

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.811 of 2024

Arising Out of PS. Case No.-301 Year-2021 Thana- JHAJHA District- Jamui

Shakuntala Devi, Wife of Late Devendra Prasad, Resident of Vill- Dhamna,
P.S.- Jhajha, District- Jamui.

... .. Appellant

Versus

1. The State of Bihar
2. Mantu Mandal, Son of Anadi Mandal, Resident of Vill- Dhamna, P.S.-
Jhajha, District- Jamui.

... .. Respondents

Appearance :

For the Appellant/s	:	Mr. Prabhat Ranjan Singh, Advocate
For the Respondent/s	:	Mr. Parmeshwar Mehta, APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 09-09-2024

A judgment of acquittal dated 15.05.2024 passed by learned Sessions Judge, Jamui (hereinafter referred to as the learned trial court) in Sessions Trial No. 549 of 2022 (arising out of Jhajha P.S. Case No. 301 of 2021) by which the learned trial court has acquitted the respondent no. 2 of the charges under Sections 302/34, 380/34 and 120B/34 of the Indian Penal Code (in short 'IPC') is under challenge in the present appeal at the instance of the informant.

2. Earlier *vide* order dated 22.07.2024, this Court called for the trial court records which have been received and are available on the record.

3. The prosecution case is based on a written report dated 14.10.2021 (Exhibit 'P-2') submitted by the informant (PW-4) addressed to the Officer-in-Charge of Jhajha Police Station. The scribe of the written application is one Vikram Kumar (PW-3) who is son of the informant.

Prosecution Case

4. In her written application (Exhibit 'P-2') the informant, who is wife of the deceased, has stated that on 13.10.2021 at 11:00 pm she heard the knocking sound at the main door and the person at the door introduced himself as Vicky Mandal, thereafter, the husband of the informant, namely, Devendra Prasad opened the door whereupon co-accused Vicky Mandal came inside the house along with Mantu Mandal (respondent no. 2) and two unknown persons. It is alleged that Vicky Mandal having *katta* in his hand, Mantu Mandal having an iron rod in his hand and the other two unknown persons having *katta* in their hands attacked her husband. When the informant protested, the accused persons tied the informant as well as her husband with rope and they assaulted the husband of the informant leading to his death. The accused persons, thereafter entered the room where they broke open the lock of godrej and looted gold and silver ornaments worth Rs.20,00,000/- as also Rs.2,00,000/-

in cash. The accused persons also took away with them LED TV, two monitors, 4 mobile phones and several important documents, such as passbook, ATM, LIC papers, land registry documents and Bolero-SLX documents, etc. According to the informant, the alleged incident took place at the instance of one Deosharan Singh and Jayanti Devi, the *Bhaisur* and the *Gotni* of the informant respectively because these two persons had threatened the informant and her husband of dire consequences over a land dispute.

5. After completion of investigation, police submitted a charge-sheet bearing number 05/2022 dated 18.01.2022 against Vicky Mandal. Thereafter, a supplementary charge-sheet bearing No. 400 of 2022 dated 12.08.2022 was filed against respondent no. 2 while keeping the investigation pending against other accused persons. Upon submission of the charge-sheet, *vide* order dated 28.08.2022, the learned Magistrate took cognizance of the offences under Sections 302, 380, 120B and 34 IPC. Finding that the offences of which cognizance was taken by the learned Magistrate are triable by the court of Sessions, the learned Magistrate committed the records to the court of Sessions *vide* order dated 14.09.2022. Accordingly, on receipt of the records, the learned trial court proceeded to frame the charges against the respondent no. 2.

Charges were explained to him which he denied and claimed to be tried. The learned Sessions Judge, Jamui *vide* impugned order dated 05.01.2023 found sufficient materials available on the record for framing of charge for the offences punishable under Sections 302/34, 380/34 and 120B/34 IPC. Accordingly, the charges were framed.

