IN THE HIGH COURT OF JUDICATURE AT PATNA

Anil Yadav

vs.

The State of Bihar

Criminal Appeal (DB) No. 394 of 2016

08 May, 2023

(Hon'ble Mr. Justice Ashutosh Kumar and Hon'ble Mr. Justice Harish Kumar)

Issue for Consideration

Whether the conviction under Section 302 IPC was sustainable in view of the credibility of witnesses and evidence presented.

Headnotes

Two aspects remain inexplicable. When an occurrence had taken place in the field where all the witnesses and the deceased persons were present, it appears to be strange that the informant and other eye witnesses would come out of the field wait in the wings, witness the occurrence and yet they were not chased by the marauders or harmed in any manner. The other aspect is that when the occurrence had taken place in the middle of the field but the evidence suggests that one of the deceased fell in the canal, whereas the other was found near the canal. - There appears to be some uncertainty over the place of occurrence, especially in view of non-seizure of any blood stained earth or any incriminating material at the place of occurrence by the I.O. The cross-examination of the two I.Os. also does not indicate that they had visited the place of occurrence shortly after the lodging of the FIR. - Nothing appears to be contradictory or unusual. There is a clear evidence of the appellant having killed one of the deceased persons from a point blank range. (Page 9, 10, 12)

Two persons were killed in a broad-day light who were totally unarmed, the allegation is very serious but still it falls sufficiently short of it being the "rarest of the rare" case. - Imprisonment for remainder of the life is absolutely inappropriate in the facts of this case. The records further reveal that the appellant has has spent almost 14 years in jail. Sentence should be reduced to a minimum of 18 years of imprisonment, which would meet the ends of justice. - Appeal is dismissed but the sentence is modified. (Page 15, 16)

Case Law Cited

Union of India v. V. Sriharan alias Murugan and Ors., **(2016) 7 SCC 1;** Swamy Shraddananda v. State of Karnataka, **(2008) 13 SCC 767**

List of Acts

Indian Penal Code, 1860 – Sections 147, 148, 149, 447, 302; Arms Act, 1959 – Section 27

List of Keywords

Murder; Life imprisonment; Rarest of rare doctrine; Sentencing powers; Eyewitness testimony; Property dispute; Remission; Appellate modification

Case Arising From

Sangrampur P.S. Case No. 34 of 2009, District Munger.

Appearances for Parties

For the Appellant: Mr. Indu Bhushan, Advocate

For the Respondent: Mr. Dilip Kumar Sinha, APP

Headnotes Prepared by Reporter: Amit Kumar Mallick, Advocate.

Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.394 of 2016

Arising Out of PS. Case No.-34 Year-2009 Thana- SANGRAMPUR District- Munger

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Anil Yadav Son of Chandra Yadav Resident of village - Maheshpur, P.S. Sangrampur, District - Munger

... ... Appellant/s

Versus

The State Of Bihar

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr. Indu Bhushan, Advocate
For the Respondent/s : Mr. Dilip Kumar Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 08-05-2023

We have heard the learned Advocate for the appellant and Mr. Dilip Kumar Sinha for the State.

The appellant stands convicted under Section 302 of the IPC and has been sentenced to undergo imprisonment for the remainder of his life, to pay a fine of Rs. 10,000/- and in default of payment of fine, to further suffer S.I. for a period of one month *vide* judgment and order of conviction and sentence dated 14.03.2016/29.03.2016 respectively passed by the learned 5th Additional Sessions Judge, Munger in Sessions

Trial No. 615 of 2009, arising out of Sangrampur P.S. Case No. 34 of 2009.

The appellant and one Sanjay Yadav are alleged to have killed Chandeshwari Yadav and Maluki Yadav respectively. The FIR for the occurrence has been lodged by Naresh Yadav (P.W. 6), who is the son-in-law of Maluki Yadav (deceased no. 1) and co-brother of Chandeshwari Yadav (deceased no. 2).

