

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.66 of 2023**

CNR No. BRHC010006162023

Arising Out of PS. Case No.-56 Year-2019 Thana- LAKHISARAI District- Lakhisarai

Subhash Yadav Son of Charitar Yadav Resident of Village- Bhawariya, P.S.-
Ramgarh Chowk, District- Lakhisarai

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant	:	Mr. Pratik Mishra, Advocate Mr. Saurav Kumar Pandey, Advocate Mr. Vatsal Vishal, Advocate
For the State	:	Mr. Bipin Kumar, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

Date : 29-09-2026

We have heard learned counsel for the appellant, learned Additional Public Prosecutor for the State and perused the Trial Court's records.

2. The present appeal has been preferred for setting aside the judgment of conviction dated 06.12.2022 (hereinafter referred to as the 'impugned judgment') and the order of sentence dated 08.12.2022 (hereinafter referred to as the 'impugned order') passed by learned Additional Sessions Judge-III, Lakhisarai (hereinafter referred to as the 'learned trial court') in Sessions Trial No. 60 of 2020, arising out of Lakhisarai (Ramgarh Chowk) P.S.



Case No. 56 of 2019. By the impugned judgment, the appellant has been convicted for the offences punishable under Sections 341/34, 324/34, 326/34 and 302/34 of the Indian Penal Code (in short 'IPC'). The appellant has been sentenced to undergo simple imprisonment for one month for the offence under Section 341/34 IPC with a fine of Rs.500/- and in default of payment of fine, he shall further undergo 15 days simple imprisonment. He has also been sentenced to undergo three years simple imprisonment for the offence under Section 324/34 IPC with a fine of Rs.5,000/- and in default of payment of fine, he shall further undergo two months simple imprisonment. He has further been sentenced to undergo simple imprisonment for seven years for the offence under Section 326/34 IPC with a fine of Rs.5,000/- and in default of payment of fine, he shall further undergo three months simple imprisonment. Further, the appellant has been sentenced to undergo life imprisonment for the offence under Section 302/34 IPC with a fine of Rs.10,000/- and in default of payment of fine, he shall further undergo six months simple imprisonment.

Prosecution Case

3. The prosecution story is based on the *fardbeyan* of Birju Yadav (deceased) recorded by ASI Anil Kumar of P.S. Ramgarh Chowk at Emergency Ward, Sadar Hospital at 17:20 Hrs



on 18.01.2019 wherein he has alleged that on 18.01.2019 at about 03:00 P.M., while he was cutting grass in his field, his villagers namely (1) Vikash Yadav, (2) Subhash Yadav, (3) Mukesh Yadav and (4) Rajesh Yadav came armed with sword and other weapon and assaulted him with intention to kill. It is alleged that Vikash Yadav assaulted the informant with a *Talwar* on his right leg causing cut injuries at 2-3 places. Subhash Yadav (the appellant) assaulted him with *katta* on his left causing injuries at 2-3 places. It is further alleged that Mukesh Yadav assaulted the informant on his head resulting in 2-3 cut injuries and Rajesh Yadav assaulted him with a *katta*, causing injuries to his right wrist and hand. Further, it is alleged that all four accused persons assaulted the informant with deadly weapon due to which he sustained various injuries on his body. The informant has stated that this occurrence took place due to previous enmity.

4. On the basis of his *fardbeyan* recorded at Sadar Hospital, Lakhisarai, Ramgarh Chowk P.S. Case No. 56 of 2019 dated 18.01.2019 was registered for the offences under Sections 341, 323, 324, 326, 307, 120B and 34 of the IPC against (1) Vikash Yadav, (2) Subhash Yadav, (3) Mukesh Yadav and (4) Rajesh Yadav. During the course of treatment, the informant



succumbed to his injuries on 19.01.2019, whereafter Section 302 I.P.C. was added.

5. After investigation, Police submitted a charge-sheet bearing Chargesheet No. 473 of 2019 dated 09.10.2019 against the appellant Subhash Yadav for the offences punishable under Section 302/34 IPC, keeping the investigation pending against (1) Vikash Yadav, (2) Mukesh Yadav and (3) Rajesh Yadav.

