

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (DB) No.774 of 2015**

Arising Out of PS. Case No.-28 Year-2011 Thana- LADANIA District- Madhubani

Ram Narayan Yadav Son of Late Chedi Yadav, Resident of village -  
Chiknotoba, P.S. - Ladaniya, District - Madhubani.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

**Appearance :**

For the Appellant : Mr. Gagan Deo Yadav, Advocate  
For the Respondent : Mr. Abhimanyu Sharma, APP

**CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH**

**and**

**HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH**

**C.A.V. JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)**

**Date : 15-09-2023**

The present criminal appeal has been preferred against the judgment of conviction dated 10.07.2015 and the order of sentence dated 21.07.2015 passed by Shri Subhash Prasad Kumar, Additional Sessions Judge IV, Madhubani in S.T. No.74 of 2012 arising out of Ladaniya P.S. case No.28 of 2011, G.R. No.956 of 2011, whereby and whereunder the appellant has been convicted under Sections 302/149 of the Indian Penal Code (referred to 'I.P.C.'), and has been sentenced to undergo rigorous imprisonment for life with fine of Rs.5,000/- under Sections 302/149 of the I.P.C.



2. The prosecution case, as per the fardbeyan of informant Ram Bilakashan Yadav (PW5) recorded at 15.45 on 24.04.2011 in injured condition before the S.H.O. Ladaniya, is that his brother Ram Bharosh Yadav and his villager Ram Hirdaya Yadav were contesting election for ward member, due to which they had rivalry. On 24.04.2011, the informant alongwith his brother Jageshwar Yadav were going to caste their vote at about 3:00 p.m. as they reached near the house of Jinish Lal, accused Ram Narain Yadav, Krishna Kumar Yadav, Bachchan Yadav, Ram Hirdaya Yadav, Ram Sagun Yadav, Ram Sevak Yadav, Shiv Shankar Yadv, Ram Chandra Yadv, Hari Narain Yadav, all resident of Chiknatava under Ladaniya P.S. forming unlawful assembly armed with lathi, farsa encircled the informant and his brother abused them and also started assaulting. When the informant prevented, appellant Ram Narain Yadav, who was holding farsa in his hand, gave farsa blow on the head of Jageshwar Yadav and accused Krishna Kumar Yadav assaulted to the informant by farsa with intention to kill, on account of which both sustained severe injuries. Injured Jageshwar Yadav became unconscious and fell down. Other accused persons also assaulted by lathi, danda, fists and slaps. In the meantime, police personnel reached there, then the accused persons fled away and both injured were brought to



Ladaniya P.H.C. on police jeep, where the doctor declared his brother Jageshwar Yadav dead while the treatment of the informant was going on.

3. On the basis of aforesaid fardbeyan of the informant, Ladaniya P.S. case No.28 of 2011 dated 24.04.2011 was registered under Sections 147, 148, 149, 323, 324, 307, 302, 504 of the I.P.C. The police after investigation submitted charge sheet and thereafter cognizance was taken by the Jurisdictional Magistrate and then the case was committed to the court of Sessions. Charges were framed against the appellant, to which the appellant pleaded not guilty and claimed to be tried.

4. During trial, the prosecution examined altogether eleven witnesses, namely, Rakesh Kumar (PW1), Shashi Devi (PW2), Gulab Devi (PW3), Kalpana Devi (PW4), Ram Bilakshan-informant (PW5), Ram Hirday Yadav (PW6), Dr. Sudhanshu Shekhar Jha (PW7), Muskil Yadav (PW8), Dr. Arun Kumar Singh (PW9), Ajay Kumar Yadav (PW10) and Jitendra Kumar (PW11). In support of its case, the prosecution has also produced exhibits as Ext.1 (signature of informant Ram Bilakshan Yadav on fardbeyan), Ext.2 (protest petition dated 13.09.2011), Ext.3 (postmortem report), Ext.4 (injury report of Ram Bilakshan Yadav), Ext.5 (charge sheet No.66/11), Ext.6 (fardbeyan), Ext.6/1 (Indorsement



