

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.1145 of 2018

Arising Out of PS. Case No.-31 Year-2010 Thana- ASHTHAWAN District- Nalanda

=====

*Ranjay Yadav Son of Late Ghutaru Yadav, Resident of Village- Sakarawan, P.S.- Asthawan,
District- Nalanda.*

... ... Appellant/s

Versus

The State Of Bihar

... ... Respondent/s

=====

with

CRIMINAL APPEAL (DB) No. 1119 of 2018

Arising Out of PS. Case No.-31 Year-2010 Thana- ASHTHAWAN District- Nalanda

=====

Sunil Yadav S/o Late Ghafu Yadav, R/o Vill.- Sakrawan, P.S.- Asthawan, District- Nalanda.

... ... Appellant/s

Versus

The State Of Bihar

... ... Respondent/s

=====

Acts/Sections/Rules:

- *Sections 302/34 of the Indian Penal Code*
- *Section 27 of the Arms Act*

Appeal - filed against the judgment whereby the court has convicted the appellants for the offences punishable under Sections 302/34 of the Indian Penal Code as well as under Section 27 of the Arms Act.

Held - Prosecution has projected informant as the sole eye-witness. In the fardbeyan, informant has not stated that she has seen the occurrence in question and she ran away from the place as she was frightened. - There is an improvement in the version given by informant and there are major inconsistencies in her deposition. (Para 15)

It is the specific case of the defence that with a view to grab the land of the deceased, the appellants have falsely been implicated. The aforesaid defence taken by the appellants cannot be ruled out. (Para 15)

Prosecution has failed to prove the cause of death of the another. The inquest report of both the deceased are also not on record nor the post-mortem reports of both the deceased were produced by the prosecution. (Para 16)

Appeal is allowed. (Para 18)

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Sunil Yadav S/o Late Ghafru Yadav, R/o Vill.- Sakrawan, P.S.- Asthawan,
District- Nalanda.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :
(In CRIMINAL APPEAL (DB) No. 1145 of 2018)
For the Appellant : Mr. Y.V. Giri, Senior Advocate
Mr. Pranav Kumar, Advocate
Ms. Shrishti Singh, Advocate
For the State : Mr. Sujit Kumar Singh, APP
(In CRIMINAL APPEAL (DB) No. 1119 of 2018)
For the Appellant : Kumari Sujata Sinha, Advocate
For the State : Mr. Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 16-01-2025

Heard Mr. Y.V. Giri, learned Senior Advocate,
assisted by Mr. Pranav Kumar for the appellant in Criminal
Appeal (DB) No.1145 of 2018, Kumari Sujata Sinha, learned



counsel for the appellant in Criminal Appeal (DB) No.1119 of 2018 and Mr. Sujit Kumar Singh, learned Additional Public Prosecutor for the State.

2. Both the appeals are filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') against the judgment of conviction dated 10.08.2018 and order of sentence dated 18.08.2018, passed by the court of learned Presiding Officer, F.T.C.-I, Nalanda, Bihar Sharif in Sessions Trial No.636/2010, arising out of Ashthawan P.S. Case No.31/2010, whereby the court has convicted the appellants for the offences punishable under Sections 302/34 of the Indian Penal Code as well as under Section 27 of the Arms Act and they have been sentenced to undergo R.I. for life and to pay a fine of Rs.20,000/- (Rs. Twenty Thousand only) for the offence punishable under Sections 302/34 of the Indian Penal Code and in default of payment of fine, the appellants have to undergo R.I. for a period of three years. The appellants are further sentenced to undergo R.I. for three years and to pay a fine of Rs.5,000/- (Rs. Five Thousand only) for the offence punishable under Section 27 of the Arms Act and in default of payment of fine, the appellants have to undergo R.I. for three months. Both the sentences have been directed to run concurrently.



3. As the common judgment of conviction and order of sentence is under challenge, learned counsels appearing for the parties jointly requested that both these appeals be heard together and be disposed of by common judgment. Hence, we have taken up both these appeals together for final disposal.