6. The learned Chief Judicial Magistrate, Lakshisarai *vide* order 17.02.2020 took cognizance of the offence punishable under Section 302/34 IPC against the appellant Subhash Yadav and committed the records to the Court of Sessions on 02.03.2020. Charges were read over in Hindi and explained to the appellant to which he pleaded not guilty and claimed to be tried. Accordingly, *vide* order dated 16.11.2021 charges were framed for the offences punishable under Sections 323/34, 324/34, 326/34, 341/149, 307/34, 302/34 and 120B IPC against accused-appellant Subhash Yadav. In his statement under Section 313 Cr.P.C., the accused denied the allegations and pleaded false implication.

7. In course of trial, the prosecution examined as many as eight witnesses and got exhibited several documents. The lists of prosecution witnesses and the documents are given hereunder in tabular form:-



List of Prosecution witnesses

Prosecution Witness No.	Name of the Witness	Description of the Witness
PW-1	Mauli Yadav @ Anmol Kumar	Eye-witness
PW-2	Sheetal Yadav	Eye-witness
PW-3	Alakh Yadav	Eye-witness/son of the deceased
PW-4	Dr. Shiv Ranjan Kumar	Medical witness
PW-5	Ashutosh Kumar	I.O.
PW-6	Dhirendra Kumar Pathak	I.O.
PW-7	Dhaneshwar Yadav	Inquest report witness
PW-8	Anil Kumar	A.S.I. who recorded <i>fardbeyan</i> of the deceased

List of Exhibits on behalf of Prosecution

Exts.	Description of the Exhibits	Proved/Attested by
‘P-1’	Signature of PW-3 Alakh Yadav on <i>fardbeyan</i> of deceased on 18.01.2019	PW-3
‘P-2’	Signature of PW-3 Alakh Yadav on his <i>fardbeyan</i>	PW-3
‘P-3’	Signature of PW-3 Alakh Yadav on inquest report	PW-3
‘P-4’	Postmortem report	PW-4
‘P-1/1’	Pagination on <i>fardbeyan</i>	PW-5
‘P-1/2’	<i>Fardbeyan</i> of Birju Yadav (deceased) in writing and signature of ASI Anil Kumar	PW-5
‘P-5’	Signature of officer-in-charge on Formal FIR	PW-5

8. Defence has also examined two oral witnesses and exhibited some documentary evidences in support of his case, which is reproduced hereinbelow in tabular form for ready reference:-



List of Defence Witnesses

D.Ws.	Names	Description
DW-1	Saryug Yadav	Co-villager
DW-2	Pano Yadav	

List of Exhibits on behalf of Defence

Exts.	Particulars
Ext.-D1	Certified copy of judgment dated 05.08.2019 in S.T. No.413 of 2013
Ext.-D2	Certified copy of charge-sheet bearing Ramgarh Chowk P.S. Case No.307 of 2005
Ext.-D3	Certified copy of charge-sheet bearing Lakhisarai Ramgarh Chowk P.S. Case No.96 of 2012
Ext.-D4	Certified copy of charge-sheet bearing Ramgarh Chowk P.S. Case No.172 of 2017
Ext.-D5	Certified copy of charge-sheet bearing Lakhisarai P.S. Case No.104 of 1998
Ext.-D6	Certified copy of charge-sheet bearing Lakhisarai Ramgarh Chowk P.S. Case No.724 of 2014
Ext.-D7	Certified copy of charge-sheet bearing Seikhpura P.S. Case No.716 of 2018

Findings of the Learned Trial Court

9. The learned Trial Court, upon appreciation of the oral and documentary evidences, held that the homicidal death of Birju Yadav stood established on the basis of the evidence of Dr. Shiv Ranjan Kumar (PW-4), *postmortem* report, inquest report and other materials on record. The learned Trial Court treated the *fardbeyan* of the deceased, recorded by Anil Kumar (PW-8) at Sadar Hospital, Lakhisarai, as a dying declaration and held that the same was admissible even in the absence of a medical certificate regarding the fitness of the deceased, particularly when the



recording witness had stated that the deceased was in a fit condition to give his statement. The specific allegation against the appellant Subhash Yadav of assaulting the deceased with a *Katta* was found corroborated by the testimonies of P.Ws.1, 2 and 3 and the medical evidence.

