

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.455 of 2016

Arising Out of PS. Case No.-31 Year-1999 Thana- SALAKHUA District- Saharsa

1. Deoki Yadav and Anr S/o Late Dholan Yadav, Resident of village- Alma, P.S. Bakhtiarpur, District- Saharsa
2. Arjun Yadav, S/o Goli Yadav, Resident of village- Chourahi, P.S.- Salkhua, District- Saharsa

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 506 of 2016

Arising Out of PS. Case No.-31 Year-1999 Thana- SALAKHUA District- Saharsa

Sikko Yadav S/o Bhajju Yadav, R/o Village Alama, P.S. Bakhtiyarpur, District- Saharsa.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 455 of 2016)

For the Appellant/s : Mr. Shekar Kumar Singh, Adv.
Mr. Aditya Mishra, Adv.
Mr. Buddhlal Yadav, Adv.
Mr. Raja Surendra Mohan, Adv.

For the Respondent/s : Mr. Sujit Kumar Singh, APP

(In CRIMINAL APPEAL (DB) No. 506 of 2016)

For the Appellant/s : Mr. Baxi S.R.P. Sinha, Sr. Adv.
Mr. Rajnish Kumar Singh, Adv.
Mr. Harendra Kumar Tiwari, Adv.

For the Respondent/s : Mr.S.B.Verma, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE NAWNEET KUMAR

PANDEY

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY)

Date : 08-09-2023



The appellants have preferred these appeals under Section 374(2) of the Code of Criminal Procedure against the judgment of conviction dated 05.05.2016 and order of sentence dated 06.05.2016 passed by the learned 3rd Additional Sessions Judge, Saharsa in Sessions Trial No. 24/2000, arising out of Salkhua P.S. Case No. 31 of 1999, whereby and whereunder the appellants have been convicted and sentenced as under:-

Cr. Appeal (D.B.) No. 455 of 2016				
	Convicted under sections	Sentence		
Deoki Yadav		Imprisonment	Fine (Rs.)	in default of fine
	302 of the Indian Penal Code	Life imprisonment	10,000/-	imprisonment for six months
	27 of the Arms Act	Imprisonment for three years	1,000/-	Imprisonment for three months
Arjun Yadav	302 of the Indian Penal Code	Life imprisonment	10,000/-	imprisonment for six months
	27 of the Arms Act	Imprisonment for three years	1,000/-	Imprisonment for three months
Cr. Appeal (D.B.) No. 506 of 2016				
Sikko Yadav	302 of the Indian Penal Code	Life imprisonment	10,000/-	imprisonment for six months

All the sentences have been ordered to run concurrently.

2. The informant Brahmdeo Yadav, PW 5, gave his *fard-beyan* to the Sub-Inspector, Salakhua police station camp Goradih Punarwas at 8:30 A.M. on 21.04.1999, stating therein that in the morning of the same day, at about 5:30 A.M., he was present in his *Basa Punarwas* (a transit and temporary dwelling



abode for rearing cattle and performing agricultural works). He was gargling at the hand-pipe and his brother Subhash Yadav (PW 2), was engaged in fumigation to repel mosquitoes. Meanwhile, these three appellants, Deoki Yadav, Arjun Yadav and Sikko Yadav along with other co-accused persons namely Dashrath Yadav, Sambhu Yadav, Sitabi Yadav, Pahsupati Yadav, Bhagirath Yadav, Indradeo Yadav, Bishundeo Yadav and Biran Yadav came there and started indiscriminate firing. These three appellants caught hold of Krishnadeo Yadav (deceased), brother of the informant and took him away assaulting, towards the maize field. Having heard the outcry and sound of firing, the villagers who were also dwelling in their *Basa* situated nearby, came there and started following the miscreants. The miscreants brought Krishnadeo Yadav at a distance of 150 yards and they committed his murder by fire-shot in the maize field of Debu Yadav and Satu Yadav. The deceased suffered firearm injury at his chest and arm and died at the spot. The reason behind the occurrence was that on 29.03.1999, younger brother (P.W. 2) of the informant, had gone to Bakhtiyarpur Bazar, where his bicycle touched a child in Alka village, due to which there had been a scuffle between PW-2 and accused Bishundeo Yadav. The villagers intervened that time and the matter was pacified.



