

**IN THE HIGH COURT OF JUDICATURE AT PATNA
GOVT. APPEAL (DB) No.1 of 2024**

Arising Out of PS. Case No.-487 Year-2022 Thana- JAGDISHPUR District- Bhojpur

The State Of Bihar

... .. Appellant/s

Versus

1. Shashi Bhushan Pal SON OF SHRI HEERA LAL PAL Resident of Village -Peelapur, P.S. - Jagdishpur, District - Bhojpur
2. INDRAJEET PAL @ AJEET PAL SON OF SHRI SHIV PERSON PAL Resident of Village -Peelapur, P.S. - Jagdishpur, District - Bhojpur
3. RAMJEET PAL SON OF SHIV PERSON PAL Resident of Village -Peelapur, P.S. - Jagdishpur, District - Bhojpur
4. AMARJEET PAL @ CHHOTU SON OF SHRI SHIV PERSON PAL Resident of Village -Peelapur, P.S. - Jagdishpur, District - Bhojpur

... .. Respondent/s

Appearance :

For the State : Mr. Abhimanyu Sharma, A.P.P.
For the Respondent/s : Mr.

**CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)**

Date : 05-05-2025

The State has preferred the present appeal under Section 378(1) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') against the judgment and order dated 10.01.2024 rendered by the learned Additional Sessions Judge-IIIrd, Bhojpur at Ara in Sessions Trial No. 286 of 2023 (arising out of Jagdishpur P.S. Case No. 487 of 2022) for the offences registered under Section 307 read with Section 34 of Indian Penal



Code (hereinafter referred to as 'I.P.C.') to which, later on Section 302 of I.P.C was also added and under Section 27 of the Arms Act, whereby the learned Trial Court has acquitted all the four accused i.e. Respondent Nos. 1 to 4, who were facing the trial.

2. The prosecution story is based on the *fardebayan* of the informant, namely, Meera Kumari who has been examined as PW-4 in course of trial. In her *fardebayan* recorded on 01.10.2022 at 13:45 hours (afternoon) by one Pramod Kumar Tiwari, Sub-Inspector of Police, Shastri Nagar Police Station, she alleged that on 30.09.2022 at about 10:00 P.M. in the night, the informant heard the sound of firing coming from the *dalan* and when she went there, she saw (1) Amarjeet Pal @ Chotu (2) Ramjeet Pal, (3) Indrajeet Pal, all three sons of Shiv Person Pal and (4) Shashi Bhushan Pal, son of Heera Lal Pal were fleeing away from the *dalan*. She further alleged that when the informant went inside the *dalan*, she saw her father's elder brother was restless and was in a pool of blood. When she shouted, the people assembled there and they took him to Sadar Hospital, Ara for treatment where after treatment he was referred to Paras Hospital, Patna for better treatment. It is further alleged that the reason of this occurrence is that eight days ago, when the work of boundary wall of her *dalan* was going on, then Shiv Person Pal with his



three sons came there armed with *lathi-danda* and started abusing and stopped the work. They had also threatened them of dire consequences if they start the work of boundary wall. The informant alleged that with an intention to usurp the land, the said accused persons had shot at her elder father in his abdomen.

3. On the basis of the said *fardbeyan*, Jagdishpur P.S. Case No. 487 of 2022 dated 01.10.2022 was initially registered under Section 307/34 IPC and Section 27 of the Arms Act but after death of the injured Hare Ram Pal, Section 302 IPC has been added vide order dated 02.11.2022. The copy of FIR was received in the court of learned Chief Judicial Magistrate, Incharge on 11.10.2022 i.e. after 10 days of the registration of the FIR.

4. On completion of investigation, police submitted a chargesheet bearing Chargesheet No. 654 of 2022 dated 31.12.2022 against four accused persons, namely (1) Amarjeet Pal, (2) Ramjeet Pal, (3) Indrajeet Pal, all three sons of Shiv Person Pal and (4) Shashi Bhushan Pal, son of Heera Lal Pal. After filing of the chargesheet, the learned Additional Chief Judicial Magistrate-1st Court, Ara took cognizance of the offences under Section 302 I.P.C. read with Section 34 and Section 27 of the Arms Act. Finding that the offences are triable by the court of Sessions, the records were committed to the court of Sessions vide



order dated 16.05.2023 whereafter Sessions Trial No. 286 of 2023 was registered.

