

CASE NO.:

Appeal (crl.) 483 of 1996

Appeal (crl.) 484 of 1996

PETITIONER:

Gaya Yadav & Ors.

RESPONDENT:

State of Bihar & Ors.

DATE OF JUDGMENT: 18/02/2003

BENCH:

Y.K. SABHARWAL & H.K. SEMA

JUDGMENT:

J U D G M E N T

SEMA, J.

A-1 Gaya Yadav s/o Raj Dev Yadav, A-2 Madheshwar Yadav s/o Rohan Yadav, A-3 Khalitra Yadav, A-4 Rahish Yadav s/o Ram Laxman Yadav, A-5 Bhagwat Yadav s/o Ram Kishan Yadav, A-6 Mukhiya Yadav s/o Shiv Nandan Yadav, A-7 Ramashish kr. @ Karu Yadav s/o Shiv Pd. Yadav, A-8 Deo Prasad Yadav s/o Chandrika Yadav (since dead) were convicted for the offence under Sections 302/34, 120-B, 147 and 148 of the Indian Penal Code and were sentenced to rigorous imprisonment for life under the first two counts. No separate sentences were awarded for the offences under Sections 147 and 148 IPC. Being aggrieved, two appeals were preferred before the High Court. Criminal Appeal No. 213 of 1989 was preferred by five accused and Criminal Appeal No. 216 of 1989 was preferred by three accused. By a common judgment the High Court has dismissed their appeals and confirmed the conviction as recorded by the Trial Court. Before this Court, Criminal Appeal No. 483 of 1996 is preferred by A-1 Gaya Yadav, A-5 Bhagwat Yadav and A-6 Mukhiya Yadav. Criminal Appeal No. 484 of 1996 is preferred by A-2 Madheshwar Yadav, A-3 Khalitra Yadav, A-4 Rahish Yadav, A-7 Ramashish Kr. @ Karu Yadav and A-8 Deo Prasad Yadav. During the pendency of the appeal before this Court, A-8 Deo Prasad Yadav, expired and his appeal stands abated.

Shorn of necessary details, the prosecution story, briefly stated is that ferd-beyan (Ext.2) was lodged by Lallan Bharti (PW3) that on 15.3.1987 at about 7.30 p.m. the deceased Jagannath Singh, who was the Mukhiya of Mau Gram panchayat, was meeting people in Mau Bazar, where the informant was also present and talking to him. The accused Gaya Yadav who belongs to the neighboring village Kurkut Bigha came there and requested the deceased for supper for the night in his village on the occasion of "Holika Dahan". The deceased was reluctant to accept the invitation on the ground that he has to meet several people and it would become late. At this time, the accused Karu Yadav, who is also of the village Kurkut Bigha arrived there and both the accused namely Gaya Yadav and Karu Yadav, insisted upon Mukhiya for the supper and assured him that he would be allowed to return soon and there would be no delay. The deceased succumbed to the request of the accused and decided to go and PW-3 the informant also accompanied him. It is stated that it was a moonlit night. The deceased Mukhiya, PW-3 Lallan Bharti and accused Gaya Yadav and Karu Yadav started for village Kurkut Bigha. As they came out of Mau village, PW-3 saw 9-10 persons coming from the opposite direction. PW-3 thought that these persons might be going somewhere on the occasion of "Holika Dahan". Soon those persons came closer to them and the accused Gaya Yadav and Karu Yadav gave a push to the deceased Mukhiya and thereafter all other accused persons surrounded him. Out of them he could recognize Bhagat Yadav, Mukhiya Yadav, Madeshwar Yadav, Rahish

Yadav, Deo Prasad Yadav and Khalitra Yadav. Having seen the accused surrounding the deceased the informant retreated about 10-15 steps backward and thought that the accused persons would leave the deceased Mukhiya but instead accused Khalitra Yadav and Rahish Yadav caught hold of Mukhiya and accused Gaya Yadav and Bhagat Yadav fired at him from country made pistol. Thereupon, Mukhiya fell down. Thereafter, the accused Mukhiya Yadav who was armed with pausli bent over Mukhiya as if he was cutting the neck of Mukhiya. Simultaneously, all of them were uttering that Mukhiya should not survive. Being frightened the informant fled away from the scene. While fleeing he also saw 2-3 persons in the neighboring fields. He came back to Mau village and narrated the story about the occurrence. He further mentioned in ferd-beyan that while the accused Gaya Yadav and Karu Yadav were inviting Mukhiya for supper in the village Kurkut Bigha some persons of villages Sukata and Mau were also present. The ferd-beyan was recorded at 11.30 p.m. on the same night.