4. Mr. Y.V. Giri, learned Senior Counsel appearing in Criminal Appeal (DB) No.1145 of 2018 has contended that PW-6, Runi Devi is the informant, whose *fardbeyan* was recorded on 06.04.2010 at 07:00 a.m. wherein she has mainly stated that her father is Late Ramdhari Yadav and after her birth, the brother-in-law of her father, i.e., her maternal uncle Saryug Yadav adopted her when she was two years old as Saryug Yadav had no child. She was married to Ram Uchit Yadav in Ali Nagar. When she was 10-12 years old and unmarried, at that time the four sons of her father's brother, namely, Ranjay Yadav, Sunil Yadav, Anil Yadav and Ramjatan Yadav started pressurizing her father Saryug Yadav to transfer all the land in the name of all of them and they will take care of him. But when her father did not listen to them, the above mentioned four nephews beat her father and broke his leg for which a case of land dispute was also filed which was decided in favour of her father by the court. Her father and mother were threatened to be killed by the



above mentioned four nephews for not transferring the land to them. Her father decided to sell all the property of Sakrawan and settle down with her. About a day ago, a nephew of Arvind Yadav from another *gotiya* fixed the price of the total agricultural land at Rs. 2.5 lakh. When the four sons of late Ghutar Yadav came to know about this, all the four brothers threatened her father that if he sells the land, they will kill him. Her father got scared and went and started living in Ali Nagar. Four-five days ago, Arvind Yadav informed her father to register his land and take the money. Thereafter her father came to village Sakrawan and last night at 1 o' clock her father Saryug Yadav and mother Leela Devi were shot dead while sleeping in the house by the above four nephews of her father. The informant claims that her father and mother have been murdered by Ranjay Yadav, Sunil Yadav, Anil Yadav and Ramjatan Yadav by shooting them so that their property could be usurped.

4.1. Learned Senior Counsel further submits that after registration of the FIR on the basis of the aforesaid *fardbeyan*, the Investigating Officer carried out the investigation and thereafter filed charge-sheet against both these appellants before the concerned Magistrate court. As the case was exclusively triable by Court of Sessions, the learned Magistrate



committed the same to the concerned Sessions Court where the same was registered as Sessions Trial No.636/2010.

4.2. It is thereafter contended that before the Trial Court, the prosecution had examined 9 witnesses and also produced certain documentary evidence. Thereafter further statement of the accused under Section 313 of the Code came to be recorded. The learned Trial Court thereafter passed the common judgment of conviction and order of sentence against which both the convicts have filed separate appeals.

4.3. Mr. Giri, learned Senior Counsel has assailed the impugned judgment of conviction and order of sentence by contending that the prosecution has projected PW-6, Runi Devi as eye-witness however, from the deposition of the prosecution witnesses, it can be said that PW-6 is not an eye-witness and she was not present at the place of occurrence. It is further submitted that there is no other eye-witness to the incident in question and, therefore, the case of the prosecution rests on the deposition of PW-6. It is further submitted that PW-8, Dr. Satish Chandra Sinha, who had conducted *post-mortem* on the dead body of the deceased, has said only about the *post-mortem* conducted by him *qua* one of the deceased, i.e., Leela Devi. However, there is no reference in his deposition with regard to



the *post-mortem* of another deceased, i.e., Saryug Yadav. It is also contended that the prosecution has failed to produce the inquest report of both the deceased. Similarly, *post-mortem* reports of both the deceased are also not on record. Learned Senior Counsel, therefore, contended that even the prosecution has failed to establish that the death of Saryug Yadav was a homicidal death. Mr. Giri, learned Senior Counsel would further submit that there are major contradictions, improvement and inconsistencies in the deposition of the prosecution witnesses. It has been pointed out from the evidence that PW-5 and PW-9 have been declared hostile and they have not supported the case of the prosecution.

