

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL APPEAL (DB) No.1206 of 2018**

Arising Out of PS. Case No.-46 Year-2012 Thana- BITHAN District- Samastipur

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1. Shankar Yadav son of Chandi Yadav
  2. Devendra Yadav son of Shankar Yadav
  3. Santosh Yadav son of Shankar Yadav All Resident of Village- Morkahi, P.S. Bithan, District Samastipur.
- ... .. Appellant/s
- Versus
- The State Of Bihar
- ... .. Respondent/s
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with  
**CRIMINAL APPEAL (DB) No. 1331 of 2018**

Arising Out of PS. Case No.-46 Year-2012 Thana- BITHAN District- Samastipur

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JAGDEO YADAV Son of Chandi Yadav, Resident of Village- Morkahi, P.S. Bithan, District- Samastipur.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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**Appearance :**

(In CRIMINAL APPEAL (DB) No. 1206 of 2018)

For the Appellant/s : Mr. Sarbottam Kumar Sarkar, Advocate

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

(In CRIMINAL APPEAL (DB) No. 1331 of 2018)

For the Appellant/s : Mr. Rishit Deo Kr. Sinha, Advocate

For the Respondent/s : Mr. Sri Satya Narayan Prasad, A.P.P.

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**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR**

**and**

**HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI**

**ORAL JUDGMENT**

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

**Date : 28-07-2023**

These appeals are filed under Section-374 of  
Code of Criminal Procedure, 1973 (hereinafter referred to  
as the Code), against the impugned judgment and order



dated 05.09.2018 rendered by the learned Additional Sessions Judge, Rosera, Samastipur in Sessions Trial No.608 of 2012, (arising out of Bithan P.S. Case No.46 of 2012), whereby the learned Trial Court has convicted the appellants/accused for the offences punishable under Sections-302 read with 149, 148 and 323 of the Indian Penal Code and the appellants/accused are sentenced to suffer rigorous imprisonment for life and fine of Rs.10,000/-for the offences punishable under Sections-302/149 of the Indian Penal Code and in default of payment of fine, rigorous imprisonment for additional six months each and simple imprisonment for two years for the offence punishable under Section-148 of the Indian Penal Code. The sentences were ordered to run concurrently.

2. The prosecution story, in brief, is as under:

3. The complainant Dilip Yadav filed the F.I.R. against the present appellants/accused and other in which he has mainly alleged that on the date of incident i.e. on 06.06.2012, at about 02:30 p.m., when he was cultivating his agricultural field with his younger brother Suleten Yadav (deceased), all the accused named in the F.I.R. came



with deadly weapons and made assaults on his brother Suleten Yadav. It is alleged that Jagdeo Yadav was carrying a spade in his hand and he gave blow on the head of Suleten Yadav, whereas Shankar Yadav gave stick blows. It is also alleged that accused Devendra Yadav used spear and gave blow with the said weapon whereas accused Santosh Yadav was carrying an Iron-rod and gave blows with the same to the deceased. The other accused also used the weapons which they were carrying. At that time, wife of the complainant Rukmini Devi, one Baleshwar Yadav Punit Yadav and others also saw the incident. The other village people also came at the place of incident and, therefore, all the accused fled away from the spot. The injured Suleten Yadav was initially brought to the Government Hospital at Hasanpur where primary treatment was given to him. Thereafter, for better treatment, he was referred to the hospital at Samastipur. However, before they reached to the hospital at Samastipur, the brother of the complainant, namely Suleten Yadav died.

4. On the basis of the said information given by the complainant Dilip Yadav, F.I.R. for the offences



punishable under Sections-302, 307, 324, 323, 147, 148 and 149 of the Indian Penal Code came to be registered with Bithan Police Station.

5. After the registration of the F.I.R., the Investigating Officer started investigation and recorded the statement of the eye-witnesses and the other witnesses. He had prepared the *Panchnama* of the place of incident. The dead body of the deceased was sent for *post mortem*. After the investigation was over, the Investigating Officer filed the charge-sheet against the accused persons before the concerned Magistrate Court. As the case was exclusively triable by the Court of Sessions, the concerned Magistrate committed the said case to the Sessions Court where the same was registered as Sessions Trial No. 608 of 2012.

