

IN THE HIGH COURT OF JUDICATURE AT PATNA

Bhimal Yadav

vs.

The State of Bihar

Criminal Appeal (DB) No. 500 of 2015

22 August 2023

(Hon’ble Mr. Justice Vipul M. Pancholi &

Hon’ble Mr. Justice Chandra Shekhar Jha)

Issue for Consideration

Whether the prosecution established the guilt of the accused beyond reasonable doubt for the offence of murder under Section 302 IPC and Section 27 of the Arms Act.

Headnotes

There is a delay of more than 7 hours in lodging the FIR.- IO did not prepare seizure list nor he had collected the blood stained soil from the place of occurrence - As per case of Investigating Officer, he got the information from Chaukidar and thereafter he immediately reached to the place of occurrence, however, he had not recorded the statement of the said witness nor he has been examined as a prosecution witness. There are major contradictions and omissions in the deposition given by the prosecution witnesses and first informant, who is wife of the deceased, cannot be termed as trustworthy witness or reliable witness. (Para 11, 22, 24)
Prosecution has failed to prove the case against the appellant/accused beyond reasonable doubt. Appeals are allowed. (Para 25, 27)

Case Law Cited

None cited in the judgment.

List of Acts

Indian Penal Code, 1860 – Section 302; Arms Act, 1959 – Section 27; Code of Criminal Procedure, 1973 – Sections 161, 209, 313, 374(2)

List of Keywords

Murder; Delay in FIR; Eyewitness testimony; Contradictions in evidence; Benefit of doubt; Section 302 IPC; Section 27 Arms Act; Acquittal; Post-mortem inconsistency; Investigation lapse

Case Arising From

Judgment of conviction dated 22.05.2015 and order of sentence dated 28.05.2015 rendered by 3rd Additional District & Sessions Judge, Barh, Patna in S.T. No. 116/06

Appearances for Parties

For the Appellant: Mr. Manoj Kumar Pandey, Mr. Bikramdeo Singh, Ms. Kumari Pallavi, Advocate
For the Respondent (State): Mr. Satya Narayan Prasad, APP

Headnotes Prepared by Reporter: Amit Kumar Mallick, Adv.

Judgment/Order of the Hon’ble Patna High Court

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.500 of 2015**

Arising Out of PS. Case No.-203 Year-2001 Thana- BARH District- Patna

Bhimal Yadav, Son of late Ramjot Yadav, resident of Village Soima, P.S. Barh, Distt. Patna.

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Manoj Kumar Pandey, Advocate Mr. Bikramdeo Singh, Advocate Ms. Kumari Pallavi, Advocate
For the Respondent/s	:	Mr. Satya Narayan Pd., APP

**CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)**

Date : 22-08-2023

The present appeal is filed under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment of conviction dated 22.05.2015 and order of sentence dated 28.05.2015 rendered by 3rd Additional District & Sessions Judge, Barh, Patna in S.T. No. 116/06, corresponding to G.R. No. 723/2001, arising out of Barh Case No. 203/2001, by which the concerned trial court has convicted the appellant/accused for the offence punishable under Section 302 of the Indian Penal Code and is ordered to undergo rigorous imprisonment for life and a fine of Rs. 10,000/- (ten thousand) only, and in default of payment of fine, he shall have to undergo rigorous imprisonment



for a period of two years more. Further the appellant is sentenced to undergo rigorous imprisonment for a period of three years and a fine of Rs. 5000/- (five thousand) only for the offence punishable under Section 27 of the Arms and in default of payment of fine, he shall have to undergo rigorous imprisonment for one year more. Both sentences run concurrently.

2. It is the case of the prosecution that the informant Barfi Devi, wife of late Dineshwar Yadav, proceeded to go with her husband to her parental village. They left the house at about 8:30 AM in the morning. When they reached near the agriculture field of Madan Sah, the present appellant and another accused Chhote Yadav along with two unknown persons surrounded them and thereafter the present appellant opened fire from his country made pistol, which hit in the right ear pit of her husband. At the same time, another accused Chhote Yadav also fired at the husband of the first informant, which hit in the right ribs of the Dineshwar Yadav, as a result of which injured fell down and immediately died. It is stated that cause of the occurrence is land dispute between her brother-in-law Subhash Yadav and the appellant. The first information report was registered with Barh P.S. bearing Case No. 203 of 2001 at 4:00



PM. for the alleged incident which took place at 9:00 AM in the morning.