He has alleged in his FIR dated 03.04.2009 at about 12:00 O' Clock in the day at his village home that he was married to the elder daughter of Maluki Yadav (deceased no. 1). The younger daughter of aforesaid Maluki Yadav was married to Chandeshwari Yadav (deceased no. 2). Maluki Yadav did not have any male issue. The agricultural land of Maluki Yadav used to be cultivated by him and Chandeshwari Yadav which was not to the liking of the other relatives of Maluki Yadav including his brother. On the same day *i.e.* on 03.04.2009 at about 9.30 a.m., when the informant along with other

family members were in the field, reaping the wheat crops, the accused persons including the appellant, variously armed arrived and told Maluki Yadav to leave the land. One Sunil Yadav caught hold of Maluki Yadav and Rambhajju Yadav caught Chandeshwari Yadav. On the orders of Chander Yadav, co-accused Sanjay Yadav fired from his weapon twice which hit Maluki Yadav in his chest, as a result of which he fell down but came near the canal at the other extremity of the field. The appellant/Anil Yadav is said to have fired twice at Chandeshwari Yadav which hit him in his back and waist, who also straddled up till the canal and thereafter died. Seeing the two aforenoted persons dead, the accused persons left the place of occurrence. During the course of occurrence, the informant and others hid themselves near the field and witnessed the occurrence.

On the basis of aforenoted *fardbeyan* statement, Sangrampur P.S. Case No. 34 of 2009 dated 03.04.2009 was registered for investigation for the offences under

Sections 147, 148, 149, 447 and 302 of the Indian Penal Code and Section 27 of the Arms Act.

The police, after investigation, submitted charge-sheet against the appellant whereupon cognizance was taken and the case was committed to the Courts of Sessions for trial.

The Trial court after examining eight witnesses on behalf of the prosecution and none on behalf of the defence convicted and sentenced the appellant as aforesaid.

The learned counsel for the appellant has, in the first, submitted that the Trial court committed a serious error in sentencing the appellant for the remainder of his life, which is beyond the powers of any Sessions Court. He has submitted that in ***Union of India vs. V. Sriharan alias Murugan and Ors. (2016) 7 SCC 1*** the constitution Bench of the Supreme Court has though ratified the decision in ***Swamy Shraddananda vs. State of Karnataka (2008) 13 SCC 767*** of awarding a third

sentencing option in cases where the accused is convicted of serious and grave crime, carrying with it the option of capital sentence but such sentencing could be done by the Supreme Court and High Court only as constitutional Courts. The Trial court is foreclosed from imposing any modified or specific term sentence or life imprisonment for the remainder of the convict's life as an alternative to death penalty.

Apart from this, it has been submitted that the evidence collected during the Trial does not make out a clear-cut case for convicting the appellant under Section 302 of the IPC as all the witnesses are related to both the deceased and they have definite reasons for falsely implicating the appellant.

The judgment of the Trial court has also been questioned on the ground that the Trial court did not apply its mind appropriately as even inadmissible evidence during trial was taken into account and relied upon for convicting and sentencing the appellant.

All the accepted canons of appreciating evidence, it has been urged on behalf of the appellant, have been thrown to the winds and the judgment of guilt has been arrived at only on the so called *"consistency"* of the prosecution witnesses.

As opposed to the aforenoted contentions, the State has argued that the eye witnesses to the occurrence have not been discredited during the cross-examination, all of whom have alleged the act of firing against the appellant, killing one of the of the deceased *viz*. Chandeshwari Yadav (deceased no. 2).

The ocular testimony of all the witnesses have been corroborated by the medical evidence. The Doctor, who conducted the post-mortem examination on Chandeshwari Yadav (deceased no. 2), whom the appellant is alleged to have shot at, has received one gun-shot injury; one wound of entry and the other the exit wound and both the wounds were found to be communicating to each other.

In order to appreciate the arguments on behalf of the parties, we have examined the deposition of the prosecution witnesses in great detail.

