

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.195 of 2021

Arising Out of PS. Case No.-196 Year-1998 Thana- SULTANGANJ District- Bhagalpur

Ledhu Yadav @ Ram Krishna Yadav @ Ledha Yadav, Son of Late Huro Yadav @ Hari Yadav, R/O Village- Akbarnagar, P.S.- Akbarnagar, District- Bhagalpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Manohar Prasad Singh, Advocate Mr. Samir Kumar Sinha, Advocate
For the Respondent/s	:	Ms. Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE JITENDRA KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 14-09-2023

This appeal has been preferred by the appellant under Section 374(2) of the Code of Criminal Procedure, putting to challenge a judgment of conviction dated 17.06.2021 and an order of sentence dated 24.06.2021, passed by learned 3rd Additional Sessions Judge, East Champaran, Motihari in N.D.P.S. Case No. 66 of 2015, CIS No. 13/16, whereby the appellant has been convicted and sentenced as under:-

Penal provision	Sentence		
	Imprisonment	Fine (Rs.)	In default of fine
Section 302/34 of the IPC	For life	20,000/-	SI for one year
Section 27 of the Arms Act	RI for five years	5,000/-	SI for three months



2. A self-statement of the Officer-in-Charge of Sultanganj (Akbaragar) Police Station (PW-16) in the district of Bhagalpur is the basis for registration of Sultanganj (Akbaragar) P.S. Case No. 196 of 1998 on 17.11.1998 in relation to an occurrence which had taken place on 16.11.1998 before 5:30 PM.

3. Before we mention the contents of the FIR and the background in which the FIR came to be registered, we must notice at the outset that the distance between the place of occurrence and the police station, as mentioned in the FIR, was 500 yards. According to the First Information Report, on 16.11.1998 at 5:30 PM, when the informant was discharging his official duties in his office at Akbaragar Police Station, an injured man with firearm injuries suddenly entered into the campus of the police station and fell down. He was profusely bleeding. The said injured person (the deceased) is said to have disclosed to him at the police station itself, upon enquiry made by the informant, that the deceased had gone to offer *Puja* at *Maa Kali Asthan* when this appellant and co-accused Ramji Yadav surrounded him in the courtyard of the said temple and shot at him with an intention to kill him. He narrated in detail to the Officer-in-Charge of the police station (the informant), the



background in which the offence was committed by the accused persons and motive behind the occurrence. He disclosed to the informant that his elder brother was an agent at a bus stand who was murdered by this appellant, co-accused Ramji Yadav and three others in which he (the deceased) was also a witness. The accused persons of that case were mounting pressure on him to get the case compromised which he had declined and that was the reason why these two persons had shot at him with an intention to kill him. While making such disclosures to the informant, the deceased started fainting, whereafter he (the informant) sent the deceased in that injured condition to Jawaharlal Nehru Medical College and Hospital, Bhagalpur with a Sub-Inspector, namely, Gandhi Sharma (the Investigating Officer) for treatment, but he died, no sooner than he reached the hospital. After the deceased died, the informant (PW-16) recorded his self-statement at 8:00 PM at the said hospital to the aforesaid effect.

4. Based on the said self-statement recorded by the informant, an Officer-in-Charge of the said Akbarnagar Police Station at 8:00 PM, the FIR of the case came to be registered on 17.11.1998 at 4:15 AM.