6. During the course of trial before the Trial Court, charge was framed against the accused and thereafter prosecution examined eight witnesses and produced documentary evidence. Thereafter, the further statement of the accused was recorded under Section-313 of the Code and after the conclusion of the trial, the Trial Court convicted the appellants/accused for the offences for which



they were tried, as observed hereinabove. The appellants have, therefore, filed the present appeals challenging the common judgment and order passed by the concerned Trial Court.

7. Heard learned advocate Mr. Sarbottam Kumar Sarkar for the appellants in Cr. Appeal No. 1206 of 2018 and learned advocate Mr. Rishit Deo Kumar Singh in Cr. Appeal No. 1331 of 2018 and Mr. Abhimanyu Sharma and Mr. Satya Narayan Prasad, learned A.P.P's. for the State.

8. Learned counsel appearing for the appellants have mainly contended that there are major contradictions in the depositions given by the so-called eye-witnesses and, therefore, learned Trial Court ought not to have relied upon the said witnesses. It is further submitted that even the blood stains were not found from the place of incident when the *Panchnama* was prepared by the investigating agency. It is also contended that the prosecution has failed to prove the motive on the part of the accused for committing the alleged offences. Learned counsel would further submit that though the independent witnesses were available, the prosecution



has not examined the independent witnesses and the so-called eye-witnesses are the interested and related witnesses. Therefore, the Trial Court ought to have appreciated the aforesaid important aspect of the matter. It is further submitted that though, as per the case of the prosecution, the injured Suleten Yadav was initially taken to the hospital at Hasanpur where the primary treatment was given to the injured, the prosecution has not produced the medical papers and, therefore, the story put forward by the prosecution may not be believed. Learned counsel, therefore, urged that impugned judgment and order passed by the Trial Court be quashed and set aside and thereafter all the appellants be acquitted.

9. On the other hand, learned A.P.P's. have supported the reasoning recorded by the Trial Court while passing the impugned judgment and order. It is mainly submitted that there are five eye-witnesses to the incident in question. Learned A.P.P's. have referred to the depositions given by the eye-witnesses and thereafter submitted that all the eye-witnesses have supported the case of the prosecution. It is further submitted that version of the eye-



witnesses is supported by the medical evidence. Learned A.P.P's. have referred to the opinion given by the two Doctors, P.W.-6 and P.W.-7, who have performed the *post mortem* of the deceased. Learned A.P.P's. have also referred to the injuries suffered by the deceased and the opinion given by the Doctors with regard to the cause of death of the deceased. Learned A.P.P's. thereafter referred to the deposition given by the Investigating Officer. After referring to the depositions given by the witnesses and the documentary evidence produced before the Trial Court, learned A.P.P's. would submit that the prosecution has proved the case against the appellants/accused beyond reasonable doubt and, therefore, no error is committed by the Trial Court while passing the impugned order of conviction. Learned A.P.P's., therefore, urged that these appeals be dismissed.

10. We have heard the submissions canvassed by the learned counsel appearing for the parties. We also perused the material produced on record, including the depositions given by the prosecution-witnesses and the documentary evidence produced before the Trial Court. It



would emerge from the record that there are five witnesses who have seen the incident in question.

11. P.W. 1 Chandi Yadav, is father of the deceased and also father of some of the appellants and grand-father of some of the appellants. The said witness has specifically deposed that when he was going towards his agricultural field, he had seen that the present appellants/accused along with other accused came at the place of incident and started beating Suleten Yadav with the deadly weapons like spade, spear, stick and Iron-rod. In the said incident, Suleten Yadav sustained injuries. Thereafter, the accused fled away from the place of incident. Suleten Yadav was initially taken to Government Hospital at Hasanpur from which he was referred to Samastipur. During the transit, Suleten Yadav died. He had identified the accused/appellants who were present in the Court. During cross-examination, the said witness has though stated that there was no dispute with regard to the land between the accused/appellants and the complainant and other family members, however, the accused/appellants were trying to forcibly grab the land.



12. P.W.-2 Rukmini Devi, who is wife of the complainant Dilip Yadav, has also deposed before the Court that when she was at her house, she had seen that all the appellants/accused came at the agricultural field and they had assaulted Suleten Yadav with the deadly weapons that they were carrying. In the incident, Suleten Yadav sustained injuries and he was taken to the hospital at Hasanpur from which he was referred to Samastipur.

