

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.321 of 2020

Arising Out of PS. Case No.-972 Year-2016 Thana- BANKA District- Banka

Sunil Yadav @ Sunil Kumar Yadav, Son of Late Bishu Yadav, Resident of
Village - Rampur, Uper Tola, P.S.- Banka, Distt.- Banka.

... .. Appellant

Versus

1. The State of Bihar
2. Renu Kumari D/o Ram Lakhan Mandal Resident of Village - Rampur, P.S.-
Bounsi, Distt.- Banka.
3. Sita Ram Yadav Son of Siru Yadav Resident of Village - Rampur, P.S.-
Banka, Distt.- Banka.
4. Hub Lal Son of Siru Yadav Resident of Village - Rampur, P.S.- Banka,
Distt.- Banka.
5. Manju Devi Son of Bub Lal Yadav Resident of Village - Rampur, P.S.-
Banka, Distt.- Banka.
6. Ravan Das Son of Mahavir Das Resident of Village - Rampur, P.S.- Banka,
Distt.- Banka.
7. Naresh Das Son of Muni Das Resident of Village - Goh Kara, P.S.- Banka,
Distt.- Banka.
8. Manoj Das Son of Jagdish Das Resident of Village - Sanhaula, P.S.- Banka,
Distt.- Banka.
9. Manoj Raut Son of Murari Raut Resident of Village - Sanhaula, P.S.- Banka,
Distt.- Banka.
10. Mantu Das Son of Bhagwat Das Resident of Village - Goh Kara, P.S.-
Banka, Distt.- Banka.
11. Ram Chandra Das Son of Bhagwat Das Resident of Village - Amba, P.S.-
Banka, Distt.- Banka.
12. Radhey Das Son of Bhuneshwar Das Resident of Village - Goh Kara, P.S.-
Banka, Distt.- Banka.
13. Siru Das Son of Dalti Yadav Resident of Village - Rampur, P.S.- Banka,
Distt.- Banka.
14. Tuma Devi D/o Siru Yadav Resident of Village - Rampur, P.S.- Banka,
Distt.- Banka.

... .. Respondents

Appearance :

For the Appellant : Mr. Subodh Prasad, Advocate
For the State : Mr. Dilip Kumar Sinha, Addl.PP



**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SOURENDRA PANDEY
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

Date : 08-12-2025

This appeal against acquittal of respondent nos. 2 to 14 has been preferred for setting aside that part of the judgment and order of acquittal dated 18.01.2020 (hereinafter referred to as the 'impugned judgment of acquittal') whereby and whereunder the learned Additional District and Sessions Judge-I, Banka (hereinafter referred to as the 'learned trial court') has been pleased to acquit respondent nos. 2 to 14 of the charges under Sections 147, 148, 341, 323, 447, 338, 307, 302, 504 and 506 of the Indian Penal Code (in short 'IPC') and Section 27 of the Arms Act and Section 3/4 of the Explosive Substances Act in connection with Sessions Trial No. 195 of 2018 arising out of Banka P.S. Case No. 972 of 2016.

Prosecution case

2. The prosecution case is based on the *fardbeyan* of Sunil Kumar Yadav (PW-3) recorded by S.I. Lakshman Ram of Banka Police Station on 09.12.2016 at 13:45 Hours at Rampur Upper Tola. In his *fardbeyan*, he has stated that his father has two brothers and he is the second one. His grandfather purchased eight



kathas of land in the name of his elder son Siru Yadav. His grandfather had already divided the shares of the said land among his three sons. After the death of his grandfather, three of them started living separately. His elder uncle Siru Yadav refused to give shares to other two brothers and did mutation in his name but during survey, the said land became in the name of three brothers. He has stated that his elder uncle filed a case which is going on. In the meantime, Renu Kumari threatened to leave the said land to which his father said that the said land was purchased by his father in which three brothers have equal shares and in the survey also it is in the name of three brothers to which Renu Kumari threatened him of dire consequences.

