

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.25 of 2022

Arising Out of PS. Case No.-129 Year-2009 Thana- BARAUNI District- Begusarai

RAM NARESH SINGH @ RAM NARESH Son of Shital Singh @ Shital @
Late Shital Resident of Village- Bihat, Gurudas Tola, Zero Mile, P.S.-
Barauni, District- Begusarai.

... .. Appellant/s

Versus

1. The State of Bihar
2. Gopal Singh Son of Sri Umesh Singh Resident of Village- Bihat, Gurudas Tola, Zero Mile, P.S.- Barauni, District- Begusarai.
3. Kanhaiya Kumar @ Kanhaiya Singh Son of Umesh Singh Resident of Village- Bihat, Gurudas Tola, Zero Mile, P.S.- Barauni, District- Begusarai.
4. Savita Devi W/o Sri Umesh Singh Resident of Village- Bihat, Gurudas Tola, Zero Mile, P.S.- Barauni, District- Begusarai.
5. Umesh Singh Son of Late Sheetal Singh Resident of Village- Bihat, Gurudas Tola, Zero Mile, P.S.- Barauni, District- Begusarai.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ramakant Sharma, Sr. Advocate
Mr. Sandip Kumar Gautam, Advocate

For the State : Mr. Satya Narayan Prasad, APP

For the Respondents : Mr. Ajay Kumar Thakur, Advocate

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and

HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 30-08-2024

The present appeal has been filed under Section-
372 of the Code of Criminal Procedure, 1973 (hereinafter
referred as 'Cr.P.C.') challenging the impugned judgment and
order of acquittal dated 05.08.2021, passed by the court of



learned Additional Sessions Judge-IX, Begusarai in Sessions Trial No. 19 of 2010, arising out of G.R. Case No. 1274 of 2009 corresponding to Barauni (Zeromile) P.S. Case No. 129 of 2009, whereby the private respondents herein have been acquitted of the charges levelled against them.

2. Heard Mr. Ramakant Sharma, learned senior counsel for the appellant assisted by Mr. Sandip Kumar Gautam, Mr. Ajay Kumar Thakur, learned counsel for the private respondents and Mr. Satya Narayan Prasad, learned A.P.P. for the respondent-State.

3. The prosecution story, in brief, is as under:

“On 29th April, 2009, at about 01:30 a.m., the son (deceased) of the informant went out to urinate while the other family members were asleep. Some miscreants were sitting in ambush who involved with him in scuffle and fired at his chest from a point blank range and fled away. Rajesh came to the courtyard and raising alarm informed his uncle Ganesh Singh that someone has fired at him. Immediately, he called Gopal to get up. Out of these two persons, Gopal saw from the roof and the uncle from the ground three persons fleeing towards the railway bridge in the northern side. Nobody could venture to chase the miscreants on seeing the Rajesh smeared with blood.



They rushed the injured to the Doctor's clinic at Begusarai from where the Doctor referred the patient to Patna. While on way to Patna, he died near Bakhtiyarpur. Thereafter, they returned. The deceased was a man of very calm nature and he had no enmity with anyone. He used to run a shop in front of his house. Some days ago, a theft had also taken place in his shop.”

4. After filing of the F.I.R., the investigating agency carried out the investigation and, during the course of investigation, the Investigating Officer recorded the statement of the witnesses, collected the relevant documents and thereafter filed the charge-sheet against the accused. As the case was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions where it was registered as Sessions Trial No.19 of 2010 and the statements of the accused persons were recorded under Section 313 of Cr.P.C. wherein they pleaded not guilty.