From that day, the accused persons were threatening continuously to kill the family members of the informant. This fact was known to all the villagers residing in the vicinity. Further, it has been mentioned in the *fard-beyan* that for the above-noted reason, the accused persons, after forming an unlawful assembly, forcibly took away Krishnadeo Yadav and killed him. On the outcry of the villagers, the miscreants went towards Kosi Bandh. The villagers Suresh Yadav, Kailash Yadav, Fulendra Kumar Yadav (PW 4) and other persons had seen the occurrence.

3. On the basis of *fard-beyan* given by the informant, Salakhua P.S. Case No. 31 of 1999, was registered for commission of the offences punishable under Sections 147, 148, 149, 341, 342, 364 and 302 of the Indian Penal Code and 27 of the Arms Act on 21.04.1999, at 1 P.M. The distance from the place of occurrence to the police station is 10 KM. After completion of the investigation, the police submitted charge-sheet against the accused persons and after taking cognizance, the case was committed to the Court of Sessions.

4. The charges were framed on 03.07.2021 against the appellants Deoki Yadav, Arjun Yadav and co-accused Dashrath Yadav (acquitted by the learned trial court) under



Section 302 of the IPC and Section 27 of the Arms Act and on the same day, the charges were framed against co-accused Shambhu Yadav, Sitabi Yadav, Pashupati Yadav, Bhagirath Yadav (all acquitted by the trial court), Sikko Yadav (appellant) and Bishundeo Yadav and Biran Yadav (both acquitted by the trial court), under Section 302 read with 149 of the IPC, to which the accused persons denied and claimed to be tried.

5. During the trial, seven witnesses were examined by the prosecution to substantiate the charges levelled against the accused persons. PW-1, Ram Bilash Singh, is a formal witness. He is an advocate's clerk and he identified the initial of the then SHO, Shashinath Singh on the formal FIR. PW-2, Subhash Yadav, is brother of the deceased and he is an eye-witness. PW-3, Rajdeo Yadav, is also brother of the deceased and at the time of occurrence he was not at the Basa rather he was in his house. He is not an eye-witness, but a hearsay witness. PW-4, Fulendra Kumar Yadav, is cousin of the deceased. He is also an eye-witness. He was present at the time of occurrence at his Basa situated beside the Basa of the deceased. Hearing the sound of firings, he went there and saw the occurrence. PW-5 is the informant and brother of the deceased. PW-6 is the doctor, who conducted the post-mortem



on the dead body of the deceased and PW-7 is formal witness (a constable) who produced the material exhibits before the court.

6. The documentary evidences adduced by the prosecutions are referred herein below:-

Exhibit-1 - Signature of the then SHO on the formal FIR.

Exhibit-2 - Signature of Brahmdeo Yadav, PW 5, on the *fard-beyan*.

Exhibit- 1/1 - Post-mortem report.

Exhibit- 3 - An application filed for marking the exhibits.

Exhibit (I) - Blood soaked soil

Exhibit (II) to (II)/5 Empty cartridges

Exhibit (iii) - A live cartridge

Exhibit (iv) and (iv)/1- blank cartridges.

7. The carbon copy of the inquest report is also available with the record, but it has not been marked as exhibit.

8. PW 5, Brahmdeo Yadav, is the informant and brother of the deceased. He is an eye-witness. He deposed that on 21.04.1999, he was gargling at hand-pipe and his brother PW-2 was fumigating to protect the cattle from mosquitoes. Meanwhile, Deoki Yadav (the appellant), Bishundeo Yadav, Indradeo Yadav, Shambhu Yadav, Sikko Yadav (the appellant),



Sitabi Yadav, Biran Yadav, Bhagirath Yadav, Dashrath Yadav, Arjun Yadav (the appellant), Pashupati Yadav came to their Basa and started firing. Due to fear, this witness and his brother PW-2 hid themselves in a nearby maize field. His younger brother Bhuto Yadav @ Krishnadeo Yadav was present at *Machan* (a platform made of bamboos erected for agricultural purpose). They dragged him away at the distance of 150 yards in the maize field of Debu Yadav and Satto Yadav. The informant and his brother PW 2 started outcrying whereafter, the appellant Deoki Yadav fired in the chest of Krishnadeo Yadav (deceased). Appellant Arjun Yadav fired in the neck of the deceased and appellant Sikko Yadav also fired at his neck. He deposed further that co-accused Shambhu Yadav also fired at the deceased which hit on his left hand. Thereafter, the accused persons fled away, leaving the deceased on the place of occurrence where he died. This witness disclosed the reason for the occurrence by deposing that on 29.03.1999, PW-2 had gone to Bakhtiyarpur Bazar. There was some altercation between PW-2 and accused Kishundeo Yadav because cycle of PW-2 touched a child. This witness identified his signature on *fard-beyan*, which was marked as exhibit-2. During his cross-examination, this witness stated that having heard the sound of firing, he hid himself in a



maize field. His brother Subhash Yadav had also hid himself in the maize field. The place, where they hid, was at a distance of 175 yards eastern side from the place where the accused persons fired at his brother.

