

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1410 of 2018**

Arising Out of PS. Case No.-27 Year-2007 Thana- LAXMIPUR District- Jamui

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1. Jagdish Yadav, son of Late Jethu Yadav, Resident of Village- Jinhara, P.S.- Laxmipur, District- Jamui.
 2. Laxman Yadav Son of Khado Yadav, Resident of Village- Asauta, P.S.- Laxmipur, District- Jamui.
 3. Anil Singh, Son of Darogi Singh, Resident of Village- Kala, P.S.- Laxmipur, District- Jamui.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s	:	Mr. S.K. Lal, Sr. Advocate Mr. Umesh Prasad, Advocate
For the Respondent/s	:	Mrs. Shashi Bala Verma, APP

**CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
and**

**HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
CAV JUDGMENT**

(Per: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA)

Date : 03-04-2026

Heard Mr. S.K. Lal, learned senior counsel appearing on behalf of the appellants and Mrs. Shashi Bala Verma, learned A.P.P. for the State.

2. The present appeal preferred under section 374(2) of the Cr.P.C. against the impugned judgment of conviction dated 25.09.2018 and order of sentence dated 04.10.2018, passed by learned A.D.J., F.T.C.- 1st, Jamui in S. Tr. No. 12 of 2008/S. Tr. No. 270 of 2008 arising out of Laxmipur P.S. Case No. 27 of 2007, whereby and whereunder the aforesaid three appellants



were convicted for the offences punishable under section 302 of the Indian Penal Code (in short the “I.P.C.”) and ordered to undergo rigorous imprisonment for life.

Brief facts of the case

3. Brief case of the prosecution as it speaks through written information dated 27.02.2007 of PW-7 namely, Krishna Deo Prasad Gupta, son of Late Chalitra Sah, resident of Latta, P.S. - Laxmipur, District – Jamui, that while he along with Ravindra Sah (deceased) and Sanjay Sah (PW-10) were returning to their home village – Jinhara, by bicycle and so as they reached about 5:00 P.M. in evening somewhere between the village Kala and Bishanpur and were crossing the river bridge, the accused persons including the appellants, who were hidden themselves there prior to their arrival, suddenly came before them and surrounded them. The informant identified the accused persons as Gulabi Yadav, son of Sri Yadav; Jagdish Yadav, son of Unknown (**appellant no.1**); Laxman Yadav, son of Kharo Yadav, resident of village - Jinhara (**appellant no. 2**); Adhik Yadav, son of Sri Yadav, resident of village – Jinhara; Anil Singh, son of Darogi Singh, resident of village – Kala (**appellant no. 3**) and other unknown persons. It is alleged that immediately after surrounding them, Gulabi Yadav said to



Ravindra Sah as *'you did not paid the ransom money as demanded by them, therefore, he will kill him today'* and by saying so, they pulled Ravindra Sah from his bicycle towards south of the bridge and fired on his chest, whereafter Ravindra Sah fell down to the ground. Immediately thereafter, Jagdish Yadav said that still he is alive and saying so he also fired upon Ravindra Sah from his pistol which hit to his neck. Bullet crossed the neck by causing entry and exit wound. Thereafter, Laxman Yadav fired on his stomach. It was further stated that other accused persons also started to fire upon him and on seeing the occurrence, he along with Sanjay Sah, by taking his bicycle, fled away from there and could save their life anyhow. It was said that the accused persons looted the mobile of Ravindra Sah bearing No. 9937658680 and cash of Rs. 2000/- from him.

4. The written information further speaks that immediately after reaching the village which was at about 2 km from the place of occurrence, he and Sanjay Sah (PW-10) told the villagers about the alleged incident and thereafter about 12 persons of the village returned back to the place of occurrence and found that Ravindra Sah was lying on the ground in injured condition and was in the pool of blood. He was totally



unconscious and they brought him to Laxmipur P.S. from where he was sent to Jamui Hospital for treatment, but the doctor declared Ravindra Sah brought as dead. Whereafter, he came back to the police station again and given his aforesaid written information (**Exhibit '4'**).

5. On the basis of said written information, Laxmipur P.S. Case No. 27 of 2007 dated 27.02.2007 was registered for the offences punishable under sections 302/34, 386 of the Indian Penal Code and Section 27 of the Arms Act. After concluding investigation, police submitted charge-sheet against the appellants for the offences punishable under sections 302/34, 386, 120B of the IPC and section 27 of the Arms Act. The learned jurisdictional Magistrate after perusal of materials and records took cognizance accordingly and after compliance of section 207 of the Cr.P.C. committed this case to the court of sessions under section 209 of the Cr.P.C. for its trial and disposal.

6. After commitment, learned trial court, upon perusal of records, framed charges against accused Laxman Yadav, Jagdish Yadav, Anil Singh, Tantan Mishra, Hari Ballabh Yadav under section 302/34, 386 and 120B of the IPC along with offences punishable under section 27 of the Arms Act, and



explained the charges to the accused/appellants in their vernacular language, which they pleaded “**not guilty**” and claimed to be tried.

7. To substantiate its case, prosecution altogether examined 11 witnesses namely, **PW-1, Baby Devi; PW-2, Dr. Syed Naushad Ahmad, PW-3, Puniya Devi; PW-4, Sajan Kumar Sah; PW-5, Shanti Sah; PW-6, Upendra Prasad; PW-7, Krishnadeo Pd. Gupta (informant of this case); PW-8, Shakaldeo Sah; PW-9, Jitendra Narayan Singh; PW-10, Sanjay Sah and PW-11, Satendra Nath Tiwari.**

8. The prosecution has also produced certain documents viz. Post-mortem report – **Exhibit ‘1’**, Inquest report – **Exhibit ‘2’**, seizure list of the cartridge – **Exhibit ‘3’**, endorsement on the written report – **Exhibit ‘4’** respectively.

9. After examination of prosecution witnesses and by taking note of evidence as surfaced during trial, statement of accused/appellants were recorded under Section 313 of the Cr.P.C., which was denied by the appellants in totality by claiming their complete innocence and false implication. No oral or documentary evidence were examined by the accused/appellants in their defence.

10. Upon perusal of the evidence surfaced during the



trial and hearing the parties, learned trial court convicted the accused/appellants for the offences punishable under section 302 of the IPC and passed the order of sentence as mentioned aforesaid. Being aggrieved with, the present appeal has been preferred by the accused/appellants.

11. Hence, the appeal.

Argument on behalf of the accused/appellants

12. Mr. S.K. Lal, learned senior counsel appearing on behalf of the appellants submitted that conviction of appellants was recorded on the sole testimony of PW-7 namely, Krishna Deo Prasad Gupta. It is pointed out by Mr. Lal that rest of the witnesses are villagers and they are not the eye witness of the occurrence and they deposed before the learned trial court *qua* occurrence in the manner as it was said to them by the informant (PW-7).

13. It is also submitted by Mr. Lal that, PW-10, namely, Sanjay Sah, who accompanied the deceased and informant and also the eye witness of the alleged occurrence, deposed nothing about the occurrence during the trial and declared hostile by the prosecution. It is submitted that in view of same, the testimony of solitary witness requires strict scrutiny, particularly when no case prior to the occurrence in



connection with demanding any ransom money was lodged by the deceased against them.

14. It is also submitted that PW-7 (informant) saw only three accused persons who fired upon the deceased, whereas as per medial evidence and seizure list, six bullet injuries were found upon the deceased with entry and exit wound, which makes the version of PW-7 doubtful being as eye witness of the occurrence.

15. It is also submitted by Mr. S.K. Lal that no forensic examination was made *qua* seized empty cartridges which were seized from the place of occurrence. It is also pointed out that in want of further corroborating materials, conviction as recorded by the learned trial court is bad in the eyes of law on the sole testimony of PW-7/informant.

Argument by learned A.P.P.

16. While opposing the appeal, learned A.P.P. Mrs. Shashi Bala Verma, appearing for the State, submitted that it is the quality of witness which required to be taken note of rather to count the number. It is pointed out by learned APP that there is no reason to disbelieve the version of PW-7, who is the eye witness of the occurrence and informant of this case, who supported the case during the trial. It is also submitted that as



another eye witness turned hostile during the trial, it does not lead to conclusion *ipso facto* as to doubt the testimony of PW-7.

17. We have perused the trial court records carefully and gone through the evidences available on record as also considered the rival submissions as canvassed by learned counsel appearing on behalf of the parties.

18. **PW-7 is Krishna Deo Prasad Gupta**, who is the informant of this case. He deposed during trial through examination-in-chief that the occurrence is of 27.02.2007, which took place at about 5:00 P.M. while he along with deceased and PW-10 namely, Sanjay Sah were returning to their village Jinhara, by bicycle and as they reached near to Bishanpur bridge, suddenly, the accused persons including these appellants namely Gulabi Yadav, Jagdish Yadav, Laxman Yadav, Adhik Yadav and Anil Singh surrounded them and pulled Ravindra Sah (deceased) towards the bridge, whereafter Gulabi Yadav said him that they will kill him as he refused to pay ransom tax and by saying so, he fired on his chest. It was deposed that receiving bullet injuries, he wriggled down to the ground. Whereafter the appellant accused Jagdish Yadav said that still he is alive and fired upon his neck. Thereafter, Laxman Yadav fired on his stomach. PW-7 further deposed that due to



fear, he fled away through bicycle towards his village along with PW-10. He deposed that Hari Ballabh Yadav and Tantan Mishra were also the members of the gang of the accused/appellants. It was also deposed that one Nokia mobile set and cash of Rs. 2000/- was also looted from the deceased during the occurrence. He further testified that immediately after returning to the village, he disclosed the occurrence to his mother, Punia Devi (PW-3) and maternal aunt Baby Devi (PW-1). Whereafter, he disclosed the occurrence to one Shanti Sah (PW-5), Sajan Kumar Shah (PW-4), Sakaldeo Sah (PW-8), Upendra Prasad (PW-6) and other villagers of his village. PW-7 further deposed that he returned again to the place of occurrence along with 20-25 co-villagers and brought the deceased Ravindra Sah to police station, whereafter a slip was given to him by police to get him admitted in Jamui Hospital, where Ravindra Sah was declared brought dead. It was deposed that he returned from hospital to police station and given written information *qua* occurrence, which upon his identification, exhibited during the trial as **Exhibit '4'**. He identified the appellants/accused Anil Singh, Jagdish Yadav, Laxman Yadav, Gulabi Yadav during the trial.

18.1. Upon cross-examination, it was stated that the



accused Gulabi Yadav, Laxman Yadav and Jagdish Yadