

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (DB) No.1026 of 2024**

Arising Out of PS. Case No.-696 Year-2013 Thana- KHAGARIA District- Khagaria

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1. Gulab Yadav, S/O Late Narsing Yadav, R/O Village- Morkahi, Kachahri Tola, P.S- Muffasil, Distt.- Khagaria.
  2. Dilip Yadav, S/O Late Narsing Yadav, R/O Village- Morkahi, Kachahri Tola, P.S- Muffasil, Distt.- Khagaria.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

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**Appearance :**

|                    |   |                                                                                                                                                     |
|--------------------|---|-----------------------------------------------------------------------------------------------------------------------------------------------------|
| For the Appellants | : | Mr. Ajay Kumar Thakur, Advocate<br>Ms. Kiran Kumari, Advocate<br>Md. Imteyaz Ahmad, Advocate<br>Mr. Pranshu, Advocate<br>Mr. Deepak Kumar, Advocate |
| For the State      | : | Ms. Shashi Bala Verma, Addl.PP                                                                                                                      |
| For the Informant  | : | Mr. Jai Kishor Poddar, Advocate                                                                                                                     |

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**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**  
**and**  
**HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

**Date : 22-07-2026**

Heard learned counsel for the appellants, learned counsel for the informant and learned Additional Public Prosecutor for the State.

2. The present appeal has been preferred for setting aside the judgment of conviction dated 20.07.2024 (hereinafter referred to as the ‘impugned judgment’) and the order of sentence dated 24.07.2024 (hereinafter referred to as the ‘impugned order’) passed by learned Additional Sessions Judge-III, Khagaria (hereinafter referred to as the ‘learned trial court’) in Sessions Trial



No. 129 of 2014, 129A/2014, 142/2015, 142A/2015 arising out of Khagaria (Muffasil) P.S. Case No. 696 of 2013. By the impugned judgment, the appellants have been convicted for the offences punishable under Sections 302, 120(B)/34 of the Indian Penal Code (in short 'IPC') and Section 27 of the Arms Act. By the impugned order, they have been sentenced to undergo rigorous imprisonment for life with a fine of Rs. 50,000/- each under Section 302, 120(B)/34 IPC. They have also been sentenced to undergo imprisonment for three years with a fine of Rs. 5,000/- each under Section 27 of the Arms Act. Both the sentences are to run concurrently.

### **Prosecution Case**

3. The prosecution case is based on the written application of the Shambhu Yadav (PW-9). In his written application, the informant (PW-9) has stated that on 23.11.2013, at 08:00 AM in the morning (1) Sanjay Yadav called his elder brother, namely, Subodh Yadav to come at his house. The informant with his elder brother went to the house of Sanjay Yadav on motorcycle. There, Sanjay Yadav asked the informant and his elder brother to sit on chair, in the meantime, around at 8:30 AM, all of a sudden (1) Sanjay Yadav caught hold of elder brother of the informant and (2) Gulab Yadav fired above the ear of his elder



brother from behind. His elder brother fell on the ground and started to struggle, thereafter Sanjay Yadav and Gulab Yadav fled away towards East side. The informant along with his co-villagers, namely, Bajrangi Yadav, Rana Yadav, Shakti Kumar, Bhushan Yadav and Mukesh Yadav started chasing them, in the meanwhile, (3) Dilip Yadav, (4) Manoj Yadav, (5) Chandan Yadav, (6) Mithlesh Yadav and some unknown persons started indiscriminate firing then the informant and others got terrified and started running backwards to save their lives. The informant immediately took his brother for treatment at Sadar Hospital, Khagaria where doctor referred him for better treatment elsewhere. Thereafter, the informant brought his elder brother to Dr. Ashok Sharma, Begusarai where the Doctor declared his elder brother dead. The informant alleged that above-named accused persons with common intention killed his elder brother due to prior enmity and village politics as the wife of his elder brother, namely, Pinki Devi was Sarpanch of Village Kachhari, Rahimpur at that time.

4. On the basis of the written application of the informant (PW-9), Khagaria (Muffasil) P.S. Case No. 696 of 2013 dated 23.11.2013 was registered under Sections 302, 120(B)/34 IPC and Section 27 of the Arms Act against (1) Sanjay Yadav, (2) Gulab Yadav (appellant no. 1 herein), (3) Dilip Yadav (appellant



no. 2 herein), (4) Manoj Yadav, (5) Chandan Yadav, (6) Mithilesh Yadav.