3. After registration of the FIR, the Investigating Agency started investigation and recorded the statement of the witnesses, the investigating officer also collected the material and prepared Panchnama and thereafter filed the charge-sheet against the present appellant/accused for the offence punishable under section 302 of the Indian Penal Code and Section 27 of the Arms Act before the concerned Magistrate Court.

4. As the case was exclusively triable by the court of Sessions, the learned Magistrate committed the same under Section 209 of the Code of Criminal Procedure to the concerned Sessions Court, where the same was registered as Sessions Trial No. 116 of 2006.

5. During the course of trial, the charge was framed against the present appellant/accused and the prosecution examined 08 witnesses and also produced documentary evidence. Thereafter, the further statement of the appellant/accused was recorded under section 313 of the Code of Criminal Procedure and after conclusion of the trial the trial court passed impugned order of conviction, against which the present appellant has preferred the present appeal.



6. Heard learned Advocate, Mr Bikramdeo Singh for the appellant/accused assisted by Mr. Manoj Kumar Pandey and Ms. Kumari Pallavi and learned APP Mr. Satya Narayan Prasad for the respondent/State.

7. Learned advocate for the appellant has referred to the deposition given by the prosecution witnesses and also referred to the inquest Panchnama and the *post mortem* report of the deceased and thereafter, it is mainly contended that there was a gross delay of 7 hours in lodging the FIR, wherein the present appellant has been falsely implicated. It is submitted that though PW-4 Sakuni Devi and PW-5 Barfi Devi have claimed that they are the eye-witnesses to the incident in question, in fact, nobody has seen the incident in question. It is also submitted that PW-4 Sakuni Devi did not inform the police when her statement was recorded under Section 161 of the Code of Criminal Procedure that she had in fact seen the occurrence in question. However, at the time of giving her deposition before the Court, for the first time, she had deposed that she had seen the incident in question. Learned counsel, therefore, urged that the deposition given by PW-4 may not be considered by this Court as an eye-witness. At this stage, learned counsel has also referred to deposition given by PW-5 i.e. the original first informant Barfi Devi, who is the



wife of the diseased Dineshwar Yadav.

8. Learned advocate has pointed out the major contradictions in her deposition and contended that as per the case of the said witness she alongwith her husband left their house at about 2:10 PM, whereas in the first information report given by her, she has stated that they left the house at about 8:30 AM in the morning. Learned counsel has also referred about the distance between the house of the complainant and the place of occurrence. Learned counsel has also referred to paragraph 15 of the cross-examination of the said witness and submitted that as per the case of the PW-5, she had taken food with her husband before they left the house in the morning. However, in the *post mortem* report, it is specifically stated that food is digested. Learned counsel therefore urged that the story put forwarded by the prosecution may not be believed by this court, as the prosecution has failed to prove the case against the appellant/accused beyond reasonable doubt.

9. Learned counsel has also contended that PW-1, PW-2 and PW-3 are not the eye-witnesses, as admitted by them and they are mainly hearsay witnesses. Learned counsel thereafter submitted that PW-6 is a formal witness. Learned counsel for the appellant thereafter referred to deposition given



by PW-7 Dr. Vikash Chand Choudhary, who had conducted the post mortem of the deceased and thereafter submitted that though the said witness has stated about the injury sustained by the deceased, the prosecution has failed to prove that who had caused the injury to the deceased and therefore the trial court has committed an error while relying upon the deposition given by PW-7 doctor. At this stage, learned counsel has also referred deposition given by PW-8 Investigating Officer, after referring to the same, it is submitted that for the first time Chaukidar Shibu Paswan informed him about the occurrence in question, however, he did not record the statement of Shibu Paswan. It is further stated that during cross examination the I.O. has admitted that he found blood stains on the soil, where the incident took place, however, he did not collect the same and send for necessary analysis to the FSL. Learned counsel, therefore, urged that though the prosecution has failed to prove the case against the appellant beyond reasonable doubt, the learned trial Court has passed an order of conviction and therefore, the said order be quashed and set aside.

