

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.23 of 1999

=====

VIJAY MAHTO, SON OF Jamadar Mahto, resident of Village- Bin Toli,
(Hakama), P.S.- Mehdi, District- Saran

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

=====

Appearance :

For the Appellant : Mr. Ravi Bhardwaj, Amicus Curiae
For the State : Mr. Ajay Mishra, APP

=====

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
and
HONOURABLE MR. JUSTICE GIRIJISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH)

Date : 18-06-2026

Heard learned counsel *Amicus Curiae* for the
appellant and learned Additional Public Prosecutor appearing
for the State.

2. This appeal has been filed challenging the
judgment of conviction dated and order of sentence dated
30.11.1998 passed by the learned 3rd Additional Sessions Judge,
Saran at Chapra in connection with Sessions Trial No. 300 of
1997/135 of 1997 arising out of Amnaur (Bheldi) P.S. Case No.
32 of 1996 whereby and whereunder this appellant has been
convicted for committing offence under Sections 302 and 34 of
the Indian Penal Code and has been sentenced to undergo
rigorous imprisonment for life.



3. The prosecution story, in brief, is that at about 11 PM on 05.03.1996, full brother of informant, namely Kamaldeo Rai, went to sleep on a cot kept by the side of his field while informant was still engaged in looking at the fields. It is alleged that at about 12 o'clock in the midnight, this appellant, along with co-accused Kapil Mahto, Punyadeo Bhagat and three unknown persons, armed with dab, arrived there and started assaulting Kamaldeo Rai. Upon *hulla*, informant rushed to the spot, however, by the time he reached there, the accused had started fleeing away from the place and informant saw his brother had died. Informant raised alarm whereupon co-villagers Shivchela Rai, Thakur Rai, Lal Babu Rai and others arrived there and witnesses the incident. It is further alleged that about 5 to 6 days prior to the above occurrence, the accused had threatened the deceased of dire consequences if he did not execute sale deed in their favour.

4. In this case, in order to bring home guilt of this appellant, the prosecution has examined altogether eight witnesses.

5. P.W. 1, namely Shivchela Rai, in his examination in chief, stated that on *hulla*, he rushed to the place of occurrence and upon arrival, he found the deceased lying dead on the cot. In



his cross-examination, he claimed that he saw the accused killing the victim and fleeing when villagers approached. He did not speak about torch.

6. P.W. 2, namely Thakur Rai, stated that after hearing cries, he rushed to the place of occurrence and saw Kamaldeo Rai lying dead. He further stated that he saw three persons, namely Vijay Mahto (appellant), Kapil Mahto and Punyadeo Bhagat armed with sharp cut weapons assaulting Kamaldeo Rai. He further stated that he identified the accused in the light of torch. In cross-examination, he said that when he reached the place of occurrence, Kamaldeo Rai was already lying dead.

7. P.W. 3, namely Lalbabu Rai, who also claims to be eye witness of the occurrence, stated that he heard alarm of “*bachao bachao*” and on hearing the alarm, he and Kamta Rai lit a torch and reached the place of occurrence and saw Vijay Mahto, Kapil Mahto and Ranjan Mahto running from the place of occurrence. He stated that he could not identify the other three accused persons. In cross-examination, he admitted that he did not disclose the name of the accused persons before the police or seeing the accused fleeing. He admitted that after the occurrence, he did not go near the place of occurrence during the night and he only went near the place of occurrence in the



morning along with police. He stated that he did not actually see the assault being made rather he saw some persons running away after hearing the alarm.

8. P.W. 4, namely Ramyodhya Rai, is a formal witness and is witness of the inquest report and seizure list.

9. P.W. 5, namely Ishwari Rai @ Kishori Rai, is full brother of informant and a hearsay witness. According to him, co-villagers informed him that Vijay Mahto, Kapil Mahto, Punyadeo Bhagat and three unknown persons have assaulted Kamaldeo Rai and killed him. He admitted animosity with the accused persons and also stated about the caste rivalry. In Paragraph No. 9 of his deposition, he stated that in the night of the occurrence, there was a meeting in which *Mukhiya*, *Sarpanch* and others came at the place of occurrence and after discussion and deliberation they decided to lodge F.I.R. in the next morning.