5. After investigation, police submitted chargesheet bearing Chargesheet No. 85 of 2014 dated 28.02.2014 against (1) Dilip Yadav (FIR named) and (2) Pavitra Yadav (non-FIR named) under Sections 302/120(B)/34 IPC and Section 27 of the Arms Act keeping investigation pending against FIR named accused persons, namely, (1) Gulab Yadav, (2) Manoj Yadav, (3) Mithilesh Yadav and non-FIR named accused, namely, (4) Mukesh Yadav.

6. Learned Chief Judicial Magistrate, Khagaria vide order dated 03.03.2014 took cognizance of the offences punishable under Sections 302/120(B)/34 IPC and Section 27 of the Arms Act against Dilip Yadav and Pavitra Yadav and directed for opening of separate file against the accused against whom investigation was kept pending by the I.O. Learned CJM vide order dated 31.03.2014 committed the records to the court of Sessions in respect of Dilip Yadav and Pavitra Yadav where Sessions Trial No. 129 of 2014 was registered.

7. Charges were read over and explained to them on 24.04.2014 to which they pleaded not guilty and claimed to be tried. Accordingly, the learned trial court framed charges against



them under Sections 302/120(B)/34 IPC and Section 27 of the Arms Act.

**8.** Further Chargesheet bearing Chargesheet No. 369 of 2014 dated 31.07.2014 was submitted against FIR named accused, namely, Manoj Yadav, Gulab Yadav under Sections 302, 120(B)/34 and Section 27 of the Arms Act keeping investigation pending against Mukesh Yadav and Mithilesh Yadav. Accordingly, learned CJM vide order dated 04.08.2014 took cognizance of the offences under Sections 302, 120(B)/34 and Section 27 of the Arms Act.

**9.** Further, supplementary chargesheet has been submitted bearing Chargesheet No. 678 of 2014 dated 07.11.2014 against Mithilesh Yadav under Sections 302/120(B)/34 IPC and Section 27 of the Arms Act and Mukesh Yadav has been shown absconder. Accordingly, learned CJM vide order dated 10.11.2014 took cognizance. On 09.04.2015, absconder accused Mukesh Yadav was remanded to judicial custody after surrender.

**10.** After supply of police papers to the accused, Gulab Yadav, Mithilesh Yadav, Mukesh Yadav and Manoj Yadav, learned Magistrate committed the records to the court of Sessions vide order dated 11.05.2015 on which Sessions Trial No. 142 of 2015 was registered on 21.05.2015.



11. Charges were read over and explained to Gulab Yadav, Mithilesh Yadav, Mukesh Yadav and Manoj Yadav on 15.06.2015 to which they pleaded not guilty and claimed to be tried. Accordingly, the learned trial court framed charges against them under Sections 302, 120(B)/34 IPC and Section 27 of the Arms Act.

12. On the request of learned APP, learned trial court vide order dated 19.03.2016 amalgamated Sessions Trial No. 142 of 2015 with Sessions Trial No. 129 of 2014 in which evidence of three witnesses, namely, Anandi Yadav (PW-1), Melo Yadav (PW-2) and Sadanand Yadav (PW-3) were already recorded. After amalgamation, they were again examined.

13. In course of trial, the prosecution examined as many as thirteen witnesses and got exhibited various documentary evidence. The description of the prosecution witnesses and the list of documents exhibited on behalf of prosecution are provided hereunder for ready reference in a tabular form:-

List of Prosecution Witnesses

| Prosecution witness No. | Name of Witness | Description            |
|-------------------------|-----------------|------------------------|
| PW-1                    | Anandi Yadav    | Independent Witness    |
| PW-2                    | Melo Yadav      | Independent Witness    |
| PW-3                    | Sadanand Yadav  | Independent Witness    |
| PW-4                    | Tara Devi       | Mother of the deceased |
| PW-5                    | Pinki Devi      | Wife of the deceased   |



|       |                  |                       |
|-------|------------------|-----------------------|
| PW-6  | Rana Yadav       | Independent Witness   |
| PW-7  | Bhushan Yadav    | Independent Witness   |
| PW-8  | Bajrangi Yadav   | Independent Witness   |
| PW-9  | Shambhu Yadav    | Informant             |
| PW-10 | Dr. Jagat Ranjan | Medical Officer       |
| PW-11 | Loran Prasad Rai | Investigating Officer |
| PW-12 | Haribol Yadav    | Independent Witness   |
| PW-13 | Sudhir Paswan    | Independent Witness   |

List of Exhibits on behalf of Prosecution

| Exhibit No. | Description of the Exhibit                                                             | Proved by/Attested by |
|-------------|----------------------------------------------------------------------------------------|-----------------------|
| ‘1’         | Writing and signature of the informant (PW-9) Shambhu Yadav on the written application | PW-9                  |
| ‘1/1’       | Forwarding on written application                                                      | PW-11                 |
| ‘1/2’       | Registration of case on written application                                            | PW-11                 |
| ‘2’         | Signature of the informant Shambhu Yadav (PW-9) on the inquest report                  | PW-9                  |
| ‘3’         | Writing and Signature of Dr. Jagat Ranjan (PW-10) on Post mortem report                | PW-10                 |
| ‘4’         | Seizure list of blood-stained soil, Black coloured slipper                             | PW-11                 |
| ‘4/1’       | Seizure list of 0.315 bore empty shell                                                 | PW-11                 |
| ‘4/2’       | Seizure list of one mobile and sim                                                     | PW-11                 |
| ‘4/3’       | Signature of Sudhir Paswan (PW-13) on the seizure list of one mobile and sim           | PW-13                 |
| ‘5’         | Inquest report in the writing and signature of PW-11                                   | PW-11                 |
| ‘6’         | Chargesheet No. 85 of 2014 dated 28.02.2014                                            | PW-11                 |
| ‘6/1’       | Chargesheet No. 369 of 2014 dated 31.07.2014                                           | PW-11                 |
| ‘6/2’       | Chargesheet No. 678 of 2014 dated 07.11.2014                                           | PW-11                 |
| ‘7’         | Ordersheet of samples sent to Forensic Science Laboratory, Calcutta                    | PW-11                 |
| ‘8’         | Ordersheet of samples sent to Forensic Science Laboratory, Patna                       | PW-11                 |



|       |                                                                          |                 |
|-------|--------------------------------------------------------------------------|-----------------|
| ‘9’   | FSL Report no. 756 of 2014 dated 08.09.2014 of seized blood-stained soil | Public document |
| ‘9/1’ | FSL Report no. 756 of 2014 dated 08.09.2014 of seized 0.315/8 MM         | Public document |

14. Thereafter, the statements of the accused persons, were recorded under Section 313 of the Cr.P.C. in which they denied the allegations and pleaded innocence.

15. The defence exhibited two documentary evidences and examined two defence witnesses which are being mentioned hereunder in tabular form:-

List of Defence Exhibits

| Exhibit No. | Description of the Exhibit                                      | Proved by/Attested by |
|-------------|-----------------------------------------------------------------|-----------------------|
| ‘A’         | Signature of Manoj Yadav (DW-1) on Seizure list                 | DW-1                  |
| ‘A/1’       | Signature of Karandhir Yadav on the seizure list of empty shell | DW-2                  |

List of Defence Witnesses

| Defence witness No. | Name of Witness | Description          |
|---------------------|-----------------|----------------------|
| DW-1                | Manoj Yadav     | Accused of this case |
| DW-2                | Karandhir Yadav | Other witness        |

**Findings of the learned Trial Court**

16. Learned trial court after examining the oral as well as documentary evidences available on the record found that all the prosecution witnesses have supported the prosecution case. They have supported the place, time and manner of occurrence.



Learned trial court found that all the prosecution witnesses have stated the place of occurrence as *darwaja* of Sanjay Yadav.

17. Learned trial court found that the prosecution has failed to establish the charges levelled against Manoj Yadav under Sections 302, 120(B)/34 IPC and Section 27 of the Arms. Hence, he was acquitted of the charges giving him benefit of doubt.

18. Learned trial court after considering all the facts and circumstances of the case held that the prosecution has been successfully able to prove the charges beyond all reasonable doubts levelled against these appellants, Gulab Yadav and Dilip Yadav under Sections 302, 120(B)/34 IPC and Section 27 of the Arms Act. Accordingly, the appellants were convicted of the offences punishable under Sections 302, 120(B)/34 IPC and Section 27 of the Arms Act.

