

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.113 of 2016**

Arising Out of PS. Case No.-218 Year-1998 Thana- ASHTHAWAN District- Nalanda

Karu Yadav Son of Late Tanik Yadav resident of village - Rampur Bigha,
Police Station - Bindh, in the district of Nalanda

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 194 of 2016

Arising Out of PS. Case No.-218 Year-1998 Thana- ASHTHAWAN District- Nalanda

Dharmvir Yadav Son of Late Yaddau Yadav Resident of village -
Rampurbigha, P.S. Bind, District – Nalanda

... .. Appellant

Versus

1. The State of Bihar
2. Arun Yadav Son of Ramdhin Yadav
3. Anandi Yadav Son of Ramadhin Yadav Both 3 and 4 resident of village -
Rampur Bigha, P.S. Nalanda, District - Nalanda

... .. Respondents

Appearance :

(In CRIMINAL APPEAL (DB) No. 113 of 2016)

For the Appellant	:	Mr. Vikram Deo Singh, Advocate
		Mr. Rudal Singh, Advocate
For the Respondent	:	Mr. Dilip Kumar Sinha, APP

(In CRIMINAL APPEAL (DB) No. 194 of 2016)

For the Appellant	:	Mr. Anil Chandra, Advocate
For the Respondent State:		Mrs. S.B.Verma, APP

**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

CAV JUDGMENT



(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 26-04-2023

Based on the *fardbeyan* of Dharamveer Yadav [the Appellant in Criminal Appeal (DB) No. 194 of 2016], recorded at about 9:00 pm on 27.11.1998, an FIR was registered on 28.11.1998 disclosing commission of the offences punishable under Section 302 read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act against Ramdeo Yadav (the appellant in Criminal Appeal No. 450 of 2014), Karu Yadav (an appellant in Criminal Appeal No. 113 of 2016), Ramdhin Yadav, Arun Yadav and Anandi Yadav. The police had submitted charge sheet against all the five accused persons. It transpires from the records that the trial of the appellant-Ramdeo Yadav of Criminal Appeal (DB) No. 450 of 2014 had to be separated because of his prolonged absence at the stage of commitment of the case and rest of the persons, named in the FIR, were committed to the court of Sessions for trial. Karu Yadav (the appellant herein), Arun Yadav and Anandi Yadav were put on trial in Sessions Trial No. 491 of 2000, which finally came to be concluded by the judgment and order dated 10.12.2015/16.12.2015, passed by learned 6th Additional Sessions Judge, Nalanda at Biharsharif, holding the



appellant-Karu Yadav guilty of the offences punishable under Section 302 of the IPC and Section 27 of the Arms Act. The trial court, by the said judgment of conviction dated 10.12.2015, has, however, acquitted co-accused Arun Yadav and Anandi Yadav. In the aforesaid backdrop the appellant Karu Yadav has preferred the Cr. Appeal (DB) No.113 of 2016 against the order of conviction and sentence dated 10.12.2015/16.12.2015, whereas the informant-Dharamvir Yadav has filed Cr. Appeal (DB) No.194 of 2016 against acquittal of Arun Yadav and Anandi Yadav. It has been stated at the bar that Anandi Yadav died during the pendency of Cr. Appeal (DB) No. 194 of 2016. It is noted that in the meanwhile Ramdeo Yadav faced trial in Sessions Trial No. 459 of 2011 and had been held guilty of the offences punishable under Sections 302/34 of the IPC and Section 27 of the Arms Act. By a judgment dated 28.03.2014 passed by learned 1st Additional Sessions Judge, Nalanda at Bihar Sharif. He has been sentenced to imprisonment for life and has been sentenced for commission of the said offence accordingly by the trial court by an order dated 02.04.2014. As all the aforesaid three appeals arose out of the same occurrence and the same FIR, which have been heard together with the consent of the parties. However, since the Criminal Appeal (DB) No. 450 of



2014 arises out of a separate trial, we have considered it appropriate to deliver separate judgment in the said appeal.

