

Sunil Yadav Vs. the State of Bihar and ors

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Court : Patna

Decided On : May-25-2012

Appellant : Sunil Yadav

Respondent : The State of Bihar and ors

Judgement :

Patna High Court CR. APP (DB) No.58 of 2012 (2) dt.25-01-2012 1/4 IN THE
HIGH COURT OF JUDICATURE AT PATNA Criminal Appeal (DB) No.58 of 2012
===== Sunil
Yadav, S/o Basudeo Yadav, Resident of Village- Bhagatpur, Police Station- Balia,
District- Begusarai. Appellant Versus 1. The State of Bihar.

2. Ram Balak Yadav, S/o Sanichar Yadav, resident of Village- Pratarpur, P.S-
Sahebpur Kamal, District- Begusari.

3. Girdhari Yadav, S/o Sakhi Chandra Yadav.

4. Adalat Yadav, S/o Late Prayag Yadav, both (3 and

4) are residents of Village- Bhagatpur, Police Station- Balia, District- Begusarai.
..... Respondent/s

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Appearance : For the Appellant/s : Mr. Pramod Mishra, Advocate For the
Respondent/s : Mr. D.K. Sinha, A.P.P.
===== CORAM:

HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH and HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH ORAL ORDER (Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

25. 01-2012 This is an appeal against the judgment dated 22.11.2011 in Sessions Trial No. 251 of 2009 passed by the Additional District & Sessions Judge, F.T.C.-IV, Begusarai. In the aforesaid trial, in which the appellant Sunil Yadav was the informant, five persons were tried. Accused no. 1, Ram Balak Yadav, has been acquitted, whereas the other four accused persons i.e. Gridhari Yadavi, Bihari Yadav, Anirudh Yadav and Adalat Yadav have been convicted for offence under Section 302 I.P.C. As regards the sentence in relation to Adalat Yadav Patna High Court CR. APP (DB) No.58 of 2012 (2) dt.25-01-2012 2/4 and Gridhari Yadav, it is submitted that in view of their earlier conviction in another case under Section 302 I.P.C., their conviction being again under Section 302 I.P.C., they should have been awarded death sentence. The grievance of the appellant, who is the informant, is in relation to acquittal of Ram Balak Yadav and not awarding death sentence to Gridhari Yadav and Adalat Yadav, though they have been sentenced to life imprisonment. We have heard the learned counsel for the appellant at length. Firstly, coming to the question of acquittal of Ram Balak Yadav, the trial court upon appraisal of evidence, has given him benefit of doubt. The trial court has noted that the First Information Report was lodged by the informant by name, but it does not name Ram Balak Yadav. A perusal of the F.I.R. as produced by the learned counsel for the appellant, would show that the incident took place on 04.12.2008 at about 8 P.M. The fardbeyan was recorded at about 10.30 P.M. on the same day. In the fardbeyan, allegation is against the four accused persons and 3- 4 known persons. Ram Balak Yadav is not named therein. The learned counsel for the appellant, with reference to the case diary and with reference to evidence in court, submits that subsequently, two witnesses have disclosed the name of Patna High Court CR. APP (DB) No.58 of 2012 (2) dt.25-01-2012 3/4 Ram Balak Yadav. In that view of the matter, the trial court should not have given benefit of doubt to him. Learned counsel for the appellant points out that the informant was further examined in course of investigation two days later by the police. In that statement also recorded under Section 161 Cr.P.C., the informant/appellant does not name Ram Balak Yadav. Thus, it is evident that even in two days time he was not able to

gather the name of Ram Balak Yadav as one of the persons when the incident took place. The trial court has considered these aspects of the matter in paragraph-33 of the judgment under appeal. We see no reason to take a different view of the matter. It was for the prosecution to establish the charge beyond reasonable doubt. If the trial court, upon consideration, as noted above in paragraph-33, has given benefit of doubt to Ram Balak Yadav, we see no reason to disagree or take another view of the matter. Now coming to the question of enhancement of sentence, so far as the other four convicted accused are concerned, in our view, relevance of Section 303 of the Indian Penal Code was totally misconceived. Again, we find that the trial court has clearly relied on the judgment of the Honble Apex Court which has declared the provision of Section 303 Patna High Court CR. APP (DB) No.58 of 2012 (2) dt.25-01-2012 4/4 I.P.C. as ultra vires. Even otherwise, the only enhancement from life sentence would be a death sentence. In the facts and circumstances of this case, we do not think, so it can, at all be argued that this case for awarding death sentence under section 303 I.P.C. as held, is not applicable. In that view of the matter, we think that there is no merit in this appeal. The appeal is accordingly, dismissed. (Navaniti Prasad Singh, J.) (Ashwani Kumar Singh, J.) Devendra/-

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