On 09.12.2016, at 10:30 AM (1) Renu Kumar (2) Master Raut, (3) Manoj Das, (4) Manoj Raut, (5) Radhe Das, (6) Mantu Das, (7) Naresh Das, (8) Ravan Das, (9) Ramchandra Das, (10) Siru Yadav, (11) Hublal Yadav, (12) Sitaram, (13) Manju Devi, (14) Dhuma Devi and (15) Ganesh Yadav all came from there house and took out a procession towards disputed land and started putting red flags on to the land which was objected to by the informant and his family members as a result of which the accused persons started throwing bricks and stones. The informant and his two brothers started running but his father said that he is innocent



man and no one will hit him. In the meantime, Master Raut took out bomb from the bag in his hand and threw it on the chest of his father as a result of which he died there and when he tried to hold him, Ganesh Yadav threw bomb at him but he sat down, therefore, the bomb hit the wall. On *hulla*, villagers assembled but the accused persons fled away with the bomb and the cartridges firing. On information, police reached there and collected the remains of bomb and took the sample of blood stained soil.

3. On the basis of the said *fardbeyan*, Banka P.S. Case No. 972 of 2016 dated 09.12.2016 was registered under Sections 147, 148, 149, 341, 323, 447, 338, 307, 302, 504 and 506 of the IPC, Section 27 of the Arms Act and Section $\frac{3}{4}$ of the Explosive Substances Act against the fifteen named accused persons.

4. Investigation was taken up and after investigation, Chargesheet No. 37 of 2017 dated 25.02.2017 was filed against (i) Renu Kumari, (ii) Uma Devi, (iii) Dublal Yadav, (iv) Shiru Yadav, (v) Manju Devi, (vi) Sitaram Yadav and (vii) Manoj Das whereas Chargesheet No. 309 of 2017 dated 31.07.2017 was filed against (i) Mantu Das, (ii) Naresh Das, (iii) Ravan Das, (iv) Radhe Das, (v) Ramchandra Das, (vi) Manoj Raut and (vii) Master Raut under Sections 147, 148, 149, 341, 323, 447, 338, 307, 302, 504 and 506 IPC, Section 27 of the Arms Act and Section $\frac{3}{4}$ of the Explosive



Substances Act. On the basis of the chargesheets, cognizance of the offences was taken on 25.04.2018 and all the fourteen accused persons were proceeded against.

5. Charges were read over and explained to the accused persons in Hindi to which they pleaded not guilty and claimed to be tried, accordingly, vide order dated 10.07.2019, charges were framed against 13 accused persons whereas against one of the accused persons, the charges were framed on 16.07.2019, for the offences under Sections 147, 148, 341, 323, 447, 338, 307, 302, 504 and 506 IPC, Section 27 of the Arms Act and Section 3/4 of the Explosive Substances Act.

6. The prosecution examined altogether eight witnesses and exhibited some documentary evidences which are as under:-

PW-1	Bhagwatiya Devi
PW-2	Lalita Devi
PW-3	Sunil Yadav
PW-4	Yasoda Kumari
PW-5	Ranjeet Singh
PW-6	Dr. Sunil Kumar
PW-7	Abhishek Kumar
PW-8	Kameshwar Yadav

List of Exhibits on behalf of Prosecution

Exhibit ‘1’	Signature of Sunil Yadav on Fardbeyan
Exhibit ‘2’	Signature of Sunil Yadav on Seizure list
Exhibit ‘3’	Fardbeyan



Exhibit '4'	Seizure list
Exhibit '4/1'	Seizure list
Exhibit '5'	Formal FIR
Exhibit '6'	Station Diary
Exhibit '7'	Sanction Report
Exhibit '8'	Postmortem report
Exhibit '9'	FSL
Exhibit '10'	Khatiyani

7. After closure of evidence on behalf of the prosecution, statement of the accused persons were recorded under Section 313 CrPC in which they pleaded innocence. On behalf of the defence, no oral or documentary evidences were produced.

