

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No. 232 of 2025

Arising Out of PS. Case No.-149 Year-2022 Thana- TETERHAT District- Lakhisarai

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Anil Kumar Yadav @ Golu @ Anil Yadav @ Golu Yadav S/o Late Makeswar
Yadav Resident of Village- Khairi, P.S- Tetarhat, Dist- Lakhisarai.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance:

For the Appellant/s : Mr. Yogesh Chandra Verma, Sr. Advocate

Ms. Kumari Anupam, Advocate

Mr. Rahul Deo Varman, Advocate

For the Respondent/s : Ms. Km. Shashi Bala Verma, APP

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

and

HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)

6 23-09-2025 The present appeal has been preferred against the judgment of conviction and order of sentence dated 16.01.2025 and 24.01.2025 respectively, passed by the District and Additional Sessions Judge-I, Lakhisarai in Sessions Trial No. 185 of 2023 (arising out of Tetarhat P.S. Case No. 149 of 2022) dated 29.12.2022, whereby and whereunder the appellant has been convicted under Section 302 of the Indian Penal Code (hereinafter referred to as the 'IPC') and sentenced to undergo rigorous imprisonment for life with fine of Rs. 10,000/- and in case of default of payment of the same, the appellant has been directed to further undergo imprisonment for three months.



2. The record of this appeal has been placed before this Court to consider the prayer of the appellant for suspension of sentence and release on bail during the pendency of the appeal.

3. The case of the prosecution in brief as per the FIR bearing Tatarhat P.S. Case No. 149 of 2022 dated 29.12.2022 registered under Section 302/34 of the IPC against unknown accused persons, based on the written report of the informant, namely Bachchi Devi (PW-5) is that on 27.12.2022 at about 09:00 p.m. in the night her husband namely Makeswar Yadav had taken meal at his home, whereafter he had gone to *bathan* situated in the same village for night stay and on 28.12.2022 at about 05:00 a.m. one relative of the informant, namely Karbil Kumar @ Karu (PW-2) had gone to wake up the husband of the informant and found that he was sleeping covered with a *chadar* (bed sheet), whereafter he had loudly called him with a view to wake him up, however when he did not wake up, he had removed the bed sheet and found that the husband of the informant was lying dead on a cot in a pool of blood. The said Karbil Kumar @ Karu (PW-2) had found 3-4 cuts on the neck of the husband of the informant, inflicted by sharp cutting weapon, whereafter PW-2 had raised alarm and then all the villagers had arrived there and found the husband of the informant lying dead on the cot. The



informant has stated that unknown accused persons have killed her husband by a sharp cutting weapon by slitting his neck, whereafter police had arrived at the place of occurrence and then the dead body was sent for postmortem examination to the Sadar Hospital, Lakhisarai, whereupon the last rites of the dead body was performed.

4. The learned senior counsel for the appellant Shri Yogesh Chandra Verma has submitted that there are no eye-witnesses to the alleged occurrence, the FIR was lodged against unknown accused persons after a delay of about two days and the prosecution witnesses are all interested and related. It is submitted that the name of the appellant has been introduced after lapse of 13 days by PW-4, namely Vikash Kumar @ Chandan Kumar, who is brother of the appellant. In this regard, reference has been made to paragraph no. 7 of the evidence of PW-4 wherein PW-4 has stated that after 13 days of the occurrence the police had arrested the appellant, whereafter the police had recovered blood stained towel of the appellant and upon disclosure made by the appellant, the police had recovered sharp cutting iron katta (Garasa) from a ditch near the road and at that time PW-4 was present there as also he had put his signature on the seizure list. Reference has also been made to



paragraph no. 11 of the evidence of PW-4 wherein he has stated that he had suspected the role of his brother since the day of occurrence and had also given his name in the written report, however it is pointed out by the learned senior counsel for the appellant that though PW-4 is a signatory to the written report but he had neither disclosed the name of the appellant at that point of time nor there is any whisper about the complicity of the appellant in the said written report, hence PW-4 has made substantial improvement and cooked up a false story with oblique motives.

5. The learned senior counsel for the appellant has next referred to paragraph no. 33 of the evidence of PW-4 to submit that the iron katta (Garasa) was recovered by the police at 12:00 hours in the night, whereafter police had shown iron katta to PW-4 and seizure list was prepared at his house, however on the contrary, a bare perusal of the seizure list would show that the same was actually prepared on 12.01.2023 at 21:30 hours, hence the seizure list is apparently fabricated and in fact the prosecution has made endeavors to falsely implicate the appellant. It is next submitted that the second witness to the seizure list, namely Jitendra Kumar i.e. PW-3 has not proved his signature on the seizure list which further creates doubt about



the genuineness of the seizure list. Another circumstance which goes in favor of the appellant is that the said iron katta (Garasa) allegedly used to kill the deceased was never produced before the learned Trial Court nor was marked as material exhibit. Moreover, the said iron katta was though sent to F.S.L. but as per F.S.L. report no blood stains were found on the Garasa. Thus, it is submitted that the recovery of iron katta (Garasa) is falsified and moreover, there is no evidence on record to show that the said iron katta was used for murdering the deceased.