10. On the other hand, learned APP has vehemently opposed this appeal. It is mainly contended that, in fact, there is no delay in lodging the FIR, as contented by learned counsel for



the appellant. Learned APP has also referred to the deposition of the prosecution witnesses and contended that though PW-1 to PW-3 are not eye-witnesses, they have proved the factum of occurrence. It is also contended that PW-4, who is daughter-in-law of the deceased, was near the place of occurrence and therefore she immediately reached to the spot and therefore she is also an eye-witness to the incident in question. It is next contended by learned APP, after referring to the deposition of PW-5 Barfi Devi, that the presence of PW-5 was natural at the place of incident, as she was going with her husband to her parental village and during transit the incident in question took place near the agricultural field of Madan Shah. It is submitted that PW-5 can be said to be trustworthy witness and reliable witness and though there is only one eye-witness to the incident in question, when the medical evidence supports the case of the said eye-witness, conviction can be recorded relying upon the deposition given by the said eye-witness and therefore the learned trial court has not committed any error while passing the impugned order of conviction. Learned APP has also referred to the inquest Panchnama of the deceased. Learned APP has also submitted that even assuming, without the admitting, that there is some lacuna on the part of the investigating agency in



carrying out the investigation by not collecting the blood stains from the place of occurrence, the benefit of the same may not be given to the accused. Learned APP therefore urged that the present appeal be dismissed.

11. We have considered the submissions canvassed by the learned Advocate appearing for the parties. We have also perused the materials placed on record including the deposition given by the prosecution witnesses and the documentary evidence produced by the prosecution before the trial court. At the outset, it is pertinent to note that, as per the case of the prosecution, the incident in question took place on 09.09.2001 at about 9:00 AM in the morning near the agriculture field of Madan Shah. It is also not in dispute that for the said incident which took place at 9:00 PM the FIR was lodged at 4:00 PM. Thus, there is a delay of more than 7 hours in lodging the FIR. Though the first informant is claiming to be an eye-witness to the incident, it is specifically stated in the FIR by the first informant that she left her house along with her husband at about 8:30 AM and when they reached near the agriculture field of Madan Shah, the appellant and another accused Chhote Yadav came at the said place with two unknown persons and the present appellant/accused opened fire with his country made



pistol. Accused Chhote Yadav also opened fire and the bullet hit on the right rib of the husband of the first informant. The first informant has stated in the FIR that nobody had come at the place of incident and she was present alone with the dead body of her husband till Chaukidar Shibu Paswan came there and thereafter informed to the concerned police authority.

12. The first informant was examined by the prosecution as PW-5. During her examination-in-chief, the first informant Barfi Devi had deposed that she left her house with her husband at 10:00 A.M. in the morning for going to her parental village and when they reached near the agriculture field, the present appellant came at the said place and thereafter opened fire, in which her husband sustained injury and fell down and immediately died. She has further stated that she is not aware about the reason why the appellant had killed her husband. She has further stated that the distance between her house and the place of occurrence is half kilometer. She has further surprisingly stated that she left her house at about 2:10 PM. At that time one Sakuni Devi PW-4 and Pantari Devi were also accompanying them. During cross-examination, she had stated that she informed immediately about the occurrence i.e. within half an hour. She had further admitted in her cross-



examination that when the incident in question took place, she and her husband both were present. Except them, nobody was present at the said place. She further deposed that she is not aware about the land dispute between the appellant and cousin of her husband Subhash and Uday.

13. PW-1 Hardev Yadav, who is son of the deceased, is admittedly not an eye-witness to the incident in question and the said witness reached to the place after he got information about the incident in question. Thus, the said witness is a hearsay witness. However, in his examination-in-chief, the said witness deposed that the present appellant and Chhote Lal Yadav are the accused in the case of murder of one Uday Yadav, who was uncle of PW-1 and the deceased father of PW-1 was a witness in the said case. Thus, the said witness has tried to point out about the motive on the part of the appellant to commit the crime in question.

