

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.715 of 2024

In
CRIMINAL APPEAL (SJ) No.314 of 2024

Arising Out of PS. Case No.-342 Year-2019 Thana- SAHPUR District- Bhojpur

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Pramod Kumar @ Pramod Kumar Yadav, Son of Mahendra Singh @ Mahendra Yadav, Resident of Village- Sahpur, Ward No. 10, P.S.- Sahpur, District- Bhojpur.

... .. Appellant

Versus

1. The State of Bihar
2. Binod Yadav @ Ravi Yadav @ Gope, Son of Munna Yadav, Resident of Village- Shahpur, P.S.- Shahpur, District- Bhojpur

... .. Respondents

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Appearance :

For the Appellant	:	Mr. Surendra Kumar Mishra, Advocate Mr. Shashikant, Advocate
For the State	:	Mr. Mukeshwar Dayal, Addl PP
For the Resp. No. 2	:	Mr. Rajesh Kumar, Advocate Mr. Sunil Kumar Yadav, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 03-03-2025

Heard Mr. Surendra Kumar Mishra, learned counsel for the appellant, Mr. Rajesh Kumar, learned counsel for the Respondent No. 2 and Mr. Mukeshwar Dayal, learned Additional Public Prosecutor for the State.

2. This appeal has been preferred for setting aside the judgment of acquittal dated 19.10.2023 (hereinafter referred to as the 'impugned judgment') passed by learned Additional Sessions Judge III, Civil Court, Bhojpur, Ara (hereinafter referred to as the



‘learned trial court’) in Sessions Trial Case No. 256 of 2021 arising out of Shahpur P.S. Case No. 342 of 2019. By the impugned judgment, the learned trial court has been pleased to acquit the sole accused Binod Yadav @ Ravi Yadav @ Gope (Respondent No. 2 in the appeal) of the charges under Sections 341, 323, 326, 307, 504 and 506 of the Indian Penal Code (in short ‘IPC’) read with Section 34 IPC and Section 27 of the Arms Act.

Prosecution Case

3. The prosecution case is based on the fardbeyan of Pramod Kumar Yadav (PW-2) recorded by Nagendra Bhusan Tiwary, S.I. of Shahpur Police Station at the Police Station on 11.12.2019 at 19:30 Hours. In his fardbeyan, the informant has alleged that on the same day i.e. on 11.12.2019 at 06:45 Hours, he was going on his motorcycle from his house to his *dalan*. When he reached near the house of Baleshwar Yadav, who is the maternal grandfather of Binod Yadav @ Ravi Yadav @ Gope, one Rahul Yadav who is the servant of Binod Yadav dashed against his motorcycle. The informant told him that he was not driving cautiously then Rahul Yadav started abusing him. The informant asked him not to hurl abuse then Rahul Yadav pushed him from his motorcycle and started assaulting him by fists and leg. Due to intervention of some people, Rahul Yadav went from there. The



informant returned to his house and while he was giving information to his family members about this incident, in the meantime, (1) Binod Yadav @ Ravi Yadav @ Gople, (2) Lallu Yadav, (3) Baleshwar Yadav and (4) Rahul Yadav who is servant of Binod Yadav came at the door of the informant and Baleshwar Yadav instigated his associates to shoot him. Binod Yadav fired at the informant from his pistol with an intention to kill him which hit his cousin Sajan Yadav on his arm due to which he became seriously injured. When the informant and other family members tried to catch the accused persons, they fled away brandishing the gun in the air. The informant alleges that the FIR named accused persons with an intention to kill him and his family members had shot at him due to which Sajan Yadav became seriously injured.

4. On the basis of the fardbeyan of the informant, Shahpur P.S. Case No. 342 of 2019 dated 11.12.2019 was registered for the offences punishable under Sections 341, 323, 326, 307, 504, 506, 34 IPC and Section 27 of the Arms Act. Upon investigation, a chargesheet bearing no. 268/20 dated 27.11.2020 was submitted against Binod Yadav @ Ravi Yadav @ Gope for the offences under Sections 341, 323/34, 326, 307, 504/34, 506/34 IPC and Section 27 of the Arms Act. On the basis of this chargesheet, learned Additional Chief Judicial Magistrate-1st, Ara



took cognizance vide order dated 12.02.2021 of the offences under Sections 341, 323, 326, 307, 504 and 506 IPC read with Section 34 IPC and Section 27 of the Arms Act. On finding that the case is triable by the Court of Sessions, the records were committed to the court of Sessions vide order dated 14.09.2021. Thereafter Sessions Case No. 256 of 2021 was registered. Charges were read over and explained to the accused-respondent no. 2 in Hindi which they denied and claimed to be tried. Accordingly, learned trial court framed charges against Binod Yadav @ Ravi Yadav for the offences under Sections 341, 323/34, 504/34, 506/34, 326 and 307 IPC and Section 27 of the Arms Act vide order dated 15.02.2022.