**Submissions on behalf of the Appellants**

19. Learned counsel for the appellants while assailing the impugned judgment and order has submitted that the learned trial court has committed grave error in convicting the appellants.

20. Learned counsel submits that the occurrence is said to have taken place on 23.11.2013 at 08:00 AM, inquest report was prepared at 03:00 PM and the *post mortem* was conducted at 04:20 PM on the same day but the FIR has been registered at 07:30 PM.



Learned counsel submits that in a serious case like murder, this is an inordinate delay in registration of the FIR. Learned counsel relies on the judgment of the Hon'ble Supreme Court in the case of **Meharaj Singh (L/Nk.) vs. State of U.P.** reported in (1994) 5 SCC 188 and **Chotkau vs. State of U.P.** reported in (2023) 6 SCC 742 to submit that this inordinate delay may prove fatal in the facts and evidences present in this case.

21. Learned counsel for the appellants submits that the wife of the deceased Pinki Devi (PW-5) has in her deposition submitted that police had got a written application from her and she had put her signature after writing everything but the first version of PW-5 which should have been the basis of FIR has been suppressed by the prosecution. The I.O. (PW-11) in his cross-examination in paragraph '18' has stated that statement of PW-5 was recorded on 18.02.2014 whereas the occurrence is of 23.11.2013. Learned counsel submits that the written information submitted by PW-5 has been suppressed by the prosecution.

22. Learned counsel for the appellants submits that the police proceeded at the place of occurrence on the basis of a rumour after recording a *Sanha*, but the '*Sanha*' in the station diary has not been brought on record, therefore, it is another suppression on the part of the prosecution. Learned counsel submits that the



suppression of *Sanha* as well as the written statement/ information submitted by Pinki Devi (PW-5) would prove fatal to the prosecution case.

**23.** It is further submitted that the prosecution witnesses are not eye-witnesses of the occurrence. The information Shambhu Yadav cannot be put in the category of a wholly reliable witness. Several contradictions have been taken from the I.O. (PW-11).

**Submissions on behalf of the State and the Informant**

**24.** Learned Additional Public Prosecutor for the State and learned counsel for the informant have opposed the appeal. It is submitted that learned trial court has examined the evidences available on the record meticulously and found the involvement of the appellants in the commission of the offence. Hence, impugned judgment and order need no interference of this Court.

**Consideration**

**25.** Having heard learned counsel for the appellant, learned counsel for the informant and learned Additional Public Prosecutor for the State, this Court finds that as per the I.O., he had heard rumour about the occurrence whereafter he had reached the place of occurrence and prepared the seizure list (Exhibit '4') on 23.11.2023 at 10:30 AM. The place of occurrence is said to be the Sahan land in front of '*Bethka*' of Sanjay Yadav (not sent up



for trial). The I.O. had collected blood-stained soil from the place of occurrence and one empty shell from the maize crop field of Rudal Yadav. He had prepared the seizure list (Exhibit '4') at 10:30 AM.

**26.** The informant (PW-9) has stated that when he was putting the body of Subodh Yadav in the tempo for taking to the hospital, police had already arrived there at 09:00 AM and had seen the body. In this regard, statements made in paragraphs '36', '37' and '38' of the deposition of the informant (PW-9) are important to take note of. In paragraph '40' of his testimony, PW-9 has stated that police arrived at his house between 12-01 PM and police had seen the dead body. He did not remember that any reading and writing was done by police in the hospital or at the house. The informant (PW-9) has deposed that he had given written information to police at 12:30 PM when police had for the first time met him at his house but the I.O. (PW-11) has stated in his testimony that the informant had given the written information in the police station at the time of registration of the FIR. In this case, the occurrence is said to have taken place on 23.11.2013 at 08:00 AM but the FIR has been registered at 07:30 PM i.e. after eleven and half hours on the basis of the written information submitted by the informant Shambhu Yadav (PW-9). This seems to



be an inordinate delay in submission of the written information to the police.

