

IN THE COURT OF ADDITIONAL SESSIONS JUDGE-IIIrd
Civil Court, Bhojpur (Ara), Bihar. 802301.
Session Trial Case No. 256 of 2021
Arising out of Shahpur P.S. Case No. 342 of 2019

1. State of Bihar

.....Prosecution

Versus

1. Binod Yadav @ Ravi Yadav @ Gope, S/o- Munna Yadav, Age – 30 years

.....Accused Person

{Resident of Village: Shahpur, P.S.-Shahpur, District-Bhojpur}

Name of Police Station: Shahpur

First Information Report No. – 342 of 2019

FIR Under Sections: 341, 323, 326, 307, 504 and 506 of Indian Penal Code read with Section 34 of Indian Penal Code and 27 of Arms Act.

Cognizance Under Sections:- 341, 323, 326, 307, 504 and 506 of Indian Penal Code read with Section 34 of Indian Penal Code and 27 of Arms Act.

Committed on: 14.09.2021

District: - Bhojpur

Charges framed under Sections:- 341, 323, 326, 307, 504 and 506 of Indian Penal Code read with Section 34 of Indian Penal Code and 27 of Arms Act.

Learned Counsel for the State: Sri Siya Ram Singh, Learned A.P.P.

Learned Counsel for the Accused person: Sri Kalika Sharan Ojha, Ld. Advocate.

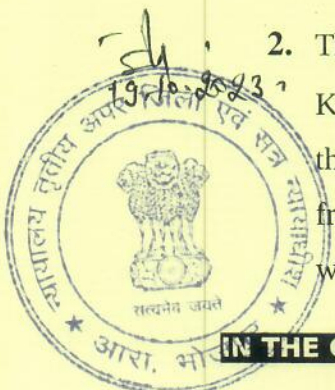
Date of Judgement:- 19th of October, 2023

Present: Satyendra Singh,
 Additional Sessions Judge - IIIrd,
 Bhojpur at Ara.

J U D G M E N T

1. In the present Session Trial, arising out of Shahpur P.S. Case No. 342 of 2019, the aforementioned accused person namely Binod Yadav @ Ravi Yadav @ Gope is charged for attempt of murder of Sajan Yadav in furtherance of common intention, an offence punishable under Section 307 of Indian Penal Code read with Section 34 of Indian Penal Code. The accused is also stand charged for committing hurt, restraint and intentional insult to Pramod Kumar Yadav in furtherance of common intention, an offence punishable under sections 341, 323, 504, 506 and 326 of Indian Penal Code read with section 34 of Indian penal Code, hereinafter IPC, and also for using arms in contravention of Section 5 of the Arms Act, punishable under section 27 of Arms Act.

2. The prosecution case is in brief as per the fard-beyan of the informant namely Pramod Kumar Yadav is that on 11.12.2019 at about 7:30 p.m. the informant gave his beyan to the effect that on 11.12.2019 at about 6:45 o'clock, the informant was going to his Dalan from his motorcycle and when the informant reached near the house of Baleshwar Yadav, who is the maternal grandfather of Vinod Yadav @ Ravi Yadav @ Gope on his



motorcycle, the servant of Vinod Yadav @ Ravi Yadav namely Rahul Yadav who was coming on motorcycle, dashed against the motorcycle of the informant. When the informant said Rahul Yadav that he was not driving the motorcycle properly, Rahul Yadav abused the informant. On protest by the informant, Rahul Yadav pushed the informant from the motorcycle and assaulted him with leg and fists. On intervention by the people, Rahul Yadav escaped. The informant returned to his door and was giving information about the incident to his family members and in the meantime, Vinod Yadav @ Ravi Yadav @ Gope, Lallu Yadav, Baleshwar Yadav and Rahul Yadav came to the door of the informant. Baleshwar Yadav instigated the other accused persons to fire on the informant on which Vinod Yadav fired on the informant with intention to kill him which hit the cousin of the informant namely Sajan Yadav on his arm due to which Sajan Yadav sustained grievous injury. When the informant and others tried to catch the accused persons they escaped. The informant and others took said Sajan Yadav to the police station.