10. The learned Trial Court further rejected the defence objections regarding the related nature of the prosecution witnesses, non-examination of independent witnesses, alleged inconsistencies and the plea of alibi, holding that the prosecution witnesses were consistent on material particulars and their evidence inspired confidence, whereas the defence failed to establish the plea of alibi with requisite certainty.

11. The learned Trial Court also held that previous enmity between the parties could not, by itself, discredit the prosecution case and concluded that the appellant, along with the co-accused, had assaulted the deceased and shared common intention in commission of the offence. Accordingly, the appellant was convicted under Sections 341/34, 324/34, 326/34 and 302/34 of the I.P.C.

12. On the point of sentence, considering that there was no material to show that the appellant had inflicted more than one blow or that the murder was committed in a brutal manner, the



learned Trial Court held that the case did not fall within the category of rarest of rare cases and sentenced the appellant to simple imprisonment for one month under Section 341/34, three years under Section 324/34, seven years under Section 326/34 and imprisonment for life under Section 302/34 of the I.P.C., with respective fines and directed payment of the fine to the dependent of the deceased besides recommending compensation through the District Legal Services Authority.

Submissions on behalf of the appellant

13. Learned counsel appearing on behalf of the appellant submits that the prosecution case suffers from serious infirmities from its very inception. It is submitted that the formal F.I.R. appears to have been registered fifty minutes prior to the recording of the *fardbeyan* of the deceased, which has been projected as the basis of the F.I.R. PW-1, Mauli Yadav @ Anmol Kumar, nephew of the deceased, has stated that he had made his statement before the police at Sadar Hospital at about 4:30 P.M. on 18.01.2019, whereas the *fardbeyan* of the deceased was recorded at 5:20 P.M., however, the statement of PW-1, being the earliest version, has not been made the basis of the F.I.R. It is, thus, submitted that the first version of the prosecution case has been suppressed.



14. Learned counsel further submits that the alleged *fardbeyan* cannot be safely treated as a dying declaration as there is no medical certification regarding the fitness of the deceased to make the statement, rather, PW-8, A.S.I. Anil Kumar, has admitted that the doctor treating the deceased had not granted permission for recording his statement. Reliance has been placed upon the judgment of the Hon'ble Supreme Court in the case of **Surjit Singh vs. State of Punjab** reported in (2024) 2 SCC 411. It is further submitted that PW-4, Dr. Shiv Ranjan Kumar, had found as many as ten *ante mortem* injuries on the body of the deceased, yet no treatment papers or medical records from Sadar Hospital, Lakhisarai or Patna Medical College Hospital have been produced to establish that the deceased was in a fit physical and mental condition to make such a detailed statement. In this regard, reliance has been placed upon the judgment of the Hon'ble Supreme Court in the case of **Suresh Sahu & Anr. vs. State of Bihar (Now Jharkhand)** reported in 2025 SCC OnLine SC 2637.

15. Learned counsel further submits that the Investigating Officer has stated that the further statement of the deceased was recorded through videography but the said videographic evidence has not been produced before the learned



Trial Court, though it would have been a material piece of evidence for appreciating the condition and manner of making the alleged statement. Reliance has been placed upon the judgment of the Hon'ble Supreme Court in the case of **Tomaso Bruno & Anr. vs. State of Uttar Pradesh** reported in **(2015) 7 SCC 178**.

16. It is also submitted that the alleged dying declaration was not put to the appellant in his examination under Section 313 Cr.P.C. and therefore the said incriminating circumstance could not have been relied upon against him. In this regard, learned counsel for the appellant has relied upon the judgment of this Court in the case of **Munna Shukla vs. State of Bihar** reported in **2020 SCC OnLine Pat 1980** and the judgment of Hon'ble Supreme Court in the case of **Aejaz Ahmad Sheikh vs. State of Uttar Pradesh & Anr.** reported in **2025 SCC OnLine SC 913**.