4.4. Learned Senior Counsel further submits that from the deposition given by PW-7, the Investigating Officer, it is revealed that he reached at the place of occurrence at about 03:30 a.m. and thereafter the seizure list was prepared at 04:00 a.m. It has been pointed out from the record that the seizure list was signed by PW-1 and PW-4. However, though the aforesaid witnesses were present and signed the seizure list and as per the deposition given by the aforesaid witnesses, they came to know about the incident in question from Runi Devi at 11:00 p.m. of 05.04.2010 and 02:00 a.m. of 06.04.2010, the said witnesses did



not disclose the names of the assailants to the police officer who was present at 03:30 a.m. It is further submitted that as per the case of the informant, deceased Leela Devi was the maternal aunt of informant Runi Devi and deceased Saryug Yadav was the husband of Leela Devi. However, it is the case of the informant that both the deceased adopted her when she was aged about 2 years. However, the informant has failed to produce the adoption deed before the court. The adoption deed was also not produced by her before the Investigating Officer. It has been pointed out that all the accused are nephews of deceased Saryug Yadav. Thus, it appears that because of the land dispute, the appellants/accused have falsely been implicated by the informant. Learned Senior Counsel submits that even otherwise also, the prosecution has failed to prove the case against the accused beyond reasonable doubt and, therefore, the Trial Court ought to have acquitted the appellants herein. Learned Senior Advocate, therefore, urged that both these appeals be allowed and the impugned judgment of conviction and order of sentence be quashed and set aside.

5. Kumari Sujata Sinha, learned counsel appearing for the appellant in Criminal Appeal (DB) No.1119 of 2018 has adopted the submissions canvassed by Mr. Y.V. Giri, learned



Senior Counsel appearing in other appeal.

6. On the other hand, Mr. Sujit Kumar Singh, learned Additional Public Prosecutor for the State has opposed the present appeals. He would mainly contend that the informant is an eye-witness to the incident in question and she has specifically narrated about the manner in which the incident took place and in fact she has identified the accused in lantern light. It is further submitted that the prosecution has also proved the motive on the part of the accused to kill both the deceased and in fact the present is a case of double murder. The learned Additional Public Prosecutor, therefore, contended that when the prosecution has proved the case against the accused beyond reasonable doubt, the Trial Court has not committed any error while passing the impugned judgment of conviction and order of sentence. He therefore, urged that both these appeals be dismissed.

7. Having heard learned counsels appearing for the parties and having gone through the Trial Court records, it would emerge that *fardbeyan* of PW-6, Runi Devi came to be recorded on 06.04.2010 at 07:00 a.m. If the said *fardbeyan* is carefully seen, it is revealed that in the *fardbeyan*, the informant has stated that her maternal aunt and maternal uncle were not



having any child. She was adopted by them when she was aged about 2 years. She has also stated about the dispute with regard to land between the accused, who are nephews of Saryug Yadav, with the deceased. She has also stated that she got married and her matrimonial house is at Ali Nagar. She has disclosed about the altercation which took place between the deceased Saryug Yadav as well as the accused with regard to the land and the threats given by the accused. However, there is no reference in the *fardbeyan* that she was present at the place of occurrence during night hours at 01:00 a.m. when the alleged incident took place.

7.1. Keeping in view the aforesaid *fardbeyan*, if the deposition given by informant (PW-6) before the court is carefully examined, she has, for the first time, deposed before the court that at about 01:00 a.m. she was at her maternal house (मायके) at Sakrawan and incident took place during night hours when all the accused came at the house of Saryug Yadav and opened fire in which bullet hit Saryug Yadav as well as Leela Devi. Both the persons died at the spot. She has also narrated about the motive on the part of the accused to kill both the deceased. She has further stated in examination-in-chief that she identified the accused in the lantern light.