6. It would appear from the records that the prosecution examined as many as nine witnesses in support of its case and exhibited some documentary evidences. The list of witnesses and the exhibits marked on behalf of the prosecution as well as defence are described hereinbelow in a tabular form:-

List Of Prosecution/Defence/Court Witnesses

A. Prosecution

Rank	Name	Nature of Evidence (Eye Witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, Other Witness)
PW-1	Rakesh Ranjan	Other Witness
PW-2	Rajiv Ranjan	Other Witness
PW-3	Vikram Kumar	Other Witness
PW-4	Sakuntala Devi	Eye Witness
PW-5	Dr. Arvind Kumar	Medical Witness
PW-6	Rajesh Saran	Police Witness
PW-7	Rajesh Kumar	Other Witness
PW-8	Shweta Kumair	Other Witness
PW-9	Mukesh Kumar Singh	Police Witness

B. Defence Witnesses, if any

Rank	Name	Nature of Evidence (Eye Witness, Police
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		Witness, Expert Witness, Medical Witness, Panch Witness, Other Witness)
DW-1	Nitish Kumar	Other Witness
DW-2	Mahendra Mandal	Other Witness

C. Court Witness, if any

RANK	NAME	Nature of Evidence (Eye Witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, Other Witness)
CW-1	NO	NO
CW-2	NO	NO

List of Prosecution/Defence/Court Exhibits

A. Prosecution

Sr. No.	Exhibit Number	Description
1	Exhibit P-1/PW3	Signature of P.W. 3 Vikram Kumar on seizure list
2	Exhibit P-2	Written application
3	Exhibit P-3	Signature of P.W. 4 Shakuntala Devi (informant) on inquest report
4	Exhibit P-4	Signature of of P.W. 4 Shakuntala Devi (informant) on seizure list
5	Exhibit P-5	Signature of P.W. 4 Shakuntala Devi (informant) on written application
6	Exhibit P-6	Postmortem report of deceased Devendra Prasad
7	Exhibit P-7	Inquest report of deceased Devendra Prasad
8	Exhibit P- 8	Seizure list dated 14.10.2021 prepared by Ramadhar Yadav
9	Exhibit P-9	Challan of dead body of Devendra Prasad
10	Exhibit P-10	Endorsement on written application
11	Exhibit P-11	Signature of P.W. 6 Rajesh Saran on formal F.I.R.
12	Exhibit P-12	Seizure list dated 29.10.2021 prepared by Ramadhar Yadav (S.I.)
13	Exhibit P-13	Seizure list dated 29.10.2021 prepared by Dilip Chaudhary (S.I.)
14	Exhibit P-14	F.S.L. Report

15	Exhibit P-15	Station Diary dated 05.09.2021 to 13.10.2021
16	Exhibit P-15/1	Station Dairy dated 14.10.2021 to 17.11.2021
17	Exhibit P-15/2	Specific entry at serial no. 364 of page no. 391200 of the station diary date 05.09.2021 to 13.10.2021

B. Defence:

Sr. No.	Exhibit Number	Description
1	Exhibit D-1/DW1	No
2	Exhibit D-2/DW2	No

C. Court Exhibits

Sr. No.	Exhibit Number	Description
1	Exhibit C-1/CW1	No
2	Exhibit C-2/CW2	No

D. Material Object:

Sr. No.	Material Object Number	Description
1	MO1	No
2	MO2	No

7. The prosecution evidence was closed on 01.12.2023, on 06.12.2023, the statement of the accused-respondent no. 2 was recorded under Section 313 of the Code of Criminal Procedure (in short ‘CrPC’) in which he denied the prosecution version and claimed innocence. Thereafter, the defence examined two witnesses. On the request of defence, the defence evidence was closed on 06.02.2024.

Findings of the learned Trial Court

8. The learned trial court analysed the prosecution as well as defence evidence in the light of the judicial pronouncements of the Hon'ble Supreme Court and the relevant paragraphs of the Hon'ble Supreme Court judgments have been reproduced in the impugned judgment. The learned trial court held that in the present case, the seizure list dated 14.10.2021 was prepared at 7:00 am in the morning which contains Jhajha P.S. Case No. 301 of 2021 whereas the formal FIR has been registered on 14.10.2021 at 19:50 hours (7:50 pm), therefore, it is definitely a case of ante-dating and it amounts to an interference with the prosecution case which would be a dent to the prosecution.

9. The learned trial court found that out of the nine prosecution witnesses examined on behalf of the prosecution, except PW-5, PW-6, and PW-9, who are Doctor, I.O. and formal witness of the case respectively, all the other witnesses are family members of the deceased. It has been held that out of the other six witnesses, except PW-4, who is the informant and the only eyewitness and who claims to be present at the place of occurrence, the rest of the witnesses are only hearsay witnesses as they admittedly, were not present at the place of occurrence and

they arrived at the place of occurrence much later after the occurrence.