PW-3 Lallan Bharti is the sole eyewitness. Nothing has been brought to our notice that the witness is related to the deceased. There is also no material, which would disclose the animosity between the witness and the accused. A suggestion was put to this witness that he is distantly related to the deceased to which he flatly denied. On the other hand, evidence disclosed that this witness was close to the deceased Mukhiya, would suggest that at the time of incident this witness was with the deceased Mukhiya would be quite natural and plausible, which would fortify his statement that he was with Mukhiya at the time of incident. Undisputedly, this witness is an independent witness. Similarly, being close to the deceased, the witness in the ordinary circumstances would not depose falsely against the accused and allow the real assailants being escaped unpunished. He has consistently deposed during the trial what has been stated by him in the ferd-beyan. At the risk of repetition we may recapitulate the sum and substance of what this witness has stated during the trial. In the evening of 15.3.1987 when the deceased Mukhiya was meeting people in Mau bazar on the eve of "Holika Dahan" the witness was also with him. First the accused Gaya Yadav requested the deceased to have supper in Kurkut Bigha on the occasion of "Holika Dahan" followed by the accused Karu Yadav which was reluctantly accepted by the deceased. The deceased along with the informant accompanied by two accused then started for village Kurkut Bigha to take supper. It was bright full moonlit night. When they came out of Mau village the witness saw 9-10 persons coming towards them at about 7.45 pm. and when they were near the Kahua tree accused Gaya Yadav and Karu Yadav pushed the deceased down and then all the accused surrounded the deceased. The informant went back 4 or 6 steps from where he saw that Rahish Yadav and Khalitra Yadav were catching hold the two arms of the deceased and the accused Gaya Yadav and Bhagwat Yadav each fired a shot from the pistol at the deceased who fell down. Thereafter, the accused Mukhiya Yadav began to cut the neck of Mukhiya by pausli. Being frightened, the informant fled away from the spot and came to the darwaja of the deceased and narrated about the occurrence, when among others Jaiprakash Narayan Lal Singh (PW9) also reached there. He further stated that he wanted to go to the police station but people told him that the officer-incharge had gone to Agar village for Holi duty. This witness, further, stated that Mukhiyajee was a nice man of the area and the witness supported him in every election. He further stated that the firing was done from a distance of about 1- yards. Accused Gaya Yadav fired from the west and Bhagwat fired from south-west and the deceased was facing towards the west.

The statement of PW-3 with regard to the invitation extended by the accused to the deceased Mukhiya on 15.3.1987 is well corroborated by the statements of PW-4 and PW-5. PW-4 Ram Ashray Sharma and PW-5 Girish Narain Singh had seen the deceased in the company of the accused Gaya Yadav and Karu Yadav along with the informant when those two accused were inviting the deceased for supper. PW-4 Ram Ashray Sharma stated that on 15.3.1987 at about 1.30 p.m. he had gone to Mau Bazar and before him accused Gaya Yadav, Mukhiya Yadav and Bhagwat Yadav had met Mukhiyajee. Gaya Yadav had invited him for supper which the victim accepted saying that he would try to come after 6.00 p.m. This witness

further stated that the Investigating Officer had met him at about 11.30 p.m. near the dead body. He further stated that he had not made any attempt to give information, as his priority was to search the body. He also stated that he told the police that PW-3 Lallan Bharti had given out the names of the murderers. He further stated that the police had recorded the statement of Lallan Bharti at 11.30 p.m. He further stated that he had voted for Mukhiya in the election, as he was a good candidate.

PW-5 Girish Narayan Singh stated that on 15.3.1987 at about 5.00 p.m. he had gone to Kuldip Mochi and while returning from there at about 7.00 p.m. he had met the deceased at the crossing of the land near the house of Krishan Sao. The deceased was with the informant, accused Gaya Yadav and Karu Yadav. PWs 6, 9 and 11 also deposed about meeting the deceased in the bazar. PW-6 deposed that he met the deceased in the Mau bazar while PW-3, accused Gaya Yadav and Karu Yadav were with the deceased and on his inquiry as to where they were proceeding, the deceased Mukhiya told him that he was going to the place of Gaya Yadav being invited for supper.

