

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL APPEAL (DB) No.780 of 2018**

Arising Out of PS. Case No.-17 Year-2011 Thana- KHAIRA District- Jamui

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1. Munna Yadav, son of Baiju Yadav,  
2. Dilip Yadav, son of Baiju Yadav,  
Both resident of Village- Mangobandar, P.S.- Khaira, District- Jamui.
- ... .. Appellants**
- Versus
- The State of Bihar
- ... .. Respondent**
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**Appearance :**

For the Appellant/s : Mr.S.K. Lal, Sr. Advocate  
Mr.Umesh Prasad, Advocate  
Mr.Pritish Kumar Lal, ADvocate  
For the Respondent : Mr.Abhimanyu Sharma, APP

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**CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI  
and  
HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA  
CAV JUDGMENT  
(Per: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA)**

**Date : 24-04-2026**

Heard Mr. S.K. Lal, learned senior counsel appearing on behalf of the appellants and Mr. Abhimanyu Sharma, learned A.P.P. for the State.

2. The present appeal preferred under section 374(2) of the Cr.P.C. against the impugned judgment of conviction dated 4<sup>th</sup> June, 2018 and order of sentence dated 12.06.2018, passed by learned A.D.J., F.T.C.- 1<sup>st</sup>, Jamui in S. Tr. No. 278/2011 arising out of G.R. No. 169/2011 arising out of Khaira P.S. Case No. 17 of 2011, whereby and whereunder the aforesaid two appellants were convicted for the offences punishable under



section 302/34 of the Indian Penal Code (in short the “I.P.C.”) and ordered to undergo rigorous imprisonment for life.

**Brief facts of the case**

3. Brief case of the prosecution as it speaks through *Fard-e-beyan* of Manju Devi (informant/PW-7) wife of Late Jageshwar Yadav of village – Mangobandar, P.S. - Khaira, District – Jamui, recorded by the S.I. of Khaira Police Station dated 08.02.2011, that on 07.02.2011 at about 7:00 P.M., the husband of informant (PW-7) had gone to supply the milk in the breakfast-cum-tea shop of one Vinod Rawat, which was situated in Mangobandar Bazar, but her husband did not return to his home. The informant alleged that when she went in search of her husband and was going on road at about 8:00 P.M., then, she saw that near to the house of one Prayag Thakur of village – Nai Tola, the accused persons, who belonged to the same family, namely, Dilip Yadav (appellant no.2) , Munna Yadav (appellant no.1) and Huro Yadav were assaulting her husband by means of brick and stones and also dragging him by holding Gamchha in his neck. The informant further alleged that on seeing the such condition of her husband, she started raising alarm. Thereafter, all the accused persons fled away leaving the husband of the informant in injured condition at the place of occurrence. She



further states that anyhow with the help of her Gotni (PW-3), she taken away the dead body of her husband to their house and informed the family members. The informant alleged that there was land dispute between the accused persons and the deceased husband of the informant and due to this reason her husband was murdered by the aforesaid accused persons/appellants.

4. On the basis of said written information, Khaira P.S. Case No. 17 of 2011 dated 08.02.2011 was registered for the offences punishable under sections 302/34 of the Indian Penal Code. After concluding investigation, police submitted charge-sheet against the appellants. The learned jurisdictional Magistrate after perusal of materials and records took cognizance accordingly and after compliance of section 207 of the Cr.P.C. committed this case to the court of sessions under section 209 of the Cr.P.C. for its trial and disposal.

5. After commitment, learned trial court, upon perusal of records, framed charges against accused persons/appellants under section 302/34 of the IPC and explained the charges to the accused/appellants in their vernacular language, which they pleaded “**not guilty**” and claimed to be tried.

6. To substantiate its case, prosecution altogether examined seven (7) witnesses namely, **Sushil Yadav (PW-1)**;



**Sukhdeo Yadav (PW-2); Janakwa Devi (PW-3); Praveen Kumar Yadav (PW-4); Dr. Syed Naushad Ahmad (PW-5); Badri Yadav (PW-6) and Manju Devi (PW-7/informant).**

7. The prosecution has also produced certain documents viz.

**Exhibit '1'** - Fardbeyan without objection;

**Exhibit '2'** - Signature of Sukhdeo Yadav on the Inquest report of the deceased Jageshwar Yadav;

**Exhibit '3'** - Post-mortem report;

**Exhibit '4'** - Signature of Badri Yadav (PW-6) on the fardbeyan.

8. The defence has produced **Exhibit 'A'** which is the certified copy of sale deed dated 16.03.2010, Rajendra Singh do in favour of Munna Yadav.

