

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.240 of 2021**

Arising Out of PS. Case No.-86 Year-2000 Thana- KASIMBAZAR District- Munger

CHHATISH YADAV Son of Devendra Yadav @ Devendra Prasad Yadav
Resident of Village - Herudiyara, P.S.- Kasim Bazar, Distt.- Munger.

... ... Appellant

Versus

THE STATE OF BIHAR

... ... Respondent

with

CRIMINAL APPEAL (DB) No. 214 of 2021

Arising Out of PS. Case No.-86 Year-2000 Thana- KASIMBAZAR District- Munger

CHHATRI YADAV @ CHHATRI PRASAD YADAV SON OF LATE
BALAK YADAV R/O VILLAGE- HERUDIYARA, P.S- KASIM BAZAR,
DIST- MUNGER

... ... Appellant

Versus

THE STATE OF BIHAR

... ... Respondent

with

CRIMINAL APPEAL (DB) No. 276 of 2021

Arising Out of PS. Case No.-86 Year-2000 Thana- KASIMBAZAR District- Munger

1. DILIP YADAV S/o Bhuna Yadav R/o village- Herudiyara, P.S.- Kasim Bazar, District- Munger
2. Rana Yadav S/o Late Ram Balak Yadav R/o village- Herudiyara, P.S.- Kasim Bazar, District- Munger

... ... Appellants

Versus

THE STATE OF BIHAR

... ... Respondent

with

CRIMINAL APPEAL (DB) No. 328 of 2021

Arising Out of PS. Case No.-86 Year-2000 Thana- KASIMBAZAR District- Munger

SUREN YADAV SON OF LATE ASHIK YADAV Resident of village -
Herudiyara, P.S.- Kasim Bazar, Distt.- Munger.

THE STATE OF BIHAR
Versus
... .. Appellant
... .. Respondent

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Appearance :
(In CRIMINAL APPEAL (DB) No. 240 of 2021 and 276 of 2021)
For the Appellant/s : Mr. Umesh Kumar, Advocate
For the Respondent/s : Ms. Shashi Bala Verma, APP
(In CRIMINAL APPEAL (DB) No. 214 of 2021 and 328 of 2021)
For the Appellant/s : Mr. Indu Bhushan
For the Respondent/s : Ms. Shashi Bala Verma, APP

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
and
HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 01-08-2023

All these appeals have been preferred under Section 374(2) of the CrPC against the same judgment of conviction dated 12.02.2021 and order of sentence dated 23.02.2021 passed by the learned Additional Sessions Judge-IIIrd, Munger, in Sessions Case No. 346 of 2013, arising out of the Kasim Bazar P.S. Case No. 86 of 2000 and, accordingly, they have been heard together and are being disposed of by the present common judgment and order.

2. By the impugned judgment and order, the appellants have been convicted and sentenced as under: -

Cr. Appeal (D.B.) No. 240 of 2021				
	Convicted under Sections	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
Chhatish Yadav	302 of the Indian Penal Code	R.I. for Life	2,000.00	-

	364 of the Indian Penal Code	R.I. for three years	500/-	S.I. for fifteen days
	201 of the Indian Penal Code	R.I. for two years	500/-	S.I. for fifteen days
	27 of the Arms Act	R.I. for three years	500/-	S.I. for fifteen days
Cr. Appeal (D.B.) No. 214 of 2021				
Chhatri Yadvav @ Chhatri Prasad Yadav	302 of the Indian Penal Code	R.I. for Life	2,000.00	-
	364 of the Indian Penal Code	R.I. for three years	500/-	S.I. for fifteen days
	201 of the Indian Penal Code	R.I. for two years	500/-	S.I. for fifteen days
	27 of the Arms Act	R.I. for three years	500/-	S.I. for fifteen days
Cr. Appeal (D.B.) No. 276 of 2021				
Dilip Yadav (Appellant No.1)	302 of the Indian Penal Code	R.I. for Life	2,000.00	-
	364 of the Indian Penal Code	R.I. for three years	500/-	S.I. for fifteen days
	201 of the Indian Penal Code	R.I. for two years	500/-	S.I. for fifteen days
	27 of the Arms Act	R.I. for three years	500/-	S.I. for fifteen days
Rana Yadav (Appellant No.2)	302 of the Indian Penal Code	R.I. for Life	2,000.00	-
	364 of the Indian Penal Code	R.I. for three years	500/-	S.I. for fifteen days
	201 of the Indian Penal Code	R.I. for two years	500/-	S.I. for fifteen days
	27 of the Arms Act	R.I. for three years	500/-	S.I. for fifteen days
Cr. Appeal (D.B.) No. 328 of 2021				
Suren Yadav	302 of the Indian Penal Code	R.I. for Life	2,000.00	-
	364 of the Indian Penal Code	R.I. for three years	500/-	S.I. for fifteen days
	201 of the Indian Penal Code	R.I. for two years	500/-	S.I. for fifteen days
	27 of the Arms Act	R.I. for three years	500/-	S.I. for fifteen days

3. Heard Mr Umesh Kumar, learned counsel appearing on behalf of the appellant in Cr. Appeals (DB) No. 240 of 2021 and 276 of 2021 and Mr. Indu Bhushan, learned counsel appearing

on behalf of the appellant in Cr. Appeals (DB) No. 214 of 2021 and 328 of 2021. Ms. Shashi Bala Verma, learned Additional Public Prosecutor has appeared for the State in all the appeals.

