

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.65 of 2020

Arising Out of PS. Case No.-225 Year-2014 Thana- BELHAR District- Banka

=====

JAGARNATH YADAV @ MISHRAJI Son of Haro Yadav Resident of Village- Kathbajra,
P.S.- Jhajha, District- Jamui.

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

=====

with

CRIMINAL APPEAL (DB) No. 103 of 2020

Arising Out of PS. Case No.-225 Year-2014 Thana- BELHAR District- Banka

=====

PRAKASH YADAV @ PARNA S/o Late Bhuneshwar Yadav Resident of Village- Bela, P.S.-
Belhar, Distt- Banka.

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

=====

with

CRIMINAL APPEAL (DB) No. 116 of 2020

Arising Out of PS. Case No.-225 Year-2014 Thana- BELHAR District- Banka

=====

MAHENDRA YADAV Son of Late Nageshwar Yadav Resident of Village- Bela, P.S.- Belhar,
Distt- Banka.

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

=====

with

CRIMINAL APPEAL (DB) No. 189 of 2020

Arising Out of PS. Case No.-225 Year-2014 Thana- BELHAR District- Banka

=====

DASHRATH YADAV Son of Late Jageshwar Yadav Resident of Village - Bela, P.S.- Belhar,
District- Banka

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

=====

with

CRIMINAL APPEAL (DB) No. 529 of 2022

Arising Out of PS. Case No.-225 Year-2014 Thana- BELHAR District- Banka

=====

INDRADEV YADAV Son of Late Bhuneshwar Yadav Resident of Village- Bela, P.S.- Belhar,
District- Banka.

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

=====

*Indian Penal Code, 1860—Sections 364, 302 r/w 34—kidnapping/abduction and murder—
Arms Act, 1959—Section 27—appellants are agates of informant (and deceased); and
because of land dispute between them, they have falsely been implicated in murder of
deceased—deceased was having criminal history; and 27 cases were registered against him
—medical evidence does not support the version of so-called eye-witnesses with regard to
occurrence of kidnapping/abduction—no eye-witnesses to occurrence of killing of deceased—
no recovery of weapon nor other evidence has been collected by the investigating agency
connecting the appellants with the incident of kidnapping of deceased—prosecution has
failed to lead cogent evidence—eye-witnesses are not trustworthy; and they are near relatives
of the deceased; and also their depositions are inconsistence with the incidents—prosecution
has failed to prove the case against appellants beyond reasonable doubt—impugned
judgment of conviction and order of sentence are quashed and set aside—appellants are
acquitted of charges levelled against them by ld. Trial Court—appeals allowed.
(Paras 21, 23 to 26)*

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PRAKASH YADAV @ PARNA S/o Late Bhuneshwar Yadav Resident of
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Arising Out of PS. Case No.-225 Year-2014 Thana- BELHAR District- Banka

MAHENDRA YADAV Son of Late Nageshwar Yadav Resident of Village-
Bela, P.S.- Belhar, Distt- Banka.

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INDRADEV YADAV Son of Late Bhuneshwar Yadav Resident of Village-
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... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 65 of 2020)

For the Appellant/s : Mr. Rajesh Kumar Sinha, Advocate

For the State : Mr. Sujit Kumar Singh, APP

(In CRIMINAL APPEAL (DB) No. 103 of 2020)

For the Appellant/s : Mr. Rajesh Kumar Sinha, Advocate

For the State : Mr. Sujit Kumar Singh, APP

(In CRIMINAL APPEAL (DB) No. 116 of 2020)

For the Appellant/s : Mr. Rajesh Kumar Sinha, Advocate

For the State : Mr. Sujit Kumar Singh, APP

(In CRIMINAL APPEAL (DB) No. 189 of 2020)

For the Appellant/s : Mr. Udit Nr. Singh, Advocate

Mr. Gajendra Kr. Singh, Advocate

For the State : Mr. Ajay Mishra, APP

(In CRIMINAL APPEAL (DB) No. 529 of 2022)