Findings of the Learned Trial Court

8. The learned trial court has analysed the evidences available on the record and found that the charges under Section 302 IPC and Section 3 of the Explosive Substances Act were proved beyond all reasonable doubts against one of the accused, namely, Master Raut. So far as the charges against the other accused persons are concerned, those charges could not be proved. It has been held that the other accused persons would not be liable for the alleged offences on the strength of Section 149 IPC.

Submissions on behalf of the Informant-Appellant

9. On perusal of the memo of appeal, it appears that the informant-appellant has raised various grounds to assail the



acquittal part of the judgment of the learned trial court. It is the case of the informant that the learned trial court has failed to appreciate that all the accused including respondent nos. 2 to 14 formed an unlawful assembly with a common intention and participated in the crime, therefore, they are liable to be convicted in terms of the evidence. It is one of the grounds that PW-1, PW-2 and PW-3 are eyewitnesses to the occurrence and have deposed that all the accused persons have committed the crime. The trial court has wrongly discarded the evidence of the related witnesses.

Submissions on behalf of the State

10. Learned Additional Public Prosecutor for the State has defended the impugned judgment of the learned trial court. It is submitted that the learned trial court has meticulously examined the prosecution evidences available on the record. The learned trial court found that the prosecution witnesses have supported the prosecution case to the extent that accused Master Raut was holding a bag in his hand from which he took out a bomb and threw on the chest of Bisu Yadav. Due to explosion, Bisu Yadav suffered serious injuries, he fell down and died. As regards other accused, the learned trial court has found that the prosecution has failed to establish the participation of other accused persons



beyond all reasonable doubts, therefore, they cannot be held liable with the aid of Section 149 IPC.

Consideration

11. We have perused the evidences available on the record. Bhagwatiya Devi (PW-1) is the wife of the deceased who had stated that at 10:30 AM, a quarrel was taking place and she was present there. She had identified fifteen persons. There was a land dispute with the elder brother Siru Yadav. Master Raut had thrown bomb at her husband Bisu Raut. As a result of this, Bisu Yadav died. She has stated that the second bomb was thrown by Ganesh Yadav at Sunil Yadav but the said bomb did not hit Sunil, he sat down and the bomb exploded with the wall. The villagers assembled but the accused persons fled away with the bomb and the cartridges. In her cross-examination, PW-1 has stated that there was a land dispute with the accused persons. She has stated that there was no case prior to this and all the accused persons were known, she was on visiting terms with them. The informant is her son but her son has not lodged any Sanha. She has stated that when the procession was going on towards the land, she had raised protest, her son was also with her and bricks and stones were being thrown indiscriminately. She had also suffered injuries but was not treated.

12. Lalita Devi (PW-2) has stated that she was in her house. Fifteen persons had come holding red flags and they were



putting the red flags on to her land. She and her whole family had gone there to stop them then they started throwing bricks and stones. She knew all the accused persons. She has stated that Master Raut had thrown the bomb on the chest of Bisu Yadav. This witness has not stated that Ganesh Yadav had also thrown bomb. She has stated that when Master Raut threw bomb on Bisu, she was standing at a distance of 4-5 steps and with her, Bhagwatiya Devi, Kameshwar Yadav, Pramila Devi, Sunil Yadav, Dinesh Yadav and Sakaldev Yadav were also present. Nobody had informed police during the occurrence, in the meantime, villagers had come and after the occurrence, the accused persons went towards Eastern side. In paragraph '12' of her deposition, she has clearly stated that apart from Bisu Yadav, nobody had received injury at the place of occurrence. She was suggested by the defence that because there was prior land dispute with Master Raut and others, therefore, they have been falsely implicated.