Criminal Appeal (DB) No. 113 of 2016

2. The appellant Karu Yadav has preferred this appeal under Section 374(2) of the Cr.P.C. against the impugned judgment dated 10.12.2015 and order of sentence dated 16.12.2015, passed by learned 6th Additional District and Sessions Judge, Nalanda at Biharsharif, in Sessions Trial No. 491 of 2000, arising out of Asthawan (Bind) P.S. Case No. 218 of 1998, whereby he has been convicted and sentenced as under:

Criminal Appeal (DB) No. 113 of 2016				
Appellant Name	Conviction under Section	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
Karu Yadav	302/34 of the Indian Penal Code	For life	10,000/-	S.I. for six months
	27 of the Arms Act	Rigorous imprisonment for three years	5,000/-	S.I. for six months

3. Briefly narrated, the prosecution’s case, as disclosed in the fardbeyan of the informant-Dharamveer Yadav recorded by the officer-in-charge Bind Police Station on 27.11.1998 about 9:00 pm, is that on the same day at about 9:00 pm, when he was



returning home after harvesting paddy crops with his brother Satendra Yadav (PW-6), his father Yaddau Yadav and his uncle Jai Ram Yadav (PW-4), suddenly, his co-villagers namely, Ramdeo Yadav, Karu Yadav (the appellant), Ramdhin Yadav, all sons of Late Tanik Yadav, Arun Yadav and Anandi Yadav, both sons of Ramdhin Yadav, armed with country made rifle, came and Ram Deo Yadav shot the informant's father with his countrymade rifle in the temporal region of the informant's father and, immediately thereafter, Karu Yadav also opened fire on the right side of the neck of the informant's father, who fell down and died instantaneously. They also chased the informant, his brother and his uncle for killing, but they saved their lives by fleeing away. Upon hearing the uproar made by the informant, his mother, sister and other villagers rushed towards the place of occurrence. The genesis of occurrence, as mentioned in the *fardbeyan*, was some old land dispute between the parties. The occurrence, according to the *fardbeyan*, had taken place at about 4:30 pm. According to the *fardbeyan*, for the safety, the dead body of the deceased was brought from the place of occurrence (PO for short) and put in an open place in front of his *Dalann*. The *fardbeyan* to the aforesaid effect gave rise to Asthawan P.S. Case No. 218 of 1998 on 28.11.1998 for commission of the offences punishable under



Section 302 read with Section 34 of the IPC and Section 27 of the Arms Act against the persons named in the FIR.

4. The police, upon completion of investigation, submitted chargesheet against all the named accused persons whereupon the cognizance was taken of the offence by order dated 24.02.1999. The case was thereafter transferred to the court of learned SDJM for commitment. As has been noted above, as co-accused Ramdeo Yadav did not appear for commitment for substantial period, his records were separated and case of other four accused persons were committed to the Court of Sessions for trial, giving rise to Sessions Trial No. 491 of 2000. Charges were framed for commission of the offences punishable under Section 302/34 of the IPC and Section 27 of the Arms Act. The appellant and others denied the charges and claimed to be tried, and accordingly, they were put on trial.

5. At the trial, the prosecution examined altogether nine witnesses, namely, Indu Devi (PW-1), an aunt of the informant; Parmeshwari Devi (PW-2), the mother of the informant; Shyama Devi (PW-3) sister of the informant; Jai Ram Yadav (PW-4) brother of the deceased and uncle of the informant Dharambir Yadav (PW-5); Surendra Yadav (PW-6) brother of the informant; Suresh Prasad Singh I.O. (PW-7), Surendra Prasad, a Pharmacist,



who had brought the post mortem report from the hospital (PW-8), and Dr. Awadhesh Prasad Singh (PW-9), who formally proved the post mortem report prepared by another Doctor.

