

Rajendra Yadav and Another Vs. the State of Bihar

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Court : Patna

Decided On : Feb-26-2014

Judge : Aditya Kumar Trivedi

Appeal No. : Criminal Appeal (SJ) No. 143 & 165 of 2013

Appellant : Rajendra Yadav and Another

Respondent : The State of Bihar

Judgement :

1. In Criminal Appeal no.165 of 2013, wherein Upendra Yadav, happens to be the appellant, in Cr. Appeal no.143 of 2013, wherein, Rajendra Yadav, happens to be the appellant, commonly originate against the judgment of conviction dated 19.02.2013 and sentence dated 21.02.2013 rendered by the Ad hoc Additional Sessions Judge-I, Banka in Sessions Trial No.1248 of 2007/ Suppl. Tr. No.245 of 2013 and on account thereof, there has been analogous hearing and being disposed of commonly.

2. Appellant Upendra Yadav has been found guilty for an offence punishable under Section 307 of the I.P.C. whereunder has been directed to undergo rigorous imprisonment for ten years as well as also slapped with fine appertaining to Rs. 25,000/- in default thereof to undergo Simple Imprisonment of one year additionally, under Section 341 of the I.P.C. to undergo Simple Imprisonment for one month as well as also slapped with fine appertaining to Rs.5,00/- in default

thereof to undergo Simple Imprisonment for seven days additionally with a further direction to run the sentences concurrently while appellant Rajendra Yadav has been found guilty for an offence punishable under Section 307/109 of the I.P.C. and has been directed to undergo R. I. for seven years as well as also fined of Rs.50,000/- in default thereof to undergo Simple Imprisonment of one and half years additionally.

3. PW-7 Mathura Yadav gave his fard-beyan on 07.04.2005 at about 11.00a.m. at Sadar Hospital, Banka in injured condition along with his younger injured brother Baleshwar Yadav, disclosing therein that on the same day at about 7.00 a.m. while his mother, wife and sister in-law (Bhabho) were harvesting wheat crop at village Murli and were gossiping adverse to Rup Lal Yadav, which was heard by Rup Lal Yadav and on account thereof, he raised alarm attracting his other brothers who assaulted his mother, wife and Bhabho with Lathi. After coming to know about the same, he along with his younger brother Baleshwar Yadav had gone to the place of occurrence no sooner than Baleshwar Yadav, Rup Lal Yadav armed with Sword, Shambhu Yadav armed with Sword, Upendra Yadav armed with Farsa, Manoj Yadav armed with Lathi encircled. Rajendra Yadav, who was armed with gun and his younger brother Binod Yadav armed with Lathi were provoking the remaining accused to do away with their life and on account thereof, Rup Lal Yadav gave Sword blow over his neck, which was prevented by him and on account thereof, got his finger of both the hands cut. Baleshwar Yadav rushed in his rescue, who was repeatedly assaulted by Upendra Yadav with Farsa. When village people tried to intervene, Rajendra Yadav terrorized them by making indiscriminate firing from his rifle. Then thereafter all the accused left the scene. They also took away harvested wheat crop. Thereafter both the injured were lifted to hospital. Baleshwar Yadav and Govind Yadav stood as F.I.R. attesting witness.

4. Banka P. S. Case no.96 of 2005 was registered on the basis of the aforesaid allegation, whereupon investigation commenced and after submission of charge sheet the accused persons faced the trial, out of whom one Rup Lal Yadav died during course of trial while remaining against except appellant stood acquitted by the judgment impugned. Hence, this appeal.

5. The defence case as is evident from mode of cross-examination as well as from their statement recorded under Section 313 of the Cr. P. C. is of complete denial of occurrence. Furthermore, Mathura Yadav, his brother, father after having house trespass committed rape on wife of Rup Lal Yadav and for that a case was instituted against the prosecution party and just to have their skin saved from the aforesaid allegation, instant case has been filed. However, neither any DW nor any exhibit has been brought up on record.