The testimony of PW-3 has been assailed by counsel for the appellants on the ground that his ocular testimony is in contradiction with the medical evidence. Mr. Anoop G. Choudhary, learned senior counsel, strenuously urged that PW-3 deposed that Gaya Yadav and Bhagwat Yadav fired at him by a country made pistol upon which the victim fell down, whereas PW-10 Dr. Mithlesh Kumar Sinha found only one gun shot injury. Dr. Mithlesh Kumar Sinha conducted the post mortem and found the following injuries:-

(1) "Incised wound over front side of neck and middle. All structures were found sharply cut including by injuries, oesophagus, blood vessels, nerve muscles and thin fourth cervical vertebra. Head was found attached with neck with skin of neck only. Margins of wound were well defined.

(2) Incised penetrating wound over front chest on upper part " below suprasternal notch into chest cavity deep. Body of sternum was sharply cut and both lungs were found lacerated. Chest cavity was found with blood and blood clot.

(3) Incised penetrating wound on right part of abdomen 2" right from umbilicus size 1" x " abdominal cavity deep peritoneum and coil of intestine were sharply cut at places. Peritoneum cavity was found filled with blood clots.

(4) One circular wound of entry of size " with inverted and blacked margin over left part of lower part of chest with tattooing of area three inches around the main wound of entry. Direction sound was from left side towards right horizontal. Bullet was lodged into substance of soft tissues of right side chest which had been recovered and was forwarded in sealed cover. There was laceration of spleen, liver and coil of intestine."

According to the learned counsel this discrepancy is substantial and fatal to the prosecution case and therefore the evidence of PW-3 does not inspire any confidence which would form the basis for conviction. In this connection Mr. Choudhary has drawn our attention to the deposition of PW-3 in cross-examination in paragraph 44 of the statement where he stated as under:-

"Mukhiyaji was rounded up while he was standing. He fell down after being hit by two gunshots. The bullets hit him immediately one after the other. Yet I stood there. I remained there for 1 minutes after that."

In his statement in chief the witness succinctly stated in para 8 as under:-

"Due to fear I went behind 5-6 (DEC) steps. After turning when I moved ahead I saw that Rahis Yadav and Khalidar Yadav were holding the arm of Mukhiyaje. Gaya Yadav took out the country made pistol from his waist and fired shot at. Bhagbat Yadav fired from the country made pistol which hit him. Mukhiyaji fell down."

From the statement in chief it clearly appears that out of the two shots fired one by accused Gaya Yadav and the other by accused Bhagwat Yadav, the one fired by Bhagwat Yadav from the country made pistol hit the deceased. The word "which hit him" is qualified by the word "Mukhiyaji fell down". It would, therefore, be clear from the statement in chief that only one bullet hit the deceased. From the above statement of PW-3 one thing is very clear that two shots were fired. PW-3 saw the firing at the distance of 5-6 steps from where it would be humanly difficult to see which of the bullet hit the deceased and which one not. It was a moonlit night and although there was a visibility, at a little distance the vision would be obscure. There was every possibility of one shot being missed the target even at a close range, unless the shot is fired by an expert hand. This apart, the I.O. PW-12 Raghunath Choudhary seized two empty cartridges vide recovery memo (Ext.3/1). This would clearly corroborate the testimony of PW-3 that two shots were fired. In the circumstances aforesaid the discrepancy appearing in chief and cross-examination in the deposition of PW-3 is too tenuous ground for rejecting or even doubting otherwise the credibility and truthful testimony of PW-3. We are, therefore, clearly of the view that the testimony of PW-3 is trustworthy, inspires confidence and on the basis of which the prosecution has established its case beyond all reasonable doubts.