6. The learned senior counsel for the appellant has next referred to Section 27 of the Indian Evidence Act, 1872 to submit that only that portion of the confessional statement which directly relates to the discovered fact is admissible and moreover, the confessional statement of the appellant was not recorded when he was arrested but was recorded after he was taken to the police station which also creates a doubt. It is submitted that the Investigating Officer i.e. PW-7 has stated in his evidence that he had reached at the place of occurrence in the morning of 28.12.2023 at 07:00 a.m. and prepared the inquest report, however none of the family members were ready to give their statement and only on 29.12.2023 the family members of the deceased had given written report at the police



station. Thus, it is submitted that the Investigating Officer has deliberately failed to record the First Information Report on receipt of information of a cognizable offence and had prepared the First Information Report belatedly after about two days, hence due deliberations, consultations and discussions cannot be ruled out, therefore the investigation is tainted and it is clear that evidence has been fabricated/manipulated. In this regard, reference has been made to a judgment rendered by the Hon'ble Apex Court in the case of *Allarakha Habib Memon etc. vs. State of Gujarat*, reported in (2024) 9 SCC 546.

7. Lastly, it is submitted by the learned senior counsel for the appellant by referring to the evidence of Investigating Officer, i.e. PW-7 that he has stated in paragraph no. 26 of his evidence that he has not mentioned about the place of occurrence, he has neither conducted any investigation at the place of occurrence nor seized any article nor seized blood-stained clothes of the deceased much less blood-stained soil. In paragraph no. 35 of this cross-examination, PW-7 has stated that he had not exhibited sharp cutting weapon as material exhibit in the Court and had never brought the same to the Court. Thus, it is submitted that there is no evidence on record to conclusively prove the guilt of the appellant beyond all reasonable doubts,



hence the sentence awarded to the appellant is required to be suspended and the appellant is required to be released on bail.

8. *Per contra*, the learned APP for the state has vehemently opposed the prayer for suspension of sentence and grant of bail qua the appellant and has submitted that all the prosecution witnesses are consistent and there is no iota of doubt about the appellant having killed the deceased.

9. Having heard the learned counsel for the parties and having cursorily perused the evidence on record, we *prima facie* find that there are no eye witnesses to the alleged occurrence in the case in hand. At best the only evidence available on record to indict the appellant is recovery of the weapon upon disclosure made by the appellant in his confessional statement made before the police. However, we find that the same is also not of much consequence inasmuch as the seizure list is itself doubtful inasmuch as the same has not stood proved, in absence of any corroboration of the same by one of its witnesses i.e. PW-3 and as far as the other witness to the seizure list i.e. PW-4 is concerned, he has though stated to have seen the seizure list of the sharp cutting weapon but then in his evidence he has stated the time of recovery to be 12:00 hours whereas the seizure list was prepared on 12.01.2023 at 21:30 hours, thus the recovery of



the sharp cutting weapon itself becomes doubtful, apart from the fact that there is no material on record to connect the sharp cutting weapon which was recovered by the police from a ditch with the murder of deceased and moreover, the said sharp cutting weapon has neither been brought before the learned Trial Court during the course of the trial nor has been marked as material exhibit. We also find that the appellant has been roped in the present case after about 13 days of the alleged incident, however the evidence of the Investigating Officer i.e. PW-7, as discussed herein above, would show that the entire investigation is tainted and *prima facie* it appears that endeavor was made to fabricate evidence. We further find that as far as circumstantial evidence is concerned, the evidence on record *prima facie* does not lead us to draw an inference with respect to the chain of circumstances being complete and the guilt of the appellant having been proved beyond all reasonable doubts, thus taking a holistic view of the facts and circumstances of the present case as discussed hereinabove, having considered the submissions made by the learned senior counsel for the appellant and for the foregoing reasons we *prima facie* find that the conviction of the appellant may not be sustainable, hence we are of the view that a case for suspension of sentence & grant of bail to the appellant



during the pendency of the present appeal has been made out.

10. Accordingly, we direct suspension of order of sentence dated 24.01.2025 qua the appellant herein as also direct to release the appellant on bail, during the pendency of the appeal, on furnishing bail bond of Rs.10,000/- (ten thousand only) with two sureties of the like amount each to the satisfaction of learned District and Additional Sessions Judge-1, Lakhisarai in connection with Sessions Trial Case No. 185 of 2023 arising out of Tetarhat P.S. Case No. 149 of 2022.

11. It is clarified that the observation made hereinabove are *prima facie* and tentative in nature for the purposes of consideration of the prayer of the appellant for suspension of sentence and grant of bail and shall not cause any prejudice to either of the parties at the time of hearing of the main appeal.

12. List this appeal for hearing in its own turn.

(Mohit Kumar Shah, J)

(Soni Shrivastava, J)

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