27. This Court finds that police had prepared the inquest report (Exhibit '5') on 23.11.2023 at 15 hours. Shambhu Yadav (PW-9) is a witness to the inquest report but at this point of time, Shambhu Yadav did not submit the written information as per the I.O. No *fardbeyan* was recorded. The dead body was sent for autopsy to the Sadar Hospital, Khagaria where *post mortem* was conducted on the same day at 04:20 PM. Even at this stage, no FIR was registered. This is required to be appreciated with reference to the testimony of Pinki Devi (PW-5) who is the wife of the deceased. In her examination-in-chief, she has stated that her husband had received a phone call from Sanjay Yadav then her husband and her *devar* had gone to the house of Sanjay. After some time, she heard a *hulla* that Subodh Yadav has been killed by Gulab Yadav. She ran to the house of Sanjay Yadav and found that her husband was lying down, he had suffered firearm injury and was in pool of blood. She asked Sanjay Yadav that who had killed then Sanjay told that Gulab had fired. This Court has noticed from paragraph '14' of the testimony of this witness (PW-5) that she has given a different version of the whole case. According to her statement, she had met police for the first time when there was a



road jam. There, she had informed police that she was the wife of the deceased. According to this witness, police had got a written application from her and she had put her signature after writing everything. This statement of PW-5 in paragraph '13' of her deposition gives an impression that she had given the written information to police during the road jam, she had put her signature on that thereafter the dead body was lifted. This written information submitted by PW-5 seems to have been suppressed by the prosecution.

**28.** This Court finds that the prosecution has examined Tara Devi, mother of the deceased (PW-4) who talks of prior enmity. Pinki Devi (PW-5) is the wife of the deceased but these witnesses have been examined only after three months by the I.O. The defence has taken contradictions in the statements of these witnesses through the I.O. which would be evident from the statements of the I.O. in paragraphs '18' and '19' of his deposition.

**29.** This Court further finds that the other witnesses, namely, Rana Yadav (PW-6), Bhushan Yadav (PW-7) and Bajrangi Yadav (PW-8) have come forward to support the prosecution case at a much belated stage. They were examined by police during investigation after three months but in their statements under Section 161 CrPC, they had not claimed themselves eye witnesses



to the occurrence. In fact, the defence brought their attention towards their previous statements made before the police and has taken contradictions in their statements through the I.O. (PW-11).

**30.** The informant claims himself an eye witness but it is evident that the police proceeded to the place of occurrence on the basis of a '*Sanha*' which was recorded by police. This *Sanha* has not been brought on record, therefore, it is another suppression on the part of the prosecution. The fact that the prosecution has suppressed '*Sanha*' as well as the 'written statement'/ 'information' submitted by Pinki Devi (PW-5) would prove fatal to the prosecution and it will shake the confidence of this Court in the written information submitted by the informant (PW-9) after about 11 hours of the occurrence.

**31.** In the case of **Chotkau** (supra), the Hon'ble Supreme Court in paragraph '60' has taken note of the judgment rendered in the case of **Meharaj Singh** (supra). Paragraph '60' of the judgment in the case of **Chotkau** (supra) is being reproduced hereunder for a ready reference:-

**"60.** On the importance of promptitude, both in the registration of the FIR and in the transmission of the same to the court, reliance is placed by Shri Nagamuthu, learned Senior Counsel on the following passage in *Meharaj Singh v. State of U.P.*<sup>3</sup>: (SCC pp. 195-96, para 12)

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3. (1994) 5 SCC 188: 1994 SCC (Cri) 1391



“12. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174 CrPC, is aimed at serving a statutory function, to



lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed to give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been ante-timed and had not been recorded till the inquest proceedings were over at the spot by PW-8.”

**32.** Considering the conduct of the prosecution and the fact that the informant does not appear to be a credible witness so as to put him in the category of a wholly reliable witness, there being no other witness of the occurrence and then there is a huge delay in lodging of the FIR in a serious case like murder, in the opinion of this Court, the prosecution has failed to establish its case beyond all reasonable doubts. The appellants have made out a case for benefit of doubt.

**33.** Accordingly, we set aside the impugned judgment and order. The appellants are acquitted of the charges giving them benefit of doubt.



34. The appellant no. 1, namely, Gulab Yadav is said to be in custody. He shall be released forthwith if not wanted in any other case. The appellant no. 2, namely, Dilip Yadav is said to be on bail, he is discharged of liability of the bail bonds and its sureties.

35. This appeal is allowed.

36. 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)

( Sunil Dutta Mishra, J)

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