10. P.W. 6, namely Kamta Rai, is informant of the present case and eye witness of the occurrence. He deposed in examination in chief that he along with the deceased was irrigating the onion field at about 9 PM after taking meals. Thereafter, his brother, namely Kamaldeo Rai (deceased), went to sleep on a cot and while P.W. 6 was awake, he noticed



several persons approaching from the western side and identified them as Vijay Mahto (appellant), Kapil Mahto, Punyadev Bhagat and others and according to him, the accused persons surrounded Kamaldeo Rai and assaulted him. Hearing the cries, he raised alarm and thereafter, the assailants fled away from the place of occurrence. He further claims that this appellant wanted to purchase a land of the deceased which he refused to sell and, therefore, he had motive. Thus, P.W. 6 is the main eye witness of the prosecution.

11. P.W. 7, namely Dr. Uma Shankar Prasad Shrivastav, is doctor who conducted the *post mortem* of the deceased and found multiple injuries on the persons of the deceased.

12. P.W. 8, namely Altaf Ali Khan, is the Investigating Officer. He in Paragraph 16 of his deposition stated that neither any one produced any torch before him nor he seized any torch. In Paragraph No. 17 of his deposition, he stated that P.W. 1, namely Shhivchela Rai, never stated that he was irrigating the field along with the deceased. He further stated that P.W. 1 never said that he saw the accused persons killing the deceased rather he said that he saw the accused fleeing from the place of occurrence. In Paragraph No. 18 of his deposition, he stated that



P.W. 2, namely Thakur Rai, never stated that he saw the accused killing the deceased. He also stated that P.W. 2 never said that he identified the accused in torch light. He further stated that P.W. 3, namely Lalbabu Rai, stated that he came to know the name of the accused through the informant, namely Kamta Rai and he denied to have witnessed the accused fleeing from the place of occurrence.

13. The prosecution has also adduced documentary evidences, which are marked as:-

Exhibit 1	Signature of Ram Ayodhaya Rai on Inquest report of carbon copy
Exhibit 1/1	Signature of Ram Ayodhaya Rai on seizure list
Exhibit 1/2	Signature of Kamta Rai on <i>fard beyan</i>
Exhibit 1/3	Signature of Ram Prasad Rai on <i>fard beyan</i>
Exhibit 1/3	Signature of Bhikhari Rai on <i>fard beyan</i>
Exhibit 2	<i>Post mortem</i> report of Kamaldeo Rai
Exhibit 3	<i>Fard beyan</i> of Kamta Rai
Exhibit 4	Inquest report
Exhibit 5	Seizure list
Exhibit 6	Formal F.I.R.

14. On the other hand, the defence has not produced any oral or documentary evidence.

15. After hearing the parties, the learned trial court convicted this appellant and sentenced him, as indicated in the opening paragraph of this order.

16. Learned *Amicus Curiae* appearing for the appellant assails the order of conviction and sentence on



multiple grounds. He submits that as per *fard beyan*, P.W. 1, namely Shivchela Rai; P.W. 2, namely Thakur Rai and P.W. 3, namely Lalbabu Rai, are eye witnesses of the alleged occurrence, however, in their deposition, they have clearly stated that they reached the place of occurrence after hearing the *hulla* and only saw this appellant, along with other accused persons, fleeing from the place of occurrence and did not see the accused making any assault on the person of the deceased. P.W. 5, namely Ishwari Rai @ Kishori Rai, who happens to be full brother of the informant, is a highly interested and hearsay witness. He also reached the place of occurrence after hearing the *hulla* and has not seen this appellant committing the alleged occurrence. He also deposed that there was a meeting in which *Mukhiya*, *Sarpanch* and others came at the place of occurrence and after discussion and deliberation they decided to lodge F.I.R.. Thus, there is no independent witness who has corroborated the prosecution story. It is further submitted that as per prosecution case, the alleged occurrence took place at 12 o'clock in the midnight and the witnesses claimed to have recognized the accused with the help of a torchlight. However, the said fact has neither been disclosed in the F.I.R. nor the alleged torch was produced before the Investigating Officer