13. Similar is the statement of P.W.-3 Ram Kumari. She has also claimed that she is an eye-witness to the incident. The said witness is the sister of the deceased. The said witness also deposed before the Trial Court about the incident in question and she has supported the case of the prosecution.

14. P.W.-4 Punit Yadav, who is an independent witness, stated that on the date of incident he was at his agricultural field and was cultivating the land through his labourer. When he heard shouts, he went at the place of incident. There he had seen that the appellants/accused were giving blows with the deadly weapons which they were carrying, to Suleten Yadav who is brother of Dilip Yadav.



He has specifically narrated about the part played by each of the appellants/accused. Thus, the said witness also supported the case of the prosecution. It is pertinent to note that this witness is an independent witness.

15. P.W.-5 Dilip Yadav is the complainant who gave F.I.R. before the concerned Police Station and the said witness is the brother of the deceased. The said witness also supported the case of the prosecution and specifically deposed before the Court with regard to the role played by each of the appellants/accused at the time of incident in question. No doubt, the said witness, during the cross-examination, has stated that partition of the land between the complainant and the accused had taken place in the year 2004 and thereafter there is no land dispute between them. Said witness also stated about the criminal case which was filed against him and also which he had filed against the accused in the year 2012.

16. Dr. Rakesh Chandra Sahay Verma, P.W.-6, is the Doctor who had performed the *post mortem* of the deceased. The said witness has specifically narrated about the injuries sustained by the deceased Suleten Yadav as



detailed hereinbelow:

1. Stitched wound at five places on vault of skull.
2. Fracture of nasal bone.
3. Right hand broken.
4. Incised wound on left hand and fore arm (size 2"x1/2"x1/2")
5. Incised wound right leg (size 2"x1/2"x1/2")
6. Incised wound left knee joint ( size 2"x1"x1/2")

On dissection: Scalp- old haematoma in mid brain and brain matter visible lacerated.

Time elapses since death: within 36 hours.

In our opinion the cause of death was hemorrhage and shock due to above mentioned injuries on the body.

17. Similarly, P.W.-7 Dr. Kamla Kant Singh has also performed the *post mortem* of the deceased and the *post mortem* report was also signed by the said witness. Said witness also deposed during his examination-in-chief about the injuries sustained by the deceased and the opinion is also given that cause of death was haemorrhage and shock due to the injuries sustained by the deceased.



18. P.W.-8 Sita Ram Prasad is the Investigating Officer who had carried out the investigation and filed the charge-sheet against the accused. The said witness, in his deposition, has narrated about the manner in which he has conducted the investigation. The said witness also recorded the F.I.R. given by the first informant Dilip Yadav, prepared the inquest *Panchnama* and sent the dead body of the deceased for *post mortem*. He has also stated that he has prepared the *Panchnama* of the place of incident.

19. We have also gone through the other documentary evidence, including the *Panchnama* of the place of incident. We have re-appreciated the entire evidence produced before the concerned Trial Court and we are of the view that all the eye-witnesses have specifically stated about the role played by each of the appellants/accused. They have supported the case of the prosecution. The version given by the eye-witnesses is fully supported by the medical evidence and, therefore, we are of the view that the prosecution has proved the case against the appellants/accused beyond reasonable doubt. Merely because there are certain minor contradictions in the



depositions given by the prosecution witnesses, their version cannot be discarded and the same is not fatal to the case of the prosecution. Thus, when the version given by the eye-witnesses is fully supported by the medical evidence, we are not impressed by the submission canvassed by the learned counsel for the appellants that at the place of occurrence blood-stains were not found.

20. We have also gone through the reasoning recorded by the Trial Court while passing the impugned order and we are of the view that the Trial Court has not committed any error while passing the impugned order and, therefore, no interference is required in the present appeals.

21. Accordingly, both these appeals are dismissed.

**(Ashutosh Kumar, J)**

**( Vipul M. Pancholi, J)**

K.C.Jha/-

AFR/NAFR	A.F.R.
CAV DATE	
Uploading Date	02.08.2023
Transmission Date	