7.2. During cross-examination, PW-6 has stated that her marriage was solemnized before 8-9 years from the date of occurrence and thereafter she was residing at her matrimonial house which is situated at a distance of about 8 kms from village Sakrawan. She has further stated that she was adopted by Saryug Yadav and the document was also prepared with regard to the same. She has further stated that she was present at the place of occurrence and nobody informed her about the incident. On the date of incident in the morning, she came to Sakrawan. However, quarrel did not take place on the date of incident between her maternal aunt and uncle with the accused. She further stated that she woke up after hearing the sound of firing and she found blood oozing out from the body of her uncle (मौसा). However, she did not find any blood on the body of her maternal aunt. She further stated that she could not see the blood because she hurriedly rushed outside and thereafter she ran away from the place of incident. However, she did not raise any alarm. She has further stated that village people gathered at the place of occurrence after hearing the sound of firing. However, she ran away from the said place and did not return. She returned in the morning at about 06:00-07:00 a.m. with other persons of her family. In the meantime, police came to the place



of occurrence. Specific suggestion was put to the said witness that she was not present at village Sakrawan which is at a distance of 9-10 kms. away from Ali Nagar, the place at which she was residing, however, she has denied the said suggestion.

8. At this stage, we would like to refer the deposition given by PW-1, Ravindra Prasad Yadav who has signed the seizure list. PW-1 has deposed that his statement was recorded by the police and the police seized five empty cartridges of 315 bore and five pellets from the place of occurrence which were lying near the dead body of both the deceased. The said seizure list was signed by him as well as one Krishna Kumar Yadav.

8.1. During cross-examination, PW-1 has stated that he is resident of Ali Nagar and the distance between Ali Nagar and the place of occurrence is 9 kms. The said witness has specifically admitted that incident did not take place in his presence. At that time, he was at Ali Nagar. He further admits that Runi Devi (informant) informed him about the names of the accused. The said information was given by Runi Devi at 02:00 a.m. The said information was given by Runi Devi on telephone which was made from the house of Virendra Yadav. The said witness further admitted during cross-examination that blood was fallen on cot and bed. He further states that blood was



found on the clothes of both the deceased. He has further admitted that he remained at the place of occurrence for two hours and the police officer also inquired from him at the place of incident. He has further stated that prior to that, police also inquired from Runi Devi.

9. PW-4, Krishna Kumar Yadav is also one of the signatories of the seizure list. The said witness has also deposed that the incident of murder took place in the night of 5/6 April and he was informed by Runi Devi in this regard. The accused always put pressure upon the deceased for the purpose of grabbing the land. *Darogaji* seized five empty cartridges and five pins from the place of occurrence. *Darogaji* also prepared seizure list and he had signed the seizure list. This witness claims to identify the accused persons.

9.1. The said witness has stated in his cross-examination that he lives in Ali Nagar. Runi Devi informed him on telephone about the murder at 11:00 p.m. The said witness specifically admitted in his cross-examination that he reached Sakrawan at 04:00 a.m. alongwith Ravindra Yadav, Ramuchit Yadav, Ashok Yadav, Anil Yadav and Parvati Devi. He did not see the murder with his own eyes and he has deposed regarding the murder based on what he heard. *Darogaji* reached Sakrawan



at 02:00 a.m. *Darogaji* recorded his statement at 10:00-11:00 a.m. The statement of Runi Devi was recorded by *Darogaji* firstly at 05:00-06:00 a.m. He had read the *fardbeyan* of Runi Devi. The paper relating to empty cartridge was prepared at 11:00 a.m.

10. From the deposition given by PW-1 and PW-4, it is revealed that both the witnesses are not the eye-witnesses to the occurrence in question. PW-1 states that he came to know about the incident and names of accused when PW-6 (informant) made telephone call at about 02:00 a.m. Further PW-4 has stated that he came to know about the incident and the names of assailants at about 11:00 p.m. from PW-6, Runi Devi. We are of the view that there are major contradictions and inconsistencies in the story put forward by the prosecution witnesses. At this stage, we have also gone through the seizure list (Ext.1), which is signed by PW-1 and PW-4. It is revealed from the seizure list that the same was prepared at 04:00 a.m.