5. In course of trial, the prosecution examined altogether six witnesses and seven documentary evidences were adduced in course of trial. No oral or documentary evidence has been adduced on behalf of the defence. The list of the prosecution witnesses and exhibits are mentioned hereunder in tabular form:-

List of Prosecution Witnesses

PW-1	Mahendra Singh Yadav
PW-2	Pramod Kumar Yadav
PW-3	Rakesh Kumar Yadav @ Guddu Yadav
PW-4	Dr. Ajay Kumar
PW-5	Ajay Kumar Sah @ Ajay Sah
PW-6	Avinash Kumar



List of Exhibits

Ext.-1	Signature of informant Pramod Kumar Yadav on fardbeyan
Ext.1/1	Signature of Surendra Yadav as a witness on fardbeyan
Ext. 1/2	Signature of S.H.O.-cum-Inspector on fardbeyan
Ext. 2	Signature of informant Pramod Kumar Yadav on protest petition
Ext. 3	Signature of S.H.O. Shambhu Bhagat at endorsement of FIR
Ext.4	Charge-sheet
Ext. 5	Injury report of injured Sajan Yadav

Findings of the Learned Trial Court

6. After analysing the evidence on the record, learned trial court found that PW-2 who is the informant of this case has stated that the accused-Respondent No. 2 fired upon him with intention to kill him but the bullet hit his cousin Sajan Yadav whereas in paragraph ‘12’ of his cross-examination, he has stated that there was darkness prevailing at the place of occurrence. Thus, the statement that the bullet which hit Sajan Yadav was fired by the Respondent No. 2 is not reliable. Learned trial court found from the cross-examination of the informant (PW-2) that four accused persons were armed with weapons and no one had fired upon him to kill him whereas in the FIR, the informant has not stated about weapons being carried by all the accused persons.



Thus, learned trial court observed that the informant himself is giving contradictory statements.

7. Learned trial court, from perusal of testimony of PW-1, found that this witness was present in his house at the time of incident and he was informed by his son about the incident but in his cross-examination, he has stated that he reached at the place of occurrence after ten minutes and when he reached there, he saw that the accused persons were fleeing, thus, learned trial court concluded that this witness is not an eye-witness of this case and further, he is a hearsay witness.

8. Learned trial court further held that PW-3 and PW-5 have been declared hostile by the prosecution. It further transpires that the I.O. of this case was not examined before the court. Learned trial court also found that the prosecution has further failed to bring the injured, namely, Sajan Yadav before the court to testify him which creates a serious doubt over the prosecution story. Learned trial court held that the prosecution has failed to prove its case beyond all reasonable doubts. Hence, learned trial court acquitted the accused-respondent no. 2 of the charges under Sections 341, 323, 326, 307, 504 and 506 IPC read with Section 34 IPC and Section 27 of the Arms Act.



Submissions on behalf of the Appellant

9. Learned counsel for the appellant has assailed the impugned judgment on the grounds inter-alia that in this case, the whole proceeding has been conducted by the learned trial court in such a manner that there is no compliance with the statutory requirement as regards service of summons upon the witnesses. The Investigating Officer of the case has acted so negligently that it may be said to be a case of culpable negligence. It is submitted that in this case, the injured Sajan Kumar whose medical examination was conducted by the Doctor (P.W.-4) and injury report has been proved, has not been made a charge-sheet witness by the Investigating Officer. The learned trial court, though, purported to issue notice to the I.O. but there is nothing on the record to show that notice was served upon the I.O. There were two I.O.s in this case. The main I.O., namely, Nagendra Bhushan Tiwary has not been examined, though he is a charge-sheet witness but no summon has been served upon him.

10. Learned counsel submits with reference to the various orders passed by the learned trial court that on 24.07.2023, the learned trial court directed for issuance of *dasti* summon upon the I.O. In the margin portion of the order dated 24.07.2023, it is



shown that “the *dasti* summon to I.O.” It would, however, appear that there is no service report of the *dasti* summon. The learned trial court closed the prosecution evidence on 13.10.2023 on the prayer of the learned Public Prosecutor (P.P.) as shown in the margin portion of the order dated 13.10.2023. It is pointed out that pursuant to an order of this Court, an enquiry has been conducted in this matter. The enquiry revealed that Shri Siyaram Singh, learned APP of this case claimed that he had not requested the trial court to close the case. This Court has, vide order dated 17.02.2025 directed to bring this matter to the notice of Secretary, Department of Law, Government of Bihar under whose control the APPs are working. There is a direction to take appropriate action. It is submitted that the learned trial court has not followed even the basic principles and did not exhaust the procedures established by law for procurement of the attendance of the witnesses. The recording in the margin portion of the order becomes highly doubtful in view of the enquiry report saying that APP did not say so.

