

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.15 of 2024

Arising Out of PS. Case No.-75 Year-2018 Thana- RIVILGANJ District- Saran

Parmatma Yadav @ Lahwar, S/o Late Awadhesh Ray, Village- Deoria, P.S.-
Revilganj, District- Saran at Chapra

... .. Appellant/s

Versus

1. The State of Bihar
2. Devednra Rai, S/o Late Dharam Nath Prasad Yadav, Resident of Village-
Jalalpur, P.S.- Rivilaganj, District-Saran at Chapra.
3. Prakash Rai, S/o Raju Rai, Resident of Village- Deoria, P.S.- Rivilganj,
District- Saran at Chapra.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Rakesh Kumar, Advocate
For the State	:	Mr. Dilip Kumar Sinha, APP
For Respondent Nos. 2 & 3	:	Mr. Mukesh Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE KHATIM REZA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 09-04-2024

We have heard Mr. Rakesh Kumar, the
learned Advocate for the appellant/Parmatma Yadav @
Lahwar, who has challenged the judgment of acquittal of
the two respondents, viz., Devednra Rai and Prakash



Rai, who have been represented by Mr. Mukesh Kumar Singh, the learned Advocate.

2. This appeal has been filed against the judgment of acquittal dated 28.08.2023, passed in Sessions Trial No. 434 of 2018, arising out of Rivilganj P.S. Case No. 75 of 2018, by the learned Additional Sessions Judge-IV, Saran at Chapra, whereby respondent Nos. 2 and 3 have been acquitted of the charges levelled against them.

3. The Trial Court, after having examined seven witnesses on behalf of the prosecution and three on behalf of the defence, has acquitted the afore-noted respondent.

4. The appellant, who is the son of the deceased, had lodged the FIR alleging that around six persons including the two respondents had assaulted the deceased, stabbed him and had thrown his dead-body in a ditch in the village. He claims to have seen the



occurrence from a distance of 10 feet. He took some time in reaching the actual place where the assault had taken place because he is physically challenged.

5. The cause of occurrence, according to him, is land dispute.

6. The deceased was earlier threatened also by the respondents and others of dire consequences.

7. On his *fardbeyan* on 13.03.2018 at 05:00 P.M. at somewhere near the place of occurrence, Rivilganj P.S. Case No. 75 of 2018 dated 13.03.2018 was registered for investigation under Sections 302/34 of the IPC against six accused persons including the respondents. However, only the respondents were put on Trial after they were charge-sheeted. There is no information in the Trial Court Records about the other four accused persons who were named in the FIR.

8. There is no reference in the FIR by the appellant (P.W. 5) about the presence of his sister at



the time of the occurrence. The sister of the appellant, who is the daughter of the deceased, has but appeared in the Trial as P.W. 1 and has claimed to have seen the occurrence. According to her also, several persons including the respondents had assaulted the deceased and on seeing her and the villagers, they ran away.

9. However, we find that in her cross-examination, P.W. 1 has stated the reason for her going to the fields, viz., for calling her father (deceased) who had gone out to tend buffaloes. When she had reached near her father, she saw him having fallen on the ground. She was very specific in stating before the Court that only on her cries, the appellant (informant/P.W. 5) came after five minutes.

10. If P.W. 1 is to be believed, then, perhaps, P.W. 5 had not seen the occurrence.

11. Apart from this, we also find the presence of P.W. 1 at the P.O. to be doubtful.



12. Beyond P.W. 1 and P.W. 5, who are the daughter and son of the deceased respectively, no other person claims to be an eyewitness to the occurrence.

13. Harihar Rai (P.W. 2) and Jhulan Yadav (P.W.3), the other independent witnesses have only claimed to have seen the dead-body in the ditch. However, both of them, being co-villagers, did not know about any standing dispute between the respondents and the deceased.

14. The Doctor, who conducted the post-mortem examination on 13.03.2018 at 08:45 P.M., found several incised wounds on the body of the deceased. The lungs and liver were ruptured. The abdominal cavity was full of blood and clots. The death was caused because of shock and haemorrhage, as a result of those sharp cutting injuries. Surprisingly, the time of death was fixed between 6-24 hours.



