

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.801 of 2023**

Arising Out of PS. Case No.-265 Year-2013 Thana- JAGDISHPUR District- Bhagalpur

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RAMDEV MANDAL S/O LATE BHAROSI MANDAL R/O VILLAGE-
KASIMPUR, P.S- GORADIH, DISTT.-BHAGALPUR.

... .. Appellant/s

Versus

1. The State of Bihar
2. RAMBILASH MANDAL S/O LATE CHHOTELAL MANDAL R/O
VILLAGE- KASIMPUR, P.S- GORADIH, DISTT.- BHAGALPUR.
3. LALAN MANDAL S/O RAMBILASH MANDAL R/O VILLAGE-
KASIMPUR, P.S- GORADIH, DISTT.- BHAGALPUR.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Davendra Kumar Pandey
For the Respondent/s : Ms. Shashi Bala Verma, APP

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**CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA)**

Date : 12-12-2023

1. Heard learned counsel for the appellant and
learned Additional Public Prosecutor appearing on behalf of the
State.

2. This appeal has been filed against the judgment
of acquittal dated 04.07.2023 passed by the learned Additional
District and Sessions Judge-VIII, Bhagalpur in Sessions Trial



No. 515 of 2014/687 of 2014(Case No./Tr. No. 296 of 2022) arising out of Jagdishpur (Goradih) P.S. Case No. 265 of 2013, whereby and whereunder the respondent nos. 2 and 3 have been acquitted from the charges under Sections 302/149, 201, 120B and 364 of the Indian Penal Code.

3. The prosecution case, in brief, is that the daughter-in-law of the informant along with his five years old-grand son Saurav Kumar was carrying bundles in Bangali Bahiyar, in the meantime, Saurav Kumar went away from there saying that he is going to the house. When they returned home at about 5:00 PM., they found that Saurav Kumar had not reached the home. On search, he could not be traced out. The informant has stated that his house is situated in Ishak Chowk where Manohar Rai and Sunil Singh reside and there is a case pending with them since long. They both used to come to the house of Rambilash Mandal, a resident of the same village. Later on, the dead body of the grand-son was found in a well. The informant has stated that he has firm belief that the said Sunil Singh, Manohar Rai, Rambilash Mandal, Lalan Mandal and Rahul Mandal have killed his grand-son and thrown his dead body into the well.

4. Learned counsel for the appellant submits that



the learned Trial Court has failed to appreciate that the informant (P.W. 5), mother of the deceased (P.W.1) and Bhola Mandal (P.W. 3) have fully supported the prosecution case. Both the parties are on inimical terms from before and due to that, they killed the five years old boy and thrown into the well. It is further submitted that the Doctor (P.W. 7) has clearly stated that the death has been caused by pressure and enclose over mouth and nostril by hand. The Trial Court has further failed to consider that one day before Manohar Rai and Sunil Rai had come in the village, who are conspirator from very beginning of the occurrence. The prosecution has established the place of occurrence.

5. Leaned Additional Public Prosecutor appearing on behalf of the State submits that the witnesses, who are saying about seeing the deceased going away from the field, have not stated that on 05.12.2013, when the deceased went away from the field for his home, the deceased was seen with the accused persons. In this case, it has not come that the accused persons were last seen with the deceased but looking at the place of occurrence, possibility that the deceased might have fallen into the well while returning home from the fields cannot be ruled out. Although the informant has stated that the deceased was



killed by the accused persons due to land dispute, but he has failed to prove the fact regarding pendency of any case between them. The statement of the father of the deceased (P.W. 2) and Bhola Mandal (P.W. 3) that they did not make any search in the house of the accused persons, creates doubt on their conducts since there is enmity from before and they have also suspicion against them and as such, they should have searched their house of the accused persons. Further he contended that from the evidence of the prosecution witnesses, it appears that after finding the dead body, merely on the basis of suspicion, they have lodged the case against the accused persons. The presence of dispute is like a double edged sword where it gives strength to the accused to commit the crime, there is also possibility of falsely implicating the accused. In this case the circumstances further indicate that the deceased himself might have fallen into the well, the possibility of falsely implicating the accused on the basis of existing dispute cannot be ruled out. Further the story that a five year old child, while he was with his mother in the field, said that he is going to home and he went away from there appears to be improbable as no mother will allow her five year old child alone to go home from the Bahiyar situated far away from the house.



6. Considering the facts and circumstances of the case and the submissions advanced on behalf of the parties, we do not find any perversity in the impugned judgment passed by the learned Trial Court. The appeal is, accordingly, dismissed being devoid of any merit, at the stage of admission itself.

(Arvind Srivastava, J)

(Sunil Dutta Mishra, J)

shailendra/-

AFR/NAFR	NAFR
CAV DATE	NA
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