10. The learned trial court found that the testimony of the sole eyewitness of this case is full of contradictions, does not inspire confidence of the court and she cannot be put in the category of a wholly reliable witness. It has been found that the evidence of the informant (PW-4) has several latches and loopholes which would create doubt about the whole prosecution case. There is a delay of almost twenty one hours in institution of the FIR and the explanations in this regard are not satisfactory. Even before institution of the FIR, the initiation of the investigation and ante-dating of the FIR are some vital issues on which the prosecution could not satisfactorily answer. The learned trial court held that the prosecution case, apart from suffering from legal deformity, is also suffering from mist of doubt and as per settled principles of law that “once a doubt is created over the manner and genesis of the occurrence then in that event, the benefit of doubt has to lay in favour of the accused.”

11. The learned trial court has relied upon the judgment of the Hon’ble Supreme Court in the case of **Lalita Kumari Vs. Government of U.P. and Ors.** reported in **(2014) 2 SCC 1** wherein the Hon’ble Supreme Court has clarified that a station

diary cannot be treated as FIR in case the information received clearly reveals that cognizable offence has been committed. The court found that S.H.O. Jhajha had already received the information regarding the murder of one person at Village Dhamna which is evident from the entry made in the station diary (Exhibit 'P-15' and Exhibit 'P-15/1') but no FIR was lodged. It has been found that even after the SHO went to Village Dhamna and found the information to be correct, he did not lodge the FIR and had not recorded the statement of the wife of the deceased. If no one was coming forward to give the statement then why the S.H.O. had not recorded his own statement and lodged the FIR. The court found that conducting of the substantial part of investigation without institution of the FIR creates a big doubt about the whole prosecution case.

12. As stated above, the learned trial court acquitted the accused-respondent no. 2 giving him benefit of doubt.

Submissions on behalf of the Appellant

13. Mr. Prabhat Ranjan Singh, learned counsel for the appellant, has assailed the judgment of the learned trial court. It is submitted that despite availability of cogent and sufficient materials against the accused, the learned trial court acquitted him in a mechanical manner and the appreciation of evidences on the

record has been done in a manner contrary to the settled principle of law on evidence.

14. It is submitted that the learned trial court could not appreciate that respondent no. 2 with the help of one Vicky Mandal (acquitted in Sessions Trial No. 95 of 2022) had committed murder of the deceased and after that took away cash, jewellery, ATM, etc. and other valuable documents of the deceased and the said ATM has been recovered in the conscious possession of the wife of the co-accused Vicky Mandal leading to his confession before the police.

15. Learned counsel submits that the learned trial court erred in deciding the case as a case of circumstantial evidence whereas in the present case there is one eyewitness and the incriminating materials preferred by the informant who is an eyewitness has been duly recovered. It is submitted that it cannot be a case of circumstantial evidence, rather it is a case of direct evidence.

16. It is submitted that the learned trial court has failed to appreciate that the delay in lodging of the FIR cannot be a ground for acquittal unless the delay occasioned prejudice to the accused. Even if the FIR was lodged belatedly, the so-called delay had not caused any prejudice to the defence and the learned trial

court was obliged to consider the informant a wholly reliable witness.

17. Learned counsel submits that the learned court below has overlooked the F.S.L. Report (Exhibit 'P-14') which clearly speaks that one broken wooden *danda* was also sent for examination and there was reddish brown stain over a large area of broken *danda*. The learned trial court could not have declared the informant untrustworthy even as in the FIR she had stated that the accused persons had assaulted her husband with *katta* and *sariya* whereas in her evidence she had stated that her husband was assaulted with *kharka* (a wooden *danda* used for locking the door) because the said wooden *danda* which was used in killing of the deceased had been seized by police and the FSL report was suggesting presence of reddish brown stain over a large area.

18. Learned counsel submits that even as the defence raised a submission that the FIR had been seen by the learned Magistrate on 16.10.2021 i.e. after a delay of 36-40 hours, the learned trial court could not appreciate that the FIR was registered on 14.10.2021 at about 7:50 pm which was the 9th day of Durga Puja and the next day i.e 15.10.2021 was Vijayadashmi, therefore it was but natural that on the said day there would be a skeleton staff strength in Civil Court and therefore FIR could not have been

brought before the learned Magistrate on 15.10.2021 and as such this delay was natural and beyond the control of the prosecution, therefore this would not be fatal for the prosecution case. According to the learned counsel for the appellant, the prosecution case would not fall in absence of independent witnesses and non-examination of the police officers who had prepared inquest report and the seizure list.

