

Upendra Yadav Vs The State of Bihar

Court: Patna High Court

Date of Decision: Oct. 1, 2002

Acts Referred: Penal Code, 1860 (IPC) â€” Section 302, 34, 364

Citation: (2002) 4 PLJR 771

Hon'ble Judges: M.L. Visa, J; B.K. Jha, J

Bench: Division Bench

Advocate: Kripa Nand Jha, Amicus Curiae No. 1, Susheel Chandra Sinha, No. 2, Ajoy Kumar Thakur and Bimal Kr., No. 3, for the Appellant; Bhagya Narain Gupta, for the Respondent

Final Decision: Dismissed

Judgement

B.K. Jha, J.

All these three appeals arise out of the common judgment of conviction and sentence passed on 23rd September, 1996 by

the learned Sessions Judge, Madhubani, in ST. No. 207/90 under Sections 302 and 302/34 of the Indian Penal Code. Hence, they were heard

together and are being disposed of by this common judgment.

2. The Appellant, Ramjiwan Yadav has been convicted u/s 302 of the I.P.C. and sentenced to undergo imprisonment for life. The Appellants Ram

Narain Yadav and Upendra Yadav, have been convicted u/s 302/34 of the I.P.C. and sentenced to undergo imprisonment for life.

3. The case of the prosecution is that on 22.10.89 at about 6 A.M. Musafir Yadav son of the informant, Saukhi Yadav alongwith the Appellant,

Upendra Yadav, had gone to ease themselves in the south of the village. After sometime the Appellants, Ram Jiwan Yadav with spade and Ram

Narayan Yadav also went towards that side. Thereafter all the three accused Appellants chased Musafir Yadav, caught hold of him near the field

of Jagdish Yadav and the Appellant, Ramjiwan Yadav, inflicted two blows of the spade on his head and he fell down on the ridge. The further case

of the prosecution is that Kishori Yadav, P.W. 1, the brother of the informant, who had also been in the southern bandh since the morning,

witnessed the entire occurrence and raised alarm. On his alarm all the accused Appellants chased him to assault but he managed to escape and

came to the house of the informant, Saukhi Yadav. Kishori Yadav narrated the informant about the entire occurrence whereupon he alongwith

Kishori Yadav, Shrawan Yadav and other villagers went to the "place of the occurrence and found his son Musafir Yadav lying dead. The

informant has alleged that all the accused Appellants were threatening his son, Musafir Yadav, for acting as identifier in the deed of gift of her share

executed by one Shila Devi aunt of the Appellants in favour of her Nati. So, they committed his murder.

4. On the same day, i.e. 22.10.89 the informant, Saukhi Yadav went to Area Police Station and put the law in motion. There S.I. S. Haque,

Officer Incharge at Arer Police Station recorded his fardbeyan (Ext. 4) on the basis of which a formal First Information Report was drawn up (Ext.

5) and a case u/s 302/34 was registered against all the three accused Appellants. The I.O., P.W. 9, Md. Shamshul Haque, took up the

investigation and visited the place of the occurrence. He seized blood stained spade from the Dalan of accused Appellant Ram Jiwan Yadav

(material Ext. I), the blood stained earth and plastic sandle of the deceased from the ridge of the field of one Jagdish Yadav and prepared the

seizure list (Ext. 16/2). The I.O. also prepared the inquest report (Ext.7) and sent the dead body of the deceased Musafir Yadav for post mortem

examination. P.W. 6, Dr. S.N. Jha, conducted an autopsy on the dead body of the deceased, Musafir Yadav, on 23.10.89 at 9.00 A.M. the I.O.,

P.W. 9, also recorded the statements of witnesses and on receipt of the post mortem examination report (Ext. 3) and completion of the

investigation chargesheeted all the three, accused Appellants for trial under Sections 302/364/34 of the Indian Penal Code. All the three accused

Appellants were placed for trial before the learned Sessions Judge, Madhubani which ended in their conviction and sentence, as indicated above.

5. The accused Appellants, pleaded innocence and false implication out of enmity at the instance of Kishori Yadav on account of dispute with

regard to an intervening ridge in between them. Four witnesses were examined on behalf of the defence, namely, Ram Chandra Yadav, D.W. 1,

Yugeshwar Mukhia, D.W. 2, Lakhan Yadav, D.W. 3 and Bechan Yadav, D.W. 4.