5. On 08.08.2023, the charges were explained to the accused persons, they denied the charges and claimed to be tried. The learned trial court framed the charges against the accused persons under Sections 302 and 34 I.P.C. and an additional charge under Section 27 of the Arms Act. The accused persons were put to trial.

6. In course of trial, the prosecution produced as many as ten witnesses. They also produced some documentary evidences which have been marked Exhibit '1' to '7/B'. The defence did not produce any oral or documentary evidence. The complete description of the prosecution witnesses and the exhibits marked on behalf of the prosecution are being mentioned hereunder in a tabular form:-

List of Prosecution Witnesses:-

P.W. 1	Soni Kumari
P.W. 2	Subhanti Devi
P.W. 3	Raj Kokil Pal
P.W. 4	Meera Kumari, Informant of this case
P.W. 5	Hewanti Kumari
P.W. 6	Durjan Pal
P.W. 7	Ravindra Kumar Pal
P.W. 8	Raj Kishor Singh
P.W. 9	Dr. Arvind Kumar Singh, doctor who conducted autopsy of the deceased Hare Ram Pal



P.W. 10	Dr. Md. Kasim
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List of Exhibits produced on behalf of the Prosecution:-

Exhibit '1'	Signature of informant Meera Kumari on <i>fardbeyan</i>
Exhibit '2'	Signature of informant Meera Kumari on protest complaint petition
Exhibit '3'	Signature of Ravindra Kumar Pal on <i>fardbeyan</i> as a witness
Exhibit '4'	Signature of S.H.O. Sanjeev Kumar at the endorsement of <i>fardbeyan</i>
Exhibit '5'	Signature of S.H.O. Sanjeev Kumar on formal F.I.R.,
Exhibit '6'	Charge-sheet
Exhibit '7'	Post-mortem report of the deceased Hare Ram Pal
Exhibit '7/A'	Mark on post-mortem report by Dr. Arvind Kumar Singh
Exhibit '7/B'	Signature of Dr. Md. Kasim on post-mortem report.

7. Heard Mr. Abhimanyu Sharma, learned A.P.P. for the appellant-State.

8. Learned A.P.P., at the outset, contended that the informant Meera Kumari, niece of the deceased, had preferred Criminal Appeal (DB) No. 198 of 2024 under Section 372 of the Code, wherein the said appellant/victim challenged the very same judgment and order rendered by the learned Trial Court. It is submitted that the Coordinate Bench of this Court vide order dated 24.09.2024, after considering the entire evidence led by the prosecution, dismissed the appeal filed by the informant/victim. Learned A.P.P. has placed on record the order dated 24.09.2024



passed by the Coordinate Bench of this Court in Criminal Appeal (DB) No. 198 of 2024.

9. We have perused the material placed on record as well as the order dated 24.09.2024 passed by this Court in the aforesaid Criminal Appeal preferred by the informant/victim. This Court has discussed the evidence led by the prosecution in detail and thereafter observed in Para-27 to 34 as under:-

“27. We find that while in her fardbeyan she has stated that she shouted and thereafter the people assembled but in her examination-in-chief, she has stated that prior to her reaching there, her father had already reached there and her sister and mother were there, they had gone there with the food. This, in the opinion of this Court, is a material improvement on the part of PW-4 in course of her evidence and she has only tried to introduce her mother, sister and father as witnesses to the occurrence.

28. This Court finds that PW-4 has claimed in her examination-in-chief that her mother and sister had seen the murder of her elder father (uncle). From her statement itself, it is evident that she does not claim herself an eyewitness to the occurrence. In her cross-examination, she has stated that it takes ten minutes from her house in reaching to the dalan. She has stated in paragraph ‘10’ of her cross-examination that when she started from her door, on way, Ramjeet Pal, Indrajeet Pal, Amarjeet Pal and Shashi Bhushan Pal met her. They had met her at a distance of 150 yards from her door and she has further stated that when she reached at her dalan, at that time four persons were there. Thus, her claim to have seen the accused person fleeing from dalan does not inspire confidence. She has stated that after her reaching to the dalan, the villagers Radheshyam Pal, Jamuna Yadav, Kamlesh