For the Appellant/s : Mr. Rajesh Kumar Sinha, Advocate

For the State : Mr. Sujit Kumar Singh, APP

**CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and**

**HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)**

Date : 10-05-2024

All the present appeals have been filed under Section
374(2) of the Code of Criminal Procedure, 1973 (hereinafter
referred as ‘Code’) challenging the judgment of conviction dated
17.12.2019 and order of sentence dated 19.12.2019 passed by
learned Additional District and Sessions Judge-II, Banka in
Sessions Trial No. 418 of 2017, G.R. No. 2618 of 2014, arising out
of Belhar P.S. Case No. 225 of 2014 dated 26.12.2014, whereby
the concerned Trial Court has convicted the present appellants for



the offences punishable under Sections 364, 302 read with Section 34 of the IPC and also under Section 27 of the Arms Act and held five accused persons guilty, including the appellants and sentenced them to undergo R.I. for 10 years and a fine of Rs. 10,000/- each for the offence under Section 364 IPC and, in default of payment of fine, they shall undergo simple imprisonment for 30 days each. All the five convicts and all the accused including the appellants have further been directed to undergo imprisonment for life and fine of Rs. 10,000/- each and, in default of payment of fine, they shall undergo S.I. for 30 days each for the offence under Section 302 IPC and further R.I. and fine of Rs. 5,000/- each for the offence under Section 27 of the Arms Act and, in default of payment of fine, further S.I. for 15 days. All the sentences have been directed to run concurrently.

2. The facts, leading to filing of these appeals are, as under:-

2.1. On 25.12.2014, the deceased brother of the informant, namely Baiju Yadav, was going to the village-Bella on his motorcycle. At about 05:00 pm, all the accused persons along with Kali Yadav, Jaggarnath Yadav and Aravind Yadav together surrounded him at the Bella Bridge and kidnapped him along with his motorcycle and, at that time, the informant informed about this



occurrence to the local Police Station and, on 26.12.2014, the informant came to know that the dead body of his brother Baiju Yadav was lying near Paingaha Chowk and then he went there and identified the body of his brother. The cause of occurrence is a land-dispute with Mahendra Yadav and the cases of land-dispute between them was taken care of by the deceased Baiju Yadav. It is further stated that one of the accused Aravind Yadav was an associate of Kali Yadav and they had committed this occurrence and his brother was murdered by firing bullet shots on his body.

2.2. After registration of the F.I.R., the Investigating Officer started the investigation and during the course of the investigation, he had recorded the statement of the witnesses and thereafter filed the charge-sheet against the appellant/accused before the concerned Magistrate Court. As the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the same to the Sessions Court where the same was registered as Sessions Trial No. 418 of 2017, G.R. No. 2618 of 2014.

3. Heard learned counsel Mr. Udit Narayan Singh assisted by Mr. Gajendra Kr. Singh in Criminal Appeal (DB) No. 189 of 2020 and Mr. Ajay Mishra, learned A.P.P. for the Respondent-State.



3.1. We have also heard Mr. Rajesh Kumar Sinha, learned counsel for the appellants and Mr. Sujit Kumar Singh, learned A.P.P. for the Respondent-State in all other appeals.

4. Learned counsels appearing for the respective appellants mainly submit that though it is alleged that Baiju Yadav was kidnapped at about 05:00 pm on 25.12.2014, the F.I.R. with regard to the said incident was not immediately filed by the informant Lattu Yadav or the other so-called eye-witnesses and, only on the next day i.e. on 26.12.2014, after the dead body of the deceased Baiju Yadav was found, F.I.R. was lodged. Thus, the conduct of the informant and near relatives of the deceased was unnatural. It is further submitted that, if the theory of kidnapping is not believed by this Court, there is no witness to the killing of the deceased by the appellants/convicts. Even otherwise, the present is a case of circumstantial evidence and the prosecution has failed to complete the chain of circumstances from which it can be established that the appellants have committed the alleged offences and, therefore, the impugned judgment and order be quashed and set aside.