6. At trial the prosecution examined altogether ten witnesses to bring home the guilt against the accused Appellants. They are Kishori Yadav P.W.

1, Tej Narain Yadav P.W. 2, Babadai Devi P.W. 3, Bishwanath Yadav P.W. 4, Shaukhi Yadav P.W. 5 (informant), Dr. S.N. Jha P.W. 6, who

conducted the autopsy on the dead body of the deceased, Musafir Yadav, Asheshwar Yadav P.W. 7, Ram Bhujawan Yadav P.W. 8, Md.

Shamshul Haque, P.W. 9 and Atinandan Chaudhary P.W. 10. Out of them P.W. 7 Asheshwar Yadav, is a formal witness. His evidence is that on

22.10.89 the house of the accused Appellant Ram Jiwan Yadav and Ram Narayan Yadav was searched and a spade was recovered from their

Dalan and was seized. A seizure list was prepared in his presence and he put Ills signature thereon (Ext. 2/1). The witness. Bishwanath Yadav,

P.W. 4 also put his signature and Mullu Yadav put his signature on the seizure list. P.W. 10, Atinandan Chaudhary is also a formal witness.

7. The evidence of P.W. 6, Dr. S.N. Jha, is that on 23.10.89 at 9 a.m. he conducted the post mortem examination on the dead body of the

deceased, Musafir Yadav and found the following antemortem injuries on his person.

1. I. Average built rigor mortis present both eyes closed, mouth half open, fists closed, dryblood over the face.

II. Incised wound 10"" x 2 1/2"" x 3"" on the left side of the face and head extending from left margine of left eyebrow 2"" right, to, c/1 vertebra

passing from the middle part of left pinna. The corresponding part of skull and servical one vertebra were cut.

III. Incised wound 4"" x 1"" x 2 and 1/2"" on the back of the middle part of the neck at the level of C/7 passing down ward deepJy up to thoracye

vertebra.

2. On dissection he found the following:

I. Skull 1 vertebra, meninges and brain were cut ton the corresponding side of above said injury No. 2.

II. Brain and meninges pale.

III. Both lungs pale.

IV. Both chamber of heart empty.

V. Spleen liver and kidneys were pale.

VI. Stomach empty.

VII. Large intestine and small intestine containing faecal matter and gases.

VIII. Urinary bladder empty.

According to him the death was caused due to haemorrhage and shock as a result one above injuries caused by heavy sharp cutting weapon such

as spade and the injuries were sufficient in the ordinary course of nature to cause death. Further according to him, the time elapsed since death was

within 36 hours.

8. Thus, the time elapsed between the death and post mortem examination held was about 27 hours and, according to the Doctor it was within the

36 hours. In other words, the opinion of the Doctor is in consonence with the prosecution case.

9. Now, it is necessary to scrutinise the factual evidence to determine as to whether the accused-Appellants were responsible for the murder of

Musafir Yadav, the son of the informant.

10. P.W. 1, Kishori Yadav, is the own uncle of the deceased, Musafir Yadav. His evidence is that on the day of the occurrence at 6 A.M. he was

near the channel of the village and his nephew was brushing his mouth on the ridge of field of one Jagdish Yadav. All the three accused-Appellants

talked together and chased Musafir Yadav. The accused-Appellant Ramjiwan Yadav inflicted two blows of the spade on Musafir Yadav. He

raised alarm whereupon they chased him also to assault but he managed to escape and narrated about the occurrence of the informant, Shaukhi

Yadav, Ram Prasad Yadav, Sri Lal Yadav and Kamal Yadav. Thereafter, they went to the place of occurrence and found Musafir Yadav lying

dead there. In cross examination, he has stated that Shaukhi Yadav, P.W. 5, the informant is his own brother. At para 8, his evidence is that at the

relevant hour of occurrence he was on the northern bank of the channel and watching his sugarcane field situated at the distance of 10 Lagga in the

south of the channel. He has further stated that after 10-15 minutes of his arrival there, the accused persons appeared at the P.O. land. At para 14

of his cross-examination, he has stated that the accused persons have got their lands by; the side of his land situated in the north of the village. At

para 15 his evidence is that the Appellant, Ramjiwan Yadav was armed with spade and rest two Appellants were unarmed. When his attention

was drawn by the defence to the earlier statements made before the police, he is admitted to have stated before the police that at the relevant time

Musafir Yadav was brushing his mouth with, Datoon in the field of Jagdish Yadav.

