

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.982 of 2015**

Arising Out of PS. Case No.-101 Year-2012 Thana- PIRPAINTI District- Bhagalpur

Pintu Yadav, son of Late Ramdeo Yadav, resident of Village - Bakiya Diyara,
P.S. Barari, District - Katihar.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant	:	Mr.N.K. Agarwal, Sr. Advocate Mr.Vikram Singh, Advocate Mr.Vijay Anand, Advocate
For the State	:	Mr.Sujit Kumar Singh, A.P.P.

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

**HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT**

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date :05-10-2023

Heard Mr. N.K. Agarwal, learned Senior Advocate assisted by Mr. Vikram Singh and Mr. Vijay Anand, learned Advocates for the appellant and Mr. Sujit Kumar Singh, learned Additional Public Prosecutor for the respondent-State.

2. In this appeal, which is filed under Section 374(2) of the Code of Criminal Procedure Code, 1973 (hereinafter referred to as the "Code"), the appellant-convict has assailed the impugned judgment of conviction dated 07.10.2015 and order of sentence dated 10.10.2015 rendered by learned 3rd Additional Sessions Judge, Bhagalpur in Sessions Trial No. 89 of 2013 whereby the concerned trial court has convicted the present appellant for the offences punishable under Section 302 of the



Indian Penal Code (in short the 'I.P.C.')

 and Section 27 of the Arms Act. He has been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 25,000/- and in default of payment of fine, to further undergo additional imprisonment for five years under Section 302 of the I.P.C. and rigorous imprisonment for three years and to pay a fine of Rs. 5000/- and in default of payment of fine to further undergo imprisonment for six months under Section 27 of the Arms Act. All the sentences have been ordered to run concurrently.

3. The prosecution story in brief is as under:-

“*Fardbeyan* of Kailash Mandal was recorded on 20th July, 2012 at about 19:30 hours by one Ranjan Kumar, S.H.O. of Pirpainti Police Station. In the said *fardbeyan*, the informant stated that on 20th July afternoon, the informant along with his elder brother Umesh Mandal and wife of Umesh Mandal namely, Anju Devi had gone to market for the work related to bank and for marketing. While returning to the village by Tractor, when they reached near the agriculture farm/farm house of Sudip Mandal near Athania Diyara, Pintu Yadav came at the said place fully armed along with 5-6 other people and stopped the tractor. Thereafter, the said assailant pulled out Umesh Mandal from the tractor and killed him by firing 5-6 bullets



from the mini-revolver like weapon just along the road. Thereafter, the body of Umesh Mandal was dragged towards *Bahiyar*. However, on seeing the people of the nearby village approaching towards them and after hearing *hulla*, the assailants left the dead body there and fled away from the place of occurrence. It is further stated that the brother of the informant Umesh Mandal sustained gunshot injuries on his face, mouth, nose and stomach. It has been further stated that the reason for such cruel murder is that around two years ago the brother of the informant and one Pagla Yadav were residing together and they were good friends and Pintu Yadav was having enmity with Pagla Yadav as a result of which Pintu Yadav with the help of 5-6 other unknown persons killed the brother of the informant i.e. Umesh Mandal. It is also alleged that the accused also took the mobile phone of the deceased after killing him.”

4. After the *fardebayan* of the informant was recorded, formal First Information Report (in short the ‘F.I.R.’) came to be registered with the Pirpanti Police Station at about 10:00 P.M. on 20th July, 2012. The investigation of the case was commenced and the Investigating Officer carried out the investigation during which he recorded the statement of the witnesses and also collected the necessary evidence. Inquest



report was also prepared and the dead body of the deceased was sent for *post-mortem*. During course of investigation, the appellant-accused came to be arrested on 01.09.2012 and after the investigation was over, the Investigating Officer filed a charge-sheet against the appellant-accused before the concerned Magistrate court. As the case was exclusively triable by court of sessions, learned Magistrate committed the same to the concerned session's court where the same was registered as Sessions Trial No. 89 of 2013.

5. Before the trial court, the prosecution had examined nine witnesses and also produced the documentary evidence. Thereafter, further statement of the accused-appellant under Section 313 of the Code came to be recorded. After conclusion of the trial, the trial court passed the impugned order against which the appellant-convict has preferred the present appeal.

6. Heard Mr. N.K. Agarwal, learned Senior Advocate assisted by Mr. Vikram Singh and Mr. Vijay Anand, learned Advocates for the appellant and Mr. Sujit Kumar Singh, learned Additional Public Prosecutor for the respondent-State.

7. Learned Senior Advocate for the appellant would mainly submit that PW-1, PW-2, PW-5 and PW-6 who were



independent witnesses have not supported the case of the prosecution and they have turned hostile. Learned senior counsel would further submit that even PW-3 the informant, namely, Kailash Mandal has specifically stated in his deposition that he did not identify the appellant who was present in the court. PW-3 further stated that he is not sure whether Pintu Yadav has killed his brother or not. Learned senior counsel for the appellant, therefore, submitted that though the informant has not supported the case of the prosecution, he was not declared hostile by the prosecution nor he has been re-examined by the prosecution and, therefore, the deposition given by the said witness in favour of the accused should be taken to the benefit of the accused.

7.1 At this stage, learned counsel has placed reliance upon the decision rendered by Hon'ble Supreme Court in the case of **Virendra Vs. State of Madhya Pradesh** reported in **AIR 2022 SC 3373**.

8. Learned senior Advocate thereafter submitted that PW-4 Anju Devi, who is the wife of the deceased is projected eye-witness and, in fact, the said witness had not seen the occurrence in question. In support of the said submission, learned counsel has referred to the deposition given by PW-3



Kailash Mandal, PW-7 Ranjan Kumar Mandal, the Investigating Officer and PW-8 Niranjana Kumar Yadav. Learned senior counsel, therefore, submitted that the trial court has committed grave error while placing reliance upon the deposition given by PW-4 Anju Devi, who is, in fact, not the eye-witness of the occurrence.

9. Learned counsel would further submit that even as per the case of the so-called eye-witness Anju Devi, the deceased sustained five fire-arm injuries, whereas as per the deposition given by PW-9 namely, Dr. Yogesh Prasad Sah, only three gunshot injuries were found on the dead body of the deceased. Learned Senior Advocate, therefore, urged that when the prosecution has failed to prove the case against the appellant beyond reasonable doubt, trial court ought to have acquitted the appellant herein.

10. Learned senior counsel, therefore, submitted that the impugned order passed by the trial court be quashed and set-aside and the present appeal be allowed.

11. On the other hand, learned Additional Public Prosecutor for the respondent-State has opposed this appeal. Learned A.P.P. has referred to the deposition of PW-4 Anju Devi by contending that she is the eye-witness to the occurrence in



question and from the deposition of the said witness, it is clear that the present appellant with the help of 5-6 other persons have killed the husband of the said witness. It is submitted that when the version given by the eye-witness is trustworthy only relying upon the said version, the conviction can be recorded, and therefore, the trial court has not committed any error while passing the impugned order. Learned A.P.P. has also referred Exhibit-6 i.e. the confessional statement of the appellant which was recorded by the Investigating Officer i.e. PW-10 Bharat Ram. It is submitted that before the said witness the appellant herein has confessed his guilt and disclosed the manner in which he along with the others have killed the deceased. Learned A.P.P. has also submitted that there are antecedents of the present appellant and number of F.I.Rs. have been registered against the appellant. In support of the said contention, learned A.P.P. has referred to the examination-in-chief of PW-10 Bharat Ram, who was the Investigating Officer of the case. Learned A.P.P., therefore, urged that this appeal be dismissed.

12. We have considered the submissions canvassed by learned counsel appearing for the parties. We have also perused the materials placed on the record and the evidence produced by the prosecution before the trial court. It is not in



dispute that PW-1, PW-2, PW-5 and PW-6 who are independent witnesses have not supported the case of the prosecution and, therefore, they were declared hostile.

13. In the present case, therefore, we have to consider the deposition given by PW-3, the informant, PW-4 Anju Devi, wife of the deceased, the Medical Officer, who has conducted the *post-mortem* on the dead body of the deceased i.e. PW-9 and three other police officers who have carried out the investigation of the present case.

14. PW-3 the informant, Kailash Mandal, has stated in examination-in-chief that the occurrence took place almost a year ago from the date of deposition when he along with his brother Umesh Mandal and Narayan Mandal and other people were going back to home by tractor, when they reached Athaniya Diyara, 5-6 persons came there and they chased the tractor and thereafter dragged Umesh Mandal and shot him dead. Thereafter, the said witness took the dead body to Pirpainti Police Station and informed the police about the occurrence which was written down by the police. However, the same was not read out to the informant. The said witness further stated that he is not sure whether Anju Devi put her thumb impression on the *fardebayan* or not. However, the said witness



did not identify Pintu Yadav who was present in the court. Immediately thereafter, he had stated that though he knows Pintu Yadav, he is not sure whether he had killed the brother of the said witness or not. At that stage, the court asked certain question to the said witness PW-3. The court asked him whether the appellant accused has given him any threat, in reply he has said that 'No'. He knows accused because he is residing in the same village. He further stated that *fardebayan* was not read out by Daroga Jee and only it was stated to him that he should put his signature and therefore he put his signature on the *fardebayan*. Thereafter, the said witness has further specifically stated that Pintu Yadav had not made any assault with the fire-arm on his brother. He further stated that his sister-in-law (*Bhabhi*) Anju Devi was present with him in the police station. However, she was not present at the time of occurrence with him.

15. PW-4 Anju Devi, who is the wife of the deceased Umesh Mandal has stated in her examination-in-chief that on the date of occurrence at around 5:00 P.M. while she was returning to her home along with her husband by tractor, Pintu Yadav, Pradeep Yadav, Akhilesh Yadav, Varun Yadav and Awadhesh Yadav stopped the tractor and pulled out her husband



Umesh Mandal and shot him on his face, stomach with pistol. She had further stated that after killing Umesh Mandal i.e. her husband, the dead body of her husband was dragged by the accused. However, in the meantime, the villagers came at the said place after hearing *hulla*, the assailants fled away from the place of occurrence. The said witness identified the appellant-accused who was present in the court. The said witness has also stated in her examination-in-chief that her husband sustained five fire-arm injuries on various parts of his body.

15.1. During cross examination, the said witness has stated that her husband was sent to jail in four cases. She has further stated that occurrence took place at about 5:30 P.M. near the agriculture farm/farm house of Sudip Mandal. She had also stated that the police had collected the blood-stained soil as well as the clothes of her husband having blood-stained were also seized by the police from the place of occurrence. She had also stated that she had shown the place of occurrence to the police from where the deceased was being taken out and killed.

16. PW-7 Ranjan Kumar is the officer who had recorded the *fardbeyan* of the informant at the place of occurrence. The said witness was working as S.H.O. at Pirpainti Police Station, district–Bhagalpur. The said witness has



identified his handwriting in *fardbeyan* and he has also identified the signature on the *fardbeyan*.

16.1. The said witness in cross-examination has stated that he went to the place of occurrence after getting the information from unknown persons and on reaching at the place of occurrence he met Kailash Mandal who gave his *fardbeyan*. However, the said witness has further stated that he had not written the date and time in the station diary. He had not collected any material from the place of occurrence at the time of recording the *fardbeyan*. He did not record the statement of any of the witnesses at the place of occurrence. The said witness has further stated that the *fardbeyan* was recorded during night hours in the light of torch, dragon light and light of the car. At that time 50-100 persons were present. Thereafter, he came back to the police station at about 10:00 P.M. and handed over the investigation to Niranjana Kumar.