5. It is apt to mention, at this stage, that according to



the prosecution's case itself, the deceased, after having sustained firearm injuries had managed to reach the police station, soon after the occurrence, and had explicitly disclosed the manner in which the occurrence had taken place and was shot at by the accused persons, no FIR was, however, immediately registered by the Officer-in-Charge to whom the said disclosures were made. He did not record the statement of the deceased when it was being made. It is also evident from the self-statement of the Officer-in-Charge of the police station (the informant) that he had not accompanied the deceased to the hospital rather one Gandhi Sharma (IO) (not examined) was sent to the Jawaharlal Nehru Medical College and Hospital, Bhagalpur by the Officer-in-Charge with the deceased for treatment. The Officer-in-Charge did not bother to register the FIR soon after the disclosures were made by the deceased, implicating this appellant and another accused for the reasons best known to the prosecution. There is no clue as to what prevented the Officer-in-Charge of the police station to register the FIR, soon after the deceased had come to the police station in injured condition and had disclosed the facts as mentioned in the self-statement, which have been noted hereinabove. We must point out that there is no explanation adduced by way of evidence at the trial by the



prosecution to explain such delay in registration of FIR.

6. It is further noteworthy, at this juncture, that the inquest report was prepared at 7:30 PM on 16.11.2018. We do not find any justifiable reason on record as to why the FIR was not registered soon thereafter. We are, thus, of the view that there has been delay in registration of FIR with no explanation on record by way of evidence adduced by the prosecution.

7. Be that as it may, upon completion of investigation, the police submitted chargesheet on 26.02.1999 for commission of an offence punishable under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act against co-accused Ramji Yadav with this appellant having been declared absconder. Cognizance was taken for commission of the offence punishable under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act based on the aforementioned chargesheet. Later, the case of the appellant was separated by an order dated 14.02.2001 passed by the court below and the co-accused Ramji Yadav was put to trial. Subsequently, the chargesheet was submitted against this appellant also and upon taking of cognizance the case was committed to the court of sessions on 19.12.2017. Charges were later framed against this appellant for commission of the offences punishable under



Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act on 19.01.2018. The appellant denied the charge and claimed to be tried. Accordingly, the appellant was put to trial.

8. At the trial, the prosecution got examined altogether 16 witnesses including the informant (PW-16) and the doctor (PW-15) who proved the report of the postmortem examination to establish the charge against the appellant. In addition to the oral evidence of the prosecution's witnesses, the prosecution brought on record following documentary evidence:-

Sl. No.	Exhibit No.	Details of exhibit
(i)	Exhibit-1	Postmortem report
(ii)	Exhibit-2	Formal FIR
(iii)	Exhibit-3	Inquest report
(iv)	Exhibit-4	Self-statement

9. Out of the rest 14 witnesses, ten, namely, Kishore Yadav (PW-1), Rajeev Sah (PW-3), Rajkumar Paswan (PW-4), Vijay Paswan (PW-6), Uttam Paswan (PW-9), Jagdev Pandit (PW-10), Anil Kumar Sah (PW-11), Kanhaiya Pandit (PW-12), Pramod Sah (PW-13) and Chhanguri Sah (PW-14) came to be declared hostile at the instance of the prosecution. The IO was not examined.

10. After closure of the prosecution's evidence, the appellant was questioned under Section 313 of the CrPC so as to enable him to explain the incriminating circumstances which



emerged against him based on the evidence of the prosecution adduced at the trial. The appellant answered the circumstances explained to him by the court in negative.

11. The defence brought on record following documentary evidence by getting them exhibited to establish the appellant's innocence:-

- (i) Certified copy of chargesheet submitted in Sultanganj P.S. Case No. 220/88
- (ii) Certified copy of judgment passed in S.T. No. 124/2001
- (iii) certified copy of judgment passed in S.T. No. 309/1990 /40/1990
- (iv) Web copy of order passed in Criminal Appeal (DB) No. 396/1993.

12. The learned trial court, after having appreciated the evidence on record, has recorded conviction of the appellant treating the statement of the deceased said to have been made to the Officer-in-Charge of Akbarnagar Police Station (PW-16) to be a dying declaration. The trial court is also of the view that in the facts and circumstances of the case, the non-examination of the IO was immaterial as the same has not, in any manner, prejudiced the case of the defence.

13. We have heard Mr. Manohar Prasad Singh, learned counsel appearing on behalf of the appellant and Ms. Shashi Bala Verma, learned Additional Public Prosecutor representing the State.