11. It would further reveal from the evidence led by the prosecution that PW-5, Ramadin Yadav and PW-9, Brindeshwari Yadav have not supported the case of the prosecution and they have turned hostile. Further, PW-2, Sanjay Sharma and PW-3, Binod Sharma are also not the eye-witnesses



to the incident in question and as per their deposition they have signed the inquest report of both the deceased. However, it is relevant to note that the prosecution has failed to produce the inquest report of both the deceased.

12. PW-7, Vijay Kumar Singh is the Investigating Officer who has carried out the investigation. The said witness has stated that on 06.07.2010, he was posted in Ashthawan police station. He had recorded the *fardbeyan* of Runi Devi. The said *fardbeyan* has been signed by two witnesses, Krishna Kumar and Sunil Kumar. The FIR was registered under Section 302 read with 34 of the Indian Penal Code as well as under Section 27 of the Arms Act. He has further stated that he has visited the place of occurrence and prepared the seizure list. Witnesses, Ravindra Yadav and Bhushan Kumar Yadav have signed the said seizure list. The said witness further deposed that inquest report was also prepared by him in presence of two independent witnesses. However, he has stated that the said aspect is not mentioned in the case diary. He further deposed that he reached at the place of occurrence at about 03:30 a.m. on 06.04.2010. He had recorded the *fardbeyan* of Runi Devi at about 08:00 a.m. he inquired with the persons who reside near the place of occurrence. He has further admitted that he did not



collect the blood from the place of occurrence and there is no reference in seizure list. He did not prepare the seizure list with regard to the clothes of the deceased. The said witness further admitted that Runi Devi did not produce any document with regard to her adoption by the deceased. The Investigating Officer further admitted that Krishna Kumar did not disclose the names of the accused.

13. PW-8, Dr. Satish Chandra Sinha has deposed that on 06.04.2010, he was posted as Medical Officer at Sadar Hospital, Biharsharif and he had conducted the *post-mortem* on the dead body of late Leela Devi. He had found following injuries on the person of the deceased:

External appearance:

- (1) Rigor Mortise present in all four limbs;
- (2) Lacerated wound with inverted margin and charring surrounded by carbon dust size 2.5" x 3" x bone deep at left cheek;
- (3) Lacerated wound over right cheek with everted margin, posterior auricular area with everted margin;
- (4) Right tempo parietal area with inverted margin;
- (5) Burn & congested ulcer over right shoulder.

Anterior aspect:

On dissection: Lacerated wound passes to & to with loss of brain matter brain vessels & is meninges;

Thoracic Cavity - Intact;

Both lungs- pale, Heart - left chamber empty;

Abdominal Cavity: Intact. All abdominal viscera like liver, spleen, kidney intact & pale. Stomach -intact contained 10 gram gastric juice.

Time elapsed since death - 6 to 36 hours.

Cause of death- In my opinion cause of death due to head injury and hemorrhage & shock produced by fire arms injuries.

14. After re-appreciating the entire evidence of the



prosecution witnesses and the documentary evidence produced by the prosecution, it would reveal that the prosecution has failed to produce inquest report of both the deceased. Similarly, *post-mortem* reports of both the deceased are also not duly exhibited. It is pertinent to note that PW-8 (doctor) has deposed with regard to the *post-mortem* of deceased Leela Devi only and there is no reference with regard to the *post-mortem* conducted by the said witness on the dead body of deceased Saryug Yadav. Thus, we are of the view that the prosecution has failed to prove that death of Saryug Yadav was a homicidal death.