11. The evidence of P.W. 2, Tej Narain Yadav, is that on the relevant date of 6 A.M. he had also been near the channel for easing himself. He

saw that accused-Appellant, Ram Jiwan Yadav having spade in his hand, Appellant, Upendra Yadav and Ram Narayan Yadav talked together

and chased Musafir Yadav. The Appellant, Ram Jiwan Yadav assaulted him with spade on the ridge of the field"" of Jagdish Yadav as a result of

which Musafir Yadav fell down on the ground. Thereafter, Ram Jiwan Yadav again assaulted him with spade. When Kishori Yadav, P.W. 1

attempted to go to the place of the occurrence they threatened him with dire consequences. Thereafter Kishori Yadav fled towards village raising

alarm regarding murder of Musafir Yadav.

12. P.W. 3, Babadai Devi, is the wife of the deceased Musafir Yadav, According to her one year prior to the occurrence her husband had given

loan of Rs. 1100/- to the Appellant, Upendra Yadav and he was evading its repayment on some or other pretext. On the date of occurrence at

about 6 A.M. while her husband was sleeping on Darwaza, the Appellant, Upendra Yadav came and both went towards the south of the village

for easing themselves. She has further deposed that Kishori Yadav, P.W. 1, came and informed her about the murder of her husband, Musafir

Yadav by the accused Appellants, Ram Jiwan Yadav, Ram Narayan Yadav and Upendra Yadav. Her further evidence is that before the

occurrence the Appellant, Ram Jiwan Yadav, had threatened her husband to commit his murder for acting as identifier in the deed of gift of her

property executed by one Most. Shila Devi, the aunt of the Appellant, Ram Jiwan Yadav in favour of her Nati, Yogi Yadav. In cross examination

she has stated that Yogi Yadav hailing from Narkatia is the Bhagna of the Appellant, Ram Jiwan Yadav.

13. On the alleged date at about 6 A.M., P.W. 4, Bishwanath Yadav had also been near the channel in the south of the village for easing himself.

He also saw Kishori Yadav the deceased, Musafir Yadav and the Appellant, Upendra Yadav near the channel. While he was returning back, he

noticed the Appellant, Ram Jiwan Yadav with spade in his hand and Ram Narayan Yadav, going towards the channel. He has further deposed that

while he was at his house, Kishori Yadav, the uncle of the deceased came and informed him about the murder of Musafir Yadav at the hands of

the Appellants, Upendra Yadav, Ram Jiwan Yadav and Ram Narayan Yadav. Thereafter, he alongwith Bhujawan Yadav and others went to the

P.O. and found Musafir Yadav lying dead there. According to him on the very day of occurrence the police searched the Dalan of the accused-

Appellants, Ram Jiwan Yadav and Ram Narayan Yadav in his presence and recovered and seized one blood stained spade. A seizure list was

prepared and was signed by him as well as by Aseshwar Yadav (Ext. No. 1). In cross examination when his attention was drawn by the defence

to the prior statements made before the police he is admitted to have stated before the police that he had gone to ease himself near the channel in

the south-west of his village. He is also admitted to have stated before the police that he had noticed the Appellants, Ram Jiwan Yadav and Ram

Narayan Yadav going towards the channel. He is also admitted to have stated before the police that he learnt from Kishori Yadav that Musafir

Yadav was being assaulted by all the accused Appellants.

