of occurrence. He had registered the formal F.I.R. at 03:00 a.m. on 09.05.2011 and, by mistake, he had mentioned the date as 08.05.2011 in place of 09.05.2011. He had visited the place of occurrence twice-1st time alone and 2nd time with the D.S.P. He has not mentioned to have gone with D.S.P. in the case diary. In para-10 he has stated that he tried to recover the rifle, but could not recover. He had sent the dead body for *post mortem* at night itself, however, he does not remember the exact time. He has



denied the suggestion that the investigation carried out by him is faulty.

21. P.W. 11 is Dr. Binod Bisnoi. He has found the following injuries on the dead body:

External

“rigor mortis present in poor limbs.

No decomposition.

External Injury.

(1) One gun shot injury entry wound ½” in diameter just lateral to the left nipple with margins inverted charring and tattooing in area of 5” in diameter plus cavity deep.

On opening the forensic cavity.

(1) Filled with blood. Tiled

(2) Large vessels, Lung, Pleura, Pericardium, Heart torified. On opening the cranial and abdominal cavities, the corresponding viscera were intact and incite.

Note- The bullet is not located due to non availabilities of proper facilities.

Time elapsed since death and P.M. held within 48 hours.

Death, in my opinion, due to Hemorrhage and shock as a result of above mentioned firearm injury.

This *post mortem* report in my pen and signature marked Ext.-4.”

21.1. In his cross-examination, he has stated that the bullet was shot from a distance of 30 c.m. The dead body was brought to him by *Chaukidar*. On identification of the dead body by him, *post mortem* was done. The dead body was received on 09.05.2011. The very same day at 10:15 the dead body was



examined which took half an hour. The dead body was examined in the *post mortem* room. He cannot tell the time taken in preparation of the report. In para-8 he deposes that a circular gun-shot injury was found on the chest, which was of one and a half inch in size. Supporting staff were also present at the time of *post mortem*. To his knowledge, the age of injury was between 12 to 48 hours. He has denied the suggestion that the *post mortem* was faulty.

22. We have considered the submissions canvassed by the learned counsels for the parties. We have re-appreciated the entire evidence led by the prosecution. We have also perused the material placed on record.

23. It would emerge from the record that P.W. 5 Mahesh Yadav is the informant whose *fardbeyan* was recorded on 01.08.2011 at 09:00 p.m., wherein he has stated that at about 06:30 p.m., when he was returning on his motorcycle with one Anil Yadav and they came near the house of Satya Narain Mandal, they saw that all the accused named in the F.I.R. came at the place with deadly weapons and they started beating the informant near the house of Satya Narain Mandal. At that time, his brother Ramesh Yadav and Simindo Yadav came there with a view to rescue the informant. Thereafter, Badri Yadav dragged



Ramesh Yadav near his house. At that time, Rajendra Yadav fired from his country-made rifle and the bullet hit the chest of the brother of the informant. When Simindo Yadav tried to intervene, all the other accused persons gave stick blows to him. At that time, the other persons came upon hearing the commotion and sound of firing. When they saw, they found that Ramesh Yadav had died because of the gun-shot injury.

23.1. At this stage, if the deposition given by P.W. 1 Simindo Yadav is carefully examined, in his examination-in-chief the said witness has only stated that when he was returning from Parsa Haat, he saw that near the house of Badri Yadav, all the named accused were present and Badri Yadav caught hold of Ramesh Yadav and ordered to shoot him. Thereafter, he was shot at. The said witness was also assaulted. He has further stated that the police was informed after one and a half hours of the occurrence and police came at the place of occurrence around 10-11 p.m.

23.2. Thus, from the deposition of the said witness, it is revealed that this witness has not given the name of the accused who had fired on the deceased.

23.3. At this stage, the deposition of P.W. 5 is also required to be examined carefully. P.W. 5 is the informant. The



said witness in his examination-in-chief has also given the name of all the accused. He has stated that he also sustained injury because of the assault made by the accused. He has also stated that there was huge blood spilled over the earth and the clothes were also blood-stained. However, he is not aware whether the same were seized by the Investigating Officer or not.

23.4. Thus, from the deposition of the aforesaid two witnesses, it is clear that there are major contradictions in their deposition. Further, though the said witnesses sustained injury, their injury report are not produced by the prosecution. The deposition of the doctor who had treated them in the hospital is not coming out on record. It is not in dispute that both these witnesses are the near relatives of the deceased and, hence, their deposition is required to be scrutinized carefully.