6. Both the appeals were independently argued by the learned respective counsels. In sum and substance, the submission so placed on behalf of respective counsels are that case of individual appellant is to be judged independently, because of the fact that presence of Rajendra Yadav being an outsider and further having some affection towards other co-accused being his party men as well as having his false implication by way of plantation is an admission on the part of the prosecution witnesses. Apart from this, it has also been submitted that at the time of inspection of the P.O., although allegation has been attributed against Rajendra Yadav that he had fired three rounds to disperse as well as to prevent the villagers to come at the place of occurrence to rescue the prosecution party but not even a single empty cartridge has been found at the place of occurrence. Moreover, during course of investigation, the gun was not seized and as such, whether any firing was made from the gun, for want of Ballistic Expert report could not be relied upon. It has also been submitted that he was exonerated during course of investigation as is evident from the evidence of I.O.

7. It has further been submitted that the occurrence was resultant of spur of moment, because of the fact that during course of harvesting of wheat crop, the mother in-law and two daughter in-law might have gossipped adverse to interest of Rup Lal Yadav, which, as the prosecution itself suggested heard by Rup Lal Yadav and the subsequent event as alleged was on account thereof. Then, how the presence of Rajendra Yadav was secured when there happens to be admission on the part of the prosecution witnesses that his house lies three kilometers away from the place of occurrence. That means to say the probability of false implication which has also been admitted by the prosecution witnesses has got a substance and in the aforesaid background, the judgment of conviction, so

recorded against him happens to be liable to be set aside. In addition thereto, it has also been submitted that Binod Yadav, his brother carrying similar kind of allegation whose complicity the learned lower Court had ruled out then in that circumstances similar nature of evidence should not have been discarded while judging the status of Rajendra.

8. The learned counsel representing appellant Upendra Yadav had taken through the evidences of the PWs and then had submitted that on account of discrepant, inconsistent version of prosecution with regard to part played by the appellant, the presence of appellant in a manner as suggested through initial version is found completely demolished. Consequent thereupon, there was no occasion for the learned lower Court to convict the appellant for an offence punishable under Section 341 of the I.P.C. as well as Section 307 of the I.P.C. In likewise manner also submitted that the witnesses have themselves admitted that in the background of land dispute subsisting amongst the parties, instant case has been registered. Therefore, it has been submitted on behalf of appellant that the occurrence, so alleged had never taken place and that happens to be reason behind presence of inconsistency amongst the PWs.

9. It has further been submitted that after minute observation of the cross-examination of the witnesses, it is apprent that there happens to be an admission on their part regarding presence of rape case at the instance of wife of one of the accused Rup Lal Yadav, who was raped and virtually on account thereof, as the evidence suggests, there was free fight, because of the fact that the witnesses have had admitted presence of injury over the person of accused/ appellant. PW-2 had gone to such extent by stating that accused persons have sustained injury at the hands of her husband. Therefore, though there happens to be some sort of slackness on the part of the defence in getting the injury report, the counter case of first information report etc. duly exhibited on the record, but the fact remains that on account of admission of the prosecution witnesses, the aforesaid occurrence could be perceived whereunder, it was an obligation on the part of the prosecution to explain the same. Having failed in their obligation, it could safely be inferred that prosecution could not be able to come with clean hand, so far manner as well as genesis of occurrence is concerned.

10. Per contra, it has been submitted on behalf of learned Additional Public Prosecutor that prosecution is not under obligation to explain each and every points, so raised on behalf of defence. Prosecution is under obligation in terms of Section 101 of the Evidence Act to support its case, whereupon the prosecution came up before Court for adjudication. So far present case is concerned that has been launched for causing murderous attempt upon the life of PW-6 as well as PW-7 and that is found fully supported with consistent version of the prosecution witnesses along with medical report as well as objective finding of the fact so far as place of occurrence is concerned. As such, the prosecution has succeeded in proving its case and that happens to be reason behind their conviction and sentence by the learned trial Court which do not attract interference.

11. As stated above, apart from exhibiting the documentary evidences, altogether eight (8) PWs have been examined on behalf of prosecution. Out of whom, PW-5 Inderdeo Sinha, is the I.O., PW-8 is the doctor. PW-4 had not supported the case of the prosecution while PW-3 had supported the occurrence halfheartedly flashing an episode perceiving Rup Lal Yadav and Mathura Yadav, who fought amongst themselves. Therefore, the evidence of four witnesses PW-1, PW-2, PW-6 and PW-7 is to be taken up to see whether the findings so recorded by the learned trial Court is found substantiated there from supported by the evidence of Doctor as well as I.O.

12. It happens to be basic rule of Criminal Jurisprudence where under prosecution is under obligation to prove its case beyond all reasonable doubt. Side by side, it is also expected at the end of prosecution for that come with clean hand.