5. Learned senior counsel for the appellant/informant Mr. Ramakant Sharma has assailed the impugned judgment of acquittal on the ground that the Trial Court has committed grave error by discarding the deposition given by the eye-witness and the other relatives of the



deceased. It is submitted that, in fact, P.W. 1 Rohit Kumar has deposed that on hearing the sound of firing and commotion when he got up, he saw in the torch light that accused Kanhaiya was having a rod and Gopal was having a pistol in his hand and his father was writhing in pain in the courtyard. He lifted his father and put him into the vehicle. At that time, he was uttering and stated that Savita instigated Gopal to kill him. It is further submitted that P.W. 7, Munni Devi, who is the wife of the deceased, has specifically deposed that at about 1:30 hours in the night when her husband went towards handpump to urinate, accused Gopal Kumar, Kanhaiya Kumar, Savita Devi, Umesh Singh and Amit Kumar with two other unknown persons were sitting in ambush and Gopal fired from his pistol on her husband. Thus, P.W. 7 is the eye-witness who has supported the version of the prosecution. It is further submitted that P.W. 8 Dr. Arun Kumar, who had conducted the *post mortem* of the dead body of the deceased, has also supported the version of the eye-witness, despite which the Trial Court has given benefit of doubt to the respondents/accused and thereby they have been acquitted of the charges levelled against them. Learned senior counsel has, therefore, urged that the present appeal requires consideration and, as such, this appeal



be admitted and thereafter the impugned judgment be quashed and set aside.

6. On the other hand, Mr. Ajay Kumar Thakur, learned counsel for the private respondents/accused, has opposed the present appeal. It is contended that from the *fardbeyan* which was given by the father of the deceased (informant), it is revealed that nobody has seen the occurrence, but Gopal saw from the roof and the uncle of the informant saw from the ground three persons fleeing towards the Railway bridge. From the *fardbeyan*, it can be said that there is no reference in the said *fardbeyan* with regard to the wife of the deceased seeing the assailants killing her husband. There is no reference of other so-called witnesses who were present at the place of occurrence. Learned counsel for the private respondents/accused, therefore, contended that the said version given by the wife of the deceased is rightly discarded by the Trial Court. It is further submitted that the statement of P.W. 7, wife of the deceased, was recorded by the police 15-20 days after the incident in question. Thus, the Trial Court has rightly not placed reliance upon the same. Learned counsel further submitted that there is no eye-witness to the incident in question and the prosecution has miserably failed to prove the



case against the respondents/accused beyond reasonable doubt and, therefore, the Trial Court has not committed any error while passing the impugned judgment of acquittal.

7. Learned A.P.P. has contended that in the facts and circumstances of the present case, this Court may pass the appropriate order.

8. We have considered the submissions canvassed by the learned counsels for the parties. We have also perused the evidence of prosecution witnesses and also perused the documentary evidence exhibited.

9. At this stage, we would like to appreciate the relevant extract of entire evidence led by the prosecution before the Trial Court.

10. Before the Trial Court, prosecution examined 09 witnesses.

11. P.W. 1 Rohit Kumar is the son of the deceased Rajesh Singh. He has stated in his examination-in-chief that the incident took place on 28.04.2009 at about 1:30-2:00 in the night. At about 5:00-6:00 in the evening accused Umesh Singh and Savita Devi were abusing his father Rajesh Singh (deceased) and were stating that even if he wins the case, he will not enjoy the land. After this, the witness went to his shop



and returned at 10:00 p.m. Savita Devi Umesh Singh, Gopal Kumar, Kanhaiya Kumar and Amit Kumar were sitting in the courtyard and were talking together. He went to sleep. On hearing the sound of firing and commotion, he got up at 1:30 a.m. and intervened having a torch in his hand and saw that Kanhaiya was having a rod and Gopal was having a pistol in his hand. His father was writhing in the courtyard. He lifted his father and put into the vehicle. His father was uttering “Sabitiya (slang) Hamko Marba Di Goli Gopal Se Marba Di”. His mother, Soni Kumari etc. were crying near his father. At that time, his mother had not informed him anything. She later informed that at 1:30 hours in the night his father had gone to urinate, where Gopal, Umesh, Kanhaiya Kumar, Amit Kumar and Savita Devi surrounded and assaulted him. She went there on hearing the commotion. She also informed that Savita Devi was giving order to kill him. Kanhaiya Kumar hit the backside of his father’s head with a rod. Gopal Kumar fired at his chest on the left side. Savita Devi pelted a brick on his right eye. Gopal and Amit threatened his mother that if she disclosed about the incident, they would kill her son and daughter. He took his father to the clinic of Dr. Shashi Bhushan at Begusarai. He claims to identify all the accused out of whom Umesh



Singh is present.