during investigation nor was it produced before the learned Trial Court. In the circumstances, it is difficult to believe that the appellant has been identified in the torchlight. Therefore, the prosecution has failed to prove the case beyond reasonable doubts and the trial court has wrongfully convicted this appellant ignoring material contradictions and hence, the appellant is fit to be acquitted. In support of his submissions, he has placed heavy reliance upon judgments of the Hon'ble Apex Court passed in the case of *Kapil Deo Mandal and Others versus State of Bihar* reported in (2008) 16 SCC 99 and in the case of *State represented by Inspector of Police, Tamil Nadu versus Sait @ Krishnakumar* reported in (2008) 15 SCC 440.

17. *Per contra*, learned Additional Public Prosecutor for the State submits that the evidence on record unmistakably points to the guilt of the appellant. The prosecution could prove that it was this appellant who committed the occurrence. Charges against the appellant was proved by the prosecution witnesses beyond all reasonable doubt and, therefore, the learned Trial Court was fully justified in convicting the appellant under Sections 302 and 34 of the Indian Penal Code.

18. On going through the rival submissions, judgments of the Hon'ble Apex Court, evidences and upon



perusal of the records, this Court finds that in this case there are lot of discrepancies and inconsistencies in the evidence. In this case, P.W. 1, namely Shivchela Rai; P.W. 2, namely Thakur Rai and P.W. 3, namely Lalbabu Rai, though claimed to be eye witnesses but they are not witnesses of the actual incident and there is material contradiction in their statements. P.W. 1 in his examination in chief stated that when he reached the place of occurrence, the deceased was lying dead in the cot and as such, he did not see the actual assault. However, in his cross-examination, he claimed to have seen the actual assault by the accused persons. Similarly, P.W. 2, namely Thakur Rai, claims to have seen the accused assaulting the deceased in the light of torch, however, in his cross-examination he admitted that he did not say before the police that he identified the accused in the torch light and also did not claim to be an eye-witness of the actual occurrence rather stated that all the accused fled away when he reached the place of occurrence. P.W. 3, namely Lalbabu Rai, also deposed that he reached the place of occurrence only after hearing the *hulla* and has not seen this appellant committing the alleged occurrence. In his cross-examination, he denied the fact that he went near the place of occurrence at night and according to him, the went there in the



morning along with the police. P.W. 5, namely Kishori Rai, is full brother of informant and thus, an interested witness and is a hearsay witness. He also deposed that there was a meeting in which *Mukhiya*, *Sarpanch* and others came at the place of occurrence and after discussion and deliberation they decided to lodge F.I.R.. P.W. 6, namely Kamta Rai, who is informant of the present case, brother of the deceased and claims to be eye witness of the actual occurrence in Paragraph No. 1 of his deposition introduced torchlight and moonlight as source of identification. The incident happened at 12 o'clock in the night. Witnesses have claimed to have seen the incident and recognized the appellant either in the torchlight or in the moonlight. However, neither the torch was mentioned in the F.I.R. nor was shown to the investigating officer during investigation nor it was produced before the learned trial court. In the circumstances, it is difficult to believe that appellant was identified in the torchlight or in the moonlight. In this connection, reliance can be placed upon judgments of the Hon'ble Apex Court rendered in the case of ***Kapildeo Mandal and others versus State of Bihar*** reported in (2008) 16 SCC 99 and in the case of ***Durbal versus State of Uttar Pradesh*** reported in (2011) 2 SCC 676.