Mr. Choudhary next contended that the prosecution has not been able to establish the place of incident inasmuch as the dead body of the deceased was said to have been recovered 200 yards away from the place of incident. The sketch map shows that there were bloodstains at both the places (1) near the kahua tree (the place of occurrence) and (2) the place where the dead body was recovered. PW-1 Umesh Sharma deposed that he had seen the accused talking with the deceased. He also said that on 15.3.1987 he was watching his gram field which is at a distance of about 60 yards towards west from the Kahua tree and heard the sound of two fires and also alarm of PW-3 that Mukhiyaje is being killed. He was running towards the east and while moving further he saw 8-10 persons carrying the dead body. He further stated that he could identify the accused. Two persons had country made gun/pistol. One of them had pausli. The others had guns. Accused Gaya Yadav and Bhagwat Yadav had pistols. He identified all the eight accused in a moonlit night. He had also seen PW-2 Jai Prakash Bharti running towards Mau village. PWs 2 and 3 reached the dalan of the deceased earlier than the witness. Thereafter, they went in search of the dead body with patromax and the dead body was found in the field of Rajdeo Singh, 200 yards away towards the south from the Kahua tree. PW-2 has also seen the dead body of the deceased being taken away by the accused. He stated that he was in his Mueshari field. He further stated that towards the south of the road is a Kahua tree. He stated that he heard the sound of gun fire from the side of the kahua tree. He went running towards the road and saw PW-3 crying and running towards the east. He also saw the accused lifting away the dead body of the deceased. He then went running towards the door of Mukhiya and on search the dead body of Mukhiya was found in the field of Rajdeo Singh. From the statements of PWs 1 and 2 it is noticed that the deceased was murdered near Kahua tree and the dead body was carried away to a place 200 yards away from where it was found.

Mr. Choudhary further contended that as the deceased suffered formidable bodily injuries including the slitting of throat, a lot of blood must have oozed out, but there was no trail of blood in between the distance of kahua tree where the incident alleged to have taken place and the place of

recovery of the dead body which would render the prosecution story about the place of occurrence doubtful. We are not at all impressed by such submission. It is in the evidence on record that after the dead body was found there was a melee and huge gathering of villagers at the spot. In such a situation the trail of blood would get disintegrated. Since the IO had arrived at the place of incident only at 11.30 p.m. there would be no evidence of the trail of blood left at the time of the arrival of the IO. Serious attempts have been made to discredit the prosecution story for non-mentioning kahua tree in the ferd-beyan. Kahua tree was mentioned by PWs to indicate the place of occurrence. As noticed, bloodstain was collected from the place of occurrence (near kahua tree). This would clearly establish that the first occurrence had taken place near the place of kahua tree. Non-mentioning of kahua tree in the ferd-beyan is, therefore, irrelevant, for establishing the place of occurrence.

Contention has also been raised by the learned counsel for the appellants that sanha no.2000 dated 15.3.1987 at the outpost Mau village was given by PW-14 Satyendra Narain Singh, son of the deceased without naming the accused. PW-14 Satyendra Narain Singh was examined and he has denied to have given any information at the outpost. On the other hand, it is revealed from the evidence of IO PW-12 Raghunath Choudhary that the sanha 2000 dated 15.3.1987 has been entered in the Mau outpost on hearing a rumour that somebody has been murdered. Contention has also been raised that there was delay in lodging the ferd-beyan. Ferd-beyan was lodged at 11.30 p.m. though the Mau outpost is about 150 yards away from the residence of the deceased, it is contended. PW-3 the informant has stated that he was busy in searching the body and he could not lodge the ferd-beyan in time. He also stated that people told him that the officer incharge of Mau outpost had gone to Agar village for Holi duty. He has also stated that Tekari police station is about 5 miles away from the place of occurrence and conveyance was not easily available. In the aforesaid circumstances lodging of ferd-beyan at 11.30 p.m. is inconsequential.

What is deduced from the aforesaid facts and circumstances is that the prosecution has been able to establish its case against accused A-1, Gaya Yadav, A-5 Bhagwat Yadav, A-6 Mukhiya Yadav and A-7 Ramashish Kr.

@ Karu Yadav beyond all reasonable doubts and the appeals in respect of them are, accordingly, dismissed. As already noticed, A-8 Deo Prasad Yadav had died during the pendency of the appeal and his appeal stands abated.

So far as A-2 Madheshwar Yadav, A-3 Khalitra Yadav and A-4 Rahish Yadav are concerned, there is no evidence to show that they have shared the common intention to murder the deceased. No overt act has also been attributed to them. Therefore, the prosecution has failed to establish its case against them for the offence under Sections 302/34 IPC beyond reasonable doubts. Their appeal is, accordingly, allowed. They are acquitted of all the charges levelled against them. Their conviction and sentence are set-aside. They are set at liberty if not wanted in connection with any other case. Their bail bonds are cancelled and sureties discharged.

A-1 Gaya Yadav, A-5 Bhagwat Yadav, A-6 Mukhiya Yadav and A-7 Ramashish Kr. @ Karu Yadav are on bail. They are directed to surrender to their bail bonds and serve out the sentence.

The appeals are disposed of in the above terms.

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JUDIS