

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.119 of 2022

Arising Out of PS. Case No.-28 Year-1990 Thana- DHANAHA District- West Champaran

BASUDEV YADAV @ BASUDEV TIWARI Son of Late Sarayug Yadav
Resident of Village- Pakaha, P.S.- Thakraha (Bhitaha), District- West
Champaran.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant : Mr. Shashank Chandra, Advocate
Ms. Kumari Subham, Advocate
For the Respondent : Mr. Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH)

Date : 19-04-2023

The appellant has preferred this appeal under Section
374(2) of the Code of Criminal Procedure against the judgment
and order dated 13.12.2021 and 21.12.2021 passed by the learned
1st Additional Sessions Judge, Bagaha, West Champaran, in
Sessions Trial No. 292 of 2013, whereby and whereunder the
appellant has been convicted and sentenced as under :-

Convicted under Sections	Imprisonment	Fine (Rs.)	In default of fine
148 of the IPC	R.I. for two years	2,000/-	-
201/149 of the IPC	R.I. for five years	5,000/-	
302/149	R.I. for Life	10,000/-	
Section 27(1) of the Arms Act	R.I. for four years	2,000/-	Three months' S.I.



2. All sentences have been directed to run concurrently.

3. Heard Mr. Shashank Chandra, learned counsel appearing on behalf of the appellant and Mr. Sujit Kumar Singh, learned Additional Public Prosecutor for the State.

4. The father of the deceased, Ratan Mallah, is the informant of Bagaha P.S. Case No. 28 of 1990, registered on 03.11.1990 for commission of the offences punishable under Sections 147, 148, 149, 302, 201 of the IPC and Section 27 of the Arms Act, which gave rise to aforementioned Sessions Trial and the subsequent impugned judgment of conviction and the order of sentence passed by the learned trial court. A written report of the informant is the basis for registration of the FIR. According to the FIR, the occurrence had taken place at 08 A.M on 02.11.1990. From the First Information Report, it transpires that the information was given to the police regarding the occurrence on 08:30 A.M. on 03.11.1990. The distance of the Police Station from the place of occurrence is said to be 10 kilometers north. According to the prosecution's case, the appellant with 7-8 persons, armed with firearm, reached the informant's place, and while using abusive language, was searching for the deceased Ramdev Mallah. The deceased is said to have fled away from the



house, who was chased by this appellant and others. The appellant is said to have shot at the deceased. The deceased fell down on the ground. When he was lying in injured condition, he was assaulted by all others, who were accompanying this appellant, with *lathi* and *danda* and thereafter took the body of the deceased towards river and disappeared thereafter. It is apparent from the FIR that the deceased had very recently come out of jail. He also disclosed in the FIR that the occurrence was witnessed by Jaisri Mallah (PW-4), brother of the deceased, Hardeo Mallah (PW-1) brother of the deceased, Sarswati Devi (PW-2) wife of the deceased. It is evident from the records that the dead body of the deceased was remained untraced.

5. The police, upon completion of investigation, submitted charge-sheet against six persons for commission of the offence punishable under Section 302 of the IPC. Charge-sheet against this appellant was filed on 02.08.2013 for commission of the offence punishable under Sections 148, 302/149, 201/149 and Section 27(1) of the Arms Act. The appellant denied the charges framed against him and claimed to be tried.

6. At the trial, altogether four witnesses were examined. No documentary evidence was adduced at the trial. After closure of the evidence of the witnesses, the appellant was



questioned by the court below in relation to the circumstances emerging against him based on the evidence of the prosecution's witnesses adduced at the trial as required under Section 313 of the CrPC. The appellant denied the circumstances. Learned trial court, upon analysis and evaluation of the evidence adduced at the trial, concluded that the charges against the appellant of having committed the offence punishable under Sections 148, 302/149, 201/149 of the IPC and Section 27(1) of the Arms Act stood prove, and accordingly, after having held the appellant guilty of the aforesaid offences, imposed the sentences as has been noted at the outset.