9. After examination of prosecution witnesses and by taking note of evidence as surfaced during trial, statement of accused/appellants were recorded under Section 313 of the Cr.P.C., which was denied by the appellants in totality by claiming their complete innocence and false implication.

10. Upon perusal of the evidence surfaced during the trial and hearing the parties, learned trial court convicted the accused/appellants for the offences punishable under section



302 of the IPC and passed the order of sentence as mentioned aforesaid. Being aggrieved with, the present appeal has been preferred by the accused/appellants.

11. Hence, the appeal.

**Argument on behalf of the appellants**

12. Mr. S.K. Lal, learned senior counsel appearing on behalf of the appellants submitted that none of the witnesses are the eye witness of the occurrence and merely due to land dispute as it surfaced during the trial, the appellants were implicated falsely with the present crime in question.

13. It is submitted by Mr. Lal that taking FIR as basic script of prosecution, major contradictions as surfaced during the trial, upon conjoint reading of testimony of PW-4 and PW-7 (the informant), were overlooked by the learned trial court while recording the judgment of conviction. PW-4 is none but the son of PW-7 (informant). It is submitted that except PW-4 & PW-7, rest of the witnesses are the hearsay witnesses.

14. It is pointed out that FIR in issue is based upon the *fard-e-beyan* of PW-7, where she nowhere stated that she was accompanied by her son (PW-4) in search of her husband, when become late to reach home after supplying the milk, but PW-4 during trial categorically stated that he accompanied with her



mother in search of his father. Except PW-4 and PW-7, being son and wife are interested witnesses as to secure conviction in the background of land dispute.

15. It is further submitted by Mr. Lal that husband of informant was returning from the market after consuming liquor as same is evident from post-mortem itself which suggest that stomach contained semi digested food with smell of alcohol and the injuries what he received may possible by falling to the hard surfaced ground, as deposed by the doctor. It is submitted that husband of the informant died due to accidental fall by consuming alcohol and taking advantage of his death, in the background of suspicion that her husband could not purchase the desired land from one Rajendra Mandal as same was purchased by appellant Munna Yadav (appellant), the present false implication was raised.

16. While concluding argument, it is submitted by Mr. Lal that Investigating Officer of this case was not examined and, therefore, the appellants could not take the benefit of the contradictions and thus by deprived from their valuable legal right of defence. It is submitted that the nature of occurrence suggests that non-examination of I.O. prejudiced the appellants and, therefore, on this score also the conviction as recorded by



learned trial court is not appears sustainable in the eyes of law.

17. In support of submission, Mr. Lal relied upon the legal report of Hon'ble Supreme Court as available through **Punimati and Another Vs. State of Chhattisgarh and Others** reported as **2025 SCC OnLine SC 2866** and **Munna Lal vs. State of Uttar Pradesh** reported in **(2023) SCC OnLine SC 80**.

**Argument on behalf of the State**

18. Mr. Abhimanyu Sharma, learned A.P.P. for the State, while opposing the appeal, submitted that the PW-7 (informant) is the eye witness of the occurrence who is none but the wife of the deceased and there is no occasion to disbelieve her version being an eye witness. It is submitted by learned A.P.P. that the informant (PW-7) categorically stated that she had seen the occurrence that how the accused/appellants were brutally assaulting her husband while he was returning to his home after supplying milk.

19. It is submitted that during cross-examination the version of chief remains intact and there is no occasion to view the testimony of informant (PW-7) with doubt. It is submitted that non-examination of I.O. is not vital to the prosecution in every case, particularly where the oral testimony appears corroborating with medical evidence. It is pointed out that the



nature of injury as found upon the deceased appears corroborating with the testimony of informant qua manner and weapon used to cause assault during the occurrence and, therefore, there is no occasion to interfere with the judgment of conviction as recorded by the learned trial court.

20. We have perused the trial court records carefully and gone through all the evidences available on record and has also considered the rival submissions as canvassed by the learned counsel appearing on behalf of the parties.

21. As to re-appreciate the evidence, while disposing the present appeal, it appears apposite to us to discuss the evidences available on record with aforementioned legal notes which are as under:-

22. **PW-1 & PW-2 namely, Sushil Yadav and Sukhdeo Yadav** are the brother-in-law of the deceased and brother of PW-7 (informant) namely, Manju Devi. They were informed regarding the occurrence by PW-7 and appears hearsay witnesses of the occurrence and they deposed during the trial that they were informed by PW-7.