11. Learned counsel relied upon the judgment of the Hon’ble Division Bench of this Court in case of **Brajesh Patel and Others Vs. The State of Bihar reported in 2008 (1) PLJR 492** where in similar circumstances, the Hon’ble Division Bench



of the Court has been pleased to set aside the judgment of acquittal and remand the matter back to the learned trial court.

Submissions on behalf of the Respondent No. 2

12. Learned counsel for the sole accused-Respondent No. 2 has defended the impugned judgment as according to him, sufficient opportunity was given to the prosecution to produce the witnesses, when the prosecution did not bring the witnesses, the evidence was closed. It is submitted that the learned trial court has rightly appreciated the evidences available on the record.

Submissions on behalf of the State

13. Mr. Mukeshwar Dayal, learned APP for the State, has, however, not supported the judgment of the learned trial court. It is his submission that in this case, as it appears the sole accused has got ten criminal antecedents and he was able to influence even the Investigating Officer of this case who despite the fact that Sajan Kumar was an injured witness and he is in fact the eye witness to the occurrence, did not examine him and made him a charge-sheet witness. Such negligence cannot be said to be a mere negligence on the part of the I.O., rather it speaks of foul play in action and it is in the nature of culpable negligence for which appropriate direction be given to the Department of Home, Government of Bihar to take suitable action and find out whether



the I.O. was acting with a mind of culpable negligence. Relied in this judgment has been placed on the judgment of the Hon'ble Supreme Court in the case of **State of Gujarat versus Kishanbhai and Others** reported in (2014) 5 SCC 108 (paragraphs '19', '22' and '23') to submit that appropriate direction be given to the Department of Home to examine the whole matter and take suitable action against the I.O.

14. Learned APP for the State submits that the learned trial court has not followed the established procedure of law and without taking appropriate steps to exhaust the processes which were required to be issued against the witnesses such as the I.O. and to summon the injured witness, the trial court arbitrarily closed the evidence on 13.10.2023 by simply endorsing in the margin portion that on the prayer of learned APP, the case is closed. The APP says that he had not made such a prayer. It is submitted that in such circumstance, the trial court should have ensured that a fair trial takes place and justice be done.

Consideration

15. We, having heard learned counsel for the parties and on perusal of the records, find that in this case, the impugned judgment of acquittal is not sustainable in the eye of law. It is evident that at first instance, the I.O. of the case has shown



complete negligence and despite the fact that Sajan Kumar is the injured of this case and he was medically examined and his injury report has been proved by PW-4, the said Sajan Kumar has not been made a charge-sheet witness. The I.O. did not think it just and proper to examine him in course of investigation. Again, the main I.O. who had conducted the investigation did not appear in course of trial.

16. We find from the ordersheets of the trial court that the *dasti* summon said to have been issued by the court were not served upon the witnesses as there is no service report of the summons on the record. This seems to be a case of falsification of judicial records inasmuch as the endorsement made in the margin portion of the order dated 21.07.2023 that “सम्मन तामिला संलग्न किया जाता है ।” is not based on record. There is no service of summon upon the I.O. Apparently, the trial court has not exhausted the processes which were required to be issued to procure the attendance of the prosecution witnesses, particularly, the official witnesses of the case.

17. In the case of **Brajesh Patel** (supra), the Hon’ble Division Bench of this Court has observed in paragraph ‘6’ as under:-

“6. We appreciate the anxiety of the trial court for expeditious disposal of the criminal case of serious nature but certain aspects of the matter were not kept in mind otherwise the



learned trial court would have taken greater care to ensure that non-bailable warrants etc. should have been issued and executed against the IO as well as the Doctor in a serious case of present nature. In not keeping such important aspect of the case in mind, the learned trial court, in our view, committed irregularity, illegality and impropriety. All the possible evidence of the prosecution could not come on record on account of such hasty action of the trial court in closing the case without taking effective steps to secure presence of the IO and the Doctor for deposition as a witness. On that account the trial itself got vitiated resulting into the impugned judgment of conviction without any legal evidence worth the name.”

