

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1204 of 2023

Arising Out of PS. Case No.-59 Year-2021 Thana- SISWAN District- Siwan

Rambabu Yadav, S/O Late Binda Yadav, R/O Village- Kisunbari, P.S- Siswan,
Distt.- Siwan.

... .. Appellant

Versus

1. The State of Bihar
2. Suresh Chauhan, S/O Indrajit Chauhan, R/O Village- Gabhirar, P.S-
Raghunathpur, Distt.- Siwan.
3. Amit Yadav, S/O Subedar Yadav, R/O Village- Kishunbari, P.S- Siswan,
Distt.- Siwan.
4. Dayal Sharan Singh, S/O Late Laxman Singh, R/O Village- Gabhirar, P.S-
Raghunathpur, Distt.- Siwan.

... .. Respondents

Appearance :

For the Appellant	:	Mr. Ashok Kumar Mishra, Advocate Mr. Ramesh Kumar, Advocate Mr. Yeshoneel Ratnam, Advocate Mr. Md. Rais, Advocate
For the State	:	Mr. Sujit Kumar Singh, APP
For the Resp Nos. 2 to 4	:	Ms. Kumari Anupama, Advocate Mr. Khalid Faizan, Advocate

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

Date : 27-01-2025

Heard learned counsel for the appellant, learned counsel
for the respondent nos. 2, 3 and 4 and learned Additional Public
Prosecutor for the State.

2. This appeal has been preferred for setting aside the
judgment of acquittal dated 22nd September, 2023 (hereinafter
referred to as the ‘impugned judgment’) whereby and whereunder
the learned Additional District and Sessions Judge-VII Court



Siwan (hereinafter referred to as the 'learned trial court') has been pleased to acquit respondent nos. 2, 3 and 4 of the charges under Sections 302/34 and 120B of the Indian Penal Code (In short 'IPC') and Section 27 of the Arms Act in Sessions Trial No. 257 of 2021 (G.R. No. 782 of 2021) arising out of Siswan P.S. Case No. 59 of 2021.

Prosecution Case

3. The prosecution case is based on the written application (Exhibit 'P-3') submitted by one Rambabu Yadav to the Officer Incharge of Siswan Police Station under the District of Siwan. In his written application, the informant alleged that on 22.02.2021 after 11:30 PM (night hours), his father who was sleeping in the *verandah* of the house has been shot dead by some unknown persons. In the morning at 4'O clock on 23.02.2021, his wife Sabita Devi came outside her room and found that blood was lying under the bed whereafter she started crying, thereafter the neighbours assembled and they found on lifting the body that the father of the informant had suffered firearm injury on his chest. The informant has stated that he had gone to Delhi for check-up of his eyes and in his house, his wife and daughter, only two members of the family were present.



4. On the basis of the written application of the informant, Siswan P.S. Case No. 59 of 2021 was registered for the offences alleged under Section 302/34 IPC and Section 27 of the Arms Act. The endorsement made on the written application by which the case has been registered has been marked Exhibit 'P-6' at the instance of the Investigating Officer (In short 'I.O.') who has been examined as PW-5 in the instant case. Exhibit 'P-6' would show that the case was registered on 25.02.2021 and the formal FIR was made on 25.02.2021 at 06:00 PM.

5. After investigation, Police submitted chargesheet against respondent nos. 2, 3 and 4 vide Chargesheet No. 68 of 2021 dated 31.05.2021 under the aforementioned Sections. Cognizance was taken of the offences and the records were committed to the court of Sessions for trial whereafter charges were explained to the accused (respondent nos. 2, 3 and 4) who denied the charges and claimed to be trial.