13. Sunil Yadav (PW-3) is the informant of the case. He has supported the prosecution case. According to him, about 10-15 persons had come in the procession with red flags, they were having *lathi* and *danda* and they were putting the red flags on the disputed land which was objected to. He had identified fifteen persons. This witness has stated that on objection raised, the accused persons started throwing bricks and stones and Master Raut took out a bomb



from his bag and threw on the chest of Bisu Yadav as a result whereof Bisu Yadav died. He has stated that Ganesh Yadav had thrown bomb at him but he sat down, therefore, the bomb hit the wall and the accused persons fled away firing. He has stated that his grandfather had purchased eight *kathas* of land in the name of Siru Yadav in which his two uncles and his father had got shares but Siru Yadav was not allowing them to come to the land. Two days back, Renu Devi had threatened him that he should not try to go on the land otherwise he would have to face dire consequences. He has proved Exhibit '2' which is the signature of this witness on the seizure list.

14. In his cross-examination, PW-3 has stated that he cannot file any document relating to the said land in the court. A case under Section 107 was going on for the last one year. On the day of occurrence, he was in the house and he was not aware of the occurrence from before. By the time, he could see the accused persons, the accused persons had already reached on the disputed land and they were standing with the flags. He has further stated in his cross-examination that no brick or stone was there from before on the said land. He has stated that first of all, his father had gone to stop them and Master Raut had thrown the bomb from a distance of ten feet. He has stated that bricks and stones were being thrown but nobody had received any brick or stone. This witness has stated that



nobody had got injured. He has also stated that nobody had suffered any injury due to splinters of the bomb which was thrown on his father. This witness was suggested that he was an active member of the organization and wanted to usurp the land, he had himself prepared the bomb and the bomb was with Bisu Yadav which exploded.

15. Yasoda Kumari (PW-4) is the Sub-Inspector of Police posted in the Banka Police Station. She has identified the writing and signature of the then Sub-Inspector Laxman Ram on the *fardbeyan* and the formal FIR. She also identified the writing and signature of Sub-Inspector Shrikant Chauhan. At her instance, Exhibit '3', Exhibit '4' and Exhibit '4/1' were marked. PW-4 has given the description of the place of occurrence and has stated that she had recorded the re-statement of the informant and the statement of Bhagwatiya Devi. She had received the injury report of Hublal Yadav and thereafter recorded the statement of witness Nageshwar Yadav, Sanjay Kumar and Lalita Devi. She had also recorded the statement of the villagers Gore Turi, Tulsi Yadav, Manoj Turi, Dhananjay Kumar Mandal, Priyanka Kumari, Chunki Devi and Talo Devi who had supported the occurrence. She had sent the seized exhibit to FSL whereafter she was transferred. She has proved the formal FIR (Exhibit '5'). She has also proved Sanha



Entry 308 recorded at 12:30 PM by the Police Station Writer Amit Kumar. This has been marked Exhibit '6' (with objection).

16. In her cross-examination, PW-4 has stated that Sanha Entry 308 is the xerox copy and she was not having the original copy of the same. On the said Sanha Entry, there is no date nor signature of any Officer was present. She could not say that during which time she was present in the police station on 09.12.2016. She has stated that the seizure list was prepared at the place of occurrence and she had seized the blood stained soil. She had not recorded the distance between the dead body and the house of the deceased in the case diary. She had gone to the place of occurrence on 21.12.2016 also. On 09.12.2016, she had recorded statement of the informant only. On 21.12.2016, she had not recorded statement of any of the witnesses. In paragraph '16', she has stated that no investigation was done on the point of throwing of bomb on the house of Sunil Yadav.

17. Ranjeet Singh (PW-5) is a formal witness who had come to identify the signature of Kundan Kumar, District Magistrate which has been marked Exhibit '7' (with objection). He had not typed the application and he has stated that signature was not done in his presence and there was no seal on that paper.

18. Dr. Sunil Kumar Choudhary (PW-6) was the Doctor posted at Sadar Hospital, Banka as a Medical Officer and on that



day, he had conducted the postmortem of Bisu Yadav. He had found the following injuries: -

“External –

(1) Lacerated wound over left side of chest (size 9” x 9” x 5”), loss of 3, 4 and 5th ribs around injury.