14. P.W. 5, Shaukhi Yadav, is the informant of this case. His evidence is that on the date of occurrence at about 6.30 A.M. while he was at his

Darwaja, at about 5 A.M. the Appellant, Upendra Yadav came there and took his son, Musafir Yadav for easing themselves. Thereafter, the

Appellant, Upendra Yadav and his son, Musafir Yadav, went towards the south of the village near the channel. Later on the Appellant, Ram

Jiwan Yadav with spade in his hand and the Appellant, Ram Narayan Yadav also followed them. After some time his brother Kishori Yadav came

and informed him about the murder of Musafir Yadav at the hands of the Appellants, Ram Jiwan Yadav, Ram Narayan Yadav and Upendra

Yadav. On receipt of this information, he alongwith Kishori Yadav, P.W. 1 and Ram Bhujawan Yadav, P.W. 8 and his daughter-in-law, Babadai

Devi, P.W. 3, went to the P.O. and found his son, Musafir Yadav lying dead on the ridge of the field of Jagdish Yadav. Then he went to the police

station and lodged a case. The Officer Incharge recorded his fardbeyan and he put his signature thereon (Ext. No. 2). He has outlined the motive

behind the commission of murder of Musafir Yadav by the accused-Appellant that before the occurrence Most. Shila Devi, the aunt of the

Appellant, Ram jiwan Yadav, had gifted her property to her Nati Yogi Yadav. The Appellants had threatened him to commit his murder for acting

as identifying witness in the deed of the gift. His further evidence is that his son Musafir Yadav had given loan of Rs. 1100/- to the Appellant,

Upendra Yadav and he was evading its repayment on some or other pretext. In cross examination at para 14 his evidence is that he alongwith Ram

Bhujawan Yadav, P.W. 8 had gone to the police station. When his attention was drawn by the defence to the prior statements made before the

police he is admitted to have stated before the police that alongwith him, his daughter-in-law, Babadai Devi, had also gone to see the dead body of

Musafir Yadav.

15. P.W. 8, Ram Bhujawan Yadav, the brother of the informant, is not the eye witness of the occurrence. His evidence is that on hearing hulla of

Kishori Yadav, P.W. 1, about the murder of Musafir Yadav, by the accused-Appellants, he alongwith Shaukhi Yadav and Bishwanath Yadav

went towards the place of occurrence and found Musafir Yadav lying dead on the ridge of the field of Jagdish Yadav. He has also outlined the

motive behind the occurrence as disclosed in the fardbeyan as well as by others in their evidence. In cross examination when his attention was

drawn by the defence to the earlier statements made before the police, he is admitted to have stated before the police that in the morning of the

date of occurrence at 5 A.M., his brother, Kishori Yadav, had gone to watch his sugar cane field and came raising alarm that Musafir Yadav was

murdered by all the accused-Appellants.

16. P.W. 9, Md. Shamshul Haque, is the Investigating Officer of this case. His evidence is that on 22.10.1989, he recorded the fardbeyan of

Shaukhi Yadav and a formal F.I.R. was drawn up (Ext. Nos. 4 and 5). He recorded the further statements of the informant and visited the P.O.

and found the dead body of Musafir Yadav lying on the ridge of the field of Jagdish Yadav.: He seized sandle of the deceased. Musafir Yadav and

also the blood stained earth from the place of occurrence. He prepared a seizure list in presence of the witnesses. The witnesses, Rajnandan

Chaudhary and Fakirachand Chaudhary put their signature on the seizure list (Ext. Nos. 6 and 6/1 respectively). He also prepared the inquest

report (Ext. No. 7) and sent the dead body of the deceased for post mortem examination. He also seized a blood stained spade and prepared the

seizure list (Ext. No. 6/2). In cross examination he has deposed that the seized blood stained spade was sent for chemical examination but no such

report was received. His attention was also drawn by the defence to the earlier statements of the witnesses, Kishori Yadav, Bishwanath Yadav

and Ram Bhujawan Yadav, made before the police in course of investigation. The witness Kishori Yadav had not stated before him that at the

relevant hour of occurrence, Musafir Yadav was brushing his mouth with Datoon in the field of Jagdish Yadav. The witness Bishwanatha Yadav

had not stated before him that at that time he had not gone for easing himself in the south-west of his village near the channel. He had also not

stated before him that he had seen the Appellants, Ram Jiwan Yadav and Ram Narayan Yadav going towards the channel. He had also not stated

that Kishori Yadav informed him about the commission of murder of Musafir Yadav at the hands of all the three Appellants. The witness Ram

Bhujawan Yadav, had not stated before him that on the date of occurrence at 5 P.M. Kishori Yadav had gone to watch his sugarcane field and

had come raising alarm that Musafir Yadav was done to death by all the accused-Appellants.