11.1. In his cross-examination, he has stated that at the time of incident he was at his shop. The accused are his relatives. A land-dispute was going on with his uncle. No compromise had taken place in the said title suit in his presence. Further he has denied to have any knowledge about the ownership of the said land. On hearing the *hulla*, he was first to reach the place of occurrence. He saw his father fallen on the ground facing the sky. He took his father to hospital in an Alto car. Dilip Kumar had arranged the vehicle, not Gopal Kumar. He has further stated that his father died at Bakhtiyarpur while on way to Patna and they returned home at about 06:00-06:30 a.m. when Police was already present there. Whose statements the Police recorded, he is not aware. The statement of his mother Munni Devi was not recorded that day. He is also not aware whether the case was filed that day or not. He has also stated that his statement was recorded by the Police 5-7 days after the said incident. He has denied the suggestion that he had not stated before the Police as stated by him in the Court. He knows the place where the incident took place. The place of occurrence is 4-5 steps north to the handpump. His courtyard is not surrounded by any boundary wall. His father



had fallen in the courtyard, 5-7 steps away from the place where he was shot at. No blood had spilled at the place where his father was shot at but his vest (*ganjee*) was smeared with blood that oozed out of his chest. When the witness reached the courtyard, his father was conscious and 4-5 persons viz. his sister, Ganesh Singh, wife of Ganesh Singh and 1-2 others were present there. He has denied the suggestion to have given false deposition.

12. PW-2 Bachchi Devi has stated, in her examination-in-chief, that she was sleeping in her room at the time of incident. Upon hearing the sound of firing, she came to the courtyard and saw that her daughter-in-law and granddaughter were crying. She saw that her son Rajesh was writhing in pain and saying “*Savitiya hume Gopalwa se Goli Marba Diya Hai*”. Her daughter-in-law informed her that Umesh, Gopal, Kanhaiya, Amit and Savita all together have assaulted her son when he was going to urinate outside. Gopal had fired at him while others had pelted bricks. The bullet had hit the left side of the chest. He was taken to Begusarai Hospital from where he was referred to Patna. While on way to Patna, her son died. Four days prior to the said incident, Umesh had threatened her that even if she wins the case, they



would not allow her to enjoy the land. She claims to identify all the accused persons, including Umesh Singh who is present. She has further stated that her statement was recorded by the Police 6-7 days after the incident.

13. PW-3 Vinod Singh has stated in his examination-in-chief that the incident took place on 28.04.2009, at 01:30-02:00 at night. At that time, he was sleeping in his house. On hearing the sound of firing, he came to the courtyard and found his brother Rajesh Singh fallen on the ground. The left side of his chest was injured by the gunshot. He said "*Savita Devi Gopala ko kahkar goli marwa di hai*". He added that, before the incident, on the same day, at about 04:00 p.m., a quarrel had taken place between Savita Devi, Umesh Singh, Gopal, Kanhaiya and Amit on one side and Rajesh and his wife on the other. The accused persons threatened that, even if they (prosecution side) win the case related to land, they would not let them enjoy it. When he reached at the place of occurrence, his sister-in-law, niece Soni, nephews Rohit, Ranjit and Sanjit were crying. Rohit arranged a vehicle and took the brother of this witness to the clinic of Dr. Shashi Bhushan at Begusarai. There also, his brother repeated his version as stated above. After treating him for half an hour,



the Doctor referred him to Patna. The moment they reached Bakhtiyarpur, his brother died. He has further stated that for the said land-dispute, the accused persons had previously also involved in altercation. He claims to identify the accused persons, including Umesh Singh who is present.

