

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (DB) No.205 of 2017**

Arising Out of PS. Case No.-121 Year-2013 Thana- KAMTAUL District- Darbhanga

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1. Shyam Sunder Raut
2. Nawal Kishore Raut.
3. Awadh Kishore Raut.
4. Rambabu Raut.
5. Sanjay Raut.
6. Manoj Raut,
7. Uma Raut @ Umashankar Raut, All Sons of Late Radha Krishna Raut, Resident of Village Baggha, P.S. Kamtaul, District- Darbhanga.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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with

**CRIMINAL APPEAL (DB) No. 169 of 2017**

Arising Out of PS. Case No.-121 Year-2013 Thana- KAMTAUL District- Darbhanga

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Rakesh Yadav Son of Ram Shobhit Yadav, Resident of Village- P.S.- Kamtaul, District- Darbhanga.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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with

**CRIMINAL APPEAL (DB) No. 191 of 2017**

Arising Out of PS. Case No.-121 Year-2013 Thana- KAMTAUL District- Darbhanga

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1. Ram Chandra Yadav and Ors S/o Chethru Yadav
2. Naresh Yadav S/o Ramchandra Yadav
3. Ram Sudhar Yadav S/o Ram Chandra Yadav All Resident of Village-Baagha, P.S. Kamtaul, District-Darbhangha.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s



with  
**CRIMINAL APPEAL (DB) No. 236 of 2017**

Arising Out of PS. Case No.-121 Year-2013 Thana- KAMTAUL District- Darbhanga

Ram Shobhit Yadav Son of Late Nirshu Yadav, resident of Village- Bagha,  
P.S.- Kamtaul, District- Darbhanga.

... .. Appellant/s  
Versus  
The State Of Bihar

... .. Respondent/s

with  
**CRIMINAL APPEAL (DB) No. 278 of 2017**

Arising Out of PS. Case No.-121 Year-2013 Thana- KAMTAUL District- Darbhanga

Ram Sewak Yadav Son of late Rameshwar Yadav Resident of Village- Bagha,  
Police Station- Kamtaul, District- Darbhanga.

... .. Appellant/s  
Versus  
The State Of Bihar

... .. Respondent/s

**Appearance :**

(In CRIMINAL APPEAL (DB) No. 205 of 2017)

For the Appellant/s : Mr. Ajay Kumar Thakur, Adv.  
Ms. Vaishnavi Singh, Adv.  
Mr. Ritvik Thakur, Adv.  
Mr. Purushottam Kumar, Adv.

For the Respondent/s : Mr. Dilip Kumar Sinha, APP  
(In CRIMINAL APPEAL (DB) No. 169 of 2017)

For the Appellant/s : Mr. Ajay Kumar Thakur, Adv.  
Ms. Vaishnavi Singh, Adv.  
Mr. Ritvik Thakur, Adv.  
Mr. Purushottam Kumar, Adv.

For the Respondent/s : Mr.Sri Satya Narayan Prasad, APP  
(In CRIMINAL APPEAL (DB) No. 191 of 2017)

For the Appellant/s : Mr. Ajay Kumar Thakur, Adv.  
Ms. Vaishnavi Singh, Adv.  
Mr. Ritvik Thakur, Adv.  
Mr. Purushottam Kumar, Adv.

For the Respondent/s : Mr.Sri Satya Narayan Prasad, APP  
(In CRIMINAL APPEAL (DB) No. 236 of 2017)

For the Appellant/s : Mr. Ajay Kumar Thakur, Adv.  
Ms. Vaishnavi Singh, Adv.  
Mr. Ritvik Thakur, Adv.  
Mr. Purushottam Kumar, Adv.

For the Respondent/s : Mr.Sri Dilip Kumar Sinha, APP  
(In CRIMINAL APPEAL (DB) No. 278 of 2017)

For the Appellant/s : Mr. Ajay Kumar Thakur, Adv.  
Ms. Vaishnavi Singh, Adv.