17. PW-8 Niranjana Kumar is the Investigating Officer who took over the investigation after 10:00 P.M. on 20th July, 2012. The said witness has stated that he had recorded the statement of Anju Devi, Raju Mandal, Narayan Mandal, Bhuvesh Mandal, Arjun Mandal. Call details of the mobile of the deceased was also called for from S.S.P. Bhagalpur.



17.1. During cross-examination the said witness has specifically stated that on 21.07.2012, he had recorded the statement of wife of the deceased i.e. Anju Devi. He has further stated that her statement was recorded at the place of occurrence at about 7:30 P.M. during night hours. The said witness further stated that Anju Devi did not state in her statement recorded under Section 161 of the Code that the deceased sustained five fire-arm injuries on various parts of the body nor she had stated that the assailants have dragged the body of her husband while giving her statement before Police. The said witness also admitted that he did not collect the blood-stained soil from the place of occurrence nor he had prepared sketch map of the place of occurrence. He further stated that he had also not seized the blood-stained clothes of the deceased nor he had verified about the antecedents of the informant.

18. PW-9 Dr. Yogesh Prasad Sah is the doctor, who had conducted the *post-mortem* on the dead body of the deceased. The said doctor was posted at Jawahar Lal Nehru Medical College, Bhagalpur as Assistant Professor. The *post-mortem* was conducted at about 1:30 P.M. on 21.07.2012. The said witness found the following injuries:

“(i) One entry wound ½” x ½” size with inverted and black margin on right side of nose, projectile entered



and come out by on exit wound $\frac{1}{4}$ " x $\frac{1}{4}$ " in size with everted margin on tragers of left ear.

(ii) One entry wound $\frac{1}{2}$ " x $\frac{1}{2}$ " with inverted and black margin on right lower part of abdomen $3\frac{1}{2}$ " away from midline and $1\frac{1}{2}$ " away from interior superior iliac spine. Exit wound $\frac{1}{4}$ " x $\frac{1}{4}$ " was 5" away at the level of fore lumber vertebra on right side of back.

(3) 1" wound $\frac{1}{4}$ " x $\frac{1}{4}$ " size with inverted and black margin on mid part of abdomen 2" away from midline 3" away from umblicus. Exit wound was $1\frac{1}{2}$ " away from midline at the level third number vertebra on left side of back.

Opinion – The above noted injuries were antemortem and caused by fire arm.

Cause of death – above noted injuries.

Time Since Death – 12 to 24 hours prior to time of examination.

This is original copy of P.M. report prepared and signed by me which is marked as Ext.5."

19. PW-10 Bharat Ram is the third Investigating Officer who had carried out the investigation and the said witness has arrested the appellant-accused on 01.09.2012 and thereafter the accused was produced before the concerned Magistrate court. In his deposition, the said witness has narrated about the details of the F.I.Rs. registered against the appellant-accused. The said witness has also produced the confessional statement of the appellant-accused recorded by him during course of investigation and surprisingly the said confessional statement has been exhibited by the trial court as Exhibit '6'.



19.1. During cross-examination, the said witness has denied the suggestion made by the defence that by using the force or by giving threats signature of the appellant-accused was obtained on the confessional statement.

20. From the aforesaid evidence, produced by the prosecution before the trial court, it would emerge that the independent witnesses i.e. PW-1, PW-2, PW-5 and PW-6 have not supported the case of the prosecution and, therefore, they have declared hostile. Further, from the deposition given by PW-3 Kailash Mandal, who is the informant, it is clear that the said witness has not supported the case of the prosecution by stating before the court in his examination-in-chief itself that the appellant-accused Pintu Yadav has not killed his brother. It is further revealed from the deposition of PW-3 informant that PW-4 Anju Devi, who is the wife of the deceased, was not present at the place of occurrence and she was present at the police station along with the said witness.

21. At this stage, it is pertinent to note that the aforesaid witness who is the informant and main witness of the prosecution was not declared hostile by the prosecution and, therefore, we have to consider the deposition given by the said witness as it is.