Anju Devi @ Manju Devi (P.W. 1), who is the wife of Naresh Yadav (P.W. 6) has categorically alleged that she along with others and the deceased persons had been working in the field when the appellant and others arrived and started abusing. Maluki Yadav (deceased no. 1) was told by the accused persons that he should relinquish his claim over the land in question, as he did not have a male descendant. P.W. 1 and others came out of the field. It was then, it has been alleged, that both the deceased persons were caught hold of and the appellant fired at Chandeshwari Yadav (deceased no. 2) whereas one Sanjay Yadav fired at her father Maluki Yadav (deceased no. 1), both of whom died. The appellant is the uncle of P.W. 1. She has admitted in her cross-examination that her father/Maluki Yadav (deceased no. 1) and Chander Yadav were on litigating terms and about 20 years ago, a

Title Suit had been contested between them. She had no idea about the outcome of such litigation.

Similarly, Mantu Kumar Yadav and Guria Kumari (P.Ws. 2 and 4) respectively are the children of the informant (P.W. 6) and Anju Devi (P.W. 1). Both of them have supported the prosecution version to a large extent.

The wife of the deceased no. 2/Chandeshwari Yadav (P.W. 3) has supported the prosecution version. Her credibility at the trial could not be impeached even when searching questions were put to her.

Dr. Ram Pravesh Prasad (P.W. 5) performed autopsy on both the deceased. With respect to the deceased who was allegedly killed by the appellant, had received, as noted above two communicating injuries depicting wound of entry and exit. The wounds were inverted giving clear indication that firing was resorted to from close range.

Janak Kishore Singh (P.W. 7), who is the first I.O. of the case has but in cross-examination stated that

he had recorded the statement of two of the witnesses that the agricultural field belonging to Chander Yadav, which was attempted to be sown by the deceased no. 1/Maluki Yadav and that was the reason for the fight between the parties.

However, Ranjeet Kumar (P.W. 8), the second I.O. has not said anything of that kind. He has deposed before the Trial court that he never investigated as to whose field was it in which standing crops were being reaped when the occurrence took place. Who had sown the crops and who was attempting to reap it unauthorizedly was not investigated by him. He did not take the statement of any witness at the place of occurrence as no body was present there when he had visited the place of occurrence.

On perusal of the deposition of witnesses, two aspects remain inexplicable.

When an occurrence had taken place in the field where all the witnesses and the deceased persons were

present, it appears to be rather strange that the informant and other eye witnesses would come out of the field wait in the wings, witness the occurrence and yet they were not chased by the marauders or harmed in any manner. The other queer aspect, in our estimation, is that when the occurrence had taken place in the middle of the field but the evidence suggests that one of the deceased fell in the canal, whereas the other was found near the canal. Did they try to run away seeing the assailants and were shot from behind or they received injuries and struggled to come out of the field but collapsed near the canal?

In any view of the matter, there appears to be some uncertainty over the place of occurrence, especially in view of non-seizure of any blood stained earth or any incriminating material at the place of occurrence by the I.O. The cross-examination of the two I.Os. also does not indicate that they had visited the place of occurrence shortly after the lodging of the FIR.

But even then, for this reason alone, the witnesses cannot be held to be untrustworthy.

We have given our anxious consideration on the fact that P.W. 6, who is the son-in-law of one of the deceased and co-brother of the other, came out of the field and thus out of the firing range of the assailants, leaving behind his father-in-law and co-brother to fend for themselves.

This conduct does not appear to be natural but if seen in the context of an attempt to save himself from being killed, then the conduct becomes explicable. It could be possible that the assailants, including the appellant, had enmity only against Maluki Yadav (deceased no. 1) and not Chandeshwari Yadav (deceased no. 2) or P.W. 6. If at all the land had to be relinquished in favour of the accused persons, it was Maluki Yadav (deceased no. 1) who had to take a call and not others. This perhaps could be the reason for sparing the other family members of the deceased but unfortunately since Chandeshwari Yadav

(deceased no. 2) could not come out of the field, he too appears to have been killed.