14. Similarly, PW-2, Nandu Yadav, who is cousin of the deceased is also a hearsay witness. Said witness is not an eye-witness to the incident in question and he learnt about the incident in question, when he reached to the place of occurrence.

15. PW-3. Anup Yadav is also relative of the deceased. He got information about the incident from one Madan Mahto



and after receiving the information from the said person, he reached at the place of incident and came to know about the fact that the present appellant and one another accused killed Dineshwar Yadav. The said witness has specifically admitted in cross-examination that he is not the eye-witness to the incident. The said witness also tried to point out about the motive on the part of the appellant to kill the deceased Dineshwar Yadav.

16. PW-4 Sakuni Devi is daughter-in-law of deceased. During the examination-in-chief, the said witness has deposed that she was near the village Bedhna Tal, she had gone there for purpose of cultivation. When she reached near the agriculture field of Madan Sah, she had seen that the appellant Bhimal Yadav came at the place of occurrence. He was having pistol in his hand and thereafter he opened fire on Bindeshwar i.e. Dineshwar. She had also seen Chhote Yadav, who also opened fire and in the said incident Dineshwar Yadav sustained injury.

It is pertinent to note that the aforesaid aspect was not stated by her when the Investigating Officer recorded her statement under Section 161 of the Code of Criminal Procedure.

17. PW-6 Ravindra Prasad is the formal witness whereas PW-7 Dr. Vikash Chand Choudhari is a doctor, who had conducted *post mortem* on the dead body of the deceased



Dineshwar Yadav. The said witness found following external injuries on the dead body of the deceased:-

External Injuries:

(a) Lacerated oval wound with inverted margin 1/2"x1/2" radius right perital area of skull.

(b) One lacerated oval wound with everted margin 1"x1" on left temporal area of skull below left ear.

(c) One lacerated oval wound with inverted margin on seventh intercostal space at anti axillary line on left side of chest, size of wound 1/2"X1/2".

(d) One lacerated oval wound with everted margin in the fifth right intercostal space in mid-Calvication line on right side of chest.

2. On dissection skull:-

Commuted fracture of left perital and right perital bone-meninges and brain tissues illegible and mutilated. One metallic foreign body was lodged in left temporal region which was removed. Sealed in a glass vial and handed over the accompanying police.

Chest:-

Right lung ruptured left lung pale, heart empty.

Abdomen:-

Liver pale. Kidney Pale. Spleen congested stomach contains digested food. Small intestine. Full of gas and focal matters Time since death 24 to 36 hours.



Cause death:-

Hemorrhage shock due to above injuries cause by fire arms.

This is the carbon copy of original post mortem report prepared with same process by him and it contains my signature. The same is hereby marked by ex hint-X.

From the aforesaid deposition given by the doctor, it is revealed that the deceased sustained injuries by firearms and he died because of haemorrhage shock due to the injuries sustained by him.

18. PW-8 Neti Lal Bharti was the Investigating Officer, who had carried out the investigation of the first information report lodged by PW-5 Barfi Devi. The said witness has stated in the examination-in-chief that after getting information about the incident in question, he reached to the place of occurrence and recorded the complaint given by Barfi Devi. The place of occurrence as shown by the said witness is the agriculture field of Madan Sah. The said witness has also stated that he had obtained the signature of independent witnesses Jayram Yadav and Shatrughan Yadav while preparing the inquest report. Thereafter, the dead body of deceased was sent for post mortem. During course of investigation, the said witness recorded statement of witnesses Anup Yadav, Patiya



Devi, Sakuni Devi, Pantari Devi, Nandu Yadav and Haridev Yadav.

During the cross-examination, PW-8 has stated that Chaukidar Shibu Paswan informed him about the incident in question and therefore he reached to the place of incident. However, he did not record the statement of Shibu Paswan. He has also admitted that he did not prepare seizure list nor he had collected the blood stained soil from the place of occurrence. In paragraph 14 of the said cross-examination the said witness has admitted that there is no eye-witness to the incident in question and except the first informant, all the witnesses are hearsay witnesses.

