

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**CRIMINAL APPEAL (DB) No. 515 of 2014**

Arising Out of PS. Case No.-154 Year-2008 Thana- KATORIYA District- Banka

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**Rizwan Mian Son of Aziz Mian Resident of Village - Chihutjour, Police  
Station - Katoriya, district - Banka**

**... ... Appellant/s**

**Versus**

**The State Of Bihar**

**... ... Respondent/s**

=====

**with**

**CRIMINAL APPEAL (DB) No. 237 of 2014**

Arising Out of PS. Case No.-154 Year-2008 Thana- KATORIYA District- Banka

=====

**Babulal Yadav Son Of Late Munsii Yadav Resident Of Village- Lakraha, P.S-  
Katoriya Suiya O.P, District- Banka**

**... ... Appellant/s**

**Versus**

**The State Of Bihar**

**... ... Respondent/s**

=====

**Indian Penal Code, 1880** – Sections 302/34 and 452 – Arms Act, 1959 – Section 27 – Criminal Procedure Code, 1973 – Section 374 (2) – Murder and house trespass was committed with a common intention resulting life sentence was imposed. As per statement recorded in the fardbeyan of the informant it appears that he had seen the culprits/miscreants in the light of torch whereas in the deposition he has stated that he identified them in the light of lantern and torch. From the deposition of witnesses examined by prosecution which transpire full contradictions and create doubt in connecting appellants with alleged occurrence. If we find slightest doubt regarding an occurrence for criminal liability of accused. At this juncture accused persons are entitled to be given benefit of doubt. This appellants should be given benefit of doubt. – conviction and sentence set aside. Appeals allowed.

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... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

**Appearance :**

(In CRIMINAL APPEAL (DB) No. 515 of 2014)

For the Appellant/s : Mr. Vikramdeo Singh, Advocate  
Md. Nurul Hoda, Advocate  
Mr. Rajesh Kumar Sinha, Advocate

For the Respondent/s : Mr. Sujit Kumar Singh, APP

(In CRIMINAL APPEAL (DB) No. 237 of 2014)

For the Appellant/s : Mr. Vikramdeo Singh, Advocate  
Md. Nurul Hoda, Advocate  
Mr. Rajesh Kumar Sinha, Advocate

For the Respondent/s : Mr. Sujit Kumar Singh, APP

**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN  
SINGH**

**and**

**HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY  
CAV JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY )**

**Date : 21-07-2023**

Both the appeals have been preferred under Section  
374(2) of the Code of Criminal Procedure for setting aside the  
judgment and order of conviction dated 28.01.2014 and the  
order of sentence dated 05.02.2014 respectively passed by the  
learned Adhoc Additional Sessions Judge, Banka in Sessions



Trial No. 126 of 2011.

2. Both the appellants Rizwan Mian and Babulal Yadav were found guilty and convicted by the learned trial court for the offences punishable under Sections 302/34 and 452 of the Indian Penal Code. Further, the appellant Rizwan Mian was also convicted for the offences punishable under Section 27 of the Arms Act. They were sentenced for life imprisonment under Section 302/34 of the Indian Penal Code. They were also awarded a fine of Rs. 10,000/- each. Further, the appellants were sentenced for simple imprisonment of two years for the offences punishable under Section 452 of the I.P.C. The appellant Rizwan Mian was also sentenced for an imprisonment of three years for the offence punishable under Section 27 of the Arms Act. In case of non-payment of fine, the appellants had to undergo simple imprisonment for two months. All the sentences were directed to run concurrently. By the same judgment and order, co-accused Naresh Yadav, Yasin Mian @ Ahsan Ansari, Narayan Yadav, Nasir Mian and Riyasat Ansari were acquitted, because in the opinion of the learned trial court, the prosecution failed to prove its case against these accused persons beyond all the shadows of reasonable doubts.

3. As per prosecution case, Shambhu Yadav (PW-7)



who is son of the deceased, lodged his *fardbeyan* before A.S.I. of Suiya Police Outpost on 27.09.2008 at about 6:05 a.m. near the dead-body of his father, stating therein that in the preceding night the informant and his family members were sleeping in their house. His father was sleeping on a cot in the courtyard. At midnight at about 1:30 a.m., the informant heard some unusual sound at his roof (*chappar*). He noticed the presence of two persons, who were present at the roof of his house equipped with masket. They jumped inside the courtyard of his house and threatened not to make hue and cry, otherwise the family members of the informant would be shot dead. One of the miscreants opened the door through which some other miscreants entered into the courtyard. The informant identified them in the light of torch. They were (i) Rizwan Mian (appellant) (ii) Yasin Mian (acquitted) (iii) Riyasat Ansari (iv) Nasir Mian (acquitted) (v) Narayan Yadav (acquitted) (vi) Babulal Yadav (appellant) and (vii) Naresh Yadav (acquitted). The informant could not identify 2-3 miscreants. The family members of the informant out of fear sat at a place in his house. The miscreants forcibly laid down the father of the informant on a cot and tied his limbs. The appellant Rizwan Mian fired at him and appellant Babulal Yadav inflicted *farsa* (sharp-edged



