

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.849 of 2019**

Arising Out of PS. Case No.-675 Year-2013 Thana- BHAGALPUR KOTWALI District-
Bhagalpur

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RANI DEVI @ RANIYA DEVI Wife of Late Ramdeo yadav Resident of
Village - Sahebganj Bind Toli Chowk, Champa Nagar , P.S.- Nath Nagar,
Dist.- Bhagalpur.

... .. Appellant/s

Versus

1. The State Of Bihar
2. Raja Yadav Son of Sikandar Yadav Resident of Village - Sahebganj, P.S.-
University (Kotwali), Dist.- Bhagalpur.

... .. Respondent/s

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For the Appellant/s	:	Mr.Bipin Kumar, Adv
For the Respondent no. 2:	:	Mr. Rajiv Ranjan Singh, Adv
For the State	:	Mr.Ajay Mishra, Adv

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
and
HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 19-07-2023

The informant of Kotwali (Lalmatia) P.S. Case No.
675/13 registered on 11.11.2013 for the offences punishable
under Sections 302/34 of the IPC and Section 27 of the Arms
Act has preferred this appeal against acquittal under the *proviso*



to Section 372 of the Cr.P.C assailing the judgment and order dated 22.05.2019 passed by the learned 7th Additional District and Sessions Judge, Bhagalpur in Sessions Trial No. 448/15/TR No. 213/18. By the said impugned judgment, the trial court has acquitted respondent no. 2 Raja Yadav of the charge of commission of offence punishable under Section 302 read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act.

2. It is worthwhile noticing that the said Lalmatia P.S. Case No. 675 of 2013 (wrongly typed as 677/2013 in the impugned judgment), gave rise to two separate trials, i.e. Sessions Trial No. 342 of 14/TR No. 527 of 2014 against Raju Yadav, Sikandar Yadav and Piko Yadav and Sessions Trial No. 448 of 2015/TR No. 213 of 2018 against the present respondent Raja Yadav. The accused Raju Yadav, Sikandar Yadav and Piko Yadav came to be convicted by the trial court of the offence punishable under Section 302/34 of the IPC and Section 27 of the Arms Act. Three appeals came to be preferred by them before this Court against the impugned judgment of the trial court giving rise to Criminal Appeal (DB) No. 611 of 2015 (Piko Yadav @ Pinku Yadav Vs. State of Bihar), Criminal Appeal (DB) No. 620 of 2015(Raju Yadav @ Rajesh Vs State of



Bihar), Criminal Appeal (DB) No. 747 of 2015 (Sikandar Yadav Vs. State of Bihar). The said appeals have been allowed and the said appellants have been acquitted of the criminal charges by giving them benefit of doubt by a common judgment rendered today. As this appeal arises out of the same criminal case, it was heard along with the aforesaid three criminal appeals. The present appeal is being disposed of by the present separate judgment as this appeal arises out of judgment of the trial court rendered in a separate trial.

3. We have heard Mr. Bipin Kumar, learned counsel appearing on behalf of the appellant, Mr. Rajiv Ranjan Singh, learned counsel for the respondent no. 2, and Mr. Ajay Kumar Mishra, learned Additional Public Prosecutor for the State of Bihar.

4. The fardbeyan of the wife of the deceased Rani Devi recorded by Station House Officer of Lalmatia Police Station on 11.11.2018 at about 7:30 am at the house of the deceased, is the basis for the registration of Bhagalpur Kotwali (Vishwavidalaya) P.S. Case No. 675 of 2013 at about 10:30 am. The distance between the place of occurrence and the police station mentioned in the formal FIR was 2 kilometers. The informant alleged that on the date of occurrence at about 5:00



am when she and her husband Ramdev Yadav (the deceased) as usual opened the door of their house at about 5:00 am, the accused persons viz. Raja Yadav, Ranjit Yadav, Piko Yadav all three sons of Sikandar Yadav (respondent no. 2), Sikandar Yadav son of Kisun Yadav, and Raju Yadav who were waiting for an opportunity to ambush, suddenly entered into their house who were variously armed with deadly weapons and started firing upon her husband Ramdev Yadav (the deceased), because of which he died on the spot. After committing the offence the accused persons left the place issuing threats. Upon hearing gun shot firings, the informant's son Bikram Yadav and Lalu Yadav also came who saw the accused persons fleeing away from the place of occurrence after having committed the crime. The police upon completion of the investigation submitted charge-sheet against the accused persons for the offence punishable under Sections 302/34 of the Indian Penal Code and after cognizance was taken, the case was committed to the court of Sessions for trial.

5. The police upon completion of investigation had earlier submitted chargesheet against accused Raju Yadav, Sikander Yadav and Piko Yadav on 08.12.2014, keeping the investigation pending against other two accused persons.



