

**CRIMINAL APPEAL No.232 OF 1993**

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Against the judgment of conviction dated 28.6.1993  
Passed by Sri Surya Kant Mishra, Sessions Judge,  
Madhepura in Sessions Case No. 88 of 1990.

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1. Sita Ram Yadav  
2. Babloo Yadav  
3. Baiju Yadav

.....

Appellants

Versus

The State of Bihar

.....

Respondent

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For the appellants : Mr.Ranjan Kumar Jha, Advocate  
For the State : Mr.R.B.S.Pahepuri, Addl.P.P.

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**P R E S E N T**

THE HON'BLE MR. JUSTICE SHYAM KISHORE SHARMA

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**S.K.Sharma, J.**

Sita Ram Yadav and his two sons namely,

Babloo Yadav and Baiju Yadav have preferred this

appeal against the judgment dated 28.6.1993

passed by Sessions Judge, Madhepura in Sessions

Case No. 88 of 1990 by which they have been found

guilty under Sections 323 and 341 of the Indian

Penal Code and appellant no.1 Sita Ram Yadav was

further found guilty under Section 324 of the

Indian Penal Code but they have been released

under the provision of Section 360 of the Code of

Criminal Procedure on entering into bonds of

Rs.3000/- each with one surety of the like

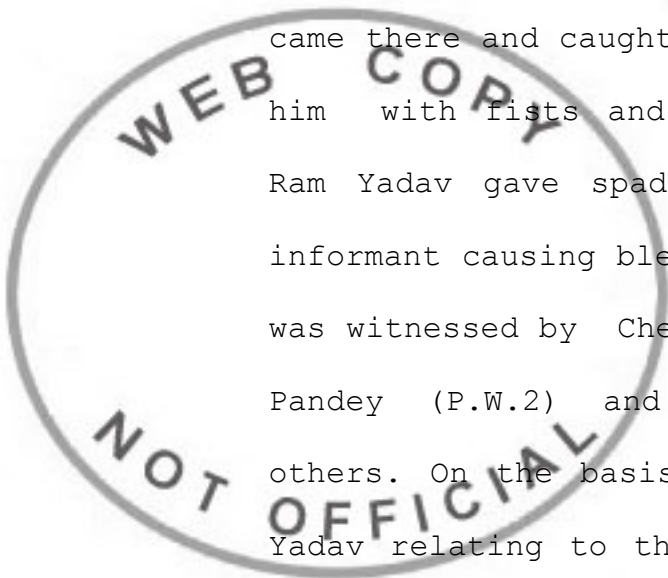
amount to appear and receive sentence when

called upon during the period of two years and in

the meantime to keep the peace and be of good

behaviour.

The prosecution case, in brief, is that one Tapeshwara Yadav alias Tappo Yadav has borrowed pumping set from the informant Ram Kumar Yadav (P.W.6) on 6.1.1990. The said pumping set was fixed in the boring of appellant no.1 Sita Ram Yadav with his permission. When Tapeswar Yadav was irrigating his lands, appellant no.1 Sita Ram Yadav came and started throwing out some parts of the said pumping set and on protest being made by the informant, two sons namely, Babloo Yeav, appellant no.2 and Baiju Yadav, appellant no.3, of appellant no.1 Sita Ram Yadav came there and caught the informant and assaulted him with fists and kicks. Appellant No.1 Sita Ram Yadav gave spade blow on the head of the informant causing bleeding injury. The occurrence was witnessed by Chetu Pandey (P.W.5) Shibnandan Pandey (P.W.2) and Toppo Yadav (P.W.4) and others. On the basis of fardbeyan of Ram Kumar Yadav relating to the occurrence on 6.1.1990 at 10.00 A.M., the F.I.R. was registered on the same day at 1.00 P.M. under Sections 342, 324 and 323/34 of the Indian Penal Code. The matter was investigated into and after completion of investigation, charge sheet was submitted under



Sections 341,305,324 and 323/34 of the Indian Penal Code against the accused persons. Cognizance was taken and thereafter case was committed to the court of sessions. The trial Proceeded. Charge under Sections 307 and 324 was framed against appellant no.1 Sita Ram Yadav and charge under Sections 323 and 341 of the Indian Penal Code was framed against all the three accused. Charges were explained to the accused persons. They pleaded innocence and preferred to face the trial.

The defence of the accused persons was that they have been falsely implicated due to previous enmity and no such occurrence, as alleged, took place.

In order to prove its case, the prosecution examined altogether 9 witnesses. They are Rajendra Yadav, full brother of the informant (P.W.1), Shiv Nandan Pandey (P.W.2) who has been declared hostile, Yogendra Prasad Yadav (P.W.3), Tapeshwari Prasad alias Toppo (P.W.4) and he has been tendered by the prosecution, Jaitu Pandey (P.W.5) has also been declared tendered, Ram Kumar Yadav (P.W.6), the informant, Bhupendra Narayan Yadav (P.W.7) is a formal witness who has

proved the formal F.I.R. Dr.Krishna Ballabh Yadav (P.W.8) and Shilbanush Toppo, Investigating Officer (P.W.9).