Submissions on behalf of the State

19. On the other hand, Mr. Parmeshwar Mehta, learned Additional P.P. for the State has defended the impugned judgment. Learned Additional P.P. submits that the learned trial court has considered deposition of all the nine prosecution witnesses and the two defence witnesses. The learned trial court has also examined the documentary evidences available on the record. In its detailed and reasoned judgment, the learned trial court has recorded its finding on various aspects of the matter emerging from the records. The case is based on the evidence of the sole eyewitness, who is the informant and has been examined as PW-4 in this case. The learned trial court has correctly observed that the Indian legal system does not insist on plurality of witnesses. Neither the Legislature (Evidence Act) nor the Judiciary mandate that there

must be a particular number of witnesses in order to record a conviction against the accused.

20. It is submitted that in this case the alleged murder of the husband of the informant took place in the night of 13.10.2021 at about 11:00 pm when the informant along with her husband after taking their dinner were about to go to their beds. The husband of the informant had opened the door on the asking by Vicky Mandal and thereafter Vicky Mandal along with some other co-accused persons including respondent no.2 had allegedly entered into her house, they caught hold of the deceased Devendra Prasad and threw him on the ground. According to the informant, Vicky Mandal was having a *katta* in his hand whereas Mantu Mandal and two others were having *sariya* (iron rod) and they started assaulting her husband indiscriminately till he died. Thereafter, they entered into the room, committed a loot of gold and silver jewellery worth Rs. 20 lakhs, cash Rs. 2 lakhs, costly blanket, ATM cards, papers of bolero, documents related to land, bank passbook, LED TV, two monitors, four mobile phones etc. and later on they fled away. It is submitted that in course of her evidence, PW-4 came out with a lot of contradictions and discrepancies in her evidence. The informant had given information about the occurrence to the police on next day i.e. on

14.10.2021 at about 7:50 pm after a delay of 21 hours despite the fact that village Dhamna is at a distance of 12 kilometers away from the police station. Even after institution of the FIR at 7:50 pm on 14.10.2021, the police had dispatched the aforesaid FIR to the learned Magistrate only on 16.10.2021 i.e. after a delay of almost 36-40 hours. It is submitted that it is not a case that police had no information about the occurrence and in fact the local Chowkidar had already given the information about the occurrence to the police station at 2:10 am in the night itself and thereafter the police arrived at the place of occurrence in the village at 3:30 am and started investigation. Steps towards investigation, preparation of seizure list, inquest report of dead body and sending the same for postmortem were taken even before institution of FIR. Learned counsel submits that the learned trial court has, therefore rightly found that there is an inordinate delay in lodging of the FIR which would create a dent in the prosecution case.

21. Learned Additional P.P. submits that the contention of learned counsel for the appellant that the learned trial court has not appreciated the evidence of the informant (PW-4) in right perspective is not a correct statement of fact. It would appear from the evidence of PW-4 that in her examination-in-chief she has stated that Vicky Mandal was armed with *katta*, Mantu Mandal

had an iron rod in his hand, Chhotu Rawat and Mithu Rawat had a *katta* in their hand and all the four had taken her husband in their possession, assaulted him and slammed him down on the earth in the courtyard of the house, whereafter they tied the legs of her husband by a rope and his mouth by a towel, whereafter they assaulted him by a *kharka*, which is a wooden material used for locking the doors. She has claimed that the accused persons had also tied her hands and legs and had pushed her on the stairs but when they went away from the house, she somehow loosened the rope of her hand and got herself free. It is submitted that in the FIR she had stated that the accused persons had assaulted her husband by the weapon, which they were having in their hand. It is therefore evident that as regards the weapon used in commission of crime, PW-4 materially differed and introduced a different story.

22. Learned Additional P.P. submits that in her cross-examination, it has come that her husband had a land dispute with his brother, Dev Sharan Singh and Dev Sharan Singh had lodged a case against her husband. She has further stated that apart from her *bhaisur*, some other persons had also lodged case against her husband. Matuk Dhari Rawat, Devwanti Devi and others had lodged criminal cases against her husband in which her husband had gone to jail. She did not remember that how many times her