14. Learned counsel appearing on behalf of the appellant has submitted that delayed registration of the FIR in the facts and circumstances of the case itself renders the entire prosecution's case suspicious. It has also been argued that there are material contradictions and inconsistencies in the evidence of the prosecution's witnesses including that of the informant. He argues that the evidence of the informant is not at all trustworthy in view of the admitted circumstance in which belated FIR came to be registered on the next date of occurrence. He contends that it is evident on close reading of the depositions of the prosecution's witnesses that it is a case of false implication and that is the primary reason why the delay occurred in registration of the FIR.

15. Learned Additional Public Prosecutor representing the State has submitted that delay in registration of FIR of few hours cannot be said to be fatal to the prosecution's case, in the peculiar facts and circumstances of the case, as the police were taking steps to ensure that the deceased was given prompt medical attention to save his life. She has also argued that prosecution's witnesses other than those who came to be declared hostile have supported the prosecution's case and there is no infirmity in the finding of conviction recorded by the trial



court.

16. We have perused the impugned judgment and order of the trial court as well as the trial court's records. We have given our thoughtful consideration to the rival submissions advanced on behalf of the parties. On scrutiny of the evidence of the prosecution's witnesses who have been declared hostile, we are of the opinion that nothing can be culled out from them in support of the prosecution's case. In such circumstance, we are required to consider the testimonies of Sanjeev Kumar Sah (PW-2), Dablu Kumar Sah (PW-5), Rajnit Sah (PW-7), Dinesh Sah (PW-8) and Dashrath Singh (PW-16) to determine as to whether the prosecution can be said to have proved the charges of commission of offence punishable under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act against the appellant.

17. In the background of the fact that the FIR came to be registered based on the self statement of the Officer-in-Charge of the police station (PW-16), in peculiar circumstances as noted-above, we deem it fit to begin with his (PW-16) evidence for the purpose of present adjudication.

18. PW-16, in his deposition supported the narrative in his self statement by stating that the deceased had come to the



police station when he was discharging his official duties and disclosed the name of this appellant and the co-accused Ramji Yadav who had shot at him leading to firearm injuries sustained by him. He also supported the prosecution's case of the motive behind the act of this appellant and the other co-accused for commission of the offence, as was disclosed in the First Information Report. In his deposition, he mentioned that the deceased was sent to Mayaganj hospital in a jeep. He also deposed that the deceased remained at the police station for about 10 minutes before he was sent to hospital during which his wife had come to the police station. The wife of the deceased has not been examined at the trial. He did not remember as to which jeep was used for carrying the deceased to the hospital and he did not remember the name of the driver of the said vehicle. In his cross-examination, he also deposed that there were other hospitals on way from the police station to Jawaharlal Nehru Medical College and Hospital, Mayaganj, Bhagalpur but the deceased was not taken to any of such hospitals for the first aid.

19. After having noticed the deposition of PW-16, we need to take note of the deposition of PW-8, a full brother of the deceased. He deposed that at about 5:30 PM while returning



from the market, he heard the news that someone has been shot at and when he rushed, he found his younger brother (the deceased) lying in a pool of blood after having sustained firearm injury. Upon an inquiry made by him (PW-8), the deceased disclosed to him that this appellant and co-accused Ramji Yadav had shot at him whereafter, he was taken to Bhagalpur for treatment but before he could be taken to a doctor, he breathed his last. In his cross-examination, he deposed that after having heard the news, he had gone to the police station where he had seen his brother (the deceased) lying and a number of persons had gathered. The deceased was not unconscious and was rather giving his statement. Apparently, in order to obtain contradiction from him, a question appears to have been put by the defence in cross-examination, in response to which, he deposed that he had not told the police during the investigation that the deceased had become unconscious before reaching the police station.