From the evidence of all the prosecution witnesses, nothing appears to be contradictory or unusual. There is a clear evidence of the appellant having killed one of the deceased persons from a point blank range.

To that extent, the findings of the trial court holding the appellant guilty of killing the deceased Chandeshwari Yadav (deceased no. 2) does not require any interference. He has rightly been convicted under Section 302 of the IPC.

The trial court but has wrongly sentenced him for remainder of his life.

In ***Union of India vs. V. Sriharan*** (supra) two of the questions raised before the constitutional Bench was; (1) whether imprisonment for life means for the rest of one's life with any right to claim remission; (2) whether as held in ***Swamy Shraddananda*** (supra) a special category of sentence; instead of death; for a term

exceeding 14 years and that category be put beyond application of remission, can be imposed?

After going through several of the decisions of the Supreme Court, the Bench viewed as follows:

> "105. We, therefore, reiterate that the power derived from the Penal Code for any modified punishment within the punishment provided for in the Penal Code for such specified offences can only be exercised by the High Court and in the event of further appeal only by the Supreme Court and not by any other court in this country. To put it differently, the power to impose a modified punishment providing for any specific term of incarceration or till the end of the convict's life as an alternate to death penalty, can be exercised only by the High Court and the Supreme Court and not by any other inferior court.
>
> (emphasis provided)
>
> 106. Viewed in that respect, we state that the ratio laid down in *Swamy shraddananda* (2)[4] that a special category of sentence; instead of death; for a term exceeding 14 years and put that category

> beyond application of remission is well founded and we answer the said question in the affirmative. We are, therefore, not in agreement with the opinion expressed by this Court in *Sangeet v. State of Haryana*[49] that the deprival of remission power of the appropriate Government by awarding sentences of 20 or 25 years or without any remission as not permissible is not in consonance with the law and we specifically overrule the same."

The trial court, therefore, has committed an error in awarding sentence of imprisonment for the remainder of the life of the appellant which requires interference.

Before we do that, it is necessary for us to point out that the Trial court was under an obligation, in such circumstance, to assess the materials against the appellant, in which, the endeavour of the State should have been to come forward in supplying those materials for striking a balance between the "aggravating and mitigating" circumstances.

The Trial court appears to have only looked at the aggravating circumstances in the case and not any

mitigating circumstance except that the appellant was the sole earning member of the family and had to look after his aged parents also. What was his conduct in jail and did he show any sign of reformation is not known nor was attempted to be known by the Trial court.

However, looking at the circumstance that two persons were killed in a broad-day light who were totally unarmed, the allegation is very serious but still it falls sufficiently short of it being the "rarest of the rare" case.

It is not uncommon that for property, a person is killed at the hands of his relatives but the appellant being directly related to deceased no. 1, for no good reason killed the deceased no. 2, who stood in the relation of son-in-law to him. It is very rare that son-in-laws of the family are killed.

There appears to be pre-meditation on the part of the appellant for killing the deceased. And the reason for asking the deceased no. 1 to leave control of the land in

question was that he did not have a male descendant. What could reflect a more warped mind than this?

The deceased no. 1 had two daughters and two son-in-laws. Desiring deceased no. 1 to abandon his claim over his own property only for the reason that he does not have a male child is something which is beyond the tenets of a civilized society.

The sin is thus unpardonable.

However, we find that imprisonment for remainder of the life is absolutely inappropriate in the facts of this case. The records further reveal that the appellant has remained in jail since 08.04.2009 and thus has spent almost 14 years in jail.

Under the aforenoted circumstances, we are of the view that the sentence imposed upon the appellant be reduced to a minimum of 18 years of imprisonment which would meet the ends of justice.

Thus, the appeal is dismissed but the sentence is modified to the extent indicated above.

Let the records of this case be transmitted to the court below and a copy of the judgment be sent to the Superintendent of the concerned jail for record and compliance.

(Ashutosh Kumar, J)

(Harish Kumar, J)

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AFR/NAFR	AFR
CAV DATE	NA
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