5. Learned counsels for the appellants have referred the deposition of the prosecution witnesses and thereafter submitted that there are major contradictions in the deposition and even, as



per the PW-3, only one accused, namely Prakash Yadav @ Parna, kidnapped the deceased i.e. Baiju Yadav. The said witness is not declared hostile and, therefore, there are two different versions coming out on record through the prosecution-witnesses.

6. It is further submitted that the Doctor, who had conducted the *post mortem* of the deceased, has specifically deposed before the Court that the time since death was within 36 hours. It is pointed out that the *post mortem* of the deceased was conducted on 26.12.2014 around 02:00 pm. Thus, the medical evidence does not support the version of the so-called eye witnesses.

7. It is further submitted that there is no recovery/discovery of the weapon from any of the accused nor any other connecting evidence has been collected by the Investigating Officer. At this stage, it is pointed out that the Investigating Officer has admitted, during cross-examination, that the deceased was having criminal history and 27 cases were registered against him. Thus, there are all chances that, because of the enmity with the deceased, someone else has killed him. However, the present appellants, who are the agnates, have been falsely implicated by the informant because of the ongoing land-dispute. Learned



counsels, therefore, urged that all these appeals be allowed and the impugned judgment and order be quashed and set aside.

8. On the other hand, learned A.P.P. has opposed the present appeals. It is contended that there are eye-witnesses to the occurrence of kidnapping and they have supported the case of the prosecution. Thus, the appellants have kidnapped the deceased Baiju Yadav and, very next morning, the dead body of the said Baiju Yadav was found. There is ample evidence produced by the prosecution before the Trial Court and, relying upon the same, the Trial Court has passed the impugned judgment and order. Hence, no interference is required in the present appeals.

9. We have re-appreciated the entire evidence led by the prosecution before the Trial Court. We have also considered the submissions by the learned counsels appearing for the parties. It would emerge that, as per the *fardbeyan* of the informant, on 25.12.2014, at about 05:00 pm, his brother Baiju Yadav was kidnapped by the named accused and, very next morning, i.e. on 26.12.2014, the dead body of Baiju Yadav was found and, therefore, the F.I.R. was lodged against the named accused. From the evidence led by the prosecution, it is revealed that in support of the said allegation, the prosecution has examined PW-1 to PW-5. If the deposition of the aforesaid witnesses are carefully scrutinized,



it is revealed that there are major contradictions in their depositions. PW-3, though claimed to be an eye-witness to the occurrence of kidnapping, had given name of the only one accused i.e. Prakash Yadav whereas the other witnesses have stated about the names of the present appellants with an allegation that they have kidnapped the deceased Baiju Yadav. Even the conduct of the informant, who is the brother of the deceased, and other near relatives of the deceased was also unnatural. The informant himself has stated, during cross-examination, that they have tried to search Baiju Yadav. However, when he was not found, they returned to the house and slept during night hours, whereas some of the witnesses have stated that the Police was immediately informed in the evening itself. However, nothing is coming out from the record, from the deposition of the Investigating Officer, that the Police was informed about the incident of kidnapping on 25.12.2014 after 05:00 pm.

10. PW-1 Jhaliya Devi has deposed in her examination in chief that on the day of incident, Baiju was caught, beaten and made to sit on a motorcycle. She went home making noise. The accused caught Baiju Yadav and took him away. He was beaten and thrown at Paragha Chowk. Baiju's family and she herself went



there to see, where she saw Baiju's dead body. There were wounds in the stomach, chest and ear.

10.1. In her cross-examination, she has stated that Baiju lived in Ulhi with his family. At the time of the incident, there were many people near the bridge, whose names cannot be mentioned, and all of them were from Bela village. Further, she has stated that Baiju was going on a motorcycle when the motorcycle was stopped. She had gone home raising *hulla*. Further, it is stated that, on the next day, there was an uproar that there was a dead body lying at Pargha Chowk. Then, all the family members and she herself went there to see. Baiju was lying dead. There was a lot of crowd. The people in the crowd also did not say anything. It is also stated that Baiju was her brother-in-law. All the accused are her agnates. There was an ongoing land dispute amongst the accused persons. Visiting, eating and drinking at their house was prohibited.

