

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.409 of 2024**

Arising Out of PS. Case No.-69 Year-2015 Thana- CHHATAUNI District- East Champaran

Kaushalaya Devi, aged about 53 years, Female, Wife of Late Ajay Kumar Yadav, Resident of Village- Bhawanipur Zirat, Ward No.21, P.S.- Chhatauni, District- East Champaran, Motihari.

..... Appellant/s

Versus

1. The State of Bihar
2. Girja Nandan Rai, aged about 70 years, Male, Son of Late Ruplal Rai, Resident of Village- Pataura Lala Tola, P.S. - Muffasil, District- East Champaran, Motihari.
3. Rajeev Kumar @ Rajeev Kumar Ranjan, aged about 34 years, Son of Girija Nandan Rai, Resident of Village - Pataura Lala Tola, P.S. - Muffasil, District- East Champaran, Motihari.
4. Mithilesh Kumar Rai @ Pinku, aged about 38 years, Son of Girija Nandan Rai, Resident of Village- Pataura Lala Tola, P.S. - Muffasil, District- East Champaran, Motihari.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Akashdeep, Advocate Mr. Shyameshwar Kumar Singh, Advocate
For the State	:	Mr. Bipin Kumar, APP
For the Opposite Party Nos. 2 to 4:		Mr. Sanjay Kumar, Advocate Ms. Sangeeta Kumari, Advocate

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

**HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT**

(Per: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA)

Date: 28-08-2024

Heard Mr. Akashdeep and Shyameshwar Kumar Singh, learned counsel for the appellant, Mr. Bipin Kumar, learned APP for the State as well as Mr. Sanjay Kumar and Ms. Sangeeta Kumari, learned counsel for the Opposite Party Nos. 2



to 4.

2. The present appeal has been filed by the appellant/ informant (wife of the deceased) under Section 372 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “Code”) against the judgment and order of acquittal dated 12.02.2024 passed by learned Additional Sessions Judge-V, East Champaran at Motihari in Sessions Trial No. 754 of 2016, CIS No. 6861 of 2016, whereby the concerned Trial Court has acquitted the accused/private respondents of the charges levelled against them for offences punishable under Sections 302 and 120 (B) of the Indian Penal Code and Section 27 of the Arms Act.

3. As per the fardbeyan of the informant, the manager of the Krishna Gas Agency, namely, Rajesh Kumar Srivastava has stated that the deceased (Ajay Kumar Yadav) was going home from his gas agency on separate motorcycles. When the deceased and the manager reached near the lane of Anand Hotel, the manager heard firing and saw that the deceased has fallen from his motorcycle. When the manager reached near the deceased, he saw that blood was coming out of the deceased. Thereafter, one known person, Sanjay Singh who is the proprietor of Petrol Pump, took the deceased to the nearest



hospital for treatment and, thereafter, the family of the deceased reached the hospital. The FIR was lodged on the same date of incident and charges against the Opposite Party Nos.2 to 4 were made.

4. Learned counsel for the appellant/ informant has placed on record the typed copy of deposition of the prosecution witnesses as well as the copy of the FIR. Learned counsel referred to the same and thereafter submitted that, in the present case, the appellant/informant had lodged the FIR under Sections 302 and 120 (B) of the Indian Penal Code against the concerned accused, including the present private-respondents.

5. It is further submitted that after investigation, the Investigating Officer filed the charge-sheet against the opposite party Nos. 2 to 4 and other accused persons before the concerned Chief Judicial Magistrate. However, as the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the same under Section 209 of the Code. It is further submitted that before Sessions Court, the prosecution had examined twelve witnesses. Thereafter, the statement of the accused, under Section 313 of the Code, came to be recorded. After conclusion of the trial, the Trial Court has passed the impugned order, whereby the opposite party nos. 2 to



4 were acquitted.

6. Learned counsel for the appellant submitted that the private respondents herein and other accused persons together hatched a conspiracy to kill the deceased and the present private respondents were the main assailants and they hired the professional killers to kill the deceased and thereafter, the professional killers committed the murder of the deceased. The Opposite Party No. 2 is the father of Opposite Party Nos. 3 and 4. The Opposite Party No. 2 was the partner of the deceased who together were running a gas agency. Opposite Party Nos. 3 and 4 started interfering in the day-to-day work of gas agency that was run by Opposite Party No. 2 and the deceased. They also started black-marketing of gas from the gas agency which was illegal. The deceased objected the same and the present Opposite Party Nos. 2 to 4 conspired to kill the deceased. The other accused persons have also stated in their confessional statement before the police that the Opposite Party Nos. 2 to 4 have conspired and murdered the deceased.

7. Learned counsel for the appellant further submitted that during investigation, the CDR also supports the prosecution case that they have paid four lacks rupees for murder of the deceased and the deposition of the witnesses also



supports the prosecution case.

8. There are all together 12 witnesses, including the doctor and the Investigating Officer.

9. PW-1, Rajesh Kumar Srivastava, who is stated to be the witness of the incident, has given his statement in his examination-in-chief that when the deceased and PW-1 reached near Anand Hotel, PW-1 heard gun shot firing and saw the deceased fallen from his motorcycle.