4. A written report of the informant Sudha Devi (PW 1) addressed to the Officer-in-Charge, Kasim Bazar Police Station in the district of Munger, is the basis for registration of Kasim Bazar P.S. Case No. 86 of 2000 dated 29.02.2000, registered for the offence punishable under Section 364 of the IPC, to which Sections 302, 201, 120B of the IPC were added under the court's order dated 02.03.2000. The informant (PW 1) happens to be the wife of the deceased. She alleged in her written report that, on 28.02.2000, at about 5 P.M., accused Subodh Yadav, Chhatri Yadav (appellant in Criminal Appeal 214 of 2021), Suren Yadav (appellant in Criminal Appeal DB No. 328 of 2021), Chhatish Yadav (appellant in Criminal Appeal No. 240 of 2021), Rana Yadav (appellant No. 2 in Criminal Appeal No. 276 of 2021), Dilip Yadav (appellant No. 1 in Criminal Appeal No. 276 of 2021), Basudev Yadav, Pramod Yadav and Yogendra Yadav enquired about whereabouts of the informant's husband Tarani Mahto (the deceased), whereupon, she told him that he was sitting behind the house near a school. Thereafter, all the person went there, called the deceased and took him towards the banks of river Ganga.

Subsequently, the informant's son Video Mahto (not examined) went to search the deceased. The informant, Devendra Kumar Mahto, Suresh Yadav, Sunil Bharti, Katiwan Yadav, Chandra Shekhar Yadav and Opal Yadav had seen the deceased going towards *diara*. She added in her written report that the accused persons had taken away her husband with an intention to kill him.

5. It appears from the evidence of the Investigating Officer that subsequently, the dead body of the deceased was found lying in a field, about one and half kilometers away from the house of the deceased, across the river. The deceased was found to have been shot dead and also assaulted with sharp cutting weapon. The agricultural field, from where the dead body of the deceased was recovered, belonged to accused Basudev Yadav. An inquest report was prepared and the dead body of the deceased was sent for postmortem examination.

6. Upon completion of the investigation, the police submitted charge-sheet against these appellants and co-accused Yogendra Yadav. The police, in its final form/report submitted against under Section 173/174 of the CrPC, recorded that other co-accused persons, namely, Subodh Yadav, Pramod Yadav and Basudev Yadav were innocent. Cognizance was thereafter taken of the offences punishable under Sections 364, 302, 201, 120B of the

IPC and Section 27 of the Arms Act. The case was committed to the court of Sessions. The charges were framed against all the six accused persons, namely, these appellants and co-accused Yogendra Yadav on 26.08.2000 for commission of the offences punishable under Sections 364/149, 302/149, 201/149, 120B of the IPC and Section 27 of the Arms Act.

7. Be it noted that the co-accused Yogendra Yadav died during pendency of the trial. It is also noteworthy that the statements of informant Sudha Devi (PW 1), her son Video Mahto (not examined), Chandra Shekhar Yadav (not examined) and Opal Yadav (PW 3) were recorded under Section 164 of the CrPC during the course of investigation, wherein they had alleged that Yogendra Yadav and other persons had come enquiring about the deceased and they had taken away the deceased across the river Ganga, whereafter he was killed.

8. At the trial, the prosecution examined five witnesses including the doctor, who had conducted the postmortem report (PW 4) and the Investigating Officer (PW 5). The prosecution's witnesses, namely, PW 1, PW 2 and PW 3 did not adduce any evidence at the trial attributing any role to these appellants in kidnapping or killing of the deceased. The trial court, however, has recorded conviction of these appellants after evaluating evidence

adduced at the trial read with statements of the witnesses recorded under Section 164 of the CrPC for commission of the offences punishable under Sections 364, 302, 201 of the Indian Penal Code and Section 27 of the Arms Act.

9. Mr. Umesh Kumar and Mr. Indu Bhushan, learned counsel appearing on behalf of the appellants have argued that the finding of conviction is perverse inasmuch as none of the witnesses have supported the prosecution's case against these appellants. They have contended that none of the witnesses have alleged any act against these appellants constituting offences punishable under Sections 364, 302, 301 of the IPC and Section 27 of the Arms Act.

10. Learned Additional Public Prosecutor has, however, defended the finding recorded by the trial court and has submitted that the trial court has rightly taken into account the fact that the witnesses were being examined at the trial nearly 19 years after the date of occurrence and, therefore, there was chance of them having lost the memories of all the evidence. She submits that, therefore, the trial court has rightly, taking aid of the statements of the witnesses recorded under Section 164 of the CrPC, held the appellants guilty of the charges.

11. We have carefully perused the evidence of the prosecution's witnesses. It can be safely said that PW 2 and PW 3 have not supported the prosecution's case at all inasmuch as they merely deposed at the trial that they had learnt about the killing of the deceased. They have not whispered anything against these appellants. PW 1, the wife of the deceased, in her examination-in-chief, deposed that she did not remember as to who had called her husband and taken to the place where he was killed. We do not find that the evidence of PW 1 in any manner supporting the prosecution's case. Taking into account, the evidence of PW 1, PW 2 and PW 3, we are of the view that the conviction of these appellants cannot be upheld. There is absolutely no evidence to justify conviction of these appellants.

12. Accordingly, the impugned judgment of conviction dated 12.02.2021 and order of sentence dated 23.02.2021 passed by the learned Additional Sessions Judge-IIIrd, Munger, in Sessions Case No. 346 of 2013, arising out of the Kasim Bazar P.S. Case No. 86 of 2000, are hereby set-aside.

13. The appellants stand acquitted of the charge of commission of the offence punishable under Section 364, 302, 201, 120-B of the IPC and Section 27 of the Arms Act.

14. These appeals are accordingly allowed.

15. The appellants are on bail. They stand discharged of the liabilities of their bail bonds and the sureties, if any.

(Chakradhari Sharan Singh, J)

(Nawneet Kumar Pandey, J)

Pawan/-

AFR/NAFR	NAFR
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