Subsequently, the police submitted its chargesheet against respondent no. 2 on 31.07.2014 for commission of the offence punishable under Sections 302/34 of the IPC and Section 27 of the Arms Act showing the other accused Ranjit Yadav, an absconder. Ranjit Yadav, it may be mentioned, is also one of the sons of Sikandar Yadav. Based on the chargesheet cognizance was taken and the case was committed to the court of Sessions whereafter, the charge was framed against respondent no. 2 for commission of offence punishable under Sections 302/34 of the IPC and Section 27 of the Arms Act. The respondent no. 2 denied the charge and claimed to be tried.

6. At the trial altogether eight prosecution's witnesses came to be examined including sons of the deceased namely Bikram Yadav (PW-1), Lallu Yadav(PW-3), wife of the deceased Rani Yadav (PW-4) brother of the deceased Sahdeo Yadav(PW-2) and Chanda Kumari daughter of the deceased (PW-6), PW-8 and PW-9 were the Investigating Officers. The doctor who had conducted the post-mortem examination came to be examined as PW-7. The prosecution witnesses i.e. PW-1, PW-2, PW-3, PW-4, PW-5 and PW-6 claimed to be the eyewitnesses at the trial.

7. The trial court has noticed contradictions in the



evidence of the prosecution's witnesses and disbelieved the prosecution's case of presence of PW-4 (the informant) as the only eye-witness present at the place of occurrence to whom no harm was done by the accused persons. He has also noticed the improvement introduced by PW-4 in her deposition that the deceased had survived for five minutes during which other family members had come and to whom the deceased had disclosed the names of the persons including respondent no. 2, who had shot at him. The trial court has found the evidence of the witnesses not reliable in the background of inconsistencies and contradictions in the evidence of the prosecution's witnesses and has recorded acquittal of respondent no. 2 giving him benefit of doubt.

8. Mr. Bipin Kumar, learned counsel appearing on behalf of the appellant has submitted that the trial court has committed gross error in disbelieving the evidence of the eye-witnesses who were present at the place of occurrence in natural course of business. He has submitted that the trial court has wrongly doubted the prosecution's case with untenable reasonings. Mr. Rajiv Ranjan Singh, learned counsel appearing on behalf of respondent no. 2 has submitted that the impugned judgment does not suffer from any legal infirmity which is



based on due appreciation of the evidence of the witnesses adduced at the trial.

9. We have perused the impugned judgment and order of the trial court as well as the lower court's records and we have given our anxious consideration to the rival submissions advanced on behalf of the parties. PW-1, the son of the deceased in his examination-in-chief claimed to be an eye-witness to the occurrence who had seen respondent no. 2 and other accused persons entering into the room of the deceased whereafter, respondent no. 2 had shot at his father leading to his death. PW-1 was however, not cross-examined in the absence of any legal practitioner present on behalf of respondent no. 2 to cross-examine him. It is pertinent here to note that the brother of the deceased, PW-2 in his evidence deposed that when the informant Rani Devi opened the door, the accused persons entered into her room and this respondent fired three shots targeting the deceased. Two shots hit the body of the deceased whereas one hit the ground. PW-2 was cross-examined on behalf of respondent no. 2. He also deposed that he did not know that who had informed the police and subsequently learnt that it was Rani Devi who had informed the police. He also deposed that the police had recovered bloodstained bed-sheet. It



is, however, not the prosecution's case that bloodstained linen was seized by the police and sent for forensic examination. Contrary to the evidence of the informant that the accused persons had entered into the room of the deceased and then killed him. PW-2 deposed that the accused persons had shot fire from the gate and not when they were inside the room. According to PW-2, the shots were fired by the miscreants from the gate.

10. It is worthwhile mentioning that the dead body of the deceased was found lying in the room, according to the prosecution's case and according to the informant(PW-4) the accused persons had entered into the room and thereafter, fired on the deceased. There is apparent improvement in the prosecution's case in as much as PW-3 and PW-6 deposed at the trial that the deceased after having sustained the injuries had told them that the persons named in the FIR had fired at him. The trial court had noticed the improvement in the prosecution's version and doubted the entire prosecution's case for the failure to disclose the first version of the information received by the police regarding the occurrence.

11. The view, which the trial court has taken while acquitting respondent no. 3, in our opinion cannot be said to be



not a reasonably possible view requiring this Court's interference.

12. We do not find any merit in this appeal.

13. This appeal is accordingly, dismissed.

(Chakradhari Sharan Singh, J)

Rajesh Kumar Verma,J:- I agree.

(Rajesh Kumar Verma, J)

ranjan/
suraj-

AFR/NAFR	NAFR
CAV DATE	22.02.2023
Uploading Date	21.07.2023
Transmission Date	21.07.2023