17. Learned counsel further submits that material inconsistencies exist regarding the motive, inasmuch as the *fardbeyan* refers to prior enmity, whereas, PW-2 refers to *rangdaari* as the reason for the occurrence. The defence has also brought on record documents relating to the criminal antecedents of the deceased. It is lastly submitted that PW-1, PW-2 and PW-3 are not eyewitnesses to the occurrence. PW-2 himself states that his statement was not recorded by the police and the presence of



PW-2 and PW-3 at the place of occurrence does not find mention in the *fardbeyan* of the deceased or the subsequent *fardbeyan* of PW-3. Thus, according to learned counsel, once the alleged dying declaration is found to be doubtful and excluded from consideration, the remaining evidence is insufficient to establish the guilt of the appellant beyond reasonable doubt and the appellant deserves to be extended the benefit of doubt.

Submissions on behalf of the State

18. Learned Additional Public Prosecutor for the State, while opposing the appeal, submits that the learned Trial Court has rightly appreciated the evidences available on the record and has recorded a finding of guilt on the basis of the materials brought on record. It is submitted that the evidence of the prosecution witnesses, coupled with the medical evidence and other materials available on the record, sufficiently establishes the prosecution case and there is no ground to interfere with the judgment of conviction and order of sentence passed by the learned Trial Court. It is, accordingly, submitted that the appeal, being devoid of merit, is liable to be dismissed.

Consideration

19. The prosecution case giving rise to Lakshisarai (Ramgarh Chowk) P.S. Case No. 56 of 2019 dated 18.01.2019



registered under Sections 341, 323, 324, 326, 307, 120B read with Section 34 of the I.P.C. has been formally registered on 18.01.2019 at 16:30 Hrs. A perusal of the enclosure to the formal F.I.R. would show that it has been drawn on the basis of the *fardbeyan* of Birju Yadav (since deceased) recorded by A.S.I. Anil Kumar (PW-8) in the Emergency Ward of Sadar Hospital, Lakhisarai at 17:20 hrs on 18.01.2019. It is evident that the time of recording of formal F.I.R. is fifty minutes prior to the recording of the *fardbeyan* (Exhibit 'P-1/2'). In this regard, we have also noticed from the deposition of Mauli Yadav @ Anmol Kumar (PW-1), who is the nephew of the deceased, that he claims to have made statement before police in the Sadar Hospital on 18.01.2019 at 4:30 P.M. Therefore, there is no iota of doubt that prior to recording of the *fardbeyan* of the victim, the statement of PW-1 had already been recorded at 4:30 P.M., but this statement has not been made basis of lodging of the F.I.R. It is for this reason, learned counsel for the appellant has submitted that the first version of the prosecution case which came through PW-1 has been suppressed. We are of the opinion that the submissions of the learned counsel for the appellant as regard suppression of the first version cannot be thrown away.

20. We have further noticed that the *fardbeyan* of Birju Yadav (deceased) has been recorded by A.S.I. Anil Kumar (P.W.-8)



in the Sadar Hospital, Lakhisarai. It has been witnessed by Alakh Yadav (son of the deceased), who has deposed as PW-3 but as regards the mental state and fitness of the victim to make statement, no certification has been done by any Doctor of the hospital. PW-8 has stated in paragraph '3' of his deposition that the doctor who was treating Birju Yadav had not granted permission to record his statement. Learned counsel for the appellant has relied on the judgment of Hon'ble Supreme Court rendered in the case of **Surjit Singh** (supra) wherein the Hon'ble Supreme Court has considered a case where dying declaration was recorded by the I.O. in which the doctor has certified at 4:30 P.M. that the patient was fit for making the statement. The dying declaration was recorded at 5:30 P.M. The Hon'ble Supreme Court found that Surjit Singh (PW-10), who had recorded the dying declaration had not stated that Dr. Sudhir Sharma had examined the deceased before giving the fitness certificate. A discussion in this regard may be found in paragraphs '12', '13' and '14' of the judgment of the Hon'ble Supreme Court which we reproduce hereunder for a ready reference:-

“12. Now, we come to the dying declaration relied upon by the prosecution which is recorded by Surjit Singh (PW 10). He recorded the alleged dying declaration at 5.30 p.m. on 8-7-1999. A request was made by him to the doctor attached to GGS Medical



College to certify whether the deceased was fit to make a statement. An endorsement, according to him, was made by Dr Sudhir Sharma at 4.30 p.m. recording that the patient was fit for making the statement.

13. In the examination-in-chief, Surjit Singh (PW 10) has not stated that Dr Sudhir Sharma examined the deceased before giving the fitness certificate. He has stated that Dr Sudhir Sharma remained present by his side when he recorded the statement of the deceased. What is most relevant is the admission given by Surjit Singh (PW 10) in Para 2 of his cross-examination, which reads thus:

“2. It is correct that doctor remained beside Reeta Rani throughout when I recorded her statement. It is correct that I sought the opinion of the doctor regarding the fitness of Reeta Rani throughout her statement but he refused to give this certificate i.e. fitness certificate. ...”

(emphasis supplied)

14. Thus, even according to Surjit Singh (PW 10), the doctor, who gave certificate at 4.30 p.m., declined to give a certificate that when the statement of the deceased was being recorded, she was fit to give a statement. There is nothing brought on record to show that Dr Sudhir Sharma examined the deceased before giving certificate of fitness at 4.30 p.m. What is most crucial is that Dr Sudhir Sharma has not been examined as a prosecution witness. In view of what is admitted by Surjit Singh (PW 10) in Para 2 in his cross-examination, which we have quoted above, an adverse inference will have to be drawn against the prosecution for not examining the said doctor. Therefore, for the aforesaid reasons, the dying declaration allegedly recorded by Surjit Singh (PW 10)



will have to be discarded. Then the other dying declaration recorded by an independent doctor, namely, Dr Manvir Gupta (PW 13), holds the field.”

21. In the present case, since the I.O. himself admits that the doctor had not granted him permission to record the statement of the victim, this Court cannot attach much evidentiary value to the *fardbeyan* of the victim as dying declaration.

22. This Court finds that there is a huge doubt over the condition of the victim at the time of recording of the *fardbeyan* in Sadar Hospital, Lakhisarai. In this regard, we refer the deposition of Dr. Shiv Ranjan Kumar (PW-4) who had found the following *ante mortem* injuries over the body of the victim:-

“Scratch abrasions (colour-red)”

- (i) 19 cm x 1/4 cm present on left shoulder and upper arm,
- (ii) 7 cm x 1/4 cm on back of chest left side just below scapula 11 cm left to vertebral medline,
- (iii) 3 cm long on back of chest left side lower part 7 cm left to midline,
- (iv) 12 cm x 1/4 cm on back of left side chest, lower part 3 cm left to midline,
- (v) 9 cm x 1/4 cm on left buttock posterolateral part 10 cm left to midline.

Incised wound:

- (i) 4 cm x 1 cm x muscle deep with clean cut regular margin present over back of left chest 7cm left to midline with blood clots,
- (ii) 4.5 cm x 1/2 cm x muscle deep with clean cut regular margin present over back of left chest just below inferior angle of scapula 5 cm left to midlinepresent horizontally,



- (iii) 4 cm x 1/2 cm x muscle deep on left buttock 5 cm left to midline,
- (iv) 2 cm x 1/2 cm x muscle deep on mid-parietal skull, 17 cm from left ear,
- (v) 3 cm x 1/2 cm on front of left leg 10 cm below knee.

Stitched wound:

- (i) 9 cm long on left parieto-occipital scalp obliquely placed 12 cm above left ear,
- (ii) 3 cm long on right occipital scalp 6 cm from right ear,
- (iii) 4 cm long on back of right elbow,
- (iv) 10 cm long on right forearm posterior aspect 7 cm below right elbow with cut mark on underlying bone,
- (v) 6 cm long on right forearm posterior aspect 5 cm above wrist joint with cut on underlying bone,
- (vi) 5 cm long on right forearm fronto-lateral aspect 10 cm below elbow joint,
- (vii) 5 cm long on dorsum of right hand and thumb,
- (viii) 9 cm long on right leg lower part 27 cm below knee. The distal amputated part was absent.
- (ix) 8 cm long on left leg lower part postero-lateral aspect 7 cm above ankle joint with corresponding cut on fibula bone,
- (x) 5 cm long on left foot later aspect 2 cm below ankle joint.

Internal:-

There was 3 cm long cut on left parietal bone with avulsion fracture of adjacent bone in an area of 3 cm x 2.5 cm placed 13 cm above left ear. There was corresponding blood clot over the cerebral surface (left parietal surface of brain). Bi-lateral lung pale. heart-both sided chamber empty. Internal organ pale. Stomach contain cream coloured fluid about 50 ml. Bladder empty.



5. Opinion-

- (i) Death was due to combined effect of cranio-cerebral damage and haemorrhagic shock as a result of above noted injuries,
- (ii) caused by sharp cutting weapon,
- (iii) Time elapsed since death was within 24 hours (approx.) from the time of postmortem examination.”

23. The Doctor had noticed as many as ten injuries on the various parts of the body of the victim. No chit of paper regarding the treatment of the victim in the Sadar Hospital, Lakhisarai or in the Patna Medical College Hospital has been produced by the prosecution. Had those papers been produced, the Court would have been in a position to appreciate from the medical papers whether deceased was in a position to speak.

24. Going through the kind of injuries suffered by the victim, we cannot believe that the victim would have been in a position to speak. We can see from the kind of recording of the *fardbeyan* that it is giving every detail of himself and that of the accused persons as also the narration of occurrence which could not have been possible. In this regard, learned counsel for the appellant has relied upon a judgment of the Hon'ble Supreme Court rendered in the case of **Suresh Sahu** (supra). What have been observed by the Hon'ble Supreme Court in paragraphs '41' to '44' are extracted hereunder:-



“41. The prosecution relies heavily on the disclosure of the names of the accused-appellants in the oral dying declaration of the deceased. However, having gone through the evidence of the medical jurist, Dr. Ajit Kumar Chaudhary (PW-5), we are unable to subscribe to the theory that the deceased would have been in a position to speak after receiving the injuries described below:—

“Abrasions:

- 1) $\frac{1}{2} \times \frac{1}{2}$ cm, $\frac{1}{2} \times \frac{1}{2}$ cm over left elbow back.
- 2) $\frac{1}{2} \times \frac{1}{2}$ cm over left thumb.

Bruises:

- 1) 8×2 cm over front of abdomen upper part situated transversely.
- 2) 5×2 cm over front of right side abdomen.
- 3) 4×2 cm over front of right thigh.

Lacerated wound (stitched):

- 1) 4×1 cm $\times$ scalp deep over the right parietal region of head.
- 2) $4\frac{1}{2} \times 1$ cm $\times$ scalp deep on the right occipital region of head.
- 3) 4×1 cm $\times$ scalp deep over left parietal region of head.

Internal Injuries:

There was defused contusion of whole scalp and both temporalis muscles. There was Crack Fracture of right temopro-parieto-occipital bone and the fracture line extends to left parietal bone and another crack fracture measuring 7 cm long was present on right parietal bone situated anteroposterior. There was presence of subdural blood and blood clot over both sides of right temporal lobe of brain.”

(Emphasis supplied)

42. It is impossible to believe that, having received such grave head/cranial injuries, the deceased would have been in a



position to speak what to talk of making an oral dying declaration.

43. That apart, admittedly, the deceased was taken to the hospital at Mandar, at the first instance, from where he was referred to R.M.C.H., Ranchi. The treatment documents of the deceased from the Mandar Hospital could have provided vital information regarding his condition at the time of arrival at the hospital. However, the prosecution did not bring any such document on record, which further weakens the case of prosecution on the theory of oral dying declaration.

44. The evidence of Tapeswari Kumari (PW-1) and Saroj Kumari (PW-2), being the sisters of the deceased, on the aspect of oral dying declaration is unworthy of credence for the reasons which we have assigned above.”

25. In view of the above discussions, we are of the opinion that the learned Trial Court has grossly erred in appreciating the *fardbeyan* of the victim by taking the same as dying declaration.