13.1. In his cross-examination, he has admitted that he lives in Railway Quarters with his father, but on the date of incident he was not present in the Railway Quarters. He has stated that a land-dispute is going on between his father and uncle Umesh. He has further stated that the statements of Munni Devi and this witness were recorded 5-6 days after the incident. He has stated that he had given the statement before the police that Savita Devi had instigated Gopal to commit the murder. He has denied to have gone through the statements of other witnesses. He has further stated that he had reached to the Doctor at 2:30-3:00 hours at night. The doctor had not informed the police. The witness stayed there for 30-45 minutes during which the doctor gave treatment. The doctor did not write anything, but referred the patient to Patna in writing. He has denied the suggestion that Rajesh was killed by unknown persons and, due to the land-dispute, the accused persons were falsely implicated in the present case.



14. P.W. 4 Ranjeet Kumar has stated in his examination-in-chief that the incident took place on 28.04.2009 at 1:30 at night. He was sleeping in his shop and, on hearing the sound of firing, came running and saw that behind the house Umesh Singh, Gopal Singh, Savita Devi, Amit Kumar, Kanhaiya Kumar all the three were fleeing away. He saw in the light coming from Yuvraj Hotel and from the electric bulb placed at the posterior side of the house that Gopal was having a pistol and Kanhaiya was having an Iron rod in his hand. When he went to the courtyard, he saw his father injured. His father was saying that "*Savitiya ne Gopal ko kaha ki goli mar do, tab Gopal goli mar diya hai.*" The brother of this witness and Binod Yadav took his father to Begusarai, but his father could not be saved. His mother informed him that at 1:30 hours in the night his father had gone towards the handpump to urinate when Gopal, Umesh, Savita Devi, Amit and Kanhaiya all surrounded him and started assaulting him and, on the order given by Savita Devi, Gopal fired on his father. Kanhaiya inflicted rod blow on the backside of his head and Savita assaulted his father below the eye. He claims to identify the accused persons, including Gopal who is present.

14.1. In his cross-examination, he has further



stated that when the F.I.R. was registered, he was present there. As he has stated here, he had stated there also. He has gone through the F.I.R. Whatever he has stated in his examination-in-chief finds mention in the F.I.R. He does not remember after how many days of the incident his statement was recorded. His statement was recorded at his residence in presence of others. He has denied the fact that his grandfather had asked him to disclose as to who had fired. He has further stated that he did not catch Gopal, Kanhaiya, Savita. He denies to know the particulars of the vehicle, name of the driver and the number of the vehicle. He has denied to have stated that he had seen from behind the house Umesh Singh, Gopal Singh, Savita Devi, Amit Kumar and Kanhaiya Kumar fleeing away and Gopal Singh was having a pistol in his hand and Kanhaiya Kumar was carrying a rod in his hand. 3-4 minutes after this, he met his father who was alive by that time, who was smeared in blood, but was not unconscious. He saw that blood was oozing out of the injuries on the backside of his head and from the chest. He has admitted to have stated in his statement before the police “Papa bol rahe the ki Savitiya ne Gopal se kaha ki goli mar do tab Gopal ne goli mar diya.” He does not remember as to how many persons were present at the place when he saw his father.



15. P.W. 5 Dilip Kumar is an independent witness. He has deposed that he knows deceased Rajesh Singh who died on 29.04.2009 due to gun-shot injury. When he was taking the deceased to the hospital, the deceased was uttering some words, but it could not be deciphered from his utterance as to who had fired at him.

15.1. In his cross-examination, he has stated that Bindu Devi @ Munni Devi is the wife of Rajesh. On the date of incident, she was at her parental house. She came after the *post mortem*.

16. P.W. 6 Ram Naresh Singh is the informant, father of the deceased. He has deposed that about five years and two months ago, at about 01:00-1:30 hours at night, his son was sleeping with his wife. When he went towards the courtyard to urinate, the accused persons assaulted him on his chest, backside of his head and below the eye and injured him, as a result of which he fell down in the courtyard. The accused persons fled away threatening to kill other family members also, if the incident is disclosed. The injured Rajesh was taken to Sadar Hospital, Begusarai from where he was referred to Patna, but he died on the way. He has further stated that he had not seen the occurrence rather he was informed about the



manner of occurrence by his daughter-in-law. He claims to identify all the accused persons. He has denied the suggestion to have given false evidence.