9.1. In his cross-examination, he also stated that the fardbeyan was given to the police and father-in-law of the deceased was only present at that time. Wife and brother of the deceased were not there. He further stated that there was no dispute between the deceased and Opposite Party No. 2 and he also stated that he has not seen as to who has fired the gun shot and being the sole witness of the incident.

10. PW-2, who is the father-in-law of the deceased, in his examination-in-chief has stated that the gas agency was run by the deceased and Opposite Party No. 2 who are partners for 20 years and they had good relationship but recently, the Opposite Party No. 2 started black-marketing and thus, differences arose between them and thereafter Opposite Party Nos. 2 to 4 hatched a plan to commit murder of the



deceased person.

10.1. In his cross-examination, he stated that the information of the death of the deceased was received by PW-2 through newspaper.

11. PW-3 has stated that he saw the gathering near the Anand Hotel, after the deceased was shot at the place of occurrence and further stated about the relationship between the deceased and Opposite Party No. 2.

11.1. In his cross-examination, he stated that he has not seen the blood spot at the place of occurrence and he also does not have any knowledge about the motorcycle of the deceased.

12. PW-4 was the brother of the deceased and he has also stated about the relationship between the deceased and the Opposite Party No. 2 along with the statement that the sons of the Opposite Party No. 2 recently started interfering in the business of gas agency and they also started the black-marketing of the gas and on 08.04.2014 at about 7 PM., deceased called PW-4 and told him that Mithilesh Kumar Rai and Rajiv Kumar Rai and some other unknown are moving around the gas agency. Later on he was informed that his brother (deceased) has sustained gun-shot injury and was admitted to Rahmania



Hospital and he later on died in Patna. He has made accusation that Opposite Party Nos. 2 to 4 have hired criminals to commit the murder of the deceased.

13. PW-5, who is a friend of the deceased and is not an eye witness, has only stated that there was a dispute between the deceased and the O.P. No. 2 and O.P. Nos. 2 to 4 are planning to grab the gas agency and kill the deceased.

14. PW-6, Shambhu Prasad Yadav is also not an eye witness of this case but has stated in his examination-in-chief that O.P. Nos. 2 to 4 were interfering in the business of the gas agency and they were trying to grab the gas agency from the deceased and has stated that the O.P. Nos. 2 to 4 have committed murder of the deceased by hiring criminals.

15. PW-7 is Dr. Tabrez Aziz. This witness has stated that he examined Mr. Ajay Kumar Yadav, aged about 45 years, Male, Son of Late Sukhdev Prasad Yadav of Bhawanipur Zirat, P.S. Chhatauni, East Champaran on dated 08.04.2015 at 10.05 PM. Injury report was identified by the police and the time of examination of patient was 10.20 PM. Patient was unconscious and the following injuries were found on the injured person (deceased): -

1. Wound of entry about 1"x1/2" cavity deep with surrounding area of totting over the skin over lower part



of skull behind right pinna.

II. Wound of exit-1 1/2"x 1/2"x 1/2" with a regular margins over lower part of skull behind left pinna.

Note- after primary management patient was referred to higher centre.

III. M.I. An old scar over dorsum of left foot.

IV. Age of injury-Within 6 hours. Caused by Fire arm.

Nature of injury-Opinion reserved.

This injury report bears his signature and stamp and it was dictated by PW-7 and written by Dr. K. N. Singh. He read the injury report and found it correct and signed it. The handwriting of Dr. K. N. Singh, Medical Superintendent is identified by him. The injury report is marked as Ext-6.

15.1. In his cross-examination, he stated that he identified the signature of Dr. K. N. Singh. He did not receive any requisition of police. The information he gave the police was not mentioned in the injury report, the color of the injury is also not mentioned. I have written the time of injury within 6 hours. The LTI and signature of injured are not on the injury report.

16. PW-8, who is the wife of the deceased and is not an eye witness to the occurrence, has given similar statement that there was a dispute between the opposite party no. 2 and the deceased. As opposite party nos. 3 and 4 started interfering in



the business of the gas agency and started black marketing of gas, to which the deceased protested. Panchayati was also done to resolve the dispute.

17. PW-9, Dr. Pankaj Kumar has stated that he was posted at FMD Department, PMCH, Patna on 15.04.2015. On the same day, he conducted postmortem examination in the mortuary on the dead body of Ajay Kumar Yadav @ Golu, 55 Years, Son of Late Sukhdev Prasad Yadav, Mohhalla-Bhabanipur Zirat, P.S. Chhatauni, District-East Champran. Body was brought and identified by constable 55A Vermo Sah and Vijay Kumar Yadav brother and Sanjay Kumar friend. On examination, following ante mortem and internal injuries were found: -

I. One stitched wound inverted U shape on left side of scalp extending 2 inch from nasal bridge.

II. One entry wound 1/2 x 1/4" cavity deep, margin inverted and lacerated with taotting 5"x 5" at right occipital parietal area of scalp 1" right from mid-line and 2.25" from right ear.

III. One exit wound 1" x 1/2" cavity deep, margin inverted and lacerated at left temporal area of scalp adjacent to left ear pinna, 4" left from mid-line.