18. Dealing with the issue of negligence on the part of the I.O. leading to acquittal of the accused, the Hon’ble Supreme Court in the case of **Kishanbhai** (supra) observed in paragraphs ‘19’, ‘22’ and ‘23’ as under:-

“**19.** Every time there is an acquittal, the consequences are just the same, as have been noticed hereinabove. The purpose of justice has not been achieved. There is also another side to be taken into consideration. We have declared the respondent-accused innocent, by upholding the order of the High Court, giving him the benefit of doubt. He may be truly innocent, or he may have succeeded because of the lapses committed by the investigating/prosecuting teams. If he has escaped, despite being guilty, the investigating and the prosecution agencies must be deemed to have seriously messed it all up. And if the accused was wrongfully prosecuted, his suffering is unfathomable. Here also, the investigating and prosecuting agencies are blameworthy. It is therefore necessary, not to overlook even the hardship suffered by the accused, first during the trial of the case, and then at the appellate stages. An innocent person does not deserve to suffer the turmoil of a long-drawn litigation, spanning over a decade or more. The expenses incurred by an accused in his defence can dry up all his financial resources — ancestral or personal. Criminal litigation could also ordinarily involve financial borrowings. An accused can be expected to be under a financial debt, by the time his ordeal is over.

22. Every acquittal should be understood as a failure of the justice delivery system, in serving the cause of justice. Likewise, every acquittal should ordinarily lead to the inference, that an innocent person was wrongfully prosecuted. It is therefore essential that every State should put in place a procedural mechanism which would ensure that the cause of justice is served, which would simultaneously ensure the safeguard of interest of those who are



innocent. In furtherance of the above purpose, it is considered essential to direct the Home Department of every State to examine all orders of acquittal and to record reasons for the failure of each prosecution case. A Standing Committee of senior officers of the police and prosecution departments should be vested with the aforesaid responsibility. The consideration at the hands of the above Committee, should be utilised for crystallising mistakes committed during investigation, and/or prosecution, or both. The Home Department of every State Government will incorporate in its existing training programmes for junior investigation/prosecution officials course-content drawn from the above consideration. The same should also constitute course-content of refresher training programmes for senior investigating/prosecuting officials. The above responsibility for preparing training programmes for officials should be vested in the same Committee of senior officers referred to above. Judgments like the one in hand (depicting more than ten glaring lapses in the investigation/prosecution of the case), and similar other judgments, may also be added to the training programmes. The course-content will be reviewed by the above Committee annually, on the basis of fresh inputs, including emerging scientific tools of investigation, judgments of courts, and on the basis of experiences gained by the Standing Committee while examining failures, in unsuccessful prosecution of cases. We further direct, that the above training programme be put in place within 6 months. This would ensure that those persons who handle sensitive matters concerning investigation/prosecution are fully trained to handle the same. Thereupon, if any lapses are committed by them, they would not be able to feign innocence when they are made liable to suffer departmental action for their lapses.

23. On the culmination of a criminal case in acquittal, the investigating/prosecuting official(s) concerned responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for. Taking into consideration the seriousness of the matter, the official concerned may be withdrawn from investigative responsibilities, permanently or temporarily, depending purely on his culpability. We also feel compelled to require the adoption of some indispensable measures, which may reduce the malady suffered by parties on both sides of criminal litigation. Accordingly, we direct the Home Department of every State Government to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers. All such erring officials/officers identified, as responsible for failure of a prosecution case, on account of sheer negligence or because of culpable lapses, must suffer departmental action. The above mechanism formulated would infuse seriousness in the performance of investigating and prosecuting duties, and would ensure that investigation and prosecution are purposeful and



decisive. The instant direction shall also be given effect to within 6 months.”

19. We are of the considered opinion that in the kind of materials present on the record, the impugned judgment is liable to be set aside and we, accordingly, set aside the same.

20. We direct for sending a copy of this judgment to the Department of Home, Government of Bihar to take appropriate action against the I.O., who did not examine the injured witness and did not make him a chargesheet witness. Further why the main I. O. did not appear for his deposition and find out as to whether it is a case of culpable negligence and then suitably act in terms of the directions of the Hon’ble Supreme Court in the aforementioned case. An action taken report be also sent to this Court within two months from today.

21. The Respondent No. 2 is directed to surrender in the court below within a period of four weeks from today. On his surrender in the court below, his prayer for bail may be considered by the trial court and he may be granted bail on furnishing bail bond/sureties to the satisfaction of the learned trial court.

22. If Respondent No. 2 does not surrender within the aforesaid period in the learned trial court, appropriate coercive action shall be taken against him to procure his appearance and in such circumstance, the benefit of the observations of this Court



with regard to grant of bail to him shall not be available to respondent no. 2.

23. Let the trial be expedited. The trial shall be conducted de novo. Learned Principal District and Sessions Judge, Bhojpur at Ara shall be the trial court. The learned trial court shall exercise it's power conferred under the erstwhile Section 311 of the Code of Criminal Procedure (Now Section 348 of the Bhartiya Nagarik Suraksha Sanhita (BNSS) to procure the statement of the injured witness in course of trial.

24. This appeal is allowed.

(Rajeev Ranjan Prasad, J)

(Ramesh Chand Malviya, J)

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CAV DATE	
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