23.5. It is pertinent to note that merely because the witnesses are near relatives and interested witnesses, their deposition cannot be discarded simply on that very ground. However, deposition of said witnesses requires to be scrutinized closely and carefully. If a witness is trustworthy, his version can be accepted. However, in the present case, from the deposition of the aforesaid two witnesses and the conduct of the said witnesses, we are of the view that they are not trustworthy and



there are major contradictions and inconsistencies in their deposition. Hence, we are of the view that they are projected as eye-witnesses, but their presence at the place of occurrence is doubtful.

23.6. It is relevant to note at this stage that, as per the case of the prosecution, P.W. 2 Garib Yadav, P.W. 3 Manoj Yadav, P.W. 4 Rajendra Yadav, P.W. 7 Satya Narain Mandal and P.W. 8 Bindeshwari Yadav also reached the place of occurrence and they are also eye-witnesses. However, from the deposition given by P.W. 10 Bhola Singh, it is revealed that the charge of investigation was taken over by him on 08.05.2011 and during the course of investigation, when he reached at the place of occurrence, he had recorded the statements of only two witnesses i.e. Mahesh Yadav, the informant, and P.W. 1 Simindo Yadav. It is surprising that though other witnesses are shown as eye-witnesses, their statements were not recorded by the Investigating Officer. It is also revealed from the deposition given by P.W. 9 Dev Raj Ray, who is the 2nd Investigating Officer, that the charge of investigation was handed over to him on 30th of June, 2011 and, during the course of investigation, he had recorded the statements of P.W.1 to 4 and 8 only on 01.08.2011. Thus, from the aforesaid deposition, it is revealed



that, though the aforesaid witnesses have claimed that they are eye-witnesses to the occurrence in question, they have given their statements before the police after a period of more than two and a half months of the occurrence. Even otherwise, there are major contradictions and inconsistencies in the depositions of the aforesaid so called eye-witnesses.

23.7. Further, P.W.11 is Dr. Binod Bisnoi who had conducted the *post mortem* of the dead body of the deceased. The said doctor conducted the *post mortem* on 09.05.2011 when he was posted at Sadar Hospital. The said witness has stated the time elapsed since death to be within 48 hours. He had conducted the *post mortem* at 10:15 a.m. Thus, the *post mortem* was conducted within 16 hours. However, the doctor has stated the time elapsed since death to be within 48 hours. Thus, we are of the view that the medical evidence does not support the version given by the so called eye-witnesses that the occurrence took place on 08.05.2011 at about 06:30 p.m.

23.8. From the evidence led by the prosecution, it is further revealed that the Investigating Officer did not seize the blood-stained soil from the place of occurrence nor the blood-stained clothes of the deceased were sent for necessary analysis to the Forensic Science Laboratory. Even there is no



recovery/discovery of the weapon allegedly used in commission of the alleged incident from any of the appellants. It is further revealed that it is the specific defence of the appellants that they have been falsely implicated in the present case because of the election dispute.

23.9. Thus, from the aforesaid evidence led by the prosecution, we are of the view that the prosecution has failed to prove the case against the appellants beyond reasonable doubt, despite which the Trial Court has recorded the impugned judgment of conviction and order of sentence. We have also gone through the reasoning recorded by the Trial Court and we are of the view that the Trial Court has committed grave error while passing the impugned judgment and order. Hence, the same deserve to be quashed and set aside.

24. Accordingly, the impugned judgment of conviction dated 13.06.2018 and order of sentence dated 14.06.2018 passed by the learned 3rd Additional District and Sessions Judge, Araria, in connection with Sessions Trial No. 1151/2012, T.R. No.64/2017 (arising out of Bhargama P.S. Case No. 43/2011) are quashed and set aside. The appellants are acquitted of the charges levelled against them by the learned Trial Court.

24.1. Since the appellant, namely Rajendra Yadav (in Cr. Appeal (D.B.) No. 940 of 2018) is in jail, he is directed



to be released from custody forthwith, if his presence is not required in any other case.

24.2. Rest all the appellants are on bail. They are discharged from the liabilities of their bail-bonds.

25. The Patna High Court Legal Services Committee is, hereby, directed to pay ₹ 3,000 (Rupees Three Thousand) to Sandeep Kumar Pandey, learned *Amicus Curiae* as consolidated fee for the services rendered by him.

(Vipul M. Pancholi, J)

(Ramesh Chand Malviya, J)

K.C.Jha/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	17.05.2024
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