

**Sheshnath Yadav S/o Late Nirmal Yadav Resident of Village + P.S.
Ishmailpur, District Bhagalpur - Appellant @HASH The State of Bihar**

Court: PATNA HIGH COURT

Date of Decision: June 22, 2016

Acts Referred: Evidence Act, 1872 - Section 3
Penal Code, 1860 (IPC) - Section 302

Citation: (2016) 4 ECRC 213 : (2017) 1 PCCR 174

Hon'ble Judges: Anjana Prakash and Rajendra Kumar Mishra, JJ.

Bench: Division Bench

Advocate: Mr. Ranjan Kumar Jha, Advocate, for the Appellants; Mr. A.K. Sinha, A.P.P, for the State; Mr. Bharat Prasad Singh, Advocate, for the Informant

Final Decision: Allowed

Judgement

Smt. Anjana Prakash, J.(Oral) - Heard learned counsel for the Appellants and learned counsel for the Additional Public Prosecutor.

2. All the Appellants have been Convicted under section 302/34 I.P.C. and sentenced to undergo Rigorous Imprisonment for life as well as fine of

Rs. 5,000/- each, in default of which, further Rigorous Imprisonment for three months. Further Appellant Shesh Nath Yadav and Pappu Yadav

sentenced to undergo Rigorous Imprisonment for 3 years under section 27(i) Arms Act by a Judgment dated 15/23.03.2013 passed by the 4th

Additional Sessions Judge, Naugachia in connection with Sessions Trial No. 484 of 1997 arising out of Ishmailpur P.S. Case No. 22 of 1997.

3. The case of the prosecution, according to Hira Mandal (P.W. 9) is that on 10.02.1997 at about 5:30 pm. when he along with Bilash Sao (P.W.

7), Saligram Gosai, Binod Mandal (P.W. 5), Umesh Mandal (Havildar) and Baman Mandal (P.W. 3) along with the deceased brother Kailash

Mandal were sitting in the Tea Shop of Bilash Sao and taking Tea, 8 accused persons variously armed came there and surrounded his brother

deceased Kailash Mandal. Then the Appellant Pappu Yadav is said to have caught hold of his brother while Appellant Shesh Nath Yadav fired at

him on account of which he fell down injured. On hearing the sounds, the Police Party came and on seeing them, the accused persons fled away.

4. During trial, the prosecution examined 9 witnesses whereas one witness was examined as Court Witness, who proved the Postmortem

Examination Report.

5. Whereas P.W. 1 Sitaram Mandal, P.W. 2 Deo Narayan Goshwami, P.W. 4 Kulanand Mandal, P.W. 5 Binod Mandal, P.W. 6 Ram Bilash

Goshwami and P.W. 7 Bilash Sao have been declared hostile, P.W. 8 Ramji Yadav is irrelevant. P.W. 6 Ram Bilash Goshwami, who was

declared hostile, proved the signature on the fardbeyan. In the present case only two witnesses i.e. P.W. 3 Baman Mandal and P.W. 9 Hira

Mandal, both of whom brothers of the deceased claim to be eye witnesses.

6. The prosecution has neither produced the Investigating Officer nor the Doctor and has only proved the Postmortem Examination Report through

a formal witness C.W. 1 Shashi Shekhar Choudhary.

7. P.W. 3 Baman Mandal, in Court, stated that on the date of occurrence, he was sitting along with his deceased brother Kailash Mandal, Hira

Mandal, the Informant and some others when suddenly accused Seshnath Yadav, Pappu Yadav, Umakanti Yadav, Awadhesh Yadav, Sunil

Yadav, Bodan Yadav and Ghotal Gauswami came there and Pappu Yadav fired at the deceased Kailash Mandal and then all of them fled away.

The injured Kailash Mandal was removed to Ismailpur Police Station and from there to Naugachia Hospital but on the way he died.

In cross-examination, he explained that he was own brother of the deceased Kailash Mandal and that Mantu Sao, the Tea Shop Owner, was still

alive. His attention was drawn to the earlier statement that he had not given such a detailed statement about the manner of occurrence or that he

was sitting in the Tea Shop of Mantu Sao. It was suggested to him that in fact, the deceased was a Veteran criminal and had been killed in another

occurrence. He conceded that his brother had been convicted by the Sessions Court in a case under section 395 I.P.C., but later on acquitted by

the High Court. He also explained that when he reached Ismailpur Police Station, Darogajee was not present.

8. P.W. 9 Hira Mandal, the Informant, stated that on 10.02.1997 while he was in Ismailpur Hatia, accused Shesh Nath Yadav, Pappu Yadav,

Abdhesh Yadav, Ghotal Goshwami, Sunil Yadav, Mahesh Yadav and Bodan Yadav and Umakant Yadav came and set next to the deceased

Kailash Mandal, who was having Tea, then Appellants Shesh Nath Yadav, Pappu Yadav and accused Awadesh Yadav fired at his brother on

account of which he fell down injured. Some persons put his brother on a cot and started to take him to Naugachia Hospital where he was

declared dead. His statement was recorded at the Hospital and he proved his signature on the fardbeyan as Exhibit-2.

In cross-examination, he explained that the deceased was his brother. He also stated that when he met Darogajee he told him to proceed to the

Hospital and he would come there but he returned and in the 10-15 minutes, he was with the Darogajee and no statement was recorded.

There is nothing else which is of note in his entire cross-examination.

9. Court witness, C.W. 1 Shashi Sekhar Choudhary proved the Postmortem Examination Report as Exhibit-3.

10. On a bare perusal of the evidence of the two eye witnesses, we find that whereas the case of the prosecution at the initial stage as narrated by

P.W. 9, Informant, Hira Mandal was that Appellant Shesh Nath Yadav fired at the deceased while Appellant Pappu Yadav had caught hold of

him, during trial, P.W. 3 Baman Mandal stated that it was Pappu Yadav, who fired at the deceased whereas P.W. 9 Hira Mandal, the Informant,

stated that three persons i.e. Pappu Yadav, Shesh Nath Yadav and one Awadhesh Yadav fired at the deceased. The statements of the witnesses,

thus, vary on a material point and hence, it is difficult to rely on the same with some certitude so as to confirm the conviction of the Appellants on

such divergent evidence. We also find that the prosecution neither produced the Investigating Officer nor the Doctor. Even if we look into the

Postmortem Examination Report, we find that a single fire arm injury was found on the deceased, which is contrary to the prosecution case. We

also find that P.W. 9 Hira Mandal, the Informant neither mentioned P.W. 3 as a witness in the fardbeyan nor does he confirm the presence of

P.W. 3 Baman Mandal, in Court as being present at the place of occurrence, even though P.W. 3 Baman Mandal has stated that he was at the

Tea Shop of Mantu Sao along with the Informant.

11. In view of such shaky evidence, we are inclined to give benefit of doubt to the appellants. In the result, the Appeals are allowed. The Judgment

of conviction dated 15.03.2013 and Order of sentence dated 23.03.2013 passed by the 4th Additional Sessions Judge, Naugachia in connection

with Sessions Trial No. 484 of 1997 arising out of Ismailpur P.S. Case No. 22 of 1997 against the Appellants, above named, is set aside. They

are acquitted of the charges. The Appellants Sheshnath Yadav and Pappu Yadav are in jail custody. Therefore, they are directed to be released

forthwith, if not wanted in any other case. The Appellants Mahesh Yadav, Sunil Yadav, Uma Kant Yadav and Borhan Yadav are on bail. They

are discharged from the liabilities of their bail bonds.