17. P.W. 7 Munni Devi @ Bindu Devi is the wife of deceased Rajesh Singh. She has stated in her examination-in-chief that on 28.04.2009 in the night her husband was sleeping with her. At about 1:30 hours he went towards the handpump to urinate when the accused persons Gopal Kumar, Kanhaiya Kumar, Savita Devi, Umesh Singh, Amit Kumar and two others were sitting in ambush and Gopal fired from his pistol on her husband. Her husband fell injured in the courtyard and said that on the order given by Savita, Gopal fired on him. She started crying, upon which the accused threatened to kill her son if she disclosed the incident to anyone. In the past also, an altercation had taken place in which the accused had said that even if the prosecution side wins the case, the accused persons would not let them enjoy the property. After the incident, her husband was taken to Begusarai Hospital. From there he was referred to Patna, but he died on way to Patna. After her husband's demise, she used to remain unwell and unconscious for about 15 days for which she was treated also.

17.1. In her cross-examination, she has stated that



Gopal had also gone for treatment with her husband. She has denied the suggestion that on the date of incident, she was at her parental house and that she had given her statement before the police 15-20 days after the incident on telephone. She has also denied that due to the land-dispute between the parties, this false case has been filed against the accused persons and that she has given false deposition.

17.2. In her further cross-examination on recall in the light of altered charge, she has stated that her husband was shot at near the handpump. She had not heard the sound of firing before going there. Except her, none else from her family was present there. Only the 5 accused persons were present. Only one bullet was fired. The bullet had not gone through. Her husband was not unconscious after receiving the bullet injury. Blood had come out of the injury and his vest was blooded. She is not aware where is the vest. Her clothes had not received any blood-stains. She has further stated that Savita Devi had pelted brick on her husband, which hit beside his right eye. Blood had not spilled on the earth where her husband had fallen. Her husband was treated at Begusarai, but not in Sadar Hospital. He was treated in some private hospital. She did not disclose the incident to any of her family members before. After the last



rites of her husband were performed, she disclosed the same to her father-in-law first of all. She had given her statement before the police 15-20 days after the incident. She has denied the suggestion to have given false evidence.

18. PW-8 Dr. Arun Kumar has deposed that he was posted as M.O. at Sadar Hospital, Begusarai. He performed the *post mortem* examination of the deceased Rajesh Singh on 29th April, 2009 at 11:00 a.m. and found following *ante mortem* injuries:-

“(i) Firearm projectile wound of entry-1 inch X 1 inch X going inside deep on left side of chest-2 inch medial to left nipple with inverted, block margin.

(ii) Lacerated wound below the right eye over the zygomatic predominance of the face – 1/2” X 1/2” X bone deep.

(iii) Lacerated wound over the occipital area of the skull – 1” X 1/2” X bone deep.

Rigor mortis present in all four limbs.

On dissection – One bullet extracted from the left thoracic cavity.

Time elapsed since death – within 24 hours.

Cause of death – the death is due to neurogenic and haemorrhagic shock as a result of above-mentioned injuries caused by firearm.”