Yadav and many other persons had assembled. This Court finds that those co-villagers who have been named by PW-4 have not been examined in this case. Radheshyam Pal whose house is adjacent to the dalan has not been introduced as a witness in this case. PW-4 has stated that no one who is in the boundary of the dalan had reached there. She had made a phone call to police from mobile no. 9905794872. She has stated that she and her younger father had taken her elder father to Arah. When she reached Arah, she had not given any information to her family members and they had also not given any information as to whether Mukhiya, Sarpanch or Police had come in the village. In paragraph '16' of her cross-examination, she has stated that on the verandah, other male persons used to sleep apart from her elder father but on that day, nobody was there. She was suggested that this is a false case and for that reason, the son, daughter-in-law and wife of the deceased have not deposed. From the deposition of PW-4, it would appear that she claims to have reached the place of occurrence and on way she had heard the firing which was not the case in the fardbeyan and for this reason, she was also suggested by the defence that in her statement before police, she had stated that after hearing sound of firing in the night, she had gone to the dalan. She was suggested by the defence that she was in female portion (Janani Kita) of the house in the night of the occurrence.

29. *This Court further finds from the evidence of PW-1 who is the sister of PW-4 that she claims her presence at the place of occurrence with her mother. She has stated that she and her mother had hidden themselves behind the wall and had seen the occurrence in which Shashi Bhushan Pal, Amarjeet Pal and Indrajeet Pal said that the deceased was sleeping, they ordered to kill whereon Amarjeet fired on her elder father. PW-1 has stated that after the murder, she had raised hulla, her father was coming after irrigating his field had also heard the sound of firing and thereafter, Meera*



Kumari (PW-4), Hewanti Kumari (PW-5) and her father (PW-4) came and saw the accused persons. In her cross-examination in paragraph '4', she has stated that in Janani Kitta, female members are residing, male members stay at dalan. On the date of occurrence, in the Janani Kitta, her two sisters PW-5 and PW-4 were there. She was not there in the Janani Kitta and on the date of occurrence, she was at her dalan. She has stated that there is no main gate in her dalan. In paragraph '8' of her cross-examination, PW-1 has stated that after the occurrence, she and her mother raised hulla. She has categorically stated that Meera Kumari (PW-4) who had lodged the case had not raised hulla. On hulla, the neighbours from the village had come there. She has admitted in paragraph '11' of her cross-examination that her statement is different from the statement of Meera Kumari. She was not present when her sister had made the statement. In paragraph '12' of her deposition, she has denied the suggestion that she had told police that she was supporting statement of Meera Kumari. She was also suggested that she had stated before police that she heard the sound of firing when she was at some distance from the dalan. From the evidence of PW-1, it is clear that her testimony differs with the evidence of the informant and she herself has denied the suggestion to have made statement before police that she supported the statement of the informant.

30. *This Court finds from the evidence of Subhanti Devi (PW-2) that in her examination-in-chief though she has supported the prosecution case on similar line but in paragraph '10' of her cross-examination, she has categorically stated that she had not seen any occurrence. From her deposition it is evident that the claim of the informant (PW-4) that her mother had seen the occurrence is not supported by her mother (PW-2). PW-2 has stated that the deceased was her bhaishur, he has three sons namely Rabindra Pal, Munna Pal and Deepak Pal. On the date of*



occurrence, her daughter and daughter-in-law were not there. She was suggested that there was no enmity between the accused and the informant which this witness has denied. It is evident from her evidence that this witness has stated that she was cleaning utensils at the hand pump. She has herself stated that she had not seen any occurrence.

31. Learned counsel for the appellant has relied upon the evidence of PW-1, PW-2 and PW-4 as according to him, the whole prosecution case rests upon their evidence, the trial court has noticed the inconsistencies and contradictions in the evidence of these witnesses. This Court has too pointed out the contradictions hereinabove. We are of the considered opinion that the learned trial court has not committed any error in appreciating the evidence of PW-1, PW-2 and PW-4. In our opinion, these witnesses were not present at the place of occurrence, the occurrence took place in the night hours at 10:00 pm. The female members of the family were living in the Janani Kitta and the distance between Janani Kitta and the dalan is said to be a ten minutes walk, therefore it was not only the darkness of night, the claim of the prosecution witnesses that they had seen the accused persons from some distance would not be believable. Neither the source of identity has been stated by the prosecution witnesses nor the source of light has at all been mentioned either by the I.O. or these prosecution witnesses.