17. Thus, the prosecution mainly relied upon the evidence of P.W. 1, Kishori Yadav and P.W. 2, Tej Narain Yadav, the eye witness to the

occurrence. Their evidence clearly suggests that on the alleged date of occurrence they had gone to ease themselves near the channel of the village

and Musafir Yadav had also been there. Thereafter, they noticed all the three Appellants, Ram Jiwan Yadav with spade, Ram Narayan Yadav and

Upendra Yadav talked together and chased Musafir Yadav. The Appellant, Ram Jiwan Yadav, gave two blows of spade on Musafir Yadav and

he fell down on the ridge of the field of one Jagdish Yadav. When P.W. 1, Kishori Yadav, attempted to went to the P.O. they threatened him with

dire consequences and thereafter he came . to the village raising alarm about the murder of Musafir Yadav at the hands of the accused-Appellants.

The evidence of P.W. 4, Bishwanath Yadav, reflects that at the, relevant hour of occurrence he had also been in the south of the village near the

channel for easing himself and had also noticed Musafir - Yadav and the Appellant, Upendra Yadav near the channel. While he was returning, he

saw there two Appellants, Ram Jiwan Yadav with spade and Ram Narayan Yadav, going towards that side. He came back to his house and later

on learnt about the occurrence of murder of Musafir Yadav at the hands of the Appellants from Kishori Yadav, P.W. 1. On receipt of the

information from Kishori Yadav, P.W. 1, about the murder of Musafir Yadav by the Appellants, Ram Jiwan Yadav, Ram Narayan Yadav and

Upendra Yadav, P.W. 5. Shaukhi Yadav, the informant, P.W. 3. Babadai Devi, the wife of the deceased, P.W. 4, Bishwanath Yadav and P.W.

8, Ram Bhujawan Yadav went there and spotted the dead body of Musafir Yadav lying on the ridge of the field of Jagdish Yadav, Thereafter, the

informant, Shaukhi Yadav, P.W. 5 went to the P.S. and lodged F.I.R. P.W. 3, Babadai Devi, the wife of the deceased and P.W. 5, Shaukhi

Yadav. the informant have assigned the motive for the occurrence of murder of Musafir Yadav. They have clearly averred that prior to the

occurrence Mostt. Shila Devi, the aunt of the Appellant, Ram Jiwan Yadav, had gifted her property to her Nati, Yogi Yadav, in which the

deceased, Musafir Yadav, was the identifying witness. On being aggrieved by his acting as identifier the Appellants had threatened him to commit

his murder; They have further assigned the reason that Musafir Yadav had loaned Rs. 1100/- to the Appellant, Upendra Yadav and he was evara

ing repayment on some or other prstect P.W. 8, Ram Bhujawan Yadav, has (sic) affirmed the execution of the deed of gift Of her property by

Most. Shila Devi in favour of her Nati, Yogi Yadav The; objective find ings of the I.O. regarding seizure of blood stained earth, sandle of the

deceased and spade corroborates the above discussed factual evidence. According to medical evidence, P.W. 6, there were two injurie on the

dead body of the deceased, Musafir Yadav, caused by heavy sharp cutting weapon such as spade and in ordinary course of nature both were

individually sufficient to cause death.

18. On the other hand, the case of the defence is that all the Appellants have been dragged in this case falsely due to previous enmity. Out of the

four witnesses examined by the defence, D.W. 4, Bechan Yadav, has come forward to state that Kishori Yadav, has got his land situated adjacent

to the P.O. village called Gudriwala and the accused-Appellant, Ram Jiwan Yadav, has also got his land just by the side of his land. About 7 years

ago were were some disputes in between them over the intervening ridge of their lands,

19. Learned Counsel for the Appellants assailed the judgment of the trial Judge on the ground that the prosecution examined all the related and

highly interested witnesses so he should have brushed aside their evidence as being unreliable and the Appellants therein ought to have been

acquitted. In this case, admittedly, P.W. 1, Kishori Yadav, P.W. 5, Shaukhi Yadav, the informant and P.W. 8, Ram Bhujawan Yadav, sons of

Anup Yadav, are own brothers and P.W. 3, Babadai Devi, is the wife of the deceased, Musafir Yadav but their evidence finds cor-roboration

from the evidence of other independent eye witness; Tej Narain Yadav, who is in no way concerned with the family of the prosecution party.