23. **PW-3 is Janakwa Devi.** She is the sister-in-law (*gotni* of PW-7). It appears from her examination-in-chief that she was informed about the occurrence by PW-4 and PW-7,



thereafter she went to the place of occurrence, where she found the deceased lying on the ground. He was lifted from the place of occurrence to the shop of one Banarsi Modi and thereafter, the deceased husband of the informant was taken to one Dayanand of Badha Khan by Tempo, where he was declared dead. It was also deposed by PW-3 that Dilip, Munna Yadav and Huro Yadav were involved in assaulting the deceased as she was informed by PW-7 (informant/wife of the deceased).

23.1. Upon cross-examination, she stated that she deposed before the court on the direction of PW-4, who is son of the informant and further categorically stated that the occurrence did not take place before her. She did not saw any accused/appellants assaulting the deceased or involved in assaulting the deceased.

24. **PW-4 is Pravesh Kumar Yadav.** He is son of the deceased. He supported the date and time of the occurrence. It was deposed by him that when his father got late in returning, he went in search of his father along with his mother (PW-7) and as they reached near the house of one Prayag Thakur of Nauwa Tola, they saw that Munna Yadav (appellant no.1), Huro Yadav and Dilip Yadav (appellant no. 2) all were assaulting his father. He deposed that his father was died due to assault by the



accused/appellants. It was deposed by him that when he and his mother raised alarm, the people were assembled at the place of occurrence. He claimed to identify the accused/appellants in torch light. He identified both the appellants in dock during the trial.

24.1. During cross-examination, he stated that his father had gone home from the market at about 5:00 P.M. It was also stated that he did not find anyone while searching for his father. He found his father lying on the road. His father was dead by that time. He raised alarm for about half an hours. Whereafter about 100 persons were gathered over there. It was stated that though torch was given to police but the milk bucket was not seized by Daroga. It was stated by him that he made statement before the police that the appellants killed his father. He also stated that he identified the appellants in torch light. He denied the false implication in the background of land dispute as the land in issue was purchased by the appellant Munna Yadav.

25. **PW-5 is Dr. Naushad Ahmad.** He was the Medical Officer, Sadar Hospital, Jamui. He deposed during the trial that he had examined and conducted post-mortem examination upon the deceased Jageshwar Yadav. He deposed that the body of the deceased was brought from Mangobandar



accompanied by Chowkidar and others. On examination on the body of deceased, the following injuries were found, which are as under:

- “2. (i) An abrasion 1” x 1” on left side of fore-head.*
- (ii) An abrasion 2” x 1½” on anterior chest wall.*
- (iii) An abrasion 1/2” x 1/2” on nose.*
- (iv) An abrasion 1/2” x 1/2” on right malar eminence.*
- (v) A diffused swelling on occipital region.*
- (vi) A bruise 1” x 1” on left scapular region.*
- 3. On dissection of skull – a haemistoma found between pericranium and meninges on occipital region.*
- 4. Chest – N.A.D.*
- 5. Abdomen – Stomach contained semi digested food with smell of alcohol.*
- 6. All above injuries were ante-mortem, caused by hard and blunt substance.*
- 7. Cause of death – due to injury no. 5.*
- 8. Time elapsed since death – within 24 hrs.*
- 9. This post-mortem report is in my pen & signature.”*

25.1. Upon cross-examination, the doctor (PW-5) deposed that aforesaid injuries are possible upon falling on the hard road after consuming alcohol. It is also stated by the doctor that abrasion may be possible by fall.

26. **PW-6 is Badri Yadav.** He is not the eye witness of the occurrence. He came to know about the occurrence only from someone else. He is *Samdhi* of the deceased. It is stated by him that fardbeyan of PW-7 was recorded by police, which was signed by him and also stated that PW-7 put her thumb impression and upon his identification, his signature was



exhibited as **Exhibit – ‘4’**. He denied that the deceased died under influence of liquor. He stated in clear terms that occurrence did not took place before him.