22. At this stage, we would like to refer the decision rendered by the Hon'ble Supreme Court in the case of **Virendra** (supra), where the Hon'ble Supreme Court has observed in paragraph '7' as under:

“7. Both the courts shifted the burden on the defence. The evidence rendered by the prosecution witnesses was rejected, either as that of indifferent witnesses or as irrelevant evidence. We may note that these are all prosecution witnesses who were not treated as hostile. No attempt whatsoever was made either to treat them as hostile or to re-examine them except that of PW10. Not even a suggestion was put to them on the presence of PW15. In such a scenario, the statement made by the prosecution witnesses in favour of the accused would certainly inure to his benefit. Our view is fortified by the decision of this Court in *Raja Ram v. State of Rajasthan*, (2005) 5 SCC 272 : (AIR Online 2000 SC 474):

“9. But the testimony of PW 8 Dr. Sukhdev Singh, who is another neighbour, cannot easily be surmounted by the prosecution. He has testified in very clear terms that he saw PW 5 making the deceased believe that unless she puts the blame on the appellant and his parents she would have to face the consequences like prosecution proceedings. It did not occur to the Public Prosecutor in the trial court to seek permission of the court to heard (*sic* declare) PW 8 as a hostile witness for reasons only known to him. Now, as it is, the evidence of PW 8 is binding on the prosecution. Absolutely no reason, much less any good reason, has been stated by the Division Bench of the High Court as to how PW 8's testimony can be sidelined.”

It is reiterated in *Javed Masood v. State of Rajasthan*,



(2010) 3 SCC 538: (AIR 2010 SC 979):

“20. In the present case the prosecution never declared PWs 6, 18, 29 and 30 “hostile”. Their evidence did not support the prosecution. Instead, it supported the defence. There is nothing in law that precludes the defence to rely on their evidence.”

Reliance was made on the recovery from the appellant. The fact remains that there was sufficient evidence to conclude that only one shot was fired which could be seen even from the evidence of PW15. While assessing the evidence produced by the defence, courts discarded them without appreciating the fact that it has to be seen only on the degree of probability.”

23. From the aforesaid observation made by the Hon’ble Supreme Court, it can be said that the statement of the prosecution witness who was not treated as hostile and no attempt was made by the prosecution either to treat him as hostile or to re-examine him, the statement made by such prosecution witness in favour of the accused would certainly inure to the benefit of the accused.

24. In the present case also, no attempt was made by the prosecution to declare PW-3 informant to declare him hostile or to re-examine him, and, therefore, the statement made by the said witness which is in favour of the accused is to be considered as beneficial to the appellant-accused herein in the facts of the present case.

25. It would further reveal from the deposition of



PW-3 that PW-4 Anju Devi was not present at the place of occurrence and, therefore, it can be said that the prosecution has projected Anju Devi as eye-witness but, in fact, she is not an eye-witness to the occurrence.

26. At this stage, we would like to refer the deposition of the prosecution witnesses and the *fardbeyan* given by PW-3. It is revealed from the record that *fardbeyan* was recorded by the P.W.7 Ranjan Kumar, S.H.O., at the place of occurrence at 19:30 hours on 20th July, 2012 and thereafter formal F.I.R. was registered at concerned police station at about 10:00 P.M. If the said *fardbeyan* is carefully examined, it is revealed that PW-4 Anju Devi has put her thumb impression on the said *fardbeyan*.

26.1. At this stage, if the deposition of PW-7 Ranjan Kumar Mandal who has recorded the *fardbeyan* of the informant is examined, it is revealed that the said officer reached at the place of occurrence during the night hours. He had recorded the *fardbeyan* in torch light, dragon light and light of the car. While recording the *fardbeyan* 50-100 persons were present and while recording the *fardbeyan* he did not record the statement of any other person who were present.