6. The prosecution in order to bring home the charge against the persons put on trial, exhibited following documentary evidence:-

Ext. 1	Signature of informant P.W. 5 Dharamvir Yadav on fardbeyan proved by him.
Ext. 2	Signature of Jairam Yadav (P.W. 4) on seizure list of blood proved by P.W. 5 Dharamvir Yadav informant.
Ext. 2/1	Signature of Satendra Yadav (P.W. 6) on seizure list of blood proved by P.W.5 Dharamvir Yadav informant.
Ext. 3	Signature of Nathun Pd. And Ram Lakhan Yadav on inquest, proved by P.W. 6 Satendra Yadav
Ext. 4	Signature and writing of P.W. 7 Suresh Pd. Singh, I.O. on fardbeyan proved by him.
Ext. 4/1	Attestation on fardbeyan by P.W. 7 Suresh Pd. Singh, I.O. proved by him.
Ext. 4/2	Registration of FIR signed by I.O. P.W. 7 Suresh Pd. Singh proved by him.
Ext. 4/3	Proved formal FIR by P.W. 7 Suresh Pd. Singh
Ext. 5	Post mortem report of Yadu Yadav
Ext. 6	C.C of the F.I.R. of Asthawa P.S. Case No. 87/88
Ext. 6/1	C.C of the final report of Asthawa P.S. Case No. 87/88
Ext. 7	C.C of F.I.R Sarmera P.S. Case No. 22 of 2000
Ext. 7/1	C.C of the final form of Saremera P.S. Case No. 22/2000
Ext. 8	C.C, of the F.I.R of Saksohra P.S. Case No. 6/06
Ext. 8/1	C.C of the final form of Saksohra P.S. Case No. 6/06
Ext. 9	C.C of the F.I.R of Sarmera P.S. Case No. 34/02
Ext. 10	C.C of the judgment of Cr. Appeal No. 500/90
Ext. 11	C.C of the order passed in S.T. No. 459/11



7. After closure of the evidence of prosecution's witnesses, in compliance with requirement under Section 313 of the CrPC, the trial court gave the accused persons an opportunity to explain the circumstances emerging against them from the evidence of the prosecution witnesses. The circumstance, however, were denied by them.

8. The trial court, after having appreciated and evaluated the evidence on record, held the appellant-Karu Yadav guilty of the offences punishable under Section 302 of the IPC read with Section 34 of the IPC and Section 27 of the Arms Act. The trial court, however, concluded that in the absence of evidence adduced at the trial other accused persons, namely, Anandi Yadav and Arun Yadav, could not be held guilty of the aforesaid offences. The trial Court, accordingly, recorded acquittal of co-accused Anandi Yadv and Arun Yadav by the judgment dated 16.12.2015.

9. We have heard Mr. Vikram Deo Singh, learned counsel appearing on behalf of the appellant in Criminal Appeal (DB) No. 113 of 2016 and Mr. Anil Chandra learned counsel for the appellant in Criminal Appeal (DB) No. 194 of 2016, in which



acquittal of the persons put on trial, namely, Anandi Yadav and Arun Yadav (since deceased) is under challenge. Mr. Dilip Kumar Sinha learned APP has represented the State in Criminal Appeal (DB) No. 113 of 2016, whereas Ms. Shashi Bala Verma, learned APP has appeared for the State in Criminal Appeal (DB) No. 194 of 2016.

10. Mr. Vikram Deo Singh learned counsel for the appellant-Karu Yadav has submitted that there has been inordinate delay in lodging of the *fardbeyan* inasmuch as occurrences is said to have taken place at about 4:30 pm on 27.11.1998, the *fardbeyan* came to be recorded at about 9:00 pm, though the distance from the Police Station to the place of occurrence was hardly 5 Kms. He has emphasized that it is evident from the *fardbeyan* that the informant had gone to Bind P.S. for registration of FIR. The submission he has made to make out a case for the defence that the informant and the witnesses had the occasion to see the police much before recording of the *fardbeyan* at about 9:00 pm on 27.11.1998 and the first version of the occurrence disclosed to the police has been suppressed by the prosecution. In support of his submission, he has referred to the deposition of Indu Devi (PW-1) that the police had reached at 8