27. Now, the most important witness of the crime in question is PW-7, who is the informant of this case and wife of the deceased. She deposed in her examination-in-chief that it was about 8:00 P.M. and her husband went to nearby market to supply milk to the shop of Vinod Rawat, son of late Brahmdeo Rawat, which is located in the area of Mangobandar, upon getting late, she went to search her husband and when she reached near to the house of one Prayag Thakur, she found that Dilip Yadav, Munna Yadav and Huro Yadav were engaged in assaulting her husband by using bricks and stone chips. Neck of her husband was also tied by Gamchha. It was stated that she raised alarm after arriving over there and found her husband dead, she deposed that appellant fled away from there. She brought her husband to the house of her Gotni Janakwa Devi (PW-3). She identified the accused/appellants in dock.

27.1. Upon cross-examination, she stated before police regarding land dispute. It was also stated that her husband went to the shop of Vinod Rawat for supplying the milk. It was also stated by her that the shop of Vinod Rawat was at a distance of



500 Yards from house. She was living with her husband since last 20 years and had never visited Mangobandar. The milk was taken by her husband in a bucket which was made of steel having maximum capacity of 5 Kgs. It was stated by her that it was a dark night and she came with a torch. It was stated that by the time when she reached at the place of occurrence her husband was died. She deposed that she saw the brick and stones. It was also seen by the police. She further stated that blood was not found at the place where her husband was lying to the ground. She loosed her sense after seeing the dead body of her husband, but she immediately returned to herself. It was also stated that she informed the police through her parental village. She denied that her husband was not consuming liquor on that day. She also stated that at that time, road was under construction and brick plates and stones were stored beside the road. She denied that her husband fell on the stones and brick plates in drunken condition and due to said accident he received injury and died. She denied the false implication due to land dispute.

28. Upon close scrutiny of testimony of PW-3, PW-4 and PW-7 (informant), it appears that they are the relatives and family members of the deceased. PW-3 is the *gotni* of PW-7



(informant), whereas PW-4 is the son and PW-7 is the wife of the deceased. It appears from the testimony of PW-7 what she deposed through examination-in-chief that the dead body of her husband was brought by her to the house of PW-3 from the place of occurrence. Whereas, PW-3 not supported this fact rather deposed that the dead body was taken to one Dayanand of village Badha Khan on Tempo on the direction of one Banarsi Modi. PW-3 was told by PW-4 & PW-7 that the deceased was assaulted by the accused/appellants and on said information she went to the place of occurrence and found the husband of PW-7 dead there.

29. **PW-7**, neither through her fardbeyan nor through her testimony disclosed that she was accompanied by PW-4, whereas PW-4, who is the son of the deceased, categorically deposed that he went to the place of occurrence with her mother (PW-7) and found the accused/appellants assaulting his father. If the testimony of PW-7 be taken into consideration the presence of PW-4 claiming the eye witnesses of the occurrence appears doubtful. PW-4 stated that prior to the occurrence his father was under habit of consuming liquor. He could not met with anyone during search of his father and found his father lying on the ground and he was dead.



30. Contradicting the testimony of PW-3, PW-7 failed to depose that her husband was taken to Badha Khan through Tempo on the advise of one Banarsi Modi, for Dayanand, who declared him dead. It was also stated by PW-3 in her cross-examination that by the time when she reached to the place of occurrence, her husband was fallen on the ground. She also stated that she had taken torch. PW-4 also stated that his father was taken to doctor in Badha Khan, who declared him dead. His mother (PW-7) was accompanied by PW-3. PW-4 categorically deposed that he went in search of his father along with PW-7, but said fact was not supported by PW-7 through her examination in chief. Rather, she stated that she went alone in search of her husband. She said to collect torch on the way whereas PW-4 stated that he proceeded with torch from his home only.

31. From the available medical evidence out of **Exhibit '3'** which is the post-mortem report of the deceased, it appears that he received total of six injuries, where the death was said to be caused by injury no. 5 (a defused swelling on occipital region. Four injuries were "abrasions" and one was "bruise". The abdomen was also contained with semi digestive food with **smell of alcohol**. The doctor also supported that this



type of injuries are possible due to fall on the ground like hard road. The road was said to be made of concrete in terms of testimony of PW-4 and also stolen bricks were stored beside place of occurrence in terms of PW-7.

32. Admittedly, the Investigating Officer of this case was not examined. The factum of land dispute is also not convincing for the reason that it was already purchased by Munna Yadav (appellant no. 1) from one Rajendra Mandal, which was intended to be purchased by the deceased, therefore, the land dispute between the parties are not convincing which said to be main motive behind the occurrence. The land in issue was sold to Munna Yadav on 06.03.2010 as per sale deed, which is exhibited as Exhibit 'A', whereas the occurrence took place on 07.02.2011, which appears remotely connected with the crime in question. Torch which was said to be source of identification of appellant was not seized by the police.