9. PW-2 is Subhash Yadav. He is also one of the brothers of the deceased. As per his deposition, at the time of occurrence, he was engaged in fumigating to save the cattle from mosquitoes. Meanwhile, Deoki Yadav (the appellant), Arjun Yadav (the appellant), Dashrath Yadav, Sikko Yadav (the appellant), Sitabi Yadav, Bhagirath Yadav, Biran Yadav, Shambhunath Yadav, Bishundeo Yadav, Indradeo Yadav, Pashupati Yadav came there and started firing. Due to fear, this witness hid himself in the maize field. His brother (deceased) was sleeping on *machan* at the Basa. The accused persons caught hold of his brother and dragged him away to the maize field of Sato Yadav and Debu Yadav. Deoki Yadav (appellant) fired in the chest of deceased on the extortion made by co-accused Dashrath Yadav. Appellant Arjun Yadav fired in the neck of the deceased. Similarly, the appellant Sikko Yadav also fired at the neck of the deceased. When the deceased fell on the ground, the accused persons attempted to drag him away, but they fled away leaving him, as the villagers assembled there.



The reason behind the occurrence narrated by this witness is exactly the same as narrated by P.W. 5.

10. Rajdeo Yadav (PW 3), is also a brother of the deceased. At the time of occurrence, he was not at the Basa, rather he was in his house. On hearing the sound of firearms, he went there and saw the dead-body of his brother. His brothers PWs 5 and 2 and villagers Kailash Yadav, Suresh Yadav, Fulendra Kumar Yadav (PW 4) and Bishundeo Yadav were present there. This witness noticed that blood was oozing from the neck, chest and arms of the deceased. PW-5 apprised this witness that when he had gone to attend nature's call and PW 2- was engaged in fumigation, the accused persons came there and started indiscriminate firing. They dragged the deceased away to the maize field. The appellant Deoki Yadav had fired at the chest of the deceased and Arjun Yadav had fired at his neck and the appellant Sikko Yadav had also fired at his neck.

11. PW-4, Fulendra Kumar Yadav, is cousin of the deceased. His Basa was situated beside the Basa of the deceased. He deposed that on the day of occurrence at 5.30 in the morning, he was feeding his cattle. On hearing the sound of firing, he went to the Basa of the deceased and saw that Deoki Yadav (appellant), Bishundeo Yadav, Sikko Yadav (appellant)



and Shambhu Yadav took the deceased to the maize field. The appellant Deoki Yadav fired on the deceased, similarly, Sikko Yadav (appellant) and Shambhu Yadav had also fired at the deceased. This witness deposed further that Pashupati Yadav, Arjun Yadav, Indradeo Yadav, Sitabi Yadav, Bhagirath Yadav and 2-3 miscreants were also there. On hue and cry, the miscreants fled away leaving the dead-body. This witness identified the appellants and other co-accused persons who were present in the dock and claimed to identify the other accused persons who were represented by a lawyer. In his cross-examination, he has stated that at the Basa of the deceased, none had suffered firearm injury. Only firing was made at his Basa. The deceased did not become injured at Basa.

12. PW-6 is the doctor who conducted post-mortem on the dead-body of the deceased. He found the following *ante-mortem* injuries:-

“(i) lacerated wound of 1^{1/2}”x1^{1/2}” on right lower part of neck with laceration of right carotid artery and muscles of right side of neck with tattering and charring of right upper extremity.

(ii) Lacerated wound of 2”x2^{1/2}” on right anterior part of neck both wound communicating with each other.

(iii) One lacerated wound of 1”x1/3” cavity deep on right side of chest.

(iv) One lacerated wound of 2”x1” on



posterior part of the right upper back. Injury no. iii and iv communicating with each other. All injuries caused by firearms.”