O' Clock and had taken away the dead body of the deceased. Similarly, the daughter of the deceased (PW-3) also deposed that the informant had come along with the police from Bind P.S. at about 8:00 pm, whereafter the police had taken away the dead body along with the witnesses and went to the police Station. He has further submitted that whereas it was clearly mentioned in the fardbeyan of PW-5 that the dead body of the deceased was brought by the family members from the place of occurrence to an open place near his *dalaan*, PW-4, Jai Ram Yadav, an eye witness, deposed that the police had come at the place of occurrence at Aahra Khanda at about 7:00 pm and that he had talked to the police also. In order to contend patent inconsistencies in the evidence of the witnesses, who have claimed to be the eye witnesses, he has submitted that, according to the informant (PW-5), the police had reached the place of occurrence at about 10:00 pm in the night and had collected blood stained soil and seized the same. Further, contrary to the evidence of the witnesses PW-1 and PW-3 that the dead body was taken away by the police at about 8:00 pm, the informant deposed that the police had gone to the place of occurrence at 11:00 in the night and had come back to his house at about 11:30 pm, where the dead body was kept on a cot in front of his



dalaan. He has argued that it would further appear from the evidence of PW-6 that the initial version of the disclosure made before the police prior to recording to the *fardbeyan*, has been suppressed, which creates serious doubt on the prosecution's case. He has further argued that the entire case of the prosecution that the occurrence had taken place at about 4:30 pm stands falsified in view of the contradiction in the statement made by the informant under Section 161 of the CrPC before the police and his deposition at the trial. The Investigating Officer, in paragraph no. 35 in his evidence deposed that the informant had told him that the occurrence had taken place on 27.11.1998 (Friday) at about 9:00 am in the morning. He also deposed that the informant had not told him that the dead body was kept on a cot. He contends that it appears that the occurrence had taken place in the morning, which was not seen by anyone, and subsequently, the appellant and others came to be falsely implicated. He has also submitted that the witnesses are inconsistent in their evidence on the point as to whether the dead body of the deceased was carried from the place of occurrence to his house. According to the FIR and other family members, who are witnesses, the dead body was brought to their house from the place where actual killing had taken place. Reference has been



made in support of his submission to the evidence of PW-5 (para 2), PW-4 (para 2) and PW-6 (para 1). The female members, on the other hand, had deposed that the police had come at about 8:00 pm and had taken away the dead body of the deceased. Reference in this regard has been made to the depositions of Indu Devi PW-1 (para 12) and Parmeshwari Devi (PW-2) (para 8). Shyama Devi (PW-3), in her evidence, deposed that they were waiting near the dead body for police and the police came at about 8:00 pm and took the dead body to the Police Station. PW-1, PW-2 and PW-3 had gone to the Police Station. He also contended that there is no explanation why the inquest report was not prepared when the place of occurrence was inspected by the Investigating Officer and why the same was prepared in the next morning. He has also argued that the narration of the prosecution that some of the witnesses had seen the accused persons fleeing away from the place of occurrence, but had come at the place of occurrence after the occurrence, is absurd. In this connection, he has referred to the deposition of the informant (PW-5) to the effect that the distance of Ahara Khanda (place of occurrence) was half a kilometre south to his house. Jai Ram Yadav (PW-4) deposed that he, Satendra Yadav (PW-6) and the informant had fled towards the house and they had stayed in the house for about