20. PW-7 is the nephew of the deceased. He is said to have reached the police station with Dablu Kumar Sah (PW-5), Kanhaiya Pandit (PW-12) and Sanjeev Kumar Sah (PW-2). He deposed that his uncle (the deceased) was not alert while making his statement at the police station (चाचा जी बेहोशी के हालत में बयान दे रहे थे।).



21. The evidence of PW-5 is only to the effect that he had reached the police station at 5:00 PM on 16.11.1998 after having heard some noise and when he rushed towards the police station, he found his uncle (the deceased) giving his statement to the police officer in injured condition.

22. PW-2 also deposed on the same line. He supported the prosecution's case that the deceased was conscious when he was making his statement to the Officer-in-Charge of the police station. He also deposed that the FIR was prepared by the Officer-in-Charge of the police station on which 10-20 persons had put their signatures. It has come in his deposition that it took one and a half hours for them to reach the Jawaharlal Nehru Medical College and Hospital, Mayaganj, Bhagalpur.

23. After having carefully scrutinized the evidence of the prosecution's witnesses following things emerge:-

(i) There is no eye-witness to the occurrence.

(ii) The disclosures made by the deceased at 5:30 PM in the police station before the Officer-in-Charge (PW-16) said to have been reduced in writing by way of self-statement two and a half hours thereafter at Jawaharlal Nehru Medical College and Hospital, Mayaganj, Bhagalpur is the sheet anchor of the prosecution's case and the trial court has treated the



disclosures said to have been made to PW-16 as the dying declaration of the deceased.

(iii) There is no evidence explaining the failure on the part of the Officer-in-Charge of the police station to register the case soon after the disclosures were said to have been made by the deceased at the police station.

(iv) PW-7 has deposed that the deceased was making his statement when he was unconscious.

(v) The place of occurrence has not been proved as there is no evidence of any of the witnesses on this aspect.

(vi) No bloodstained earth or clothes appear to have been seized by the police.

24. Taking into account all attending circumstances, we are not at all convinced with the prosecution's case that the so-called statement/disclosure made by the deceased to the Officer-in-Charge of the police station can be treated to be a dying declaration for two simple reasons. Firstly, the circumstance in which delayed recording of statement after the death of the deceased has been made by the Officer-in-Charge of the police station in the form of his self-statement makes the entire prosecution's case suspicious. The fact as to whether the deceased had made any such disclosure before the Officer-in-



Charge of the police station is under serious cloud. Secondly, there is no cogent and credible evidence on record to satisfy the condition which is requisite for treating a statement to be a dying declaration, i.e., the deceased was in fit state of his mental and physical health, capable of making such disclosures as mentioned in the FIR.

25. The view taken by the trial court that the statement so recorded by the Officer-in-Charge of the police station could be treated as dying declaration is not at all tenable.

26. Further, it can be easily noticed from the depositions of all the prosecution's witnesses that none of them is an eye-witness. The occurrence is said to have taken place in a temple. There is no witness to support this fact that the occurrence had taken place in the temple, description of which, according to PW-16, was given by the deceased himself.

27. In our considered view, the informant is not at all a reliable witness. Based on the evidence of other prosecution's witnesses, in our view, it would be highly unsafe for this Court to uphold the finding of conviction recorded by the trial court.

28. Accordingly, the impugned judgment of conviction and the order of sentence dated 27.01.2021/ 28.01.2021, passed by the learned Sessions Judge, Bhagalpur in Sessions Trial No.



25 of 2018, arising out of Sultanganj (Akbaragar) P.S. Case No. 196/1998, GR No. 2355/1998, are set aside. The appellant stands acquitted of the charge of offence punishable under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act.

29. This appeal is allowed accordingly.

30. The appellant is in jail custody. Let him be released forthwith, if he is not required in any other case.

(Chakradhari Sharan Singh, J)

(Jitendra Kumar, J)

Rajesh/Suraj

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.10.2023
Transmission Date	04.10.2023