For the Respondent/s : Mr. Ritvik Thakur, Adv.  
Mr. Purushottam Kumar, Adv.  
Mr. Binod Bihari Singh, APP

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**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR**  
**and**  
**HONOURABLE MR. JUSTICE HARISH KUMAR**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)**

**Date : 19-05-2023**

1. We have heard Mr. Ajay Kumar Thakur assisted by Ms. Vaishnavi Singh, Ms. Kiran Thakur, Mr. Ritvik Thakur and Mr. Purushottam Kumar, learned Advocates and Shri Dilip Kumar Sinha and Shri Satyan Narayan Prasad for the State and Mr. Shantanu Kumar for the informant in all the above mentioned criminal appeals, which are being disposed of by this common judgment.
2. Before, we proceed to decide this case, it is necessary to be recorded that we found that the predecessor Bench had been informed about the demise of Shyam Sundar Raut, appellant no. 1 in Criminal Appeal (DB) No. 205/2017. A statement had been made on behalf of the appellants that Shyam Sundar Raut had passed away on 11.05.2017. The Bench vide order dated 20.01.2022 directed the appellants to file an I.A. application, bringing the death certificate on record and



also issued non-bailable warrant of arrest against afore-noted Shyam Sundar Raut, perhaps in expectation of an execution report confirming the death of the afore-noted appellant.

3. The Interlocutory Application as directed by the Bench has already been filed along with a death certificate issued by the North Delhi Municipal Corporation, Govt. of India. Notwithstanding the aforesaid, we also directed Mr. Dilip Kumar Sinha, the learned APP in one of the appeals to enquire from the office of the concerned Superintendent of Police whether the statement made by the appellants about the death of Shyam Sundar Raut is correct.

4. On necessary enquiry, Mr. Sinha has informed us today that Shyam Sundar Raut has passed away on 11.05.2017.

5. Since nobody has come forward on behalf of afore-noted late Shyam Sundar Raut to continue with Criminal Appeal (DB) No. 205/2017, the appeal, so far as it relates to him, stands abated under the provisions contained in Section 394 of the Code of Criminal



Procedure.

6. The appellants in all the above appeals have been convicted under Sections 326, 302 with the aid of 149 of the IPC and 120(B), 147, 148 and 341 of the Indian Penal Code vide judgment dated 24.01.2017 passed by the learned 4<sup>th</sup> Additional Sessions Judge Darbhanga in Sessions Case No. 318/2014 arising out of Kamtaul P.S. Case No. 121 of 2013 and vide order dated 27.01.2017, the appellants have been sentenced to undergo R.I. for life, fine of Rs. 10,000/- and in default of payment of fine, to suffer simple imprisonment of one year for the offence under Section 302/149 of the IPC; R.I. for ten years, fine of Rs. 5,000/- and in default of payment of fine, to suffer R.I. for one year for the offence under Section 326 of the IPC; R.I. for life, fine of Rs. 5,000/- and in default of payment of fine, one year simple imprisonment for the offence under Section 120B of the IPC; R.I. for two years, fine of Rs. 500/- and in default of payment of fine, simple imprisonment for one month for the offence under Section 147 of the IPC; R.I. for three years, fine of Rs. 5,00/- and in default of payment of



fine, simple imprisonment for one month for offence under Section 148 IPC and simple imprisonment for one month and in default of payment of fine, simple imprisonment for 15 days for the offence under 341 of the IPC. The sentences, however, have been ordered to run concurrently.

7. Mr. Ajay Kumar Thakur, the learned Advocate for the appellants has contended, while assailing the judgment of conviction and order of sentence, that nobody had seen the occurrence and that the appellants have falsely been framed in this case because of enmity. He has further submitted that none of the witnesses could be relied upon for upholding their conviction and sentence.

8. The FIR was lodged by Jaiveer Yadav (PW1), the brother of the deceased (Mahavir Yadav). PW1 in his fardbeyan, which was recorded by the S.H.O./Sandeep Kumar of Kamtaul Police Station (PW8) on 27.07.2013 at about 9. P.M. near the house of one of the appellants, namely, Umakant Raut near the dead body of the deceased, he has alleged that on the same day at about



10 'O' Clock in the morning, the deceased had gone to his daughter's matrimonial home on a bicycle. While returning, it became dark. At around 7.00 P.M., when the deceased had reached near the house of one Upendra Yadav, all the appellants and others, who were standing there from before and who were variously armed, surrounded the deceased and started assaulting him indiscriminately. As a result of the afore-noted assault, the deceased fell down on the ground and started crying for help. Thereafter also, the deceased was assaulted by various weapons by the appellants. The cause of occurrence as stated in the fardbeyan is that the co-accused/Uma Raut had accepted the sale price of approximately 2 ½ kathas of land from the deceased but later sold the said land in favour of appellant/Ram Sobhit Yadav by a registered sale deed. Because of this, the deceased had filed a case before the Civil Courts for cancellation of the registered sale deed in favour of aforesaid Ram Sobhit Yadav, which had angered the appellants. In fact, PW1 alleges in the fardbeyan that the deceased was always threatened of being killed and later



on the day of occurrence, all the appellants killed the deceased. After killing, the dead body was dragged to the house of appellants/Ram Sobhit Yadav and Uma Raut in order to give it a colour of a loot case in which the deceased was killed in defence of private property.