(2) Burn mark around lacerated wound.

Internal -

(1) Lungs ruptured left side

(2) Heart ruptured

(3) Stomach – food material

(4) Large intestine - filled with gas.

(5) Rectum – stool present

(6) Urinary bladder - filled with urine.”

19. The postmortem report has been exhibited through this Doctor as Exhibit ‘8’. This Doctor has stated that Bisu Yadav died due to bomb blast and there was no other reason. He has stated that such injuries may be caused if bomb is thrown from a distance of 5-7 metres and injuries may be caused to any person standing around 2-3 metres in the surrounding of the blast.

20. Abhishek Kumar (PW-7) is the I.O. who had conducted the supplementary investigation of the case and submitted Chargesheet No. 309 of 2017. He had not recorded statement of any of the witnesses in this case. He had not recorded in the case diary that he had gone to the place of occurrence. He had also not written about the house of Ganesh Yadav.

21. Kameshwar Yadav (PW-8) is the son of Late Bisu Yadav. He is a formal witness. He has stated that in his presence, the then Officer Incharge Laxman Ram had prepared the carbon



copy of the document (Exhibit '9' with objection) of the dead body of his father. At the same time, Darogaji had prepared the second document which was the dead body challan of his father. He has stated that the paper was prepared at about 02:00 PM and he had become senseless after seeing the dead body of his father but became conscious after 02:15 PM. The defence suggested this witness that the inquest reports were not prepared in his presence and he had given false deposition.

22. From the evidences available on the record, which we have discussed hereinabove, it is evident that even though the prosecution witnesses have stated that the villagers had assembled at the place of occurrence but no independent witness has been examined in this case. The prosecution witnesses are closely related to the deceased and admittedly, the deceased and the accused persons were on inimical terms. In such circumstances, where the closely related witnesses are inimical, the evidence of the witnesses is required to be examined with all circumspection and care. Corroboration of such inimical and related witnesses through independent material particulars would have inspired confidence in the prosecution case.

23. We have noticed that even though the prosecution witnesses have stated that they were standing at the place of occurrence where bricks and stones were being thrown



indiscriminately, but none of them received any brick or stone injuries. In fact, PW-3 has gone to the extent of saying that the bricks and stones were being thrown for ten minutes, still he says that nobody had suffered any injury. This seems to be highly improbable that despite presence of the prosecution witnesses at the place of occurrence and indiscriminate throwing of bricks and stones, the same would not cause any injury to any of the prosecution witnesses.

24. In such circumstances, we find that the learned trial court has rightly appreciated the evidences available on the record. The trial court has rightly reached to a conclusion that mere presence of a person would not make him liable for the alleged act unless there was a common object and he had participated with that common object to be achieved. The trial court has relied upon the judgment of the Hon'ble Supreme Court in the case of **Dharam Pal vs. State of U.P.** reported in (1975) 2 SCC 596 and **Roy Fernandes vs. State of Goa** reported in (2012) 3 SCC 221 in which the Hon'ble Supreme Court had occasion to consider Section 149 IPC. The trial court has rightly reached to a conclusion that no evidence has been adduced in this case to prove that respondent nos. 2 to 14 were having any common object and in furtherance to the common object, an unlawful assembly was formed in which the occurrence took place.



25. We are of the opinion that the views taken by the learned trial court cannot be said to be perverted. In a case of acquittal, unless the appellate court comes to an irresistible conclusion that the accused are guilty of committing the offence, the judgment of acquittal need not be upturned. We, therefore, find no reason to interfere with the impugned judgment of the learned trial court.

26. This appeal has no merit. It is dismissed accordingly.

27. Let a copy of this judgment together with the trial court's record be sent down to the learned trial court.

(Rajeev Ranjan Prasad, J)

(Sourendra Pandey, J)

SUSHMA2/-

AFR/NAFR	
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