7. Learned counsel appearing on behalf of the appellant has submitted that the Investigating Officer (IO) was not examined and non examination of the IO, in the facts and circumstances of the case, has seriously prejudiced the case of the appellant inasmuch as he could not obtain contradictions from the IO. He has further submitted that out four witnesses, examined at the trial, the brother of the deceased Hardeo Mallah (PW-1), wife of the deceased Sarswati Devi (PW-2) and wife of one of the brothers of deceased Lalti Devi (PW-3), who, according to the informant, were the eyewitnesses did not support the prosecution's case and came to be declared hostile at the instance of the



prosecution at the trial. He has further submitted that no blood stained clothes nor any blood stained soil appeared to have been seized by the police during the course of the investigation in support of the prosecution's case. He contends that the entire case of the prosecution has become doubtful in the absence of examination of IO and adducement of evidence to support that any occurrence had, in fact, taken place. He contends that since the wife of the deceased herself has not supported the prosecution's case as narrated by PW 4 in his deposition, the finding of conviction recorded by the trial court is not at all sustainable.

8. Learned Additional Public Prosecutor representing the State has submitted that the records go to suggest that the appellant is a historysheeter. He has submitted that there is no reason why Court should disbelieve the evidence of the brother of the deceased, Jaisri Mallah (PW-4), who has fully supported the prosecution's case in his evidence. He has accordingly contended that there is no legal infirmity in the impugned decision of the trial court. No interference is warranted in the present appeal.

9. We have perused impugned and judgment of the trial court and the lower courts records and we have given our



thoughtful consideration to the rival submissions advanced on behalf of the appellant and the State.

10. We consider it apt to take up the evidence of PW-4 first, who is the sole witness, who has supported the prosecution's case. In his deposition, he testified that this appellant with others had come to the place of occurrence. The appellant had shot a fire, which had hit in the back of the deceased. Thereafter, co-accused Dhruv Yadav had shot at the deceased from a close range. Thereafter, the deceased was brought near the house of the deceased and was assaulted with *lathi* etc.. He also deposed that the wife of the deceased Sarswati Devi (PW 2) lay on the body of the deceased thereafter. It is noteworthy that PW 2 did not support the prosecution's version in her deposition at the trial. He also deposed at the trial that the police had collected the blood stained clothes and blood stained soil. The dead body of the deceased was thrown by them in a nearby river. In paragraph 15, he deposed that he had reached the Police Station at 02 PM.

11. There are more than one reasons why we are of the opinion that the appellant deserves to be acquitted of the charges by giving him benefit of doubt. Firstly, we do not find from records any justification for delay of 24 hours in registration



of FIR, particularly when PW 4 claimed to be an eyewitness of the occurrence. Further, the informant could not be examined as he died during pendency of the trial. The IO also was not examined at the trial. We find substance in the submission made on behalf of the appellant that non-examination of the IO/any Police Officer at the trial prejudiced the appellant's case inasmuch as the appellant was not able to obtain contradictions at the trial to make out his defence. Further, three out of the four witnesses turned hostile as they did not support the prosecution's case. The witnesses, who turned hostile, were cross-examined. The prosecution could not obtain any material from the hostile witnesses to support the case of the prosecution in any manner. In such view of the matter, a case is made out for interference with the impugned judgment of conviction and order of sentence. The appellant stands acquitted of the charge by giving him benefit of doubt.

12. Accordingly, the impugned judgment of conviction dated 13.12.2021 and order of sentence dated 21.12.2021 passed by the learned 1st Additional Sessions Judge, Bagaha, West Champaran, in Sessions Trial No. 292 of 2013, are set aside.

13. The appeal is allowed.



14. Let the appellant, who is in jail, be released
forthwith, if not required in any other case.

(Chakradhari Sharan Singh, J)

(Rajiv Roy, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	N/A
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