11. PW-2 Aravind Yadav has stated in his examination-in-chief that the accused persons had surrounded Baiju Yadav. After surrounding him, they forcibly took him away on the motorcycle. Three motorcycles were already there. They had also taken away the motorcycle of Baiju Yadav. He raised *hulla*. Within no time, they took him away. They took him towards West Parkha.



When Baiju Yadav was abducted, PW 2 made a phone call to Anil Babu (Darogaji) who told him to not go anywhere to look for him and also said that he too was looking for him. It is stated that the F.I.R. bears his signature. This incident was caused due to a land dispute.

11.1. In his cross-examination, he has stated that Baiju Yadav is his co-villager. He is his brother in village relation. It is stated that he met 6-7 people while going to the bridge from his house. He had met and made conversation with Munna Yadav, Ghota Yadav, Nandkeshav Yadav and Chaudhari Yadav. It is also stated that there were two people near the bridge. There was *hulla*. On hearing the *hulla*, the people on the road ran towards the bridge. Shankar Yadav and others were returning. While all the people arrived there, the accused persons had already abducted Baiju Yadav. He did not followed them. Nobody followed them because of fear. It is also stated that the accused persons are the agnates of Baiju. There was a land dispute. They were not on visiting and speaking terms with each other.

12. PW-3 Sundar Yadav, in his examination-in-chief, has deposed that the occurrence took place in 2014 at 05:00 pm. He was coming from cattle shed. Prakash Yadav was hiding in the bush near the Bela Bridge. Baiju Yadav came from the north



direction and Prakash Yadav nabbed him and tied his hands behind the back. Then, Prakash Yadav got him seated on the motorcycle and drove him away in the west direction. In the next morning, at about 05:00 am, Prakash Yadav called him on phone and told him that Baiju Yadav had been killed and his body was lying at the Pairgha Chowk. They went there and saw the body of Baiju Yadav. Baiju Yadav had bullet injuries on his head, chest and hands. Then, Aravind Yadav made a phone call to the Police. The Police recorded the statement of Lattoo Yadav, brother of Baiju Yadav at the Pairgha Mor. He too signed on it.

12.1. In his cross-examination, he has stated that Baiju Yadav was coming on his motorcycle. He cannot tell the number of that motorcycle. He raised *hulla*. The people from the cattle-shed also arrived there, but by that time, they had abducted Baiju Yadav. They had picked up his motorcycle as well. They had left the motorcycle near the dead body. In the morning, the Police was informed. The Police arrived at Pairgha which is at a distance of 9 kms. from the village. It is also stated that Lattoo is his cousin. When Baiju Yadav came from the north side, he was nabbed by Prakash Yadav and his hands were tied behind the back and was forcibly made to sit on the motorcycle and then Prakash Yadav fled towards the west.



13. PW-4 Chameli Devi has deposed in her examination-in-chief that her husband Baiju Yadav was going to Bela from Ulhi. Arvind Yadav had called her on phone and told her that her husband had been abducted by Param Yadav, Indradev Yadav and Mahendra Yadav. The villagers accompanied her to Pairgha Chowk. The Police arrived there, interrogated and then took away the dead body with them.

13.1. In her cross-examination, she has stated that on the day of occurrence, she and her husband were in Ulhi. Bela is at a distance of 4 *kos* (measuring scale of distance, one *kos* is approximately 3000 meters). At 06:00 in the morning, she got the news from Arvind that the body of her husband was lying at the Pairgha Chowk. Pairgha Chowk is at a distance of 6 *kos* from Bela. She had gone there on foot. There, she saw the dead body of her husband.