19. P.W. 9 Manoj Kumar Singh, I.O., has stated in



his examination-in-chief that he was posted at Zero Mile Police Station on 29.04.2009. On the same date, he received the written application of Ram Naresh Singh, based on which Barauni P.S. Case No. 129 of 2009 was registered under Sections- 302/34 of I.P.C. and 27 of the Arms Act which is in his pen and signature. He himself took the charge of investigation. He visited the place of occurrence and prepared the inquest report of the dead body and sent the dead body for *post mortem*. He recorded the re-statement of the informant at the place of occurrence itself. He also recorded the statements of witnesses Gopal Singh, Soni Kumari and Dilip Kumar. The place of occurrence is the Verandah of the informant's ancestral house where the deceased was sleeping. When he went to his orchard to urinate, the accused persons assaulted and injured him. The deceased reached to the courtyard in injured condition and fell down. He was taken to the clinic of Dr. Shashi Bhushan who, after giving first aid, referred him to Patna and, while on way to Patna, he succumbed to the injuries. As the condition of the wife of the deceased was not well, he did not record her statement. On 04.05.2009 he recorded the statements of Ranjeet Kumar and Rohit Kumar. He recorded the statement of Bindu Kumari @ Munni Devi, wife of late Rajesh Kumar



under Section-164 of Cr.P.C. on 18.05.2009. He received the *post mortem* report as also the supervision note on 13.07.2009. He has further stated that the statement of Munni Devi was recorded 20 days after the incident.

19.1. In his cross-examination, he has stated that he received the written application at the place of occurrence itself. He has mentioned about the land-dispute between the parties in the case diary. He has denied the suggestion that he has conducted a faulty investigation and has implicated the accused persons in connivance with Munni Devi.

20. We have re-appreciated the entire evidence led by the prosecution and perused the typed copy of the depositions of the prosecution-witnesses supplied by the learned counsel for the appellant/informant.

21. From the evidence led by the prosecution, it is revealed that from the *fardbeyan* given by the informant, who is the father of the deceased, it can be said that there is no eye-witness to the incident in question and, as per the said *fardbeyan*, three persons were seen fleeing from the place of incident. Further, P.W. 7, who is the wife of the deceased, is projected as an eye-witness, however, the said theory of prosecution cannot be accepted as there is no reference in the



fardbeyan with regard to the presence of the wife of the deceased. The deceased was alive and, had he given the oral dying declaration before his wife, i.e. P.W. 7, the informant, who is the father of the deceased, must have disclosed the said aspect in the *fardbeyan* itself. Further, there is no reference with regard to Savita Devi and the instigation given by her to the other accused in the *fardbeyan*. Further, the statement of P.W. 7 under Section-161 Cr.P.C. was recorded after 15-20 days from the date of incident. From the deposition given by the other witnesses also, it is revealed that all the witnesses are near relatives of the deceased and, therefore, the deposition given by such witnesses are required to be scrutinized carefully. We have scanned the entire evidence of the relatives of the deceased and we are of the view that the deposition given by the said witnesses cannot be termed as trustworthy and simply relying upon the deposition of the said witnesses, conviction cannot be recorded. Though, P.W. 5 Dilip Kumar is an independent witness, he has deposed that he known the deceased Rajesh Kumar who died due to gun-shot injury. But the said witness has specifically stated that when he was taking the deceased to the hospital, the deceased was uttering some words, but it could not be deciphered from his utterance as to



who had fired at him. The said witness, on the contrary, in his cross-examination, has specifically admitted that on the date of incident, P.W. 7 Munni Devi, wife of the deceased, was at her parental house and came after the *post mortem* of the deceased. Thus, from the deposition of the said witness, the theory of the prosecution about the dying declaration given by the deceased to his wife, P.W. 7 Munni Devi, is demolished.

22. It is the specific defence taken by the accused that because of the land-dispute between the parties, they have been falsely implicated. Further, there are major contradictions, inconsistencies and discrepancies in the depositions of the prosecution-witnesses which create reasonable doubt with regard to the story put forward by the prosecution with regard to commission of the crime allegedly committed by the present respondents/accused. Thus, we are of the view that the prosecution has failed to prove the case against the respondents/accused beyond reasonable doubt.

23. We have also gone through the reasoning recorded by the Trial Court while passing the impugned judgment of acquittal. We are of the view that the Trial Court has committed no error while passing the same.

24. Accordingly, the impugned judgment and order



of acquittal is affirmed. The appeal stands dismissed at the stage of admission itself.

(Vipul M. Pancholi, J)

(Ramesh Chand Malviya, J)

K.C.Jha/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
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