husband had gone to jail. The informant (PW-4) has admitted in paragraph '28' of her cross-examination that police had come at her door in the morning hour at 4-5:00 am and police was also present in her house when her younger son Vikram Kumar and daughter Sweta reached in the morning at 7:00 am. Police had taken away the dead body of her husband for postmortem. She has further stated that her son Vikram came with the dead body of her husband in the afternoon at 1-1:30 pm and on the same day in the evening her three other sons arrived. As regards Mantu Rawat, she has stated that there was no money transaction between her husband and Mantu Rawat. Her husband was on visiting terms with Mantu Rawat and Mantu Rawat is a criminal who is engaged in business of liquor. Learned Additional P.P. submits that in paragraph '32' of her deposition she has stated that police had taken her signature on the seizure list and on one more paper, police had taken away the dead body for postmortem and she had not told anything to police because she was in frightened condition. Large number of villagers were present there and her *maike* people such as her brother Om Prakash, Bhabhi and sisters etc. had also arrived. It is submitted that it is evident from the deposition of PW-4 that she is not an eyewitness to the occurrence and when police arrived in the morning at 4-5:00 am, stayed there

for more than two hours and even as her younger son Vikram and daughter Sweta had arrived at 7:00 am, no information was given to police implicating the accused-respondent no.2.

23. It is pointed out that in paragraphs '40', '41', '42' and '43' informant's (PW-4) attention was drawn towards her previous statements made before police. She has admitted that in her statement before police she had not stated that all the four accused persons had been assaulting her husband by a *kharka* and there were sign of abrasion on his hand, leg and a cut over the eyes, nose and lips. She has stated that whatever statement she has made, she is making before this court only and had not made any such statement before police. She has also stated that she had not stated before police that when she protested against the accused persons they tied her hand and legs by a rope and pushed her on the stairs and threatened her by putting a *katta* on her neck that if she would raise *hulla*, she would be killed. She had also not stated before police that when after some time she sensed that the accused persons had left the house then she opened the ropes of her hand by her teeth, freed her hands and then opened the rope, by which her legs were tied, using her hands.

24. Learned Additional P.P. submits that the postmortem report (Exhibit 'P-6') which has been proved by the Doctor (PW-

5) is showing “rigor mortis” developed in all four limbs, eye closed. Mouth half open nasal bleeding, mouth-bleeding fracture of nasal spectrum and cartilage fracture of thyroid cartilage and bone neck move freely from left to right and right to left; Fracture of C3, C4 and C5 neck bone, abrasion on right foot below knee 4” X skin.” In his cross-examination, the Doctor (PW-5) has stated that if there is a fracture of bone, some external injuries like abrasion, bruise, etc. may occur on the external skin. He had not found such injuries on the dead body. He had not found the cut or incised wound near left eyebrow or any part of the body. PW-5 opined that if somebody is tied with a rope, there may be some external mark of such tying knot but he did not found any sign of tightness of ropes on the deceased hand and legs. In paragraph ‘11’ of his deposition, PW-5 has stated that in case of hanging C3, C4, C5 neck bone may be fractured and even due to tying the neck by soft towel. In paragraph ‘15’, the Doctor opined that he had not found the blood on cloth of the deceased.

25. Learned Additional P.P. submits that the I.O. of this case is an Inspector of Police of Jhajha Police Station who has deposed as PW-6. He has stated that he got information with regard to the murder of a person in village Dhamna on 14.10.2021 at 2:10 am whereafter he proceeded to the place of

occurrence and found that dead body of deceased Devendra Prasad was lying immediately after the main door. In paragraph '6' of his examination-in-chief, PW-6 has stated that he had requested the wife of the deceased and his family members to submit either a written report or make *fardbeyan* but they said that three sons of the deceased are in service outside the State, they have been informed and they are coming by flight. They told PW-6 that on arrival of them immediately application shall be given. After that PW-6 had directed Police Sub Inspector Ramadhar Yadav to prepare inquest report of the deceased which has been proved as Exhibit 'P-7' and send the dead body for postmortem giving instruction to the Chowkidhar at 6:30 am. FSL and Fingerprint Bureau Team were also informed. After arrival of the sons of the deceased, the informant (PW-4) had given a written application in the evening and on that basis the FIR was registered. He had talked to PW-4 and others in the morning but nobody told him the name of assailants. PW-4 had witnessed the inquest report (Exhibit 'P-7'). He had been shown the P.O. by PW-4 at 05:30 am. He had not mentioned about source of light in the case diary. In paragraph '29', I.O. has stated that prior to registration of FIR, he had done inspection of

place of occurrence, made inquest report, prepared challan of dead body and made seizure list.