19. The very fact that the torchlight was pressed into service for the purpose of identifying the accused, itself suggests that it was a pitch-dark night during the mid-winter and it was not possible to identify the assailants without the aid of torchlight. It is highly doubtful as to whether PWs 1, 2, 3 and 6 had actually torchlights in their hands as stated by some of them, in the absence of recovery of the same by the police during investigation and non-production before the court. The said fact was neither mentioned in the *fard beyan*. Mentioning of such an important fact for the first time during trial lacks credence and cannot be relied upon. Thus, in this case, the informant in the F.I.R. or the witnesses in their statement under Section 161 of the Cr.P.C., have not disclosed certain facts but introduced the fact for the first time before the Court. Such version, lacks credence and is liable to be discarded.

20. While appreciating the evidence, the Court has to take into consideration whether the contradictions/omissions have been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements on trivial matters, which do not affect the core of the case of the prosecution, should not be made a ground for rejection of evidence in its entirety. However, the discrepancies



in the evidence of eyewitnesses, if found not to be minor in nature, may be a ground for disbelieving and discrediting their evidence. In such circumstances, the witnesses may not inspire confidence and if their evidence is found to be in conflict and contradiction with other evidence available or with a statement that has already been recorded, then in such a case, it cannot be held that the prosecution has proved its case beyond reasonable doubt. In this connection, reliance can be placed upon *Mahendra Pratap Singh versus State of Uttar Pradesh* reported in (2009) 11 SCC 334.

21. It is settled law by series of judgments of the Hon'ble Apex Court that the omission which in fact amount to contradiction in material particulars and goes to the root of the case renders the case unreliable. In this case, testimony of the witnesses was improved by them while giving statement before the learned trial court and involved material contradictions, inconsistencies and hence, was not reliable. It is settled law that in criminal cases, since life and liberty of the accused are involved, a strict standard of proof is required as to prove the guilt of the accused. It is not the preponderance of the probabilities that establishes the guilt of the accused. It is necessary that the evidence on record must prove it beyond



reasonable doubt. A conviction cannot be based on the consideration that the prosecution story may be true. The accused can only be convicted if the court reaches the conclusion that the prosecution story must be proved. The burden of proving the guilt of the accused is upon the prosecution. In this case, the prosecution has miserably failed to prove the guilt of the appellant beyond reasonable doubt.

22. Taking a look at the above picture, it gives rise to substantial doubt regarding the veracity of the prosecution case. The material contradictions apparent in deposition of the prosecution witnesses significantly undermines the credibility of the prosecution case. These inconsistencies renders the prosecution case doubtful. On the face of such evident discrepancies, recording conviction becomes untenable and thus, the impugned judgment is fit to be set aside.

23. Accordingly, the impugned judgment of conviction dated and order of sentence dated 30.11.1998 passed by the learned 3rd Additional Sessions Judge, Saran at Chapra in connection with Sessions Trial No. 300 of 1997/135 of 1997 is hereby set aside with respect to this appellant only.

24. In that view of the matter, appellant, above named, is discharged from the liability of his bail bonds in



connection with this case.

25. We appreciate the valuable assistance rendered by Mr. Ravi Bhardwaj, learned counsel (A.U.I.N. No. 6248) who was appointed as an *Amicus Curiae* in this case, for extending valuable assistance to this Court in deciding this appeal. He shall be paid Rs. 10,000/- (Rupees Ten Thousand) by the Patna High Court Legal Services Committed, Patna towards his professional fee.

26. Accordingly, this appeal stands allowed.

27. Interlocutory application/s, if any, also stands disposed off.

(Prabhat Kumar Singh, J)

(Girijish Kumar, J)

shashank/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	19.06.2026
Transmission Date	19.06.2026