13. Injury on the person of accused is of concern which, if so successfully pleaded and established, to have sustained during course of the same occurrence so alleged, that too being grievous in nature and for that prosecution has been put under obligation to explain. However, being the injury simple in nature as well as having consistency amongst the prosecution witnesses regarding manner as well as genesis of occurrence, then in that event the prosecution is not at all under obligation to explain. That happens to be the fundamental rule which governs the criminal trial wherein, there happens to be the specific plea followed with ample

materials suggesting the same.

14. So far as this particular case is concerned, it is apparent that defence has not exhibited any document to support its plea. It is also evident from their statement recorded under Section 313 of the Cr. P. C. that they have just and discharged their obligation in mechanical manner without identifying its importance and relevancy in a criminal trial. However, the evidence of the prosecution itself speaks otherwise. From the evidence of informant (PW-7), in his examination in-chief, he had reiterated his earlier version and supported the prosecution case by stating murderous attack on them by the accused persons with Sword and Farsa respectively. However, from paragraph-17 of his cross-examination, he had admitted that a case under Section 376 of the I.P.C. was registered on the same day, wherein he remained under custody for nineteen months and then has been let off on bail. He has further admitted that in another case of rape, he has been convicted and consequent thereupon, appeal is pending before the High Court. In paragraph-18, he had further admitted that his father still happens to be under custody while remaining accused are still absconding.

15. PW-6, another injured, while supporting the case of the prosecution in toto, in paragraph-5 of his cross-examination had stated that wife of Rup Lal Yadav had instituted a rape case against him, his brother, PW-7 and others disclosing date of occurrence of the same day, wherein they were arrested on the same day, because of the fact that on the same day Rup Lal Yadav was also assaulted.

16. PW-2 had stated that accused persons have also instituted a case against her husband and brother in-law (Dewar), father in-law for commission of house trespass as well as committing rape upon the wife of Rup Lal Yadav. Wherein on the basis of compromise, PW-6 and PW-7 have already been acquitted. In paragraph-6, she had further admitted that an occurrence had taken place, wherein accused persons were brutally assaulted. They have also sustained injury over their head on account of assault given by her husband. PW-1 at paragraph-8 had stated that Mathura Yadav (PW-7) had gone to Jail as a case was instituted by the wife of Rup Lal Yadav. However, subsequently the case has been compromised and on the basis thereof, case has been disposed of.

17. Having concealment of the aforesaid fact right from nascent stage of the case including during course of evidence is indicative of the fact that they have had purposely suppressed the manner as well as genesis of occurrence in the background of admitted fact that rape was committed upon wife of accused Rup Lal Yadav on the same day by the prosecution party and in the aforesaid background certainly the accused persons have got the right of private defence and in the aforesaid background if there was free fight amongst the party, then in that event the mode of consideration of the evidence will be different from in ordinary course of nature.

18. In this way, first of all, the evidence of PW-8 is taken who had found following injuries over the person of injured:-

(i) Incised wound on left hand and amputations left index finger.

(ii) Incised wound on right index finger dorsal side of right hand 3" x 1/4" x skin deep.

M. I.- black mole on left thigh. Time of injury within two hours.

Nature of injury-

Injury no.(i) grievous caused by sharp cutting weapon.

(II) simple caused by sharp cutting weapon.

On the time day at 10.35 A.m., Baleshwar Yadav, son of Parmeshwar Yadav, R/o Vill"Charelal, P.S. Banka, Distt. Banka was examined and found the following injuries on his person.

(i) Incised wound on left upper arm 4" x 1/6" x skin deep.

(ii) Incised wound on vertex of skull- 3" x 1/4" x scalp deep.

M.I.- Old scar mark on right knee.

19. Now coming to the ocular evidence, it is evident from the initial version as is evident from fard-beyan, there happens to be no specific disclosure regarding