9. On the basis of the afore-noted fardbeyan statement, Kamtaul P.S. Case No. 121 of 2013 dated 28.07.2013 was registered for investigation for offences under Sections 147, 148, 149, 341, 326 and 302 of the Indian Penal Code.

10. The police, after investigation, submitted charge-sheet against the appellants whereafter cognizance was taken and the case was committed to the Court of Sessions for trial.

11. The Trial Court, after having examined 8 witnesses on behalf of the prosecution, convicted the appellants and sentenced them in the manner afore-noted.

12. During the Trial, PW1 supported the prosecution case by stating that the deceased was killed at 7. P.M. on 27.07.2013 while on his way to his home from the matrimonial home of his daughter where he had gone in



the morning. PW1 reiterated that the deceased had purchased 2 ½ kathas of land from appellant / Uma Raut but no sale deed was executed and the same was postponed for a later date. However, the land in question was sold to appellant / Ram Sobhit Yadav. When the deceased started pressurizing aforesaid Uma Raut to execute the sale deed in his favour, he was brutally murdered by all the accused persons. On 26<sup>th</sup> of July 2013, appellant / Ram Sobhit Yadav had specifically threatened the deceased that he shall be killed. A day later, the deceased was beaten to death.

13. While narrating the occurrence, PW1 has further stated that after the accused persons had left the scene of occurrence, the deceased was alive for about two hours but he breathed his last only after giving his partial statement to the police party which had arrived at the place of occurrence. PW1 thereafter gave the entire account of the occurrence to the police which was recorded read over to him and such statement was signed by PW1 and one Mrtyunjay Yadav (PW3) put his L.T.I. over the same.



14. In his cross-examination, PW1 has further stated that no sooner did he learn about the occurrence, he raised alarm on which many people arrived including Laxmi Yadav (PW7), Mrityunjay Yadav (PW3), Lakhandeo Yadav (PW4) and many others who were not examined at the Trial. PW1 wanted to save his brother but he was pinned down to the ground he was but not assaulted by the appellants. The clothes of the deceased were drenched with blood. The dead body, by the time the police had arrived, had not been kept on any cot. The police party had also seen the blood smeared clothes. He, thereafter, along with others, went to the D.M.C.H., where his statement was recorded by the police. On that statement, Mrityunjay Yadav (PW3) had also signed. The house of PW3 and 4, PW1 asserts, is situated very close to his house. He denies of having told the I.O. (PW8) that at the time of the occurrence, he was not present on the spot but was informed about the occurrence by PW3. He also denies that he had not stated before the police that the deceased had remained alive for two hours and had given some statement to the police but before he could



complete the same, he died.

15. In order to test the correctness of the version of PW1 at the Trial, it would be necessary to first refer to deposition of PW3 and 4 and the I.O. (PW8) of the case.

16. Mrityunjay Yadav (PW3) claims to have witnessed the occurrence as he was present on the spot when the deceased was assaulted. He is distantly related to the deceased as also PW1. After the assault, the deceased is stated to have remained alive for about two hours and died only after giving some statement to the police. PW3 has supported the motive behind the occurrence, namely, the insistence of the deceased for execution of sale deed in his favour by one of the appellants for a portion of land for which sale price was accepted by the afore-noted appellant but the sale deed of the land in question was executed in favour of another. He has also supported the statement of PW1 that the police party had arrived at the place of occurrence and the deceased at that time was alive, who started giving statement to the police but before he could complete his statement, he died. PW1 thereafter gave his statement which was recorded as his



fardbeyan whereafter the F.I.R. was lodged. The occurrence had taken place in front of the house of appellant / Uma Raut. At the place of occurrence, he had a talk with PW1 and others. He also claims to have gone to the D.M.C.H. along with PW1.

17. Similarly, Lakhandeo Yadav (PW4) has also claimed to have been present at the place of occurrence when the assault on the deceased had taken place. He has stated before the Trial Court that taking the deceased to be dead, the accused persons left the place of occurrence. When the deceased was still gasping for life, an attempt was made to arrange for a vehicle to take him to the hospital. A cot also was arranged but in the meantime, the police party arrived. Some of the assailants were named by the deceased in front of the police but while making his statement, the deceased had died. With regard to the motive of the occurrence, PW4 has supported the version of PW1 and 3.

18. The other eye-witnesses of the occurrence as named in the F.I.R. is one Laxmi Yadav, who appeared in the witness box as PW7 but has been declared hostile.