13. PW-7 is a formal witness (a constable). He produced the material exhibits before the Court.

14. The Investigating Officer was not examined by the prosecution, in this case.

15. The appellants were questioned by the learned trial court, as per requirement of Section 313 of the CrPC so as to enable them to explain the incriminating circumstances emerged against them in trial. The appellants answered those questions in negative and pleaded their complete innocence.

16. Mr. Baxi S.R.P. Sinha, the learned Senior Counsel appearing on behalf of the appellants, submitted that the Investigating Officer has not been examined in the case, due to which, a serious prejudice has been caused to the appellants, as the place of occurrence was not established. He submitted further that the dead-body, as per inquest report, was present at the Basa of the deceased, whereas place of occurrence is 150 yards away from his Basa. As to how the dead-body brought to the Basa from the place of occurrence, has not been explained by the prosecution. Further submission of the learned counsel is that on the basis of same evidence, seven FIR named accused



persons, who were accompanying the assailants (appellants), were acquitted, but these three appellants were convicted which shows the non-application of mind by the learned trial court. He submitted further that the informant, PW-5, did not name the assailants in his *fard-beyan*, but in his deposition, he vividly described the occurrence, specifying the names of these three appellants with the specific overt act attributed against them, which shows nothing but an afterthought idea which emerged in the mind of informant after the post-mortem. He submitted further that the informant (PW 5) deposed that four persons namely Deoki Yadav, Arjun Yadav, Sikko Yadav and Shambhu Yadav had fired at the deceased, but only two firearm injuries are found on the dead-body and other two are the wound of exit. Injury no. (i) and (ii), and similarly (iii) and (iv) are interconnecting injuries. Learned counsel has also submitted that all the eye-witnesses are interested witnesses and not a single independent witness has been examined on behalf of the prosecution.

17. On the other hand, the learned Additional Public Prosecutor, Mr. Sujit Kumar Singh submitted that the eye-witness had supported the factum of occurrence, which is corroborated by the medical evidence. The accused persons who



were acquitted by the learned trial court were not the assailants. The overt act attributed against the other accused persons was not corroborated by medical evidence. As such, the learned trial court did not commit illegality in convicting and sentencing the appellants since their guilt was proved beyond all reasonable doubts. Learned counsel submitted further that when the ocular evidence is fully corroborated by the medical evidence, the minor contradictions and omissions crept into the depositions of the witnesses do not render the prosecution's case incredible or untrustworthy. If the evidence adduced by the prosecution is scrutinized in totality, the guilt of the appellants is proved beyond all the reasonable doubts. He submitted further that it has been settled law that non-examination of independent witness does not go to the root of the matter, if the evidences of the witnesses are found above board and unimpeachable.

18. We have perused the lower court's record and also carefully heard the rival submissions of the learned counsels carefully.

19. In this case, there are three eye-witnesses. PW 5, PW 2 who are the brothers of the deceased and PW-4 who is his cousin, whose Basa was situated nearby the Basa of the deceased. The statements made by these three eye-witnesses are



almost similar to the extent of disclosure of the names of the appellants, and their specific overt act of firing at the deceased. As per their depositions, Deoki Yadav fired at the chest, whereas Sikko Yadav and Arjun Yadav fired at the neck of the deceased. The deposition of PW-4 is slightly different as he did not name the appellant Arjun Yadav as assailant of the deceased, whereas the name of Arjun Yadav figured as one of the assailants in the deposition of PW-2 and PW-5. The post-mortem report shows only two injuries on the dead-body. Injury No. (i) is at the neck of the deceased, whereas injury no. (iii) is on his chest, injury no. (ii) and (iv) are exit wounds. All the three eye-witnesses had deposed unanimously that Deoki Yadav fired in the chest of the deceased whereas Sikko Yadav fired in his neck. The eye-witnesses PWs 2 and 5 also named Arjun Yadav as direct assailant, but Fulendra Yadav (PW-4) did not name the appellant Arjun Yadav as assailant of the deceased. As such, the prosecution's version against the appellant Arjun Yadav becomes doubtful. In our opinion, appellant Arjun Yadav deserves the benefit of doubt.