14. PW-5 Lattu Yadav has stated in his examination-in-chief that, on the day of incident, his brother Baiju Yadav was going from Ulhi village to Bela village on his motorcycle when Prakash Yadav, Indradev Yadav, Mahendra Yadav, Virendra Yadav, Surendra Yadav, Kailash Yadav and Dashrath Yadav nabbed his brother near the Bela Bridge and abducted him with his motorcycle. On the following day, four men went to look for him



in the forest at 04:00 in the morning. At that time, his cousin Arvind Yadav had a mobile phone with him. He called them and asked them about their whereabouts on which he replied that they were in the forest. Then, the Police arrived from Jhajha and interrogated him. It is stated that there was a land dispute among the agnates and this incident happened because of it.

14.1. In his cross-examination, he has stated that his village is at a distance of 4 *kos* from Ulhi. His brother Baiju Yadav lives in Ulhi. Later, it is stated that on hearing *hulla* that Baiju Yadav has been kidnapped, all the family members came out of the house and started looking for him. Only his family members i.e. cousin Sunder Yadav, Arvind Yadav, Sukhdeo Yadav, Sufal Yadav and he himself had gone out looking for Baiju. Other family members had also gone out looking for him. They looked for him, but to no avail. They looked for him till 08:00 pm, but having not found him, they returned home and went to sleep. They did not went looking for Baiju in the night. They had informed Belhar Police Station regarding the incident on the phone. The Police did not arrive in the night and also not in the next morning. He had informed the Police after seeing the dead body. The S.H.O. said that he had returned after seeing the dead body at Pairgha Chowk at 11:00 pm.



15. PW-6 Rona Devi has not supported the case of the prosecution and has been declared hostile.

16. PW-7 Jawahar Prasad is the Investigating Officer who has stated in his examination-in-chief that after taking charge of the investigation, he arrived at the place of occurrence and did its inspection and noted the boundary of the place of occurrence and recorded the statement of the people present there. The body of the deceased was recovered from Pairgha Chowk under Jhajha P.S. The *post mortem* of the dead body of the deceased was done in Jamui Hospital.

16.1. In his cross-examination, he has stated that the *fardbeyan* is not in the handwriting of Anil Kumar Paswan. The *fardbeyan* did not bear his signature. Whatever actions were taken on paper works were done before the Jhajha Police and does not bear his signature. The Jhajha Police had got the *post mortem* done. It is stated that the deceased and the accused persons are agnates. He did not know if there is any land dispute among them. In the course of investigation, it came to the fore that the deceased was involved in criminal activities. The *post mortem* report and the inquest report were provided to him by the Jhajha P.S.

17. PW-8 Dhiraj Kumar is also an Investigating Officer who had deposed that after accepting the charge, on 03.09.2016,



he went through the record wherein he investigated the criminal history of the accused and had gone through the diary.

17.1. In his cross-examination, he has stated that, during the course of the investigation, the statement of the witnesses were not recorded by him nor the place of occurrence was inspected by him nor the material exhibit was seized by him.

18. PW-9 Prakash Yadav has stated that he got the news of the occurrence in the morning. He was at home at that time. He came to know that Baiju Yadav had been killed. He saw the dead body of Baiju Yadav. One bullet had hit on the ear and one bullet had been hit on the stomach. Further, he has stated that he did not see anybody committing the occurrence with his own eyes.

19. PW-10 Dr. Nagina Paswan is the Doctor who was posted as M.O. at Sadar Hospital, Jamui on 26.12.2016. He had examined the dead body of Baiju Yadav and found following injuries:-

“Antemortem Injuries:-

1. External appearance eyes was open, mouth close, rigor mortis present all limbs.

(i) Lacerated wound with black and charred skin above left ear size 1/4” x 1/4” x Track deep, entry wound.

(ii) Lacerated wound of right parital region of skull size 1/2” x 1/2” track deep, exit of injury No. 1.

(iii) Oval shape lacerated wound 3/4” in diameter with black and charred of left side of abdomen 5” below left coastal margin intestine bulging out, entry wound.



(iv) Oval shape lacerated wound on left side of abdomen 3" below the injury No. 3, 1/4" in diameter, entry wound.

(v) Oval shape lacerated wound on back of left side of abdomen 1/2" in diameter, exit wound of injury No. 4.