3. On the basis of the fard-beyan of the informant- Pramod Kumar Yadav, the Police registered an FIR bearing registration number Shahpur P.S. Case No. 342 of 2019 against above named accused person.
4. After investigation the police submitted the charge-sheet against the above named accused person namely Vinod Yadav @ Ravi Yadav @ Gope and after that learned Additional Chief Judicial Magistrate-1st, Ara took cognizance against above named accused person under sections 341, 323, 326, 307, 504 and 506 of Indian Penal Code read with Section 34 of Indian Penal Code and 27 of Arms Act. After cognizance the case of accused person was committed to the Court of Sessions vide order dated 14.09.2021 and after that the Sessions Case No. 256 of 2021 was constituted against the above named accused person and the present sessions case was transferred to this court after moving of various co-ordinate courts for trial and disposal under sections 341, 323, 326, 307, 504 and 506 of Indian Penal Code read with Section 34 of Indian Penal Code and 27 of Arms Act.
5. On 15.02.2022, the learned Additional Sessions Judge – XVIIth, Ara framed charged against the above named accused person namely Vinod Yadav @ Ravi Yadav @ Gope for attempt of murder of Sajan Yadav in furtherance of common intention, an offence punishable under Section 307 of Indian Penal Code read with Section 34 of Indian Penal Code with additional charge for committing hurt, restraint and intentional insult to Pramod Kumar Yadav in furtherance of common intention, an offence punishable under sections 341, 323, 504, 506 and 326 of Indian Penal Code read with section 34 of Indian penal Code and also for using arms in contravention of Section 5 of the Arms Act, punishable under section 27 of Arms Act. The accused person denied the charges and claimed trial. Hence, the case was put to trial and file was put up for prosecution evidence.



6. After closure of prosecution evidence on prayer of Id. A.P.P., the statements of accused person was recorded under section 313 of Cr.P.C. on 10.10.2023 to which the accused person denied and claimed his innocence. Thereafter, the record was fixed for defence evidence.
7. No defence evidence was produced on behalf of the accused person. The defence evidence was closed on request of defence and case record was fixed for argument of both sides.
8. Now, the point for consideration in this case is whether the prosecution has been able to prove the charges levelled against the accused person beyond all reasonable doubts?

FINDINGS

9. The Prosecution has produced the following evidences in support of their case:-

Oral Evidence:-

- | | | |
|--------|---|--|
| P.W. 1 | - | Mahendra Singh Yadav, |
| P.W. 2 | - | Pramod Kumar Yadav, informant of this case, |
| P.W. 3 | - | Rakesh Kumar Yadav @ Guddu Yadav, |
| P.W. 4 | - | Dr. Ajay Kumar, who treated the injured Sajan Yadav, |
| P.W. 5 | - | Ajay Kumar Sah @ Ajay Sah and |
| P.W. 6 | - | Avinash Kumar. |

Documentary Evidence

- | | | |
|----------|---|--|
| Ext. 1 | - | Signature of informant Pramod Kumar Yadav on fard-beyan, |
| Ext. 1/1 | - | Signature of Surendra Yadav as a witness on fard-beyan, |
| Ext. ½ | - | Signature of S.H.O.-cum-Inspector on fard-beyan, |
| Ext. 2 | - | Signature of informant Pramod Kumar Yadav on protest petition, |
| Ext. 3 | - | Signature of S.H.O. Shambhu Bhagat at endorsement of F.I.R, |
| Ext. 4 | - | Charge-sheet and |
| Ext. 5 | - | injury report of injured Sajan Yadav. |

Material Evidence

Nil

10. The Defence has produced the following evidences in support of their case:-

Oral Evidence:-

Nil

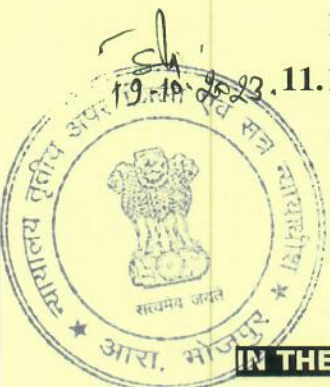
Documentary Evidence:-

Nil

Material Evidence:-

Nil.