19. Though the wife of the deceased has also been examined as PW5, who claims to have offered water to the deceased while he was still alive but has not claimed to have seen the occurrence herself.

20. This takes us to the deposition of I.O of this case (PW8), who has confirmed that he had recorded the fardbeyan statement of PW1 near the dead body. He read over the fardbeyan before PW1 and PW3. PW1 signed the document whereas PW3 put his L.T.I. on the same. The dead body, according to him, was lying on the macadamized road of the village in front of the house of one Ram Dayal Raut. He had prepared the inquest report, which was signed by PW3 and other witnesses. Thereafter a formal F.I.R. was registered (Ext. 5). Commencing the investigation of the case, PW8 seized blood stained earth in front of witnesses. A flood light was arranged with the help of villagers for making the inquest. A map also was prepared by PW8. Shortly thereafter, the dead body was sent for postmortem examination through two Chowkidars, who have not been examined in this case.



21. In his cross – examination, PW8 has but given a different story, namely, that at the police station, an information had been received by around 6 P.M. on 27.07.2013 i.e. the date of occurrence that the deceased had been killed. On such information, PW8 had come to the place of occurrence. He does not say anything about the source of such information. When he reached the place of occurrence, he found the dead body kept on a cot. PW8 has confirmed that PW1 had told him that he learnt about the occurrence from PW3 and that PW1 did not give any details of the manner of occurrence and of specific participation of the appellants. Even the cause of occurrence as narrated by PW1 was not told to him when he had recorded his fardbeyan statement.

22. On the basis of afore-noted deposition of witnesses, Mr. Thakur has contended that PW1 in his fardbeyan had not said anything to give any impression that he was either accompanying the deceased at the time of the occurrence or was present when the deceased was being assaulted to death. In fact, his attention was drawn to his earlier statement before the police that PW3 had



informed him about the occurrence, which fact was confirmed by the I.O. (PW8). He further submits that if the statements of PW1, 3 and 4 are to be believed, then the deceased must have named some of the assailants before the police. That statement should necessarily have been brought on record. Not doing so, completely belies the correctness of their version with respect to the occurrence. This statement of afore-noted witnesses do not get confirmed by deposition of PW8, who has not stated either in his examination in chief or in his cross-examination that the deceased was alive and had given names of few of the assailants but while making such statement, he had died. In fact, PW8 saw the dead body of the deceased kept on a cot. This, therefore, pre-supposes that none of the so called eye-witnesses (PW1, 3 and 4) have made correct statements at the trial. There could have been no earthly reason for the police to have withheld the earliest statement of the deceased to the police, if at all it was made.

23. There is force in such submission that with such anomaly in the deposition of witnesses, their statements



cannot wholly be relied upon.

24. Testing the correctness of statement from other angle, we have analyzed the deposition of PW8, who in his cross-examination has stated that the information about the death of the deceased was received in the police station at 6 'O' clock in the evening.

25. Be it noted that the occurrence is said to have taken place at around 7.30 P.M. and the fardbeyan was recorded at 9 P.M. on 27.07.2013. Who gave the information to the police and what was the content of such information is not known. No Station Diary entry appears to have been made by PW8 or else it would have been brought on record. This again justifies the inference that the occurrence took place sometimes before than what was reported and the implication of the appellants in the fardbeyan was only an afterthought. Though the time of the occurrence as confirmed by the Doctor does not clearly render the prosecution case doubtful but it cannot be said with certainty that the occurrence took place in presence of PWs1, 3 and 4.

26. The Doctor (PW2) who conducted the postmortem



on the deceased found seven ante-mortem injuries, the first to four being dangerous to life and injury nos. 5, 6 and 7 being simple in nature caused by hard and blunt force. The death however was because of intra-cranial hemorrhage, compression and shock. The time of death was assessed to be within 12 to 18 hours from the time of post-mortem examination which was held at about 11 A.M. on 28.07.2013. It further appears from the postmortem report that one of the injuries on the head of the deceased was the fatal one which had led to intra-cranial hemorrhage leading to death.

27. The deceased has been killed about which there could be no two opinions. The postmortem report and the deposition of PW2 confirms that it was a homicidal death. But who committed the crime is the question which remains unanswered. The reasons for doubting the prosecution version can be summarized as follows:-

(i) divergent statements of the so called eye-witnesses, namely, PW1, 3 and 4.

(ii) the I.O. (PW8) having stated before the Trial Court that the information about the death of the



deceased reached the police station at around 6 P.M. on the day of the occurrence in juxtaposition to the specific case of the witnesses that the occurrence took place at 7.30 P.M. and the fardbeyan was record at 9 P.M.