26. Learned Additional PP has pointed out that in this case, PW-1, PW-2 and PW-3 are the three sons of the deceased. PW-8 is the daughter of the deceased and on perusal of the deposition of these witnesses, it would appear that they were not present in the village on the date of occurrence. PW-1 is a Senior Manager in TCS Company, he was in Bengaluru, PW-2 was in Pune and PW-3 was in Patna. PW-8 was also in Patna with her brother Vikram Kumar (PW-3). It has come in evidence that Vikram Kumar (PW-3) received a phone from the mobile of his cousin brother Ravi Ranjan (not examined) that the occurrence had taken place at his house in Dhamna. PW-8 has stated that she and her brother (PW-3) started calling their father and mother but despite several rings, they were not picking up their phone whereafter Vikram Kumar (PW-3) had made a phone call to Jhajha Police Station and had informed about the occurrence.

27. PW-3 has stated that after getting information from his cousin Ravi Ranjan, he had given call to his brothers PW-1 and PW-2 and had also made a phone call to Jhajha Police Station and thereafter left with his sister (PW-8) to his village from Patna. He reached his house at about 06:00 am (morning)

and found that police team was present there and a large number of villagers had also assembled. In his presence, police had collected the towel, a portion of the wood and blood from the place of occurrence, prepared the seizure list on which he had put his signature which has been marked Exhibit 'P-1'. PW-3 had come to Sadar Hospital with the dead body of his father for postmortem, police had brought the dead body to Sadar Hospital, Jamui and this witness was accompanying the police. He returned with the dead body after postmortem. Learned Additional PP submits that from the deposition of Rajesh Kumar (PW-7), it would appear that he is another son of the deceased who was in Indore on the date of occurrence. He has stated that at about 01:00 O'clock in night, his brother (PW-3) had informed him that some occurrence had taken place in his house at Dhamna and when he was talking to PW-3, he got a phone from an unknown number on his mobile. When he received that unknown number call, he found that at the other side, it was his mother who told him that his father has been killed. Learned Additional PP submits that all these prosecution witnesses who are sons and daughter of the deceased have stated that they came to know about the occurrence in the night itself but none of them has stated that either Ravi Ranjan who is cousin brother of PW-3

or the mother who had talked to PW-7 had taken name of the assailants of their father. It is pointed out with reference to paragraph '16' of the deposition of PW-7 that PW-7 was suggested that he had not stated to police that his mother had told him that his father has been killed. This suggestion has been denied by PW-7, therefore, it is evident from the testimony of PW-7 that his mother had only informed him that his father has been killed. She had not disclosed about the name of the assailants. In paragraph '21' of the deposition, PW-7 has stated that apart from the uncle and aunt, his father had also enmity with villager Matuk Dhari Rawat and Banarasi Rawat. No agricultural work was taking place on the land since 1996 because of the dispute with the uncle. Learned Additional PP has further pointed out from the deposition of PW-6 that in paragraphs '54', '55' and '56', it has come that the I.O. had not mentioned in the case diary the description of the sasural house of Vicky Mandal. He has stated that Juli Kumari, wife of Vicky Mandal was present there but he had not recorded the statement of Juli Kumari. PW-6 had not recorded the statement of Chaukidar of village- Pradhan Chak where he had gone to conduct raid and had not recorded the statement of sasural people of Vicky Mandal. He had also not taken signature of Juli

Kumari, wife of Vicky Mandal. As regards the seizure list prepared by the I.O. in the sasural of Vicky Mandal, it has come in evidence that the I.O. had not made any verification with regard to seized ATM Card from bank. He had not mentioned in the case diary that the ladies purse was sealed. The seizure list witnesses were not examined by him and no one from village Pradhanchak has been examined by the I.O. In this background, the defence suggested the I.O. that he had not prepared any seizure list and had only obtained signature on blank sheet of paper from the seizure list witnesses who had not been examined and he was deposing in collusion with the informant. It is submitted that on recall, PW-6 had proved the station diary entry which has been marked 'P-15/2' and perusal thereof would show that the station diary entry contains entry no. 364 at 02:00 am wherein it is recorded that at this point of time, a telephone call was received that a person has been murdered in village Dhamna whereafter the Officer-in-Charge of the police station Rajesh Saran (PW-6) along with Sub-Inspector Virbhadr Kumar Singh, Gupteshwar Prasad Singh, Ramadhar Yadav and Dilip Kumar Choudhary together with armed forces proceeded from police station. It is submitted that information was well received by the Officer-in-Charge of the police station by way of

Exhibit 'P-15/1', it was disclosing commission of a cognizable offence, still no FIR was lodged.