11. P.W. 1 Mahendra Singh Yadav says that the incident took place on 11.12.2019 at about 6:45 in the evening and at that time his son Pramod Kumar Yadav was going to his Dalan from his motorcycle and when his son reached near the house of Vinod Yadav on his motorcycle, the servant of Vinod Yadav @ Ravi Yadav namely Rahul Yadav who was coming on motorcycle, dashed against the motorcycle of his son. When his son said

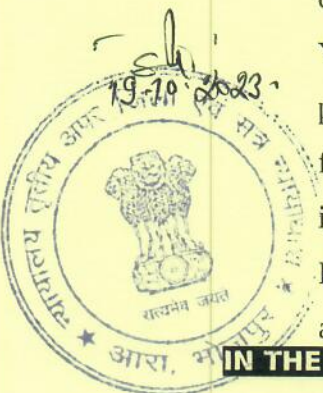


Rahul Yadav that he was not driving the motorcycle properly, Rahul Yadav abused his son. On protest by his son, Rahul Yadav pushed his son from the motorcycle and assaulted him with leg and fists. The witness further says that when his son returned to his door and was giving information about the incident to his family members and in the meantime, Vinod Yadav @ Ravi Yadav @ Gope, Lallu Yadav, Baleshwar Yadav and Rahul Yadav came to his door and after that all the accused persons instigated to each-other to fire upon his son on which Vinod Yadav fired upon his son with intention to kill him which hit Sajjan Yadav on his arm due to which Sajjan Yadav sustained grievous injury and after that all the accused persons fled away. Lastly, the witness says that he will recognize the accused persons after seeing them and the identification is not disputed.

In his cross-examination at para no. 3 the witness says that he is the father of Pramod Kumar Yadav and neighbour of Vinod Yadav and Vinod Yadav's way from his house and that way prepared one week ago. The witness further says that there is no previous dispute between his family and Vinod Yadav and when the incident happened, the people from the village did not come but they came after the incident. The witness further says that he saw the accused persons to fleeing after shooting. On being asked by the court that how long did you reach where the bullet was fired on that the witness replied that he reached where the bullet was fired after ten minutes. At para no. 6 of cross-examination the witness says that Vinod Yadav fired upon Pramod Yadav but that bullet was hit to Sajjan Yadav. The witness further says that he has not recorded his statement before the police and it is also not the case that he has given false testimony today and as he stated today not be happened in the same way.

12.P.W. 2 Pramod Kumar Yadav, informant of this case says that this case has been lodged by him against Vinod Yadav, Baleshwar Yadav, Lallu Yadav and Rahul Yadav and he recorded his statement before the police and he read and understand his beyan and after that he puts his signature on it which is recognized by him and the same is marked as Ext. 1. The witness further says that Surendra Yadav also put his signature on fard-beyan which is also recognized by him and the same is marked as Ext. 1/1.

The witness says at para no. 2 of examination-in-chief that the incident took place on 11.12.2019 at about 6:45 in the evening and at that time he was going to his Dalan from his motorcycle and when he reached near the house of Vinod Yadav on his motorcycle, the servant of Vinod Yadav @ Ravi Yadav namely Rahul Yadav who was coming on motorcycle, dashed against the motorcycle of him and when he said Rahul Yadav that he was not driving the motorcycle properly, Rahul Yadav abused him. On protest by him, Rahul Yadav pushed him from motorcycle and assaulted him with leg and fists. The witness further says that when he returned to his door and was giving information about the incident to his family members, in the meantime, Vinod Yadav @ Ravi Yadav @ Gope, Lallu Yadav, Baleshwar Yadav and Rahul Yadav came to his door and Baleshwar Yadav instigated the other accused persons to fire upon him on which



Vinod Yadav fired three bullets upon him with intention to kill him which hit Sajan Yadav on his arm due to which Sajan Yadav sustained grievous injury and after that all the accused persons fled away and after that his cousin Sajan Yadav took to Hospital for treatment but he was suggested that first he may go to police station for lodging the FIR and after that he would be treated. The witness further says that he filed a protest petition before the Id. Chief Judicial Magistrate Ara on which he puts his signature and the same is marked as Ext. 2. The witness at para no. 7 of cross-examination says that there was a case running since 2013 between him and the accused Vinod Yadav in which Vinod Yadav had murdered his elder brother. Lastly, the witness says that he knows all the accused persons and today Vinod Yadav is present in the court and he will recognized to others after seeing them.