6. On behalf of the prosecution, oral as well as documentary evidences were adduced, the details of which are being provided hereunder in tabular form:-

List of Prosecution Witnesses

PW-1	Payal Kumari
PW-2	Dr. Rajni Kant
PW-3	Sabita Devi



PW-4	Rambabu Yadav
PW-5	Arbind Kumar

List of Exhibits

Exhibit-P-1/PW2	P.M.R
Exhibit-P-2/PW2	Signature of PW-2 Dr. Rajni Kant on Seizure list
Exhibit-P-3/PW4	Writing on Fardbeyan
Exhibit-P-4/PW5	FIR
Exhibit-P-5/PW5	Signature of SHO on the FIR
Exhibit-P-6/PW5	Pagination on the FIR
Exhibit-P-7/PW5	Inquest Report
Exhibit-P-8/PW5	Signature of the Police on Seizure List
Exhibit-P-9/PW5	Writing on Chargesheet

List of Defence Witnesses

DW-1	Rajesh Ram
DW-2	Bhola Yadav

Findings of the Learned Trial Court

7. The learned trial court having examined the evidences on the record found that in this case, no prosecution witness has seen the occurrence. It has been found on the basis of the materials on the record that no prosecution witness has stated that Amit Yadav (respondent no. 2) came to his/her house and fired. The only witness who made a statement saying that Amit Yadav had threatened the victim is the grand daughter of the victim, namely,



Payal Kumari, who has been examined as Prosecution Witness No.

1. She has, however, stated in her cross-examination that Amit Yadav had never said anything to her and her parents.

8. The learned trial court found that none of the witnesses has stated that the accused persons had hatched any conspiracy for committing the alleged occurrence, they had not seen the accused persons either sitting together or talking with each other and as such, the prosecution could not establish that any of the ingredients of the offences punishable under Sections 120B and 302/34 IPC is present. As regards the charge under Section 27 of the Arms Act, the learned trial court recorded a finding that no witness had ever seen Amit Yadav (respondent no. 2) having a pistol in his hand and firing from the same or killing Binda Yadav (deceased) by the said pistol. In the circumstances, the learned trial court held that the prosecution had failed to establish its case beyond all reasonable doubts.

Submissions of the Appellant

9. Learned counsel for the appellant has though submitted at first instance that the learned trial court has not applied its judicious mind properly and has passed the impugned judgment in mechanical manner, the present case was that of a land dispute in which Amit Yadav (respondent no. 2) had given a



threat to the deceased, therefore, there are sufficient materials in form of circumstantial evidences on the record to prove the prosecution case but in course of argument, while going through evidence of the prosecution witnesses, learned counsel for the appellant would realise the weaknesses of the prosecution.

Submission of Respondent Nos. 2 to 4 and State

10. Learned counsel for the respondent nos. 2 to 4 as well as learned Additional Public Prosecutor for the State have jointly opposed this appeal. It is submitted that not only the authenticity of the written application (Exhibit 'P-3') is shrouded in mystery, the lodging of the FIR after about three days of the occurrence after return of the informant from Delhi would cast serious doubt over the authenticity of the first information report. In their submission, there is an inordinate delay in lodging of the first information report for no plausible reason. It is evident from Exhibit 'P-3' that the wife and the daughter of the informant were very much present in the house and large number of villagers had also come to the place of occurrence in the morning of 23.02.2021 at 04:00 AM, still no FIR was lodged. It is submitted that the wife and the daughter of the informant were not aware of the person who may have been involved in the killing of Binda Yadav, therefore, no statement



was made by them and only after return of the informant (PW-4), the application was given to the police that too does not disclose the name of the accused. The application does not say that the deceased had been killed on account of any land dispute. No suspicion has been raised against the respondent nos. 2 to 4 in the application (Exhibit 'P-3').

11. It is submitted that in course of trial, neither the informant nor his wife and daughter could depose as an eye witness rather they have clearly stated that they had not seen respondent no. 2 visiting their house on any earlier occasion. In her examination-in-chief, Payal Kumari (PW-1) has stated that there was a land dispute with Amit Yadav (respondent no. 2) and he had threatened her Dadaji (deceased) but in her cross-examination, she has stated that she had come to know about the threat given to her Dadaji by Amit Yadav from her Dadaji but she had not given this information to the police station.

Consideration

12. This Court finds from the findings recorded by the learned trial court that the trial court has gone through the entire evidence and only thereafter the impugned judgment has been passed, however, we have carefully perused the evidences available on the record once again.