Further, the other independent witness, Bishwanath Yadav, P.W. 4, is not the eye witness to the occurrence but his evidence that he had noticed

the Appellant, Upendra Yadav, near the channel and the Appellants, Ram Jiwan Yadav with spade and Ram Narayan Yadav, going towards that

side gives a blood to the prosecution version. In the light of the aforesaid findings we cannot accept the above contentions of the learned Counsel

for the Appellants.

20. Learned Counsel for the Appellants further submitted that the trial Judge should not have convicted the Appellants, Upendra Yadav and Ram

Narayan Yadav u/s 302/34 I.P.C. in absence of pre-planning and prior meeting of their minds for the commission of murder of Musafir Yadav.

21. Section 34 I.P.C. purports that ""when a criminal act is done by several persons in furtherance of common intention of all each of such person is

liable for the act in the same manner as it were done by him alone. This section suggests that several persons must intend to do and do an act. He

must remain present at the scene of the occurrence and must associate in the commission of the offence in the same or the other way in furtherance

of the common intent of all. The spirit of the common intention presupposes prior concert, or pre-arranged plan or prior meeting of minds. The

preconcert, pre-arranged plan or prior meeting of minds may be determined from the conduct of the offenders. In other words the element of

intention is to be inferred from the physical conduct of the wrong doer including utterance, postures, gestures and the manner of the result of the

conducts.

22. In the present case, the prosecution evidence reflects that before the occurrence Mostt. Shila Devi, the aunt of the Appellants, Ram Jiwan

Yadav and Ram Narayan Yadav, had gifted her property to her Nati, Yogi Yadav. The Appellants had threatened the deceased, Musafir Yadav,

to commit his murder for acting as identifying witness in the said deed of gift. It shows that the Appellants were carrying grudge against Musafir

Yadav (deceased) before the date of the occurrence.

It further reflects that in the early morning of the date of the occurrence while the deceased Musafir Yadav was sleeping at his Darwaza, the

Appellant, Upendra Yadav, came and forced him to accompany him for natural calls. Both of them went in the south of the village near channel for

the said purpose. Soon after their departure, the Appellant Ram Jiwan Yadav with spade and Ram Narain Yadav followed them. Thereafter the

Appellant Upendra Yadav separated himself from Musafir Yadav and all the three Appellants talked together and instantly chased Musafir Yadav

up to the field of Jagdish Yadav. There Ram Jiwan Yadav gave two blows of spade on him. He fell down and died on the ridge of the field of

Jagdish Yadav. When Kishori Yadav attempted to go near the place of occurrence, all the three Appellants threatened him to assault as a result of

which he went to the village. He narrated the entire incidents to the informant, Saukhi Yadav P.W. 5, and others whereupon they went to the place

of occurrence and spotted the dead body of Musafir Yadav lying on the ridge of Jagdish Yadav.

23. The above circumstances with the actions of the Appellants are indicative of the fact that there was a pre-arranged plan for the commission of

the murder of Musafir Yadav. To give effect to their plan Ram Jiwan Yadav committed his murder in furtherance of common intention of all of

them. So, the Appellants Upendra Yadav and Ram Narayan Yadav cannot escape constructive liability as defined u/s 34 of the I.P.C. Thus,

having heard the learned Counsel for the Appellants at length, on this point, we are satisfied the view taken by the trial Judge in respect of the

Appellants Ram Narayan Yadav and Upendra Yadav is fair and reasonable.

24. Thus, we are of the view that the prosecution succeeded to bring home the guilt against the accused Appellants beyond reasonable doubts. We

find no infirmity in order of conviction and sentence passed by the trial court.

25. In the result, all the three Appeals are dismissed. The order of conviction and sentence passed against all three Appellants is upheld. The

Appellant, Ram Jiwan Yadav is in custody. The rest two Appellants, Upendra Yadav and Ram Narayan Yadav are on bail and so their bail bonds

are cancelled with a direction to surrender in the court below to serve out the sentence imposed upon them.

M.L. Visa, J.

26. I agree.