five minutes. During these five minutes, he had met his sister-in-law Parmeshwari Devi(PW-2), niece Shyama Devi(PW-3) and wife Indu Devi (PW-1) and fifteen minutes thereafter they had returned to the place of occurrence. He has submitted that it is absurd to believe that the accused persons who stay at the place of occurrence for 15 minutes after having committed the offence, and, therefore, the prosecution's case that the accused persons were seen fleeing away from the place of occurrence is fanciful and imaginary. He has also argued that, according to the case of the prosecution, large number of persons of the village had assembled after the occurrence, but no villager was examined at the trial. He has also argued that the medical evidence is also not consistent with ocular evidence. Referring to the post mortem report, he has submitted that it does not indicate as to whether the firearm injury was antemortem or postmortem. Further, according to the evidence of the Doctor (PW-9), only one metallic substance, similar to bullet, was extracted out of the skull cavity. Concluding his submission, Mr. Singh has argued that the deceased and the informant had criminal history of their involvement in a case for the commission of offence punishable under Section 396 of the IPC and they were on bail when the occurrence had taken place. He has argued that it seems that the



deceased was killed by some unknown person and because the informant and his family members were having grudge due to land dispute, the accused persons came to be falsely implicated.

11. Mr Dilip Kumar Sinha, learned Additional Public Prosecutor, per contra, has submitted that as there are three eyewitnesses, namely, PW-4, PW-5 and PW-6, in whose presence the occurrence had taken place and whose evidence are consistent on the point of assault made by the appellant Karu Yadav, the finding of conviction recorded by the trial court cannot be said to be suffering from any legal infirmity, more so because the medical evidence supports the ocular evidence. He has submitted that it is true that there are some minor inconsistencies in the evidence of the eyewitness and other witnesses, the same being not substantial and significant, the finding of conviction cannot be said to be unsustainable. He has argued that the delay of 4 1/2 hours in registering the FIR from the time of occurrence is of not such nature as to create any doubt over the prosecution's story. Such delay is natural in the facts and circumstances of the present case.



12. Mr Rajvansh Dubey, learned counsel for the appellant in Criminal Appeal (DB) No. 194 of 2016, while putting to challenge the finding of acquittal of respondents No. 2 has submitted that the trial court has not duly considered the evidence of the prosecution's witnesses, who supported the prosecution's case at the trial. Further, the learned trial court has not assigned any reason as to why they have been acquitted. He has argued that the evidence of the eyewitnesses, who deposed at the trial for the prosecution, have fully supported the prosecution's case as regards the participation of the said respondents in commission of the offence. He has accordingly submitted that the finding of acquittal to the extent the same relates to respondents No. 2 is perverse and unsustainable in law. He has further submitted that the finding recorded by the trial court of conviction of appellant Karu Yadav is based on proper analysis and appreciation of evidence on record, which does not require any interference by this Court.

13. We have perused the impugned judgment and order of the trial court as well as the lower court's record. We have given our thoughtful consideration to the rival submissions advanced on behalf of the appellant and learned Additional



Public Prosecutor for the State. According to the prosecution's case, as disclosed in the FIR, the occurrence had taken place at 4:30 p.m. at a place called Ahra Khandha. From the FIR itself, it appears that the distance of the police station from the place of occurrence was 5 kms. It is further apparent from the *fardbeyan* of the informant (PW 5) that he had gone to the police station for lodging a case and his *fardbeyan* was recorded at 9:00 p.m. at the police station. As has been disclosed in the *fardbeyan*, it further appears that before the *fardbeyan* was recorded at the police station, the dead body of the deceased was brought near the house of the deceased and was kept in an open space in front of the *dalaan* of the informant. The informant happened to be the son of the deceased. From the contents of the *fardbeyan*, it emerges that, for the first time, the information to the police was given regarding the occurrence at 9:00 p.m. on 27.11.1998. It has come in the evidence of the eyewitness (PW-5), that the distance between Ahra Khandha (place of occurrence) and the house of deceased is half a kilometer. Apparently, thus, the dead body of the deceased was not at the place of occurrence before the police was informed and subsequently when the police reached the village where the occurrence had taken place. It would be apt to notice that the defense had put questions to the eyewitnesses,



PW-5 and PW-6, as to whether they had stated before the police that the occurrence had taken place, in fact, at 09:00 am, to which they had denied. Attention of the Investigating Officer was drawn to the deposition to obtain contradiction in the statement of the PW-5 and PW-6 made during the course of investigation under Section 161 of the CrPC and their evidence at the trial.