20. After scrutinizing the evidences of the witnesses carefully, we find that all the eye-witnesses deposed that place of occurrence is maize field, situated 150 yards away



from the Basa where the deceased was sleeping on his *Machan*. There is no contradiction at all in respect of place of occurrence in the depositions of the witnesses. So far as the submission of learned counsel for the appellants that the dead-body of the deceased, as per inquest report, was found at the Basa and it has not been explained as to how it reached at the Basa, is concerned, this is a natural phenomenon that if a family member of someone is shot dead at some distance of dwelling abode, his kith and kin could not leave that dead-body unattended on a lonely place and it appears to be a natural conduct of the witnesses including, the villagers in carrying the dead-body from the field to the Basa. Moreover, the defence did not ask questions in this respect during the cross-examination of the witnesses, in order to explain the circumstances in respect of shifting of the dead-body from the place of occurrence to the Basa of the deceased. We are of the view that merely because the dead-body was found at Basa, does not shake the depositions of the witnesses in respect of place of occurrence, as such, non-examination of the Investigating Officer is of no much relevance.

21. A bench of this Court in the case of ***Bijay Singh and Ors. Versus State of Bihar 2005 (1) BLJR 816*** has



held, in paragraph no. 10 as follows:-

“It is a settled principle of law that non-examination of Investigating Officer or the doctor is not fatal for prosecution in each and every case. It depends upon the facts and circumstances of the case. In order to take advantage of non-examination, the defence has to show that it has caused serious prejudice to them.”

22. A similar view has been taken by Hon'ble Supreme Court in case of Ram Gulam Chaudhary and others versus State of Bihar reported in 2001 AIR Supreme Court 2842, the fact of that case is exactly similar to the present one. In that case, the dead-body of the deceased was shifted from the place of occurrence to another place and I.O. was not examined. The Hon'ble Supreme Court held in paragraph No. 30 as follows:-

“In our view, in this case also non-examination of the investigating officer has caused no prejudice at all. All that Mr Mishra could submit was that the examination of the investigating officer would have shown that the occurrence had taken place not in the courtyard but outside on the road. The investigating officer was not an eyewitness. The body had already been removed by the appellants. The investigating officer, therefore, could not have given any evidence as to the actual place of



occurrence. There were witnesses who have given credible and believable evidence as to the place of occurrence. Their evidence cannot be discarded a merely because the investigating officer was not examined. The non-examination of the investigating officer has not led to any prejudice to the appellants. We, therefore, see no substance in this submission.”

23. So far as the submission of the learned counsel for the defence that not a single independent witness came forward in support of the prosecution's case is concerned, it is a settled proposition that non-examination of an independent witness does not go to the root of the matter, if the witnesses are reliable and their testimonies are above board. In the present case, the witnesses have corroborated the specific overt act of the appellants Deoki Yadav and Sikko Yadav by deposing that Deoki Yadav fired at the chest of the deceased whereas the appellant Sikko Yadav fired at his neck and the corresponding injuries on chest and neck of the deceased were found in post-mortem report.

24. The allegation against other co-accused persons, who were acquitted by the learned trial court, was that they dragged the deceased to the maize field after assaulting him, but not a single injury or mark of dragging like bruise, etc.



was found on the dead body of the deceased, as such, the medical evidence did not corroborate the allegation levelled against those accused persons, who were acquitted by the learned trial court. In our view, the learned trial court rightly acquitted other accused persons.

25. On the basis of the observations mentioned above, appellant Arjun Yadav deserves the benefit of doubt, as one the material eye-witnesses did not corroborate the allegation of firing against him. Accordingly, he is acquitted from all the charges levelled against him and the judgment of conviction dated 05.05.2016 and order of sentence dated 06.05.2016 passed by the learned 3rd Additional Sessions Judge, Saharsa in Sessions Trial No. 24/2000, arising out of Salkhua P.S. Case No. 31 of 1999, so far as it relates to him, is set aside.

26. So far as appellants Deoki Yadav and Sikko Yadav are concerned, it emerged in the evidences of the eye-witnesses that Deoki Yadav fired in the chest of the deceased whereas appellant Sikko Yadav fired at his neck corroborating injuries are found in the chest and neck of the deceased. In our view, the learned trial court did not commit any illegality in convicting these two appellants and sentencing them as noted above. The judgment of conviction and order of sentence



awarded by the learned trial court in respect of these two appellants, in our view, need no interference.

27. Accordingly, the appeals of appellants Deoki Yadav and Sikko Yadav are dismissed.

(Nawneet Kumar Pandey, J)

I agree
(Chakradhari Sharan Singh, J)

(Chakradhari Sharan Singh, J)

SONALI/Kundan

AFR/NAFR	NAFR
CAV DATE	18.08.2023
Uploading Date	31.10.2023
Transmission Date	31.10.2023