The informant P.W.6 in his evidence has stated that on 6.1.1990 at 10.00 A.M. his pumping set was taken by Toppo Yadav and has fixed the same in the boring of Sita Ram Yadav with his permission. When the irrigating of field was started, accused Sita Ram Yadav came and started throwing the parts of the pumping set. In the meantime, Babloo Yadav and Baiju Yadav came and threw him on the ground and assaulted him with fists and kicks. Thereafter, accused Sita Ram Yadav assaulted with spade on his head causing bleeding injury. Chetu and Toppo intervened and the informant was saved. Thereafter the brother of the informant came who brought the injured informant to police station on one bicycle where statement of the informant was recorded by A.S.I., upon which the informant put his signature which has been marked Ext.1/1. The informant was treated in government hospital. This witness in his cross-examination has confused in saying that how many borings accused Sita Ram Yadav have. This witness by modifying

his statement has stated that accused Sita Ram Yadav has four borings. He in his cross-examination initially stated that accused Sitaram Yadav came to the place of occurrence with empty handed and his sons were carrying lathi in their hands but he modified his statement that Sita Ram Yadav was having a spade in his hand. This witness in his cross-examination has stated that he was unconscious and statement at the police station was given by his elder brother Rajendra Yadav and after regaining consciousness, he put his signature on the F.I.R. on the instruction of his brother.

Learned counsel for the appellants has submitted that a number of contradictions are apparent in the statement of the informant P.W.6. He has stated that there was no instrument in the hand of accused Sita Ram Yadav, though in his statement he has stated that accused Sita Ram Yadav assaulted on his head with spade. This witness has stated that he has given his fardbeyan and thereafter it is read over to him and after he found correct, he signed but this witness in his cross-examination in paragraph 11 has stated that when he was brought to police

station, he was unconscious and it was stated by his brother that he has lodged the case and this witness has merely put his signature on the F.I.R. Therefore, the entire evidence of this witness has become contrary on each of the parts.

P.W.8 has stated that on 6.1.1990 while he was posted as Medical Officer I/C in Government Hospital, Singheshwar, examined Ram Kumar Yadav and found following injuries:

(i) one incised wound 1"x1/4"x sclap deep on the head 4 1/2" above left eye brow.

(ii) One bruises 3"x 1" on the dorsen surface of left hand.

(iii) Two bruises 4"x1" each on the left scapular region.

In the opinion of the doctor, injury no.(i) was caused by sharp cutting weapon whereas other injuries by hard and blunt substance.

P.W.1 is only other witness who has, to some extent, supported the informant's case. He has stated that he reached the place of occurrence after hearing noise and found the head of his younger brother Ram Kumar Yadav was bleeding. This witness has stated that the

assailants had already left the place. The injured brother was brought to police station where he gave his fardbeyan. This witness further stated that prior to this occurrence, appellant no.1 Sita Ram Yadav had filed a case of ceiling and for that we were on litigating terms from before

The informant is the only witness who has supported the occurrence though a number of persons were cited in the fardbeyan as the persons who were present at the time of occurrence but they have not been brought to dock to support the prosecution and there is no explanation as to why they have not come to support the prosecution version. The conviction can be awarded on the testimony of single witness if it may give inference that the evidence was intact and was without any deviation.

Learned Addl.P.P. submits that the trial court has already taken very lenient view as instead of awarding substantive sentence, the appellants have been given the benefit of provision of Section 360 of the Code of Criminal Procedure considering the facts and circumstances of the case.

If the evidence of informant P.W.6 is taken into consideration in its entirety, then it appears that there is no explanation from where appellant no.1 picked up the spade though the statement of the this witness is specific that appellant no.1 came at the place of occurrence empty handed. Therefore, it appears that the statement that appellant no.1 was with spade has been introduced later on after one injury was found by the doctor to be caused by sharp cutting weapon.

P.W.9, the Investigating Officer, has stated in his evidence that when the informant was brought to police station, he was in full conscious. If the statement of the I.O. is accepted, then the statement of the informant became doubtful because he has stated that after receiving injury he became unconscious and regained his consciousness only after statement regarding case was given by his brother P.W.1 before the police. Thus, it appears that there are so many contradictions in the evidence of the informant P.W.6.

Learned counsel for the appellants has submitted that the entire aspect of the case was



not taken into consideration which may affect the prosecution case in its entirety. The occurrence is said to have taken place on 6.1.1990 and the statement of the accused persons was recorded under Section 313 of the Code of Criminal Procedure on 26.4.1993 i.e. after about three years. On the date of recording statement under Section 313 of the Code of Criminal Procedure, the age of appellant no.3 Baiju Yadav was 19 years whereas the age of another appellant no.2 Bablu Yadav was 18 years. It means that on the time of occurrence, these two appellants were juvenile and as such entire trial vitiated on account of the fact that this fact was not looked into by the trial court and it is well settled that a juvenile cannot be tried along with the other major accused. The duty of the trial court was to proceed according to the provisions of Juvenile Justice Act and this has not been followed. So the entire trial vitiated. Not only that, on merit also, it appears that the informant has not been supported by any other witness including his brother P.W.1.

After analysing the entire evidence, I am of the view that the prosecution has not been

able to prove its case beyond the shadow of all reasonable doubt. Accordingly, the appellants are entitled to be acquitted.

In the result, this appeal is allowed and the impugned judgment of the trial court is set aside.

( **Shyam Kishore Sharma, J.**  )

Patna High Court, Patna  
The 19<sup>th</sup> February, 2008  
Tahir/- (NAFR)

