

In the Court of 7th Addl. Sessions Judge, Munger,

S.T. No.147 of 2021

State Vs. Arbind Yadav & Others.

21.09.2022:-

Out of six accused persons two accused persons are present and other four accused persons are represented which is accepted only for today. Record is put up for order today on petition dated 28.03.2022 u/s 227 of Criminal Procedure Code filed by the petitioners namely 1. Arbind Yadav 2. Kaila Yadav 3. Manika Yadav alias Manish Yadav 4. Bokua Yadav 5. Chhotu Yadav & 6. Shankar Yadav and rejoinder dated 22.06.2022 filed on behalf of the prosecution. In petition dated 28.03.2022 it is stated that the instant sessions case is related with Kotwali P.S. Case no. 452/17 which is counter blast of Kowtali P.S. Case No. 451/17. Kotwali P.S. 451/2017 was registered u/s 302/307/34 I.P.C. and 27 Arms Act against five persons including the informant of this case and during course of trial, bearing S.C. no.128/18 Sukhdeo Vishwakarma and Pintu Sharma convicted by Sessions Judge, Munger u/s 304/307/34 and 27 Arms Act and fined also vide Judgment dated 13.2.2020. Although a supplementary charge sheet has been submitted on 28.8.19 against the informant of this case Pushpam Kumari, Durga Devi and Maya Devi all D/o Sukhdeo Vishwakarma submitted u/s 302/34 of the I.P.C. and 27 of the Arms act which is pending before the C.J.M, Munger for commitment of the case to the court of Sessions. No any discharge petition u/s 227 or 228 of the Cr.P.C. has been filed on behalf of these petitioners earlier, either before this court or before the Honorable High Court, Patna. These petitioners are innocent and have committed no any offence as alleged in the FIR, neither these petitioners have any criminal antecedent as earlier. Rather these petitioners have been falsely roped in a concocted case. Later on, in

collusion of Kotwali Police only to save skins from the earlier Kotwali P.S. Case No. 451/17 lodged by the accused Arbind Yadav. Just after committing the murder of Subodh Yadav and causing head injury to Arbind Yadav. Police reached at the place of occurrence which situates hereunder:

North- P.C.C. Road thereafter house of Ashok Choudhary.

South - House of Krishna Mohan Poddar.

East - House of Birendra Sharma

West- P.C.Road.

and occurrence took place near the 2nd gate of the house of the informant where pieces of bricks were found in scattered way and arrested Sukhdeo Sharma and also seized double barrel along with 12 lives cartridges of 65 mm from the house of Sukhdeo Sharma and three empty cartridges of 65 mm bore. It is further submitted that after institution of Kotwali P.S. case No. 451/17 and arresting of Sukhdeo Sharma, this instant case has been lodged only to save the skins on the basis of a baseless and false grounds that accused petitioners along with deceased Subodh Yadav and 20-30- persons armed with weapons came and started to break the boundary wall and gate and deceased Subodh Yadav entered into her campus. On objection Subodh Yadav gave BARCHI blow on her chest which caused injury thereafter all the persons entered into the house and started to assault with brick stone to her father and her sisters and also misbehaved with her sisters, father always possessed a loaded gun and when Subodh Yadav and others wanted to snatch the double barrel gun then finger of the gun was pressed and bullet hit to Subodh Yadav who died at the spot. It is further submitted that motive alleged that father of the informant purchased a piece of the

land of two Katha from Mahabeer Mandal in the year 1973 and again purchased two Kathas land from the wife of Mahabeer Mandal namely Samudri Devi in the year 1992 but the aforesaid two Kathas land has been purchased from Raj Mandal, Sunil Mandal and Shatrughan Mandal by the mother of these accused persons through registered deed on 16.12.17 for which accused persons committed offence. The reality of the said Mahabeer Mandal husband of Samudri Devi was a habitual drinker hence Sukhdeo Sharma by persuading Mahabir Mandal able to procure sale deed on 12.2.1974 by showing Samudri Devi, since jamabandi of the land was running in the name of Samudri Devi hence mutation has not been done even then Sukhdeo Sharma constructed house on the land thus by giving pressure, again able to execute (two Khata Land that very land from Samudri Devi of consideration amount Rs.6,000/- on 7.7.82 and earlier amount of Rs.3000/- adjusted which reveals from the same deed dated 7.7.82 also. It is further submitted that on the basis of the aforesaid forged sale deed, informant and her father forcibly claimed over the lands of two katha which has been purchased by the mother of these accused persons on 30.1.2016 from Raju Mandal and others and filed a measurement case no. 65/17-18 before C.O. Sadar, then on 15.12.17 in presence of C.O. Sadar and Anchal Amin the land of two kathas demarcated in presence of boundary persons namely Sukhdeo Sharma, Krishna Mohan Poddar, Jagdish Sharma and Biran Sharma which gave an annoyance to Sukhdeo Sharma and his family and when Arbind Kumar on 16.12.2017 at 2 pm was passing through the road the informant of this case and her men started to abuse and assault Arbind Kumar, seeing the occurrence when Subodh Yadav went to protect Arbind Kumar then with the connivance of the family members Sukhdeo