15. It would further reveal from the deposition given by the prosecution witnesses that the prosecution has projected PW-6 (informant) as eye-witness and there is no other eye-witness to the incident in question. It is pertinent to note at this stage that in the *fardbeyan*, Runi Devi has not stated that she has seen the occurrence in question and she ran away from the place as she was frightened. The said aspect has been stated by her before the court while giving her deposition. She has narrated a new story by stating that she heard the sound of firing and, therefore, she woke up and found the blood oozing out from the body of her maternal uncle (मौसा) and thereafter she ran away from the place and went to her matrimonial house at village Ali



Nagar situated at a distance of 9 kms. She has further specifically admitted that she returned to the place of occurrence, i.e., at village Sakrawan in the morning at about 07:00-08:00 a.m. with her family members and thereafter gave her *fardbeyan*. We are of the view that there is an improvement in the version given by PW-6 and there are major inconsistencies in her deposition. It would further reveal from the deposition given by PW-1, PW-4 and PW-7 that the Investigating Officer reached at the place of occurrence at about 03:30 a.m. The seizure list was prepared by him at about 04:00 a.m., i.e., prior to registration of the FIR. The said seizure list was signed by PW-1 and PW-4. Further from the deposition given by PW-1, it transpires that the said witness has admitted that he came to know about the incident in question from Runi Devi at about 02:00 a.m. when she disclosed the names of the assailants and informed him on telephone which was made from the house of Virendra Yadav. Further, PW-4 has stated he came to know about the incident from Runi Devi and she disclosed the names of the assailants. It is pertinent to note that the aforesaid witnesses have admitted that they remained present at the place of occurrence after the police came at the said place and it is the specific admission of the said witnesses that the



police inquired with them at the said place. The question, therefore, arises for consideration that if the said witnesses were aware about the names of the assailants, why names of the accused were not disclosed to the police at the time of preparing the seizure list as the police was already present at the place at about 03:30 a.m. It is relevant to observe that the *fardbeyan* of Runi Devi was recorded at 07:00 a.m. and as per her deposition, the same was recorded when she returned from Ali Nagar to village Sakrawan, i.e., the place of occurrence. It is the specific case of the defence that the appellants are the nephews of Saryug Yadav and the informant is the niece of Leela Devi and, therefore, with a view to grab the land of the deceased, the appellants have falsely been implicated. We are of the view that the aforesaid defence taken by the appellants cannot be ruled out. From the evidence led by the prosecution and more particularly from the deposition given by PW-6, it can be said that though PW-6 is not an eye-witness, she was projected as eye-witness to the occurrence in question and time in lodging the FIR was taken by the informant with a view to falsely implicate the appellants.

16. It is also required to be observed at this stage that PW-8 has deposed about the injury sustained by deceased



Leela Devi however, there is no reference in the deposition of the said witness with regard to *post-mortem* conducted by him *qua* another deceased, namely, Saryug Yadav. It is pertinent to note that the prosecution has failed to prove the cause of death of the another deceased Saryug Yadav as there is no evidence led by the prosecution with regard to the death of the deceased Saryug Yadav. The inquest report of both the deceased are also not on record nor the *post-mortem* reports of the deceased were produced by the prosecution.

17. Thus, looking to the aforesaid evidence led by the prosecution, we are of the view that the prosecution has failed to prove the case against the appellants beyond reasonable doubt and, therefore, benefit of doubt is required to be given to the appellants herein. We are, therefore, of the view that the Trial Court has committed an error while passing the impugned judgment of conviction and order of sentence against the appellants. Hence, the same is required to be quashed and set aside.

18. Accordingly, both these appeals stand allowed. The impugned common judgment of conviction dated 10.08.2018 and order of sentence dated 18.08.2018, passed by the Presiding Officer of F.T.C. No.-I, Nalanda, Bihar Sharif in



Sessions Trial No.636/2010, arising out of Ashthawan P.S. Case No.31/2010, are hereby quashed and set aside. The appellants are acquitted of the charges levelled against them by the learned Trial Court.

18.1. Since both the appellants are in jail, they are directed to be released from jail custody forthwith, if their presence is not required in any other case.

(Vipul M. Pancholi, J.)

(Alok Kumar Pandey, J.)

Sanjay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	21.01.2025
Transmission Date	21.01.2025