19. We have also gone through the inquest Panchanama and the *post mortem* report of the deceased.

20. From the aforesaid evidence produced by the prosecution before the concerned trial court, it would emerge that for the alleged incident which had taken place at about 9:00 AM in the morning on 09.09.2001, the FIR was registered at 4:00 PM on the same date. Thus, there is gross delay of seven hours in lodging the FIR. It would further emerge from the record that in the first information report, the first informant Barfi Devi PW-5 has stated that she was alone from 9:00 AM up



to 4:00 PM at the place of occurrence with the dead body of her husband and, in the meantime, no body had come at the place of occurrence. Chaukidar Shibu Paswan was informed about the occurrence and thereafter he had gone to the police station for giving information. Even PW-4 Sakuni Devi had not stated in her statement given before the police under Section 161 of the Code of Criminal Procedure that she is an eye-witness to the incident and for the first time she had deposed in her examination-in-chief before the court that she had also seen the incident in question.

21. Thus, we are of the view that PW-4 is not the eye-witness of the occurrence and therefore her deposition cannot be accepted as an eye-witness.

22. At this stage, it is pertinent to note that as per case of PW-8 Investigating Officer, he got the information from Chaukidar Shibu Paswan and thereafter he immediately reached to the place of occurrence, however, surprisingly, the investigating officer had not recorded the statement of the said witness nor he has been examined as a prosecution witness. It is also relevant to note that PW-3 Anup Yadav stated in his examination-in-chief that he got the information from one Madan Mahto about the occurrence in question. The



Investigating Officer has not recorded statement of the said witness Madan Mahto, who had gone to the place of incident immediately after the occurrence took place. Even, as per the case of prosecution, PW-1 to PW-3 are not an eye-witness to the incident in question and, therefore, the deposition of PW-5, who is claimed to be an eye-witness to the occurrence, is required to be examined carefully by this Court.

23. We have perused the deposition given by the PW-5, first informant, from which it is revealed that in her examination-in-chief, she had stated that she left her house with her husband at 10:00 AM whereas in FIR she had stated that they left their house at about 8:30 AM. As per the first information report, the incident took place at 9:00 AM. Whereas in the examination-in-chief, it is her case that they left the house at 10:00 AM at one place she had stated that the distance between her house and place of occurrence is half kilometer and she left her house at about 2:10 PM alongwith her husband, Sakuni Devi and Pantaro Devi. It is pertinent to note at this stage that Investigating Officer recorded statement of Patiya Devi, Pantaro Devi and Pantari Devi. The said witnesses have not been examined by the prosecution at the time of trial. The said witness in her cross-examination stated that she alongwith her



husband had taken meal i.e. rice, curd and dal and thereafter they left their house in the morning. However, in the post-mortem report and the deposition given by PW-7, Dr. Vikash Chand Choudhari, it is stated that stomach contains digested food. Thus, it is difficult to believe the story put forwarded by the so-called eye-witness Barfi Devi.

24. It is true that even if there is one eye-witness, who is trustworthy and reliable and if the case of the eye-witness is corroborated by the medical evidence, the conviction can be recorded relying upon the sole eye-witness. However, as discussed hereinabove, there are major contradictions and omissions in the deposition given by the prosecution witnesses and we are of the view that PW-5 Barfi Devi, who is the first informant and who is wife of the deceased, cannot be termed as trustworthy witness or reliable witness, looking to the overall evidence produced by the prosecution before the learned trial court.

25. Thus, we are of the view that the prosecution has failed to prove the case against the appellant/accused beyond reasonable doubt. In spite of that, trial court has wrongly recorded the order of conviction.

26. In view of the aforesaid discussion, we are



inclined to allow this appeal. Accordingly, this appeal is allowed.

27. The judgment of conviction dated 22.05.2015 and order of sentence dated 28.05.2015 rendered by 3rd Additional District & Sessions Judge, Barh, Patna in S.T. No. 116/06 corresponding to G.R. No. 723/2001 arising out of Barh P.S. Case No. 203/2001 are quashed and set aside. The appellant is acquitted of the charges levelled against him. He is directed to be set at liberty forthwith, unless his detention is required in any other case. Fine, if any paid by the appellant, be returned to him immediately.

(Vipul M. Pancholi, J)

(Chandra Shekhar Jha, J)

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