assault over mother, wife and sister in-law (Bhabho) of informant Mathura Yadav (PW-7) at an initial stage. With regard to assault over their person (PW-6 and PW-7), it is evident that Rup Lal Yadav was alleged to have given Sword blow over Mathura Yadav (PW-7) while Upendra Yadav was shown to have assaulted Baleshwar Yadav with Farsa. When the evidence of PW-7 has been gone through, it is evident from paragraph-6 of his examination in-chief that Rup Lal Yadav had assaulted him with Sword causing injury over his left finger while Shambhu Yadav had also inflicted Sword causing injury thereupon, while Upendra Yadav had assaulted Baleshwar Yadav with Farsa over his hand as well as forehead, rest have assaulted with Lathi. PW-6 had asserted that when they reached at the place of occurrence, all the accused persons began to assault them with Sword. Rup Lal Yadav and Shambhu Yadav were armed with Sword, Upendra Yadav armed with Farsa and Manoj Yadav was armed with Lathi. They have had assaulted them. PW-2 had stated that first of all, Rup Lal Yadav assaulted all the three female with Lathi as well as also abused them. After arrival of Mathura Yadav and Baleshwar Yadav, Rup Lal Yadav armed with Sword, Shambhu Yadav armed with Sword, Upendra Yadav armed with Farsa, Manoj Yadav armed with Lathi came along with Rajendra Yadav and Binod Yadav, who were standing away from them and were provoking. Rup Lal Yadav and Shambhu Yadav assaulted Baleshwar Yadav and Mathura Yadav armed with Sword while PW-1 had stated that Rup Lal Yadav had assaulted Baleshwar Yadav with Sword. Upendra Yadav had assaulted Baleshwar Yadav with Farsa, Shambhu Yadav had assaulted Mathura Yadav with Sword while Manoj Yadav had assaulted with Lathi.

20. From the examination in-chief itself, it is evident that there happens to be inconsistency amongst the evidence of the PWs even including PW-6, PW-7 the injured. That inconsistency is to be seen in the background of the evidence whatsoever been stated by the witnesses themselves. PW-2 in paragraph-5 had admitted that the accused persons happen to be her Bhainsur as well as Dewar and there happens to be land dispute amongst them since long. In paragraph-6, she had admitted that because of the fact that accused persons always done the act according to their wish and desire, therefore, she has come to depose. In paragraph-9, she had further stated that as Rajendra Yadav failed to accede their dictum, therefore, Binod Yadav and Rajendra Yadav have been implicated in this

case. In paragraph-9, PW-6 had stated that accused persons are rich while he happens to be a poor. Accused persons have forcibly possessed his land and is not giving their actual share for which dispute has arisen. Having the land partition according to their share then in that event, no case would have been instituted.

21. Now coming to the evidence of PW-5, the Investigating Officer, it is evident from paragraph-2 of his examination in-chief that he had visited the place of occurrence as pointed out by mother Kusmi Devi as well as wife Sabita Devi of informant which happens to be a field lying South to the house of accused Dhruv Lal Yadav, wherein wheat crop was standing. He has found wheat having been harvested at its Southern side from some area while remaining standing crop was found intact. The I. O. in paragraph-3 of his examination in-chief himself suspected the allegation of the prosecution party even then submitted charge sheet after examining other witnesses as well as after obtaining injury report. During cross-examination, he has stated that he had found the case untrue against accused Rajendra Yadav and Binod Yadav.

22. Thus, after analyzing and crystallizing the evidence available on the record inconsonance with the prosecution version the following silent features are coming out:-

(A) Defence had not examined any DW or produced F.I.R., injury report regarding the counter version, but fact remains admitted at the hand of the prosecution regarding institution of rape case by the wife of accused Rup Lal Yadav and further having assault over the person of accused by the prosecution party on the same day and same time.

(B) In the aforesaid background, it was incumbent upon the prosecution to have fair in their conduct by suggesting out of them who were the aggressor and who were the defender.

(C) The inter se relationship is admitted along with claim and counter-claim.

(D) The prosecution witnesses including the injured themselves have admitted that in case there would have been genuine partition, then in that event the instant

case would not have been lodged.

(E) The objective finding of the I.O. relating to P.O. has not supported the prosecution version.

(F) Major part, because of the fact that by examination of PW-8, the injury over the person of PW-6 and PW-7 has been perceived, but presence of those injuries, in the background of inconsistency amongst the witnesses regarding the assailant as well as in the background of the fact that there happens to be intentional act on the part of the prosecution to suppress the manner as well as genesis of occurrence, did not justify the verdict along with the fact that similar status is found with regard to appellant Rajendra Yadav.

23. Consequent thereupon, the judgment of conviction and sentence recorded by the learned trial Court is set aside. Both the appeals are allowed. The appellants Upendra Yadav and Rajendra Yadav are on bail. Hence, they are discharged from its liabilities.

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