on fardbeyan) and Ext.7 (signature of I.O. Jitendra Kumar on formal F.I.R.). The defence also examined two witnesses, namely, Ram Kishun Yadav (DW1) and Subhash Chandra Mishra (DW2). In support of its case, the defence has produced exhibits, viz. Ext.A (c.c. of F.I.R. of Ladania P.S. case No.29/11), Ext.B (c.c. of chargesheet of Ladania P.S. case No.29/11) and Ext.C (injury report of Ram Kumar Yadav in S.T. No.583/12). After conclusion of the trial, the learned Trial Court convicted and sentenced the appellant in the manner as indicated above.

5. Learned counsel for the appellant has submitted that the judgement of conviction and order of sentence passed by the learned trial Court is bad in law and deserves to be set aside. The learned trial Court has failed to properly appreciate the entire material available on the record. It has further been argued that the prosecution has also utterly failed to prove the case beyond all reasonable doubts. In order to buttress this contention, the attention of this Court has been drawn towards the variation and contradiction in the testimony of the prosecution witnesses. It has also been pointed out that there is severe inconsistency between the ocular testimony of the witnesses and the findings of the medical report of the injured witness (PW 5). The learned counsel for the appellant has further argued that the prosecution has also



failed to prove the place of occurrence to the judicial satisfaction of the Court. It has also been pointed out that there are only related witnesses excluding the Medical Officer and the Investigating Officer. Such lapses of the prosecution have caused immense prejudice to the appellant. Moreover, it has been pointed out that the prosecution has not come with clean hands as they have suppressed certain material facts regarding the manner of occurrence which has been later brought up to the notice by the appellant in the form of *Exhibit A* to *C*. Therefore, it is contended that the findings of the learned trial Court are bad in law, wrong on facts, bereft of legal reasoning, devoid of merit and the judgement of conviction is fit to be set aside.

6. The learned A.P.P. appearing for the State has submitted that the prosecution has been able to prove its case beyond all reasonable doubts, and therefore, learned trial court has rightly convicted the appellant by relying upon the evidence brought on record by the prosecution during trial. It has been contended that minor contradictions and variations in the testimony of the witnesses cannot be a ground to discard their evidence as a whole. Therefore, the judgement and order assailed in this appeal requires no interference and appeal is liable to be dismissed.



7. After perusing the record and hearing the arguments advanced by the parties, following issues arise for consideration in this appeal: -

(I) Whether the prosecution has proved the presence of eyewitnesses at the alleged place of occurrence?

(II) Whether the doubt regarding the place of occurrence and non-examination of the material witness has caused prejudice to the appellant?

(III) Whether the suppression of material facts during the trial is fatal for the prosecution case?

8. With reference to issue No. I, upon a thorough examination of the case record, it is found that a total of 11 prosecution witnesses were examined, where, from PW 1 to PW 5, alleged to be eyewitnesses to the occurrence. However, the presence of all these eyewitnesses, particularly PW 1 to PW 3, becomes doubtful in light of the testimony provided by the Investigating Officer (PW 11) in paragraphs 28, 29 and 30 of his deposition. It is evident from the mentioned paragraphs that certain material information regarding the presence of some eyewitnesses were disclosed by PW 1 to PW 3 for the first time during the trial and was not mentioned to the Investigating Officer. Furthermore, there is a major inconsistency and contradiction in the testimony of the eyewitnesses, PW 1 and PW 5 (the informant) claimed that the



deceased fell backward after being hit by the *farsa*, contradicting the testimonies of PW 2, PW 3, and PW 4, who said that the deceased fell forward. Additionally, there are inconsistencies in the description of the deceased's clothing, PW 1 stated that the deceased was wearing a red-coloured T-shirt and lungi, while PW 2 mentioned an orange-coloured half ganji and lungi, and PW 3 stated an orange-coloured T-shirt and green lungi. It has furthermore been pointed out that PW 1, PW 2, and PW 4 in their respective deposition admitted that they were not voters and were merely accompanying other witnesses. It is furthermore found upon perusal of the deposition of the PW 11 that in paragraph 13 of his deposition, where he mentioned going to see votes at 2 pm, being there for an hour and returned to his house, raises doubts about his claim of being an eyewitness.

Moreover, the conduct of the eyewitnesses, including their failure to assist the deceased or call the police when numerous family members were allegedly present at the polling booth, adds to the skepticism surrounding their presence. In this regard, it is pertinent to take note of the decision of the Hon'ble Supreme Court, passed in the case of *State of Rajasthan v. Mohan Lal*, reported in *(2009) 12 SCC 308*, wherein it has been held that considering the facts and conduct of not saving the deceased,



along with the contradictions in the testimonies of the eyewitnesses, the presence of eyewitnesses cannot be accepted.

Additionally, the absence of the eyewitnesses' names in the *fardbeyan* provided by the informant (PW 5) further raises questions about their presence at the place of occurrence. Moreover, the credibility of the informant's testimony (PW 5) is also called into doubt when compared to the medical report (*Exhibit 4*), which describes the nature of the wounds as simple, whereas PW 1 to PW 4 assert that the informant (PW 5) was struck with a *farsa*. PW 2, in paragraph 34, even mentioned the *farsa* getting stuck in the informant's (PW 5) head. However, according to the doctor (PW 9), the injury is a lacerated wound and can be described as superficial in nature. Thus, there is evident inconsistency, substantial disparities and contradictions in the testimony of the above witnesses, who contend to be eyewitnesses to the alleged incident. At this point, it is imperative to consider the decision of the Hon'ble Supreme Court passed in the case of ***Sunil Kumar Shambhudayal Gupta and others versus State of Maharashtra***, reported in (2010) 13 SCC 657, where in para No. 16 the following has been observed:

*“The discrepancies in the evidence of eyewitnesses, if found to be not minor in nature maybe a ground for*



*disbelieving and discrediting that evidence. In such circumstances witnesses may not inspire confidence if the evidence is found to be in conflict and contradiction with the other evidences and the statement already recorded. In such a case, it cannot be held that the prosecution proved its case beyond reasonable doubt.”*

In light of the discussions made above, we are of the considered opinion that there exist reasonable doubts, contradictions, and inconsistencies in the testimony of the witnesses which casts doubt on the presence of the eyewitnesses (PW 1 to 5) at the place of occurrence.

Accordingly, issue No. I is decided in negative.

9. With reference to issue No. II, a thorough examination of the case record reveals that the entire incident allegedly occurred near Jinish Lal's house. PW 1 to PW 5 categorically testified during the trial that they witnessed the appellant, who was holding a *farsa* in his hand, striking the deceased on the head, resulting in bloodshed and the deceased falling to the ground. However, in stark contradiction to this testimony, the Investigating Officer (PW 11) stated in his deposition, specifically in paragraph 21, that he did not find any blood marks at the place of occurrence. Furthermore, in paragraph 22 of his deposition, he mentioned that



he did not find any signs of violence at the place of occurrence. Such a fundamental defect casts reasonable doubts to the place of occurrence. In this regard, it is pertinent to note the decision of the Hon'ble Supreme Court in the case of *Syed Ibrahim versus State of Andhra Pradesh*, reported in *(2008) 10 SCC 601*, wherein it has been held that when the place of occurrence itself has not been established, it would not be proper to accept the prosecution's version. In light of the facts of the case and considering the inconsistencies in the testimony of the prosecution witnesses, coupled with the absence of any bloodstain marks or signs of violence at the alleged place of occurrence, the entire case becomes doubtful and certainly detrimental to the prosecution's case.

Further, it is worth noting that the prosecution witnesses affirmed that the incident took place near Jinish Lal's house. Surprisingly, the prosecution did not take the initiative to examine Jinish Lal or any other independent witnesses, despite the fact that there was an election taking place at the time of the occurrence. In this context, it becomes imperative to refer to the Hon'ble Supreme Court judgement in the case of *Takhaji Hiraji v. Thakore Kubersing Chamansing* reported in *(2001) 6 SCC 145*, in paragraph 19 of the judgement, it has been observed that the



non-examination of a material witness, who could provide essential information or fill gaps in the prosecution's case, may lead the court to draw an adverse inference against the prosecution. However, if overwhelming evidence has already been presented, the non-examination of additional witnesses may not be significant. In such cases, the court must scrutinise the value of the evidence already presented and consider whether the witness in question was available but withheld.

In light of the discussions made above and considering the issue No. I (where the presence of eyewitnesses stands doubtful), we are of the considered view that an adverse opinion against the prosecution can be formed due to the absence of any material witness in this case, despite having several houses between the alleged place of occurrence and the deceased's house, as mentioned in the deposition of PW 2 and PW 3.

Hence, in light of the substantial disparities and contradictions between the material witnesses regarding the place of occurrence, along with the non-examination of material witness, particularly Jinish Lal or any other independent observers during the election, it casts clouds of doubts over the veracity of the prosecution's case and prejudices the appellants.

Accordingly, issue No. II is decided in affirmative.



10. With reference to issue No. III, a thorough examination of the case record reveals that there exists both a prosecution case and a counter case. *Exhibit A* presented by the accused represents the counter case, wherein it is asserted that a free fight occurred involving both parties, resulting in injuries on both sides. Notably, *Exhibit C*, the injury report marked as such, vividly demonstrates that the accused also suffered injuries. Surprisingly, the prosecution has not provided an explanation about the free fight and the injuries sustained by the accused party. *Exhibit C*, the injury report shows that the nature of wound to be grievous, and *Exhibit A* indicates the existence of a pending counter case related to the present occurrence. It is evident that the prosecution has suppressed crucial facts, and as a consequence, their presented evidence ought to be discounted. At this juncture, it is relevant to take note of the Hon'ble Supreme Court finding in the judgement of *State of Karnataka v. Jinappa Payappa Kudachi*, reported in *1994 Supp (1) SCC 178* wherein at page 181, the following has been observed:

*“6. The effect of non-explanation by the prosecution about the injuries on the accused persons depends on the facts and circumstances of each case. Normally if there is such non-explanation, it may at the most give scope to argue that the accused had the*



*right of private defence or in general that the prosecution evidence should be rejected as they have not come out with the whole truth particularly regarding the genesis of the occurrence.”*

In light of the legal position as discussed above, this Court is of the opinion that the prosecution's failure to account for the injuries sustained by the accused party, as evidenced by *Exhibit C* and the existence of a pending case (*Exhibit A*), raises significant doubts about the veracity of the case as they have not come out with the whole truth and particularly the genesis of the occurrence.

Accordingly, issue No. III is decided in affirmative.

11. In view of the findings arrived at on the issues formulated hereinabove, we are of the considered opinion that the prosecution has failed to prove the charges against the appellants and, therefore, the judgment of conviction is not tenable.

12. Therefore, we are of the considered opinion that the conviction of the appellant is not sustainable in the eyes of law.

13. In the result, the present appeal stands allowed and the judgment of conviction dated 10.07.2015 and the order of sentence dated 21.07.2015 passed by Shri Subhash Prasad Kumar, Additional Sessions Judge IV, Madhubani in S.T. No.74 of 2012



arising out of Ladaniya P.S. case No.28 of 2011, G.R. No.956 of 2011, are set aside.

14. Since the appellant Ram Narayan Yadav is in jail custody, he is directed to be released from custody forthwith, if not wanted in any other case.

**(Sudhir Singh, J)**

**( Chandra Prakash Singh, J)**

Narendra/-

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