IV. Triphinning (Surgical) was found 7" x 5.5" left side of skull involving left frontal, parietal and temporal



bones. V. One abrasion 1.5" x 1/2" right knee front.

2. Injury no. 2 and 3 were in continuation and structure in between were found pierced through and though.

3. On dissection- Sub-dural hematoma was found on both sides of brain and brain matter was found lacerated.

Heart-little blood in right chamber; Bladder-empty, Stomach about 50 gram pasty substance. Viscera-congested.

Opinion1. Time since death 6 to 24 hours approx 2. Cause of death-Head injury of Violence-Fire arm.

Opinion regarding injury no. 1 and 4 can be obtained from surgeon concerned. It is true photocopy of original PM report, he identified it and this report is in his pen and bears his signature. It is mark exhibit-7.

17.1. In his cross examination, he stated that dead body came from Udyan Hospital. When the dead body came, it had been operated and was bandaged. There was bandage all over the head. It is not written as to when he was admitted in Udyan Hospital. It is also not written as to for how many days ago he was undergoing treatment in Udyan Hospital. It has been added by him by giving arrow in Injury No. 1. He has not written as to how many days ago haematoma was because it is not written in postmortem report. The color of haematoma and laceration is not mentioned because it is not mentioned in postmortem report.



18. PW-10, Subodh Kumar has stated in his examination in chief that he was posted as S.H.O. Chhatauni, Motihari. F.I.R. was lodged as Chhatauni P.S. Case No. 69/2015 dated 08.04.2015 under Section 307, 326/34 of the I.P.C. and 27 of the Arms Act and then investigation of this case was given to Dhananjay Kumar S.I. It has further been stated that on 30.06.2015 he took the charge of investigation of this case from the S.I. Dhananjay Kumar and thereafter he submitted charge-sheet against the other accused persons, namely, Ravi Kumar Sahani, Sudama Sahani, Rajan Sahani, Krishna Yadav and Chandan Ram. He also stated that he has obtained CDR of mobile number of Girja Nandan Rai but he found no clue. This witness has also stated that he found no evidence regarding the black marketing of gas cylinders. PW-10 has also stated that there was not any type of interference by the Girja Nandan Rai and his two sons in the Gas Agency.

19. PW-11 has stated in his examination-in-chief that he is third I.O. of this case. He further stated that he has submitted charge sheet in this case against the accused Girija Nandan Rai, Rajeev Kumar and Mithilesh Kumar on 27.04.2016 under Sections 302, 120(B) of the Indian Penal Code and Section 27 of the Arms Act.



20. PW-12, Dhananjay Kumar, has stated in his Examination in Chief that he was the first I.O. of this case. On information, he along with officer-in-charge reached at Rahmania Hospital. He also went at the place of occurrence at Anand Hotel lane, where blood spot was found. He arrested one Ravi Sahani and recorded his confessional statement. Further, he arrested accused Sudama Sahani and recorded his confessional Statement. He collected the inquest report from SKMCH Hospital, Patna. Some clothes of the deceased were also brought before him and seizure list thereof was made.

20.1. In his cross-examination, he admitted that the mobile was received from the accused Ravi Sahani, but no CDR was taken by him. After scrutinizing the evidence of this witnesses, it appears that he has not taken CDR of mobile of accused Ravi Kumar, Krishana Yadav and Sudama Sahani that he talked with accused persons namely Girja Nandan Rai, Rajiv Rai and Mithlesh Rai. Rather, it has been stated that accused Girja Nandan Rai, Rajiv Rai and Mithlesh Rai had not made any type of interference in the gas agency business. He also stated that any type of complaint has not been received against Girja Nandan Rai, Mithlesh Rai and Rajiv Rai by the deceased.

21. Considering the above facts and



circumstances and the deposition given by the witnesses along with the doctor and Investigating Officer, it is evident that the above Opposite Party Nos. 2 to 4 are dragged in this case and made accused in the present case only on the basis of confessional statements of other accused persons. The informant is the only eye-witness who was present near the place of occurrence, but he has also not seen the incident and has only heard gun shot firing and thereafter, he saw the deceased fallen from his motorcycle. Opposite Party Nos. 2 to 4 are not concerned with the present case and the prosecution has failed to establish a direct connection of Opposite Party Nos. 2 to 4 to the alleged occurrence and the Opposite Party Nos. 2 to 4 cannot be considered as guilty of the offence, only on the basis of confessional statements of other co-accused persons and statements of the witnesses.

22. We have also considered the reasoning recorded by the trial Court while passing the order of acquittal in favour of the Opposite Party Nos. 2 to 4 and we are of the view that the trial court has not committed any error while passing the impugned order. Thus, looking into the overall facts and circumstances of the present case, we are not inclined to interfere with the impugned order and judgment of acquittal



dated 12.02.2024.

23. Accordingly, the present appeal is dismissed
at the stage of admission itself.

(Vipul M. Pancholi, J)

(Ramesh Chand Malviya, J)

Brajesh Kumar/-
Anand Kr./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	06.09.2024
Transmission Date	06.09.2024