In his cross-examination the witness says that the incident took place at about 6:45 in the evening and at that time there was winter and there was darkness at the place of occurrence and it is not the fact that there was no clear visibility at the place of occurrence. The witness further says that he couldn't tell the number of motorcycle from which he was going and he also not able to tell the number of that motorcycle from which he was dashed by Rahul Yadav. At para no. 21 of cross-examination the witness further says that there were four persons and all of them were armed with weapons but none of them had made fire upon him but when the Vinod Yadav fired the bullet was hit to Sajan Yadav who was standing with him. Lastly, the witness says that it is not the case that he has given false testimony today for falsely implicated the accused person in this case due to previous enmity.

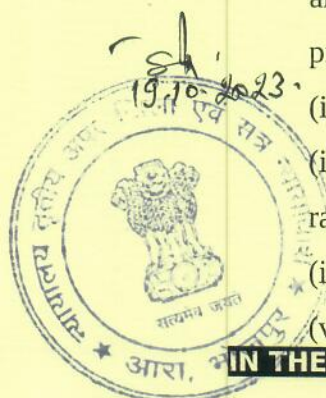
13. **P.W. 3 Rakesh Kumar Yadav @ Guddu Yadav** says that he does not know anything about the occurrence and he has not recorded his statement before the police.

On prayer of the Id. A.P.P. for the State the present witness is declared hostile.

In his cross-examination the witness says that he has no enmity with informant Pramod Kumar and today he has testified himself before the court voluntarily.

14. **P.W. 4, Dr. Ajay Kumar** says that on 11.12.2019, he was posted at Referral Hospital, Shahpur as Medical Officer and on the same day he examined Sajan Yadav, S/o- Surendra Yadav, Age – 35 years, Religion – Hindu, Sex – Male, R/o- Village Shahpur, P.S. – Shahpur, District – Bhojpur and found following findings:-

- (i) Lacerated wound on left elbow joint near fore-arm with skin margin dark stained and inverted size $\frac{1}{2}$ " x $\frac{1}{2}$ " x depth could not ascertained. Fresh bleeding from wound side present.
- (ii) Cause by fire-arm weapon.
- (iii) Nature of injury – reserved because patient was refer to Sadar Hospital, Ara for x-ray, opinion and further management.
- (iv) Age of injury – within 6 hours.
- (v) Mark of identification - A mole on face below left eye.



This injury report is in my hand-writing and signature and same is marked as Ext. 5 and the same is recognized by me.

In his cross-examination the witness says that there is no evidence before him that the injury is sustained by gun-shot injury but he mentioned the dark stains and there may be make a margin inverted from round object. The witness further says that he cant't tell which were the thing of dark stain injuries and blood keeps coming out deu to wounding of artuary and vain and giving pressure can stop bleeding but bleeding was not stopped by it and blood was oozing from the wound and he did not mention whether the cloth had blood or not. The witness further says that the patient he referred to Sadar Hospital, Ara has has not received his X-ray report. The witness further says that he can't tell the exact time of the injury but he mentioned about six hours and he can't tell whether there was bleeding from wounds for hours or not. Lastly, the witness says that he did not know the person before it.

15. **P.W. 5, Ajay Kumar Sah @ Ajay Sah** says that he does not know anything about the incident and on the day of occurrence he was not present at the village. The witness further says that he recorded his statement before the police and Baleshwar Yadav is Ex-Army who was retired in 2000.

In his cross-examination the witness says that he has no enmity with Pramod Yadav.