26.2. At this stage, it is also relevant to examine the



deposition of PW-8 Niranjana Kumar, officer to whom the investigation was handed over by PW-7 Ranjan Kumar at about 10:00 P.M. in the police station. The said witness has specifically observed or stated that he had recorded the statement of Anju Devi on 21.07.2012 at 7:30 P.M. at the place of occurrence. Thus, from the aforesaid evidence produced before the trial court, it can be said that Anju Devi was present at 19:30 hours at the place of occurrence when *fardebayan* was recorded by PW-7 Ranjan Kumar despite which, her statement was not recorded. Further, even assuming that she was not present at the place of occurrence at 7:30 or 19:30 hours on 20th July, 2012 while recording *fardebayan* and she has put her thumb impression at the police station when the formal F.I.R. was registered at 10:00 P.M. on the very same day, why the statement of such an important eye-witness who is wife of the deceased was not recorded by the investigating agency. Once again, it is to be recalled that statement of Anju Devi was recorded for the first time on 21.07.2012 at 7:30 P.M. i.e. almost after 24 hours of recording of the *fardebayan*, we fail to understand the version given by the prosecution before the trial court by leading such type of evidence.

27. Thus, from the aforesaid event, the submission



canvassed by learned senior counsel for the appellant that PW-4 Anju Devi is a projected eye-witness is required to be accepted.

28. Thus, the prosecution case rests upon only two witnesses i.e. PW-3 informant and PW-4 Anju Devi. If PW-3 informant has not supported the case of the prosecution and specifically stated that the appellant herein has not killed his brother and when PW-4 is considered as projected eye-witness, we are of the view that the prosecution has failed to prove the case against the appellant beyond any reasonable doubt.

29. It is also pertinent to note that as per the case of so-called eye-witness PW-4 Anju Devi, the deceased sustained five fire-arm injuries on various parts of the body, whereas as per PW-9 Dr. Yogesh Prasad Sah who has conducted the *post-mortem* of the dead body of the deceased, deceased sustained three fire-arm injuries. Three were entry wounds and three were exit wounds. Thus, the medical evidence also does not support the case of so-called eye-witness.

30. Now, it is contended by learned Additional Public Prosecutor by relying upon the deposition given by PW-10 Bharat Ram who has recorded the confessional statement of the appellant-accused that the said confessional statement is exhibited i.e. Exhibit '6' and, therefore, the said document is to



be read by this court once the same has been exhibited. It is submitted that in the confessional statement, the appellant-accused has admitted his guilt and the manner in which he along with the other accused have committed the alleged offences. However, we are not impressed by the argument canvassed by learned A.P.P.

30.1. At this stage, we would like to refer the provision as contained in Section 25 of the Evidence Act which provides as under:

“No confession made to a police officer investigating a case shall be proved as against a person accused of any offence”

31. In the present case, as observed hereinabove, PW-10 Bharat Ram was an investigating officer who was investigating the case and before whom the so-called confessional statement was made by the appellant-accused, we are of the view that the trial court has committed grave error while exhibiting the said confessional statement and, therefore, we are of the view that the said confessional statement cannot be read as an evidence against the appellant.

32. In view of the aforesaid discussions, we are of the view that when the prosecution has failed to prove the case beyond reasonable doubt against the appellant. Merely because there are certain antecedents against the appellant, he cannot be



convicted, if there is no evidence against him in the present case.

33. Accordingly, the impugned judgment of conviction dated 07.10.2015 and order of sentence dated 10.10.2015 passed by learned 3rd Additional Sessions Judge, Bhagalpur in Sessions Trial No. 89 of 2013 arising out of Pirpanti P.S. Case No.101 of 2012 is quashed and set aside. The appellant, namely, Pintu Yadav is acquitted of the charges levelled against him by the learned Trial Court. The appellant is in custody since 01.09.2012 i.e. more than eleven years, he is ordered to be set at liberty forthwith, if his presence is not required in any other case.

34. The appeal stands allowed.

(Vipul M. Pancholi, J.)

(Chandra Shekhar Jha, J.)

Sanjeet/Rajeev-

AFR/NAFR	NAFR
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