15. *Rigor mortis* also was present over the body. In the month of March, there are little chances of *rigor mortis* setting in or to continue in the body when within six hours, post-mortem is conducted over the dead-body.

16. It appears from the post-mortem report, notwithstanding the fact that the time of death was placed between 6-24 hours of the post-mortem examination, that the occurrence had taken place sometimes before than what has been projected by the prosecution.

17. The evidence of the appellant (P.W. 5) further confirms that there is a possibility of his not having seen the occurrence. In his cross-examination, he has stated that when he reached the P.O., he found his father lying on his back and the place was full of blood. The ditch was of a reasonably big size which could accommodate about 100 persons. After he reached the P.O., about 100-200 persons arrived at the



same place. The police party also came shortly. He claims to have talked to Harihar Rai, Jhagru Rai, Fagu Rai and the *mukhiya* of the village, viz., Rameshwar Rai. He did not have any talk with his sister (P.W. 1). However, in the next paragraph, he has said that at the time of the occurrence and even thereafter, i.e. till the time many people had assembled at the P.O., his sister was present at the P.O.

18. Further in his cross-examination, P.W. 5 stated that he saw the occurrence from a distance of 10 feet. There was no land dispute between the parties but still he claims that because of old dispute there was a verbal scuffle sometimes prior to the occurrence. He has also confirmed that prior to the death of the deceased the accused persons had lodged a case against the deceased and the deceased also had lodged a case against the accused persons.

19. A detailed analysis of the deposition of P.W. 5 juxtaposed with the evidence of P.W. 1,



silhouetted against the evidence of the Doctor, it appears that the dead-body of the deceased was seen by villagers and P.W. 5 as well as P.W. 1 after the occurrence was over.

20. The accused persons are all co-villagers. There is nothing on record to indicate that there was any attempt at chasing the miscreants.

21. Had P.W. 1 and P.W. 5 seen the accused persons assaulting the deceased and had raised cries, which allegedly had attracted approximately 100-200 persons, the accused persons would have been nabbed.

22. Nonetheless, these are subjunctive formulations which have no place in criminal law. Nonetheless, from the narration of events, the two eyewitnesses, viz., P.W. 1 and P.W. 5, who are the daughter and son of the deceased respectively, do not appear to be sterling witnesses who can be believed



outrightly.

23. The Investigator of the case has been examined as P.W. 6. He claims to have received information at the police station that one Awdhesh Rai of Deoria village has been killed. He did not receive any information about the assailants. On such information, he went to the P.O. where he found P.W. 5 and recorded his statement.

24. In token of having seen the process of recording of the FIR, the father-in-law of the sister of P.W. 5 appended his signature but he has not been examined at the Trial.

25. Though the topography of the P.O. has been very distinctly stated by P.W. 6 but there is nothing in his evidence which would demonstrate that he had seen a pool of blood in the ditch where the dead-body was lying. Witnesses Jhulan and Harihar had only given hearsay account of the occurrence.



26. No further questions were asked from the Investigator and, therefore, he did not have anything substantial to offer.

27. We have also taken note of the fact that four other accused persons, apart from the two respondents, were named in the FIR as the assailants of the deceased but they were never charge-sheeted. In fact, one of the defence witnesses, viz., Pankaj Kumar Singh (D.W. 1) has stated before the Trial Court that one named accused who was not sent up for Trial, viz., Vijay Kumar Rai, because he had been working in Indian Army and on 13.03.2018, he was posted at Siliguri and was on duty.

28. Prabhat Kumar Singh (D.W. 2) knew respondent No. 2/Devendra Rai. He has testified to the fact that Devendra Rai (respondent No. 2) and others had met D.W. 2 in the office of ADM on the day of the occurrence and remained there till evening.



29. For all these reasons, there appears to be a doubt about the role played by the respondents.

30. The independent witnesses did not talk about any enmity between the respondents and the deceased. It appears that because of some dispute earlier, six persons have been named including the two respondents by P.W. 5.

31. Giving benefit of doubt to the respondents, they were acquitted of the charges.

32. We do not find that the Trial Court judgment requires any interference.

33. The appeal is dismissed.

(Ashutosh Kumar, J)

(Khatim Reza, J)

Sauravkrsinha/
Rajesh

AFR/NAFR	NAFR
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