33. It would be apposite to refer **para No. 13** of the legal report of Hon'ble Supreme Court in the matter of **Punimati and Another (supra)**, which reads as under:-

“13. It is a well-settled law that merely because the witness is an interested or related witness, his/her deposition cannot be discarded. Further, deposition of such witnesses is required to be scrutinized closely. As such, we have closely scrutinized the deposition given by PW-4, who is the



mother of the deceased. As observed hereinabove, there are material contradictions in her deposition regarding the manner in which the incident took place and with regard to which the information about the incident was given by her granddaughter.”

34. It would be apposite to reproduce **para 38, 39 & 40 of Munna Lal’s case (supra)**, which reads hereunder for ready reference: -

“**38.** First, statement of PW-3 under section 161, Cr. P.C. was recorded nearly 24 days after the incident. Since the Investigating Officer did not enter the witness box, the appellants did not have the occasion to cross-examine him and thereby elicit the reason for such delay. Consequently, the delay in recording the statement of PW-3 in course of investigation, is not referred to and, therefore, remains unjustified. The possibility of PW-3, being fixed up as an eye-witness later during the process of investigation, cannot be totally ruled out.

**39.** Secondly, though PW-4 is said to have reached the place of occurrence at 1.30 p.m. on 5<sup>th</sup> September, 1985 and recovered a bullet in the blood oozing out from the injury at the hip of the dead body, no effort worthy of consideration appears to have been made to seize the weapons by which the murderous attack was launched. It is true that mere failure/neglect to effect seizure of the weapon(s) cannot be the sole reason for discarding the prosecution case but the same assumes importance on the face of the oral testimony of the so-called eyewitnesses, i.e., PW-2 and PW-3, not being found by this Court to be wholly reliable. The missing links could have been provided by the Investigating Officer who, again, did not enter the witness box. Whether or not non-examination of a witness has caused prejudice to the defence is essentially a question of fact and an inference is required to be drawn having regard to the facts and circumstances obtaining in each case. The reason



why the Investigating Officer could not depose as a witness, as told by PW-4, is that he had been sent for training. It was not shown that the Investigating Officer under no circumstances could have left the course for recording of his deposition in the trial court. It is worthy of being noted that neither the trial court nor the High Court considered the issue of non-examination of the Investigating Officer. In the facts of the present case, particularly conspicuous gaps in the prosecution case and the evidence of PW-2 and PW-3 not being wholly reliable, this Court holds the present case as one where examination of the Investigating Officer was vital since he could have adduced the expected evidence. His non-examination creates a material lacuna in the effort of the prosecution to nail the appellants, thereby creating reasonable doubt in the prosecution case.

40. In the facts of the present case, particularly conspicuous gaps in the prosecution case and the evidence of PW 2 and PW 3 not being wholly reliable, this Court holds the present case as one where examination of the investigating officer was vital since he could have adduced the expected evidence. His non-examination creates a material lacuna in the effort of the prosecution to nail the appellants, thereby creating reasonable doubt in the prosecution case.”

35. In view of aforesaid, we are of the considered view that testimony of PW-4 & PW-7 being interested witness not appears wholly reliable. They are immediate family members of the deceased. Their depositions are full of contradiction creating a doubt *qua* their presence near to the place of occurrence, and also their claim as an eye witness to the occurrence.

36. Accordingly, both above-named appellants are acquitted from the charges levelled against them, by giving



benefit of doubt.

37. Hence, appeal stands allowed.

38. Accordingly, impugned judgment of conviction dated 4<sup>th</sup> June, 2018 and order of sentence dated 12.06.2018, passed by learned A.D.J., F.T.C.- 1<sup>st</sup>, Jamui in S. Tr. No. 278/2011 arising out of G.R. No. 169/2011 arising out of Khaira P.S. Case No. 17 of 2011 is hereby set aside.

39. Appellants namely, Munna Yadav and Dilip Yadav are in custody in connection with this case, they are directed to be released forthwith, if not required in any other case. Fine if any paid, be returned to appellants forthwith.

40. Office is directed to send back the trial court records along with a copy of this judgment to the trial court, without delay.

**(Chandra Shekhar Jha, J.)**

**Bibek Chaudhuri, J:- I agree**

Rajeev/-

**(Bibek Chaudhuri, J.)**

AFR/NAFR	AFR
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