16. **P.W. 6, Avinash Kumar** says that he took the charge of Shahpur police case no. 342 of 2019 from the Police Sub-Inspector Nagendra Bhushan Tiwari on 02.10.2020 which was registered under sections 341, 323, 326, 307, 504 and 506 of Indian Penal Code read with section 34 of Indian Penal Code and 27 of Arms Act. The witness further says that after taking the charge of the case he submits the charge-sheet bearing charge-sheet no. 268 of 2020, dated 27.11.2020 under sections 341, 323, 326, 307, 504 and 506 of Indian Penal Code read with section 34 of Indian Penal Code and 27 of Arms Act against the accused Vinod Yadav @ Ravi Yadav @ Gope which was already in custody. The witness further says that S.H.O. Shambhu Kumar Bhagat has put his signature on fard-beyan which was recognized by him and the same is marked as Ext. ½ and the there is also the signature of Shambhu Kumar Bhagat on formal F.I.R. which was recognized by him and the same is marked as Ext. 3. Lastly, the witness says that the charge-sheet has been written by him and his hand-wrinting and recognized by him and the same is marked as Ext. 4.

In his cross-examination the witness says that he has not testified any witnesses and in this case he has only submitted the charge-sheet. The accused Vinod Yadav was in judicial custody from earlier and he remanded himself in this case. The witness further says that he had submit the charge-sheet in a hurry because the time was over. Lastly, the witness says that there was no need for orders of senior officers to submit the charge-sheet.



ARGUMENT

17. Heard arguments of both the sides. The learned Additional Public Prosecutor Sri Siya Ram Singh for the prosecution appears before the court and argued that the witnesses of this case have fully supported the allegation against the accused person. On the day of occurrence i.e. on 11.12.2019 the above named accused person fired upon the informant Pramod Kumar Yadav with intention to kill him but the bullet was missed and hit to Sajjan Yadav in which Sajjan Yadav sustained grievous injury and the allegation levelled against the accused person is serious in nature. During the examination all the prosecution witnesses have clearly stated that the above accused person was seen at the place of occurrence. The doctor who is examined as P.W. 4 has found the injuries on the body of Sajjan Yadav and cause of injury is gunshot injury which corroborated that the accused person committed offence as alleged under section 307 of IPC read with Section 34 of IPC and 27 of Arms Act. Lastly, it has been prayed that there are sufficient material against the accused person and the allegations levelled against the accused person is serious in nature, hence prayed to convict the accused person.

On the other hand, the learned counsel Sri Kalika Sharan Ojha for the defence appeared before the court and argued that the accused person is innocent and he has committed no offence and falsely implicated in this case by the informant and his family members due to previous enmity. The prosecution witnesses of this case are interested and hearsay witnesses and no prosecution witnesses are the eye-witness of this case. On perusal of the statements of the prosecution witnesses, it appears that at the time of alleged incident no one of prosecution witnesses were present at the place of occurrence. The prosecution has fully failed to bring the witnesses who corroborated the case of prosecution against the accused person and this case has been falsely lodged against the above named accused person due to mala fide intention and previous enmity which is also clear from the statement of the informant. The learned defence counsel further submitted that there are contradictions in the statements of the witnesses and nothing has been recovered from the place of occurrence and I.O. of this case has not appeared before the court to record his statement which creates a serious doubt while the injured Sajjan Yadav has not made witness in this case which also creates a serious doubt. It has further been submitted that on the day of occurrence that was a dark night and it is not possible to anyone to see anyone in dark night. The learned defence counsel has further submitted that in view of the evidences on record, the charged levelled against the above named accused person is not made out and the accused person deserves to be acquitted from the charges levelled against him.

CONCLUSION

18. I have heard the arguments advanced by the learned counsels for both the sides. From perusal of case record, it transpires that the prosecution has examined six witnesses including the Medical officer as P.W. 4 who is the official witness in the instant case. On the other hand, the accused person not produced any witnesses in his defence. Further perusal of the case record it shows that the accused person is facing trial under sections