28. It is submitted that in such circumstance, when the seizure list was prepared by the I.O. on 14.10.2021 at 07:00 am (morning), the case number of Jhajha Police Station could not have been mentioned because no case has been registered till that time. It is submitted that in this case, the seizure list (Exhibit 'P-8') contains the Jhajha P.S. Case No. 301/2021 which clearly shows that this is a case of ante-dating and ante-timing and the learned trial court is correct in saying that it amounts to an interference with the prosecution case and the same is a dent to the prosecution case. Learned Additional PP has, therefore, defended the judgment of the learned trial court and submitted that no interference is required in this case. He has relied upon the judgment of the Hon'ble Supreme Court in the case of **Babu Sahebagouda Rudragoudar and Others Vs State of Karnataka** reported in **2024 SCC Online SC 561** to submit that a judgment of acquittal need not be interfered with lightly and if two views are possible, the High Court would not impose its views in place of the views expressed by the learned trial court.

Consideration

29. We have heard learned counsel for the appellant and learned Additional PP for the State at length as well as perused the learned trial court's records. It is evident from the materials available on the record in this case that the occurrence took place on 13.10.2021 during night hours. The informant, who is the wife of the deceased and has been examined in this case as PW-4 claims herself an eye witness to the entire occurrence.

30. From the oral testimony of her son Rajesh Kumar (PW-7), it appears that she had herself talked to her son and informed him that his father had been killed but she had not disclosed the names of the assailants to her son. The prosecution witnesses PW-1, PW-2, PW-3 and PW-8 who are the other brothers and sisters of PW-7 had also talked to each other after getting information about some occurrence in their house in village Dhamna. PW-3 has disclosed that he had got information in the night from his cousin brother Ravi Ranjan about some occurrence in his house. These witnesses have not stated that they were told about the name of the assailants of their father. This Court further finds from the Station Diary Entry (Ext. 'P-15/1') that an information with regard to murder of a person in

village 'Dhamna' was received in Jhajha Police Station in the same night at 2:10 am and a police team had proceeded for the village Dhamna. The I.O. (PW-6) reached the house of the informant in between 3-4 am. He has stated that after reaching the place of occurrence at about 3:30 AM, he found that hundreds of people had assembled from the village there. He first controlled the crowd and waited for the morning. He met Shakuntala Devi (PW-4), wife of the deceased and some other members of the family of the deceased and he had some talk with them but none of them told him the name of the assailants/murderers. PW-6 had prepared the inquest report at 5:20 AM and the wife of the deceased (PW-4) is one of the witnesses to the said inquest report. He had also prepared the dead body challan and had sent the dead body for post mortem at 6:30 AM.

31. From these materials, to this Court it appears that neither the informant (PW-4) nor anyone from the village who had assembled at the place of occurrence had seen the actual occurrence which took place in the night of 13.10.2021/14.10.2021. This is not a natural conduct of an eye witness to the occurrence that he/she would remain silent about the name of the murderers for about 21 hours.

32. This Court finds from the evidence of the sons and daughters of the informant that two of them who are PW-3 and PW-8 reached thier village early in the morning. PW-3 has stated that he reached his house at 6.00 AM and found that the police team was present there. He has also stated that a large number of villagers had assembled there. His mother was weeping in the *Verandah* whereafter he had entered into his house and had seen the dead body of his father lying in the courtyard of his house on the floor. These witnesses, however, remained completely silent and have not stated that after reaching their house, their mother told them about the name of the murderers. The I.O. (PW-6) has stated in his examination-in-chief that he had requested the wife of the deceased and other family members to submit either written or oral statement for purpose of lodging of the FIR but they told him that three sons of the deceased are in service outside the State, they have been informed, they are coming by flight and as soon as they arrive, the application would be submitted. It is, therefore, evident that the informant (PW-4), Vikram Kumar (PW-3) and Shweta Kumari (PW-8) were present at the place of occurrence when police team was there at about 6.00 AM but they did not disclose the I.O. about the identity of the murderers.

33. It is also evident from the records that a station diary entry was made *vide* Exhibit 'P-15/2' which disclosed commission of a cognizable offence, still no formal FIR was lodged by the police in Jhajha Police Station and they kept on waiting for a written report or *fardbeyan* of the informant as per her convenience.

34. This Court further finds that in the seizure list (Exhibit-'P-8') which has been prepared by the I.O. on 14.10.2021 at 7.00 AM, the case number of the present case being Jhajha P.S. Case No.301 of 2021 has been mentioned which was not possible because by that time the informant had neither submitted any written report nor made her *fardbeyan* so no FIR had been registered. The other three sons of the informant reached their village at about 05:00 PM and about two and half hours thereafter they went to Police Station. The FIR came to be registered on 14.10.2021 at 7.50 PM. Thus, the finding of the learned trial court that it is a case of ante-timing of the seizure list is a correct finding of fact.