(vi) Oval shape lacerated wound on right lower chest 1/4" in diameter, entry wound.

(vii) Oval shaped lacerated wound on lateral surface of left lower chest 1/2" in diameter, exit wound of injury No. 6.

(viii) On dissection- skull bone intact, brain matter meninges intact.

2. Chest and Abdomen:

Lower lobe of both lungs teared, heart was empty, stomach empty, small and large intestine tear liver, spleen, kidney were pale.

Cause of death:- Hemorrhage and shock due to above injuries caused by fire arms.

Time since death: Within 36 hours."

20. PW-11 Mukesh Kumar Jha has deposed in his examination-in-chief that he was posted as Sub-Inspector of Police at Jhajha P.S. on 26.12.2014. On the same day, he had recorded the statement of Lattoo Yadav at Pairgha Chowk also known as Patel Chowk. He had recorded the *fardbeyan* near the dead body in the presence of the family members of the deceased. The *fardbeyan* is in his handwriting and bears his signature.

20.1. In his cross-examination, he has stated that the *fardbeyan* was recorded before the Belhar Police. The place of



occurrence falls within Jhajha P.S. The case was not registered in the Jhajha P.S.

21. It is further revealed from the record that PW-10 (Doctor), who had conducted the *post mortem* of the dead body of the deceased, has specifically stated that the *post mortem* was conducted at about 02:00 pm on 26.12.2014 and in 'Para-3', he has specifically stated that "Time since death: Within 36 hrs." Thus, we are of the view that the medical evidence does not support the version of the so-called eye-witnesses with regard to the occurrence of kidnapping.

22. From the deposition of the Investigating Officer, it is revealed that the deceased was having criminal history and 27 cases were registered against him. Now, it is a specific case of the defence that they are the agnates of the informant and, because of the land-dispute between them, all the appellants/convicts have been falsely implicated in the F.I.R. in question.

23. It is not in dispute that there is no eye-witness to the occurrence of killing the deceased and because the case of the prosecution rests on the circumstantial evidence, therefore, even presuming that the story put forward by the prosecution with regard to the kidnapping of the deceased by the appellants is correct, even then, there is no other material connecting the



appellants/accused with the killing of the deceased. It is not in dispute that the pistol/revolver/fire-arm from which the deceased was killed was not recovered or discovered at the instance of the appellants. Thus, there is no recovery of the weapon. No other evidence has been collected by the Investigating Agency connecting the present appellants with the incident of killing of the deceased.

24. However, we are of the view that the prosecution has even failed to prove the incident of kidnapping by leading cogent evidence. The so-called eye-witnesses of occurrence of kidnapping are not trustworthy and they are near relatives of the deceased and there is inconsistency in the deposition of the said witnesses. Thus, when the first part of the version of the prosecution with regard to the kidnapping is not duly proved by the prosecution, we are of the view that there is no other material available in the evidence of the prosecution from which it can be said that the appellants have committed the alleged offences.

25. Thus, the prosecution has failed to prove the case against the appellants beyond reasonable doubt and, therefore, the Trial Court ought to have acquitted the appellants herein.

26. In view of the aforesaid discussion, the impugned judgment of conviction dated 17.12.2019 and order of sentence



dated 19.12.2019 passed by learned Additional District and Sessions Judge-II, Banka in Sessions Trial No. 418 of 2017, G.R. No. 2618 of 2014, arising out of Belhar P.S. Case No. 225 of 2014 dated 26.12.2014, are quashed and set aside. The appellants are acquitted of the charges levelled against them by the learned Trial Court.

27. The appellant, namely Prakash Yadav @ Parna, in Criminal Appeal (DB) No. 103 of 2020 is on bail. He is discharged from the liabilities of his bail bonds.

28. All the other appellants are in custody. They are directed to be released from custody forthwith, if their custody is not required in any other case.

29. Accordingly, the appeals stands allowed.

(Vipul M. Pancholi, J)

(Ramesh Chand Malviya, J)

Sachin/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	15.05.2024
Transmission Date	15.05.2024