13. In this case, the prosecution witnesses, namely, PW-1, PW-3 and PW-4 are the family members of the deceased. PW-4 is the son of the deceased who was at Delhi at the time of occurrence. In his examination-in-chief, he has stated that he returned home on 23.02.2021 at 10:30 PM whereafter he had taken the dead body of his father to Siwan Sadar Hospital and after doing all formalities, he had submitted the written application at the police station. He has further stated that when he was returning to the house after submitting the application, he got a secret information that his co-villager Amit Yadav had called 4-5 persons and murdered his father. In his cross-examination, he has stated that Amit Yadav is his co-sharer. He has further stated that he had made statement on the basis of what he had heard about the occurrence. He was suggested that Amit Yadav was studying engineering and was living outside but he has been falsely implicated only to damage his future. This suggestion was, though, denied by PW-4 but it is evident from his deposition that he had not seen the occurrence and he has not whispered any motive behind the occurrence against Amit Yadav or any other accused. He has not even disclosed as to from whom he heard that Amit had called 4-5 persons and had murdered his father.

14. Payal Kumari (PW-1) is the grand daughter of the deceased as stated above, she is the only witness who has stated that there was a land dispute with Amit but in her cross-examination



when she was asked that which land of her is in dispute with Amit Yadav, this witness has stated that she is not aware of it and she has further stated that her house and land are separated from that of the house and land of Amit Yadav. She is also not an eye witness. In paragraph '21' of her deposition, she has stated that neither she nor her mother had given information to the police. She has stated that police had arrived at the place of occurrence after half an hour to one hour and police had taken statement of her mother whereafter the police had recorded her statement and had taken away the dead body. From the deposition of PW-1, it is crystal clear that the first version of the prosecution story came from the mouth of the mother of PW-1 after the police arrived within one hour of the occurrence in the morning at the place of occurrence itself but this first version of the prosecution story has been suppressed. The informant came on 23.02.2021 at 10:00 PM whereafter he claims to have taken away the body to Sadar Hospital but the *post mortem* report of the deceased which has been proved as Exhibit 'P-1' by the Doctor (PW-2) would show that the *post mortem* examination was conducted on 24.02.2021 at 01:30 PM and there was an entry wound charge margin with over shaped wound of diameter 1/2" on back side right skin of chest at the level of T5 vertebra with inverted margin and exit wound present on the left side of 5th intercostal space just lateral to sternum wound diameter 3/4" with everted margin. The Doctor (PW-2) has



stated in his cross-examination that when a person is shot at from a distance of 15-20 metres, it is called charge margin. The deceased had only one entry and exit wound. The Doctor had recorded injury caused by gunfire in the *post mortem* report. Daroga had written .315 bore on the seizure list. It is, thus, evident from the *post mortem* report and the evidence of PW-2 that the deceased had suffered a firearm injury caused by a gun using .315 bore cartridge.

15. The I.O. who has been examined as PW-5 had visited the place of occurrence and found that the blood had fallen down beneath the cot whereafter he claims to have recorded the statement of the witnesses. It is evident from the evidence of the I.O. (PW-5), the informant (PW-4) and the Doctor (PW-2) that in this case, the written application was submitted by PW-4 only after the *post mortem* had already been conducted on the dead body. In fact, the FIR has been registered on 25.02.2021 at 06:00 PM i.e. after about 18 hours of the *post mortem*.

16. The wife of the informant who has been examined as PW-3 and was present in the house, has stated that when she got awoken in the morning at 4'O clock and came outside her house and went to awake her father-in-law Binda Yadav then she found blood had fallen down beneath his cot. It seems difficult to believe that the assailants entered into the house of the informant at 11:00 PM, shot dead Binda Yadav in his room by firing from a gun and then went



away but during all this period, neither PW-1 nor PW-3 could get awoken from the sound of firing inside the house. This also seems peculiar that the police having reached the place of occurrence within one hour and despite recording the statement of the wife of the informant did not lodge the first information report and the first information report has been lodged on the basis of a written application submitted by PW-4 who arrived from Delhi in the night hour of 23.02.2021 and even thereafter it took about 18 hours from the time of *post mortem* in recording of the first information report.

17. In the opinion of this Court, it is a case of no evidence and the learned trial court has rightly appreciated the evidences available on the record. This being an appeal against acquittal, we would not interfere with the impugned judgment.

18. This appeal has no merit. It is dismissed.

(Rajeev Ranjan Prasad, J)

(Ramesh Chand Malviya, J)

SUSHMA2/-

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CAV DATE	
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