weapon) blow on him and thereafter the miscreants untied his father and fled away. While fleeing away, they threatened the informant and his family members not to lodge a case otherwise they would also be eliminated. The dead-body of his father was lying on the cot. It has further been stated that the reason for murder of his father was a land dispute with co-accused Narayan Yadav who is his agnate.

4. On the basis of *fardbeyan* (Ext.1), the formal FIR (Ext.8) was drawn. The FIR was registered on 27.09.2008 at about 11:30 a.m. Thereafter, the investigation was carried out. The cognizance was taken under Sections 302/34 and 452 of the I.P.C. including Section 27 of the Arms Act against the appellants as well as co-accused Nasir Mian, Narayan Yadav, Naresh Yadav, Yasin Mian, Riyasat Ansari and Ramzan Mian. The case of the accused persons was committed to the court of sessions, except the co-accused Ramzan Mian was under custody in a different case at Deoghar (Jharkhand), and till the date of passing of the impugned judgment and order, Ramzan Mian could not be produced before the trial court, consequently, his case was separated. Charges were framed against all the above-named accused persons, except Ramzan Mian under Sections 302/34 and 452 of the I.P.C. The appellant Rizwan



Mian was also charged under Section 27 of the Arms Act. The accused persons pleaded not guilty and claimed to be tried.

5. In order to prove its case, the prosecution has examined eight witnesses. The following documentary evidences have also been exhibited:-

Ext.1- Signature of Subodh Yadav in *fardbeyan*

Ext.2- P.M. Report

Ext.3- Signature of Shambhu Yadav in inquest report

Ext.3/1-Signature of Sunil Kr. Yadav in inquest report

Ext.4- Signature of Shambhu Yadav in seizure list

Ext. 4/1- Signature of Sunil Kr. Yadav in seizure list

Ext.5- *fardbeyan*

Ext.6- Forwarding Report

Ext.7- Endorsement

Ext.8- Formal FIR

Ext.9- Inquest Report

Ext.10- Seizure list

6. After conclusion of the prosecution evidence, the accused persons were questioned by the learned trial court under Section 313 of the CrPC to enable them to understand the incriminating materials emerged during the trial against them. They answered the questions in negative. Thereafter, the learned



trial court, on the basis of evidences adduced on behalf of the prosecution and after hearing the arguments, came to the conclusion, as stated above.

7. The learned counsel for the appellants has submitted that there is material contradiction in the evidences of the witnesses examined on behalf of the prosecution to prove its case. He has submitted further that the informant Shambhu Yadav (PW-7) in his *fardbeyan* has mentioned that he identified the accused persons including the convicts in the light of the torch, whereas some prosecution witnesses have stated that they identified the accused persons in the light of a lantern. On this score alone, the defense has been able to create a doubt on the veracity of the occurrence as well as the depositions of the witnesses. He has submitted that if a slightest doubt is created about the occurrence, then the accused persons should have been given the benefit of doubt.

8. The further submission of the learned counsel for the appellants is that, though the witnesses have stated that the appellant Rizwan Mian fired shot at the deceased and appellant Babulal Yadav inflicted *farsa/bhujali* blows on the person of the deceased, but the I.O. didn't find bloodstain on the clothes of the deceased nor on the cot on which the deceased was said to



be murdered. The I.O. (PW-8) has stated in paragraph-12 of his deposition that he didn't notice any bloodstain on the clothes of the deceased, nor he noticed the mark of fire shot, whereas the deceased was wearing the same clothes which he was wearing at the time of occurrence. In paragraph-8 of the deposition this witness has stated that he found the dead body lying on a cot but he didn't mention whether there was any bloodstain on that cot where the deceased was lying was present or not. In paragraph-5 he has stated that he had seized the blood-soaked soil from the place of occurrence, but there is nothing on record to show that the blood-soaked soil was sent for forensic examination. The learned counsel has also submitted that in the depositions of the witnesses it has come that the appellant Rizwan Mian had fired two shots on the person of the deceased but only one firearm injury was found on his person.