Sharma came with a double barrel gun and started firing with intention to kill Subodh and Arbind Yadav. For which Arbind Yadav received fire arms injury on his head and Subodh Yadav received fire arms injury on his neck and he died on the spot. Hence, entire prosecution case is false and baseless only to save skins from Kotwali P.S. Case No. 451/17. It is further submitted that so far the merit of this case is concerned there is no any allegation leveled against these petitioner in any manner except against the deceased Subodh Yadav. However on the date of occurrence Maniya alias Manish Yadav was on duty at Kharagpur and Bokoua Yadav alias Ajay Kumar Yadav is handicapped and not able to move easily. Hence, the involvement of these petitioner are totally false. From perusal of the injury report of the informant doctor found an arrow insulated in left chest wall itself false on this ground that the informant admitted in Sadar Hospital on 14.12.17 at 8.05 pm. While the aforesaid injury of the informant prepared on 14.12.17 at 3.1- pm and simple in nature. From perusal of the FIR and entire case diary there is no any allegations leveled against these accused persons. Hence section 307/34 IPC is not applicable against these petitioners. It is therefore, prayed that these petitioners may be discharge from this case u/s 227 of the Criminal Procedure Code and if the court is of the opinion that accused persons have committed an offence then charge may be framed u/s 228 of the Cr.P.C., after framing charge, transfer the case for trial to the court of C.J.M. Munger.

Per contra, prosecution has filed rejoinder on 22.06.2022 against the petition of the defence dated 28.03.2022 stating therein that the petition 28.03.2022 filed on behalf of the defence is not maintainable either on the facts of the case or on the point of law. The defence has

stated so many facts in the petition dated 28.3.2022 but the same cannot be either looked in to or considered unless the trial is being conducted by adducing the evidence by the parties of the case. The Police after completion of investigation has submitted charge sheet and on the basis of the charge sheet the cognizance of the offence u/s 147/148/149/341/323/307/354/337/447/448 and 324 of the IPC has been taken. The I.O. has inspected the place of occurrence in para 16 of CD and further recorded the statements of prosecution witnesses in para 18,19 and para 20 of the case diary. Further more, the injury has also been found on the body of the informant in para 29 of the case diary. After cognizance the case has been committed to the court of Session for trial and disposal but the defence has filed this petition only with a view to delay the disposal of the case. There is sufficient material on record against the accused persons for framing of the charge under which the cognizance has been taken. In fact the fard beyan of the informant was recorded prior to the case of Kotwali P.S. case No. 451 of 2017 but the police in collusion with the informant of Kotwali P.S. case no. 451/17 has recorded his case earlier to my case only with a view to save his skin from Kowali P.S. Case No.452/17. In the interest of justice it would be necessary that both the cases be tried together in one court. Most of the facts in the petition of the defence are beyond the case diary. The petition dated 28.3.2022 filed on behalf of the defence deserves to be rejected. It is therefore prayed to reject the petition dated 28.03.2022 filed by the petitioners.

I have already heard the rival contentions of both parties and perused the case record. From perusal of the case record it reveals that this case was registered u/s 147/148/149/341/323/307/354/337/447/448/324 IPC

against all the F.I.R. named accused persons. After investigation, the investigating officer has submitted charge-sheet u/s 147/148/149/341/323/307/354/337/447/448/324 IPC against all the six petitioners and vide order dated 20.01.2021 cognizance has been taken in this case. After that this case is committed to the court of sessions. From perusal of the original case dairy as well as injury report available on the case record it transpires that there is sufficient material available on the case record to frame charge against all petitioners. At this juncture it is pertinent to mention that at the time of framing of charge, the court is required to evaluate the material and document on record to decide whether there is ground for presuming that the accused had committed the offence. There is no need to evaluate the sufficiency of the evidence to convict the accused. Materials brought on record by the prosecution can be believed to be true but their probative value can not be decided at this stage rather the evidentiary value and its credibility and veracity has to be considered at the stage of trial.

In the light of aforesaid discussions, having regard to facts and circumstances of the case, petition dated 28.03.2022 filed by the defence is hereby rejected and all the accused persons are directed to appear physically for framing of charge u/s 147/148/149/341/323/307/354/337/447/448/324 IPC.

Put up on 29.09.2022 for framing of charge.

7th

Addl. Sessions Judge Munger.

21.09.2022.