26. We have further noticed that the I.O. (PW-5) has stated in paragraph ‘1’ that he had recorded the further statement of the informant (victim) and had recorded it by way of videography but the said videographic statement has not been produced before the learned Trial Court. The electronic evidence of videography would have been a vital piece of evidence in this case and it would have demonstrated how the deceased had made statement during his hospitalization in the Sadar Hospital. Non-production of the video by the I.O. (PW-5) would prove fatal to the



prosecution. In this regard, learned counsel for the appellant has relied on the judgment of Hon'ble Supreme Court in the case of **Tomaso Bruno (supra)**. Paragraph '28' of the said judgment reads as under:

“28. The High Court held that even though the appellants alleged that the footage of CCTV is being concealed by the prosecution for the reasons best known to the prosecution, the accused did not invoke Section 233 CrPC and they did not make any application for production of CCTV camera footage. The High Court further observed that the accused were not able to discredit the testimony of PW 1, PW 12 and PW 13 qua there being no relevant material in the CCTV camera footage. Notwithstanding the fact that the burden lies upon the accused to establish the defence plea of alibi in the facts and circumstances of the case, in our view, the prosecution in possession of the best evidence, CCTV footage ought to have produced the same. In our considered view, it is a fit case to draw an adverse inference against the prosecution under Section 114 Illustration (g) of the Evidence Act that the prosecution withheld the same as it would be unfavourable to them had it been produced.”

27. We, therefore, find that in this case so far as the fardbeyan of the victim/deceased, which has been attached with the formal FIR is concerned, the same is not free from blemish and doubt for the reasons discussed hereinabove.

28. We have further noticed that in this case the said dying declaration has to be discarded in view of the provisions contained in Section 313 Cr.P.C. The dying declaration was not put



before the accused-appellant during his statement under Section 313 Cr.P.C. In this regard, the learned counsel has relied on the judgment of this Court in the case of **Munna Shukla (supra)** and the judgment of Hon'ble Supreme Court in the case of **Aejaz Ahmad Sheikh (supra)**.

29. This Court in the case of **Munna Shukla (supra)** has held in paragraph '24' as under:-

“24. In the case of Jaswant Singh v. State (Delhi Administration) reported in (1978) 4 SCC 85 : AIR 1979 SC 190, it has been held by the Apex Court that the dying declaration, which is not recorded by a Magistrate has to be scrutinized closely but it is well settled that if the Court is satisfied on a close scrutiny of the dying declaration that it is truthful, it is open to the court to convict the accused on its basis without any independent corroboration.”

30. The Hon'ble Supreme Court in the case of **Aejaz Ahmad Sheikh (supra)** has held in paragraph '16' as under:-

“16. The most unfortunate part is that the evidence of PW-11 about the dying declarations made by these two victims has not been put to the accused in his examination under Section 313 of CrPC. Not only that what is stated in the evidence by PW-11 is not put to the accused in his statement under Section 313 of CrPC., but even the fact that the dying declarations were made by Fatima and Amina to PW-11 was not put to the accused.”

31. We have also noticed that in this case the *fardbeyan* of the informant talks of prior enmity whereas the statement of



Sheetal Yadav (PW-2) talks of *rangdaari* as the reason for the occurrence. Defence has exhibited several documents and marked exhibits to show that the deceased was a veteran criminal. He was convicted in Sheikhpura P.S. Case No. 716 of 2018.

32. We have further noticed that in this case the prosecution witness numbers PW-1, PW-2 and PW-3 are not eyewitnesses to the occurrence. PW-2 has stated that his statement was not recorded by police. Presence of PW-2 and PW-3 is not stated in the *fardbeyan* of the deceased or in the *fardbeyan* of PW-3 which was recorded on 19.01.2019 at 13:00 Hrs. The occurrence took place outside the village and in this regard, the statement of PW-3 says that it happened in south-west Bahiyar to the village.

33. We, therefore, find that in this case, the learned trial court has grossly erred in appreciation of the evidences available on the record. The prosecution has failed to establish its case beyond all reasonable doubts.

34. In result, we set aside the impugned judgment dated 06.12.2022 and the order of sentence dated 08.12.2022 passed by learned Additional Sessions Judge-III, Lakhisarai in Sessions Trial No. 60 of 2020, arising out of Lakhisarai (Ramgarh Chowk) P.S. Case No. 56 of 2019. The accused-appellant is acquitted of all the



charges, giving him benefit of doubt. The appellant is said to be in jail, he shall be released forthwith, if not wanted in any other case.

35. This appeal stands allowed.

36. Let a copy of this judgment together with the records of Trial Court be sent down to the learned Trial Court.

(Rajeev Ranjan Prasad, J)

(Sunil Dutta Mishra, J)

Rakhi/Utkarsh/-

AFR/NAFR	
CAV DATE	N/A
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