9. The further submission of the learned counsel for the appellants is that the occurrence is alleged to have taken place at 1:30 a.m. on 27.09.2008. The post-mortem was conducted on the same day i.e. on 27.09.2008 at about 10.45 p.m., but the doctor (PW-6), who had conducted the autopsy on the dead-body, has mentioned the time elapsed since death was 48 hours, which creates doubt on the prosecution case as well as



the post-mortem itself. The learned counsel has also submitted that there is admittedly land dispute between the parties and it was the reason for false implication of the accused persons including the appellants.

10. On the other hand, the learned counsel for the State has submitted that the witnesses are unanimous in their deposition that Rizwan Mian (appellant) fired shot at the deceased and Babulal Yadav (appellant) inflicted *farsa* (sharp-edged weapon) blow on the person of the deceased, which is corroborated by the medical evidence. The firearm injury and cut injury were found on the person of the deceased. He has further submitted that the post-mortem report shows that the head of the deceased was partly detached from his body.

11. We have given our thoughtful consideration on the rival submissions of the learned counsels and have carefully perused the documentary as well as the oral evidences.

12. PW-7 is the informant, who is the son of the deceased, though in his examination-in-chief has supported the occurrence as mentioned in his *fardbeyan*, has stated that first of all, two persons entered into his courtyard, they opened the door and thereafter 7-8 miscreants came there. Rizwan Mian was carrying a masket. Co-accused Satya Narayan, Babulal



(appellant), Naresh Yadav, Yasin Mian and Nasir Mian came there. At that time, a lantern was illuminating and the accused persons were also flashing torch. He has stated that Babulal inflicted *farsa* blow on the neck of his father. This witness identified his signature on the *fardbeyan* and also the signature of his brother which has been marked as Ext.2. He also identified the signature of Sunil Kumar Yadav on the carbon copy of the inquest report. He himself and Sunil Kumar Yadav had signed the inquest report which have been marked as Ext. 3 and 3/1 respectively. In paragraph-14 of his deposition, this witness has stated that the torch or lantern, in the light whereof the accused persons were identified, were not given to the investigating authority. He has stated that he had land dispute with the appellant Babulal. PW-2 Subodh Yadav is the son of the deceased. Though, he has supported the occurrence in the same manner as PW-6, but in paragraph-9 of his deposition, this witness expresses his unawareness of land dispute between the accused persons and his family. In paragraph-19 of his deposition, this witness has stated that his father had sustained six firearm injuries which is not supported by the medical evidence as well as the evidences of other prosecution witnesses. PW-4, who is daughter-in-law of the deceased,



though claims herself to be an eye-witness of the occurrence, but in paragraph-19 of her deposition she has expressed her unawareness about the land dispute, whereas the informant PW-7 has specifically stated in his statement that there were land dispute between the appellant Babulal and him.

13. Thus, we see that the depositions of the witnesses examined by the prosecution is full of contradictions which create doubt in connecting the appellants with the alleged occurrence. The most important thing which is creating doubt to the prosecution case is the deposition of the investigating officer (PW-8). He did not mention about bloodstain on the clothes of the deceased, whereas he has stated specifically that the deceased was wearing the same clothes which he wore at the time of occurrence. In paragraph-8 of the deposition, this witness has stated that he found the dead body lying on a cot, but he didn't mention whether there was any bloodstain on that cot where the deceased was lying, was present or not. It is settled principle of law that even a slightest doubt is created regarding an occurrence for criminal liability of an accused, the doubt would go to the root of the matter and the accused persons are entitled to be given the benefit of doubt. PW-7, the informant has stated in his *fardbeyan* that he had seen the



culprits in the light of torch, whereas in his deposition he has stated that he identified them in the light of the lantern and torch. Moreover, he has stated that he did not hand over the torch and lantern to the investigating authority.

14. Considering, the above-mentioned facts and circumstances, we are of the considered opinion that the appellants should be given the benefit of doubt.

15. Accordingly, the impugned judgment of conviction and order of sentence dated 28.01.2014 and 05.02.2014, passed by the learned Adhoc Additional Sessions Judge, Banka in Sessions Trial No. 126 of 2011 are hereby set aside.

16. The appeals are accordingly allowed.

17. The appellants are in jail custody. Let them be released forthwith, if they are not required in any other case.

**(Nawneet Kumar Pandey, J)**

I agree.  
**Chakradhari Sharan Singh, J.**

**(Chakradhari Sharan Singh, J)**

SONALI/HR/-

AFR/NAFR	NAFR
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