341, 323, 326, 307, 504 and 506 of Indian Penal Code read with Section 34 of Indian Penal Code and 27 of Arms Act. Before just decision a brief analysis of evidences are necessary to just arrival of decision of this case. The informant of this case is the most important witness and P.W. 2 Pramod Kumar Yadav is the informant of this case who says about the occurrence that on 11.12.2019 the accused Vinod Yadav fired upon him for intention to kill him but the fire was missed and the bullet hit to his cousin Sajan Yadav but on the other hand the witness at para no. 12 of cross-examination clearly says that there was darkness at the place of occurrence and then how it could be possible to say that the bullet that was hit to his cousin was fired by the accused Vinod Yadav because the informant in his further cross-examination at para no. 21 says that four the accused persons were armed with weapons and no one had fired upon him to kill him and on the other hand the witness has failed to tell in his fard-beyan that all the accused persons were armed with weapons and there are contradictory statements of the present witnesses himself. The witness further says at para no. 7 of examination-in-chief that there was a previous enmity with accused Vinod Yadav since 2013 but the P.W. 1 who is the father of the informant clearly says in his cross-examination at para no. 3 that there was no enmity with accused person before this case. From further perusal of testimony of the informant it is crystal clear that there was previous enmity with the accused person and there is various contradictions in the statements of the present witnesses with another witnesses and due to the darkness the informant was not able to tell that by whom the firing hit to his cousin Sajan Yadav, and thus, the testimony of the present witness is not fully trustworthy and reliable in the eyes of law. On perusal of testimony of P.W. 1, it appears that this witness was at his house at the time of incident and he was informed by his son about the incident. The witness further says at para no. 4 of cross-examination that he reached at the place of occurrence after ten minutes and when he reached at the place of occurrence he saw that the accused persons were fleeing and thus this witness is not an eye-witness of this case and he has not seen the incident to his own eyes and thus he is hearsay witness and thus the testimony of this witness is also not reliable and trustworthy in the eyes of law because he is not an eye-witness of this case. Now, I have come to the testimonies of P.Ws. 3 and 5 and these witnesses are declared hostile by the prosecution and these witnesses were not aware of the incident and they nothing known about the incident and the testimonies of these witnesses are not reliable and credible in the eyes of law who support the prosecution case. From perusal of case record it also transpires that the I.O. of this case has not examined before the court who explained about the incident in which manner he investigate the case. The prosecution has also failed to bring the injured Sajan Yadav before the court to testify his witness which creates a serious doubt. From further perusal of case record it also transpires that from the place of occurrence no any empty cartridges have been recovered by the police officials. From perusal and scrutiny of all the statements of the witnesses it clearly shows that there is no eye-witness of this case and most of the witnesses are interested and hearsay witnesses and nobody saw the incident happening and there are many contradictions in



the statements of the witnesses and there is no specific and overt act levelled against the present accused person and there is gap of consistency in the statements of the witnesses and the police officials of this case fully failed to recovered the used weapons in this case during the investigation or trial which corroborate the prosecution case against the above named accused person which further reflects that a casual approach adopted by the prosecution to take appropriate steps to prove their case.

On the other hand, It is an admitted fact by the statement of the informant that there was a previous animosity between the accused person and the informant.

19. In the instant case, though the prosecution has been able to prove the bodily injury and the nature of it, through the testimony of P.W.-4, the doctor who treated the injured, it has miserably failed to establish the complicity of the accused person in the said act. Neither the intent nor the act has been proved against the accused person.

Thus, in the light of the aforementioned facts and discussions, and the appreciation of evidences led by the prosecution, this court has arrived at the conclusion that the prosecution has failed to prove and establish well beyond reasonable doubt, both the criminal act and intent of the accused person charged under Sections 341, 323, 326, 307, 504 and 506 of Indian Penal Code read with Section 34 of Indian Penal Code and 27 of Arms Act, for committing the attempt of murder to Sajan Yadav, that is, the prosecution has not been able to bring home the charges against the accused person and proved its case beyond reasonable doubt.

Thus, in the light of the aforementioned facts, circumstances and discussions, this court had arrived at the following veritable conclusion:-

ORDER

The accused person namely Vinod Yadav @ Ravi Yadav @ Gope stands acquitted of the charges of sections 341, 323, 326, 307, 504 and 506 of Indian Penal Code read with Section 34 of Indian Penal Code and 27 of Arms Act in absence of sufficient evidence. He is already on bail. He and his bailors are discharged from their liabilities.

This judgment has been corrected, signed and pronounced by me on 19th of October, 2023 in open court.

Dictated

19.10.2023.

Addl.Sessions judge-IIIrd
Bhojpur at Ara.
Dated- 19th of October, 2023

Addl.Sessions judge-IIIrd
Bhojpur at Ara.
Dated- 19th of October, 2023