32. We have noticed from the postmortem report of the deceased that the Doctor (PW-9) has found as many as five injuries on his body and those were on different parts of the body. The injuries noticed by PW-9 are being reproduced hereunder for a ready reference:-

“(1) Stitched wound 26 cm long along with 11 stitches (Metallic) present on front of abdomen at mid line, 4 cm below xiphisternum.



(2) *Stitched wound 4 cm long alongwith 3 stitches present on lt. side of abdomen, 8 cm lateral to injury no.1.*

(3) *Stitched septic wound 5 cm long along with 3 stitches present on Rt. side of abdomen, 12 cm lateral to injury no.1*

(4) *Stitched wound 5 cm long along with 4 stitches present on mid back, 15 cm above from sacral region.*

(5) *Septic wound 6 cm x 4 cm present on lower back at sacral region. Pus, slough present in wound.”*

33. In his cross-examination, PW-9, who is a Child Specialist Doctor, has stated that he cannot say anything about the age of the injury, he cannot say that what kind of bullet it was and whether the injury was grievous or not may be said only by the doctor who had conducted the operation. PW-9 has further stated that he cannot say that what kind of injury it was and whether it was caused by short gun or long gun. He has stated that he had not found any pellet of the bullet and the cause of death was septicemia. PW-9 is a child specialist of SPM Civil Hospital, Lucknow. We have noticed that the deceased was firstly taken to Sadar Hospital, Ara and then he was being treated for 16-17 days in the Paras Hospital at Patna but curiously enough the medical papers of the treatment given to the deceased in Sadar Hospital, Ara and Paras Hospital, Patna have been withheld by the prosecution. The doctors of Sadar Hospital and Paras Hospital have not been examined in this case. From the postmortem report it is not clear as to what kind of injuries



was suffered by the deceased and whether those were firearm injuries.

*34. In the light of the discussions made hereinabove, as we have noticed that the prosecution witnesses are not consistent with regard to their presence at the place of occurrence and the description of the place of occurrence given by the prosecution witnesses particularly PW-4 differs with the description given by the I.O. (PW-8), we find it important to take note of the inordinate delay in lodging of the FIR and then sending it to the court of learned jurisdictional Magistrate. It is evident that the FIR has been lodged after the son of the deceased reached Patna. The prosecution kept on waiting for his arrival and for that reason the Jagdishpur Police Station did not record any fardbeyan or FIR on its own even though information with regard to the occurrence was given by PW-4 through her mobile phone. The prosecution kept on deliberating with regard to the names which are to be given in the FIR and only after deliberation, the fardbeyan was recorded on 01.10.2022 at 13:45 hours. The FIR was registered on 22:10 hours but then it was sent to the jurisdictional court only after ten days. We find from the last page of the formal FIR that there is a specific column meant for giving the date and time of dispatch of FIR to the jurisdictional court, it is the requirement of Section 157 CrPC. No information has been mentioned in this column in the formal FIR. We are reminded of the judgment of the Hon'ble Supreme Court in the case of **Meharaj Singh** (supra) (paragraph '12') which reads as under:-*

“12. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the



actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174 CrPC, is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed to give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and



authenticity and it appears to us that the same has been ante-timed and had not been recorded till the inquest proceedings were over at the spot by PW 8.”

10. When inquired, learned A.P.P., under the instruction, submitted that the said appellant/informant/victim has not challenged the order dated 24.09.2024 passed by this Court in the aforesaid Criminal Appeal till today. Thus, when the same judgment and order rendered by the learned Trial Court has not been interfered by this Court and when the said order has attained finality, we are of the view that the present appeal is also required to be dismissed. We have also independently examined the evidence led by the prosecution and we are of the view that the learned Trial Court has not committed any error while passing the impugned judgment and order.

11. Accordingly, the present appeal stands dismissed.

(Vipul M. Pancholi, J)

(Sunil Dutta Mishra, J)

Sachin/-

AFR/NAFR	
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