14. The Investigating Officer, in his testimony in paragraph-35, deposed that the informant (PW-5) had stated that the occurrence had taken place at 09:00 am on 27.11.1998. In the same paragraph, the Investigating Officer deposed that the informant had not told him that the dead body was kept on a cot or a *chowki* (wooden cot).

15. As has been noted hereinabove, according to the eyewitnesses, PW-4, PW-5 and PW-6, were accompanying the deceased. According to them, all of them had gone to their house first and thereafter the informant went to the police station and had returned with the police. In paragraph-13, he deposed that the police had come at Ahra Khandha at 07:00 pm. The deposition of PW-4, an eyewitness, suggests that police had knowledge about the occurrence before the *fardbeyan* of the informant (PW-5) was recorded at the police station at 09:00 pm on 27.11.1998.



Evidently, the initial version of the occurrence has been suppressed by the prosecution. In quick succession, we hasten to notice the evidence of two family members of the deceased, namely, Indu Devi (PW-1), wife of PW-4 and Shyama Devi (PW-3), the daughter of the deceased. The daughter of the deceased, in her deposition in paragraph-8, has stated that the informant (PW-5) had come with the police from Bind Police Station at 08:00 pm and the police had taken away the dead body of the deceased. PW-1, in her deposition in paragraph-12, deposed that the police had reached at 08:00 pm. The deposition of PW-1, PW-3 and PW-4 are apparently consistent on the point that the police had arrived at the place of occurrence before the *fardbeyan* of the informant (PW-5) was recorded at 09:00 pm. There is another aspect of the matter, which needs to be taken into account in quick succession. According to PW-3, the police had arrived at 08:00 pm, according to PW-1, the police had arrived at 8 o'clock and according to PW-4, the police had arrived at 07:00 pm. The IO in his evidence, on the other hand, has deposed that he had proceeded for the place of occurrence at 10:00 pm. He is said to have collected the blood stained soil from the place of occurrence at 11:00 pm in the presence of witness Satyendra (PW-6) and Jairam (PW-5) and prepared a seizure list. Thereafter, he had



reached the house of the informant and found the dead body of the deceased lying on a cot in an open place. He is said to have inspected the place of occurrence with the aid of torch light. The blood stained soil was not sent for forensic examination. No scientific investigation was done after obtaining the blood stained soil. The inquest of the dead body was, however, prepared on the next day in the morning at 06:30 am on 28.11.1998. The place of preparation of inquest report is an open place in front of *dalaan* of the deceased. There is, thus, apparent inconsistencies in the evidence of the prosecution's witnesses to the effect that the police had reached on 27.11.1998 at 08:00 pm/07:00 pm. There is no apparent reason, why the inquest was conducted in the next morning at 06:30 am. Further, according to the evidence of the IO, he had left from the police station at 10:00 p.m. on 27.11.1998 and, according to the inquest report, he had found the dead body of the deceased lying on a cot at 11:30 pm. As noted above, delayed registration of FIR raises a reasonable doubt about the preparation of inquest report. Further, according to the evidence of the prosecution's witnesses, the dead body of the deceased was shifted by the prosecution's witnesses from the place of occurrence. They have not disclosed the manner in which the dead body was taken from the place of occurrence to



the house of the deceased, which according to some of the prosecution's witnesses was half a kilometer away from the place of occurrence.

16. The IO is said to have collected blood stained soil from the place of occurrence, but in the absence of any scientific evidence, it cannot be concluded that the said blood was human blood or blood at all or not. It is noticeable that the doctor, who had conducted the *postmortem* examination, was not examined. The Doctor (PW-9), who proved the signature of the doctor, who had conducted the *postmortem* examination, deposed that according to the said report, the deceased had died due to shock and hemorrhage due to the injuries caused by firearm. We have seen the *postmortem* report available on record. From the *postmortem* report, it appears that a metallic substance, similar to bullet, was extracted from the skull of the deceased, which was preserved and handed over to the police. The said metallic bullet was not produced as material exhibit at the trial.

17. In view of the above noted facts emerging from the evidence, we are of the considered view that not only the place of occurrence, the time of occurrence and manner of occurrence, as set out by the prosecution at the trial, cannot be said to have been proved beyond reasonable doubts. It is clear evidence of the



prosecution's witnesses that the villagers had assembled at the place of occurrence after the occurrence had taken place. Not even a single witness came to be adduce evidence for the prosecution to prove any part of the prosecution's case as disclosed by the eyewitnesses at the trial. No independent witnesses came to be examined.

18. We are mindful of the settled legal position that merely on the ground that the witnesses are related to the deceased, their evidence cannot be discarded on the ground of their being interested witnesses. In the present case, however, the enmity between the family of the deceased and the persons named in the FIR is an admitted fact. In such view of the matter, the evidence of the prosecution's witnesses, PW-4, PW-5 and PW-6, who claimed to be the eyewitnesses, cannot be held to be wholly reliable in view of apparent conflicting evidence of the female members of the family viz. PW-1, PW-2 and PW-3. At the cost of repetition, we need to mention that PW-4, in his evidence, has deposed that the police had arrived at the place of occurrence at 07:00 p.m. itself.

19. The place of occurrence, thus, becomes doubtful for two reasons. Firstly, because no one other than the family members of the deceased, who are the prosecution's witnesses,



had seen the dead body of the deceased lying at the place of occurrence. The blood stained soil, said to have been seized by the police from the place of occurrence, becomes meaningless in the absence of any scientific investigation that the blood was a human blood or something else. There is no evidence, as to how and in what manner the dead body of the deceased was shifted from the place of occurrence to another place, i.e., the house of the deceased, which is half a kilometer away from the place of occurrence. Secondly, the time of occurrence also becomes doubtful in view of the contradiction obtained from the Investigating Officer, who deposed at the trial that PW-4 had told him that the occurrence had taken place at 09:00 am on 27.11.1998.

20. In the aforesaid background, failure on the part of the prosecution to examine an independent witness at the trial, casts shadow on the prosecution's case.

21. In view of the above noted discussions, in our opinion, it is not safe to uphold the finding of conviction as recorded by the trial court. Accordingly, the impugned judgment of conviction dated 10.12.2015 and order of sentence dated 16.12.2015 passed in Sessions Trial No. 491 of 2000, passed by



the learned 6th Additional District and Sessions Judge, Nalanda, are hereby set aside.

22. Criminal Appeal (DB) No. 113 of 2016, is hereby, allowed.

23. The appellant Karu Yadav is in custody, consequent upon his acquittal by the present judgment, let him be released forthwith, if he is not required in any other case.

Criminal Appeal (DB) No. 194 of 2016.

24. In view of the discussions, made as above, while considering the Criminal Appeal (DB) N0. 113 of 2016, we do not find any merit in Cr. Appeal (DB) No. 194 of 2016 against acquittal of respondent No. 2.

25. As has been noted herein above, it has been informed by learned counsel for the appellant that respondent No. 3, Anandi Yadav, died during the pendency of the appeal. This appeal has, thus, abated as against respondent No. 3.



26. This appeal (Cr. Appeal (DB) No. 194 of 2016) is accordingly dismissed.

(Chakradhari Sharan Singh, J)

I agree.
Rajesh Kumar Verma, J: -

(Rajesh Kumar Verma, J)

Ranjan-nishant/-

AFR/NAFR	NAFR
CAV DATE	18.01.2023
Uploading Date	01.05.2023
Transmission Date	01.05.2023