35. The learned trial court has rightly recorded a finding that in this case substantial part of the investigation was done without institution of the FIR which creates a big doubt about the whole prosecution case.

36. This Court finds that the learned trial court has carefully examined the oral testimony of all the nine prosecution witnesses and recorded that PW-4 who is the informant of the case is said to be the only eye witness and the rest other witnesses are only hearsay witnesses. The learned trial court has noticed the cardinal principle of law that in a criminal trial, the prosecution has to succeed on its own leg and by pitching it's case beyond the shadow of all reasonable doubts. It must fall in the realm of 'must be true' category and not rest contented by leaving it in the domain 'may be true'. The learned trial court has found that there are material inconsistencies and contradictions in the evidence of the sole eye witness, hence, she cannot be wholly relied upon. There is also an inordinate delay and unsatisfactory explanation for the delay of almost 21 hours in institution of the FIR. The prosecution case is suffering from mist of doubt about the manner and genesis of the occurrence and in such circumstances, the benefit of doubt has to go to the accused. We find no reason to take any other view with regard to these findings of the learned trial court.

37. This Court having examined the entire evidence on the record is of the considered opinion that not only there is an inordinate delay in submission of the written report by the informant, there is also ante-timing on the seizure list and the

evidence of the sole eye witness (PW-4) contains contradictions which are vital and would create a dent in the prosecution case. This Court finds that in the written report which was lodged after 21 hours of the occurrence and in presence of her well educated son who had written the report and is PW-3 in the present case, the informant has stated that Vicky Mandal had a 'Katta' in his hand whereas this accused Mantu Mandal had an 'iron rod' in his hand, two unknown persons had 'Katta' in their hand and all of them assaulted the husband of the informant. In her examination-in-chief also PW-4 has stated that the accused were armed with 'Katta' and 'iron rod' but this time she has not stated that they started assaulting with those weapons. She has stated that all the four accused had taken her husband in their control, indulging physically and had brought him in the courtyard where he was slammed down and thereafter they tied the hands and legs of the husband of the informant and also tied his mouth by a towel and thereafter, all the four started assaulting the deceased by a Kharka (a wooden tool used for closing the door). Thus, she has not stated in her examination-in-chief that this accused had assaulted her husband by an iron rod. Her statement that the accused had tied her both hands and legs and that she was pushed to the stairs has been contradicted.

38. This Court, therefore, finds that the credibility of PW-4 is not that of a sterling witness and it would not be safe to convict the accused-respondent no. 2 on the basis of the sole testimony of PW-4 as the same is not corroborated in material particulars from any independent evidence on the record and at the same time there is an inordinate delay in submission of the written report (Exhibit 'P-2') which has remained unexplained. The conduct of PW-4 in maintaining silence and not disclosing the name of the murderers even after arrival of her son (PW-3) and daughter (PW-8) coupled with the evidence of the I.O. that even after his asking the informant to give her *fardbeyan* or a written report, she did not say about the identity of the murderers would only lead to a conclusion that PW-4 had not seen the occurrence. PW-4 was fully conscious, she had talked to her son (PW-7) on mobile, she had also talked to the I.O. (PW-6) and had shown him the place of occurrence, still for no plausible reason she did not record her *fardbeyan*. Apparently, the FIR has been lodged after a lot of thought process after arrival of three other sons of PW-4 in the evening. All the sons and the daughter have deposed in stereotype version. Even as a large crowd of villagers were present at the place of occurrence, no independent person has been examined by the I.O. (PW-6).

39. In the kind of materials present on the record, the prosecution story does not inspire confidence of this Court.

40. It is well-settled that in an appeal against acquittal, the High Court would not interfere with the judgment of the learned trial court lightly. The principles governing an appeal against acquittal have been recently reiterated by the Hon'ble Supreme Court in the case of **Babu Sahebagouda Rudragoudar** (*supra*) Paragraph '38' of the said judgment is being reproduced hereunder for a ready reference:-

“**38.** Further, in the case of *H.D. Sundara v. State of Karnataka*² this Court summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of CrPC as follows:—

“**8.1.** The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

41. We are convinced from a complete analysis of the evidences on the record that the trial court has not committed any error in appreciation of the evidences and this Court has, upon going through the entire materials on the record, reached to the same conclusion. No interference is required with the judgment of the learned trial court.

42. The appeal is dismissed.

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

Rishi/Sushma-

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