(iii) the claim of PW1, 3 and 4 that the deceased was alive when the police had arrived and that the deceased had made some disclosure about the assailants but before he could complete his statement, he died. Such statement not being corroborated by the I.O. (PW8) who reached the place of occurrence only to find the dead body of the deceased kept on a cot at the place of occurrence.

(IV) PW1 having told PW1 that he learnt about the occurrence from PW3 which makes his claim of being an eye-witness doubtful.

(V) The statement of PW1 and 3 about their having gone to D.M.C. H. and the further claim of PW1 of having given a statement at D.M.C.H. which according to PW8 was signed by both PW1 and 3

(VI) was the fardbeyan record in D.M.C.H. then ?. A



witness is never made to sign a statement made before the police.

(VII) The reason for committing the crime remaining doubtful as the deceased is said to have purchased a plot of land from appellant/Uma Raut 13 years ago and for the last 13 years, there was no insistence for registration of the sale deed.

(VIII) The story of dragging of the deceased from the place of occurrence to in front of the house of two of the appellants to give it a colour of death during the course of loot is not borne out by the evidence. There are no dragging marks.

(IX) No forensic examination of blood soiled earth and non-seizure of blood drenched clothes of the deceased. (X) No seizure of the bicycle used by the deceased while coming back from his daughter's matrimonial home etc.

28. In this context, it would also be profitable to look at the statement of the wife of the deceased, namely, Kaushalya Devi (PW5), who claims to have gone to the P.O. after getting the information about the occurrence



when she claims to have offered water to her still surviving husband. She saw PW1, 3 and 4 and their motorcycles. Did PW1, 3 and 4 come to the P.O. at the nick of the time or had reached the place of occurrence later on their vehicles ?

29. PW5 does not state the name of the assailants which the deceased told her while he was still alive.

30. What does all this signify?

31. That apart, it appears to be rather strange that the inquest report has not been proved. The place of occurrence also does not appear to have been fixed. PW8 admits of the fact that the dead body was brought from the place of occurrence to another place where flood light was arranged for making inquest.

32. Could that have been done under the police manual.

33. These are some of the yawning gaps which make us entertain a lingering doubt whether the appellants only had killed the deceased.

34. To tie the strings together, we have found that the fardbeyan was recorded at about 9 P.M. on 27.07.2013



but the formal F.I.R. was registered only on the next day i.e. on 28.07.2013 but it was sent to the Chief Judicial Magistrate on 29.07.2013. The delay has not been explained. The Courts generally do not disbelieve the version of the eye-witnesses if there is some delay in lodging of the F.I.R. but only if the version of the witnesses are reliable and trustworthy. The delay but needs to be explained.

35. In **Apren Joseph alias Current Kunjukunju & Ors vs. State of Kerala; 1973 (3) SCC 114**, the Supreme Court emphasized that a properly timed F.I.R. reduces the chances of embellishment, fabrication or distortion of memory. This delay in reaching the F.I.R. to the court of the Chief Judicial Magistrate assumes significance specially in view of the unreliable statements of the witnesses with respect to the genesis of the case or their being eye-witnesses to the occurrence. Different places of occurrence have been suggested by the witnesses by introducing the story of dragging the deceased and the deposition of PW8 that the deceased was kept on a cot which had been brought at a different



place where the flood light was arranged. If different places of occurrence are indicated by the witnesses, it cannot be said that the place of occurrence has been established and in that case, the conviction would be inappropriate (**Syed Ibrahim vs. State of Andhra Pradesh; 2006 Cr. Law Journal 4087**).

36. We have also found that the occurrence took place at about 7.30 P.M. A flood light was required to be arranged for inquest. How is it to be believed that the witnesses had seen the occurrence, identified the assailants and gave a graphic account of the specific roles played by each of them, without any indication about lighting at the P.O.

37. Thus, in the absence of proof of sufficient light to identify the assailants as the occurrence took place when there was no sunlight, the conviction again does not appear to be properly recorded (**Nallabothu Ramulu @ Seetharamaiah & Others v/s State of Andhra Pradesh; 2014 (12) SCC 261**)

38. These grounds, therefore, persuade us to reject the judgment of conviction and order of sentence.



39.               Perforce, we set aside the same and acquit  
the appellants of all the charges leveled against them.
40.               The appellants are directed to be released from jail  
unless their detention is required in any other case.
41.               The appeals stand allowed.
42.               Let the records of this case be returned to the  
concerned court below and the Superintendent of the  
concerned jail be intimated about this Judgment for  
record and compliance.

**(Ashutosh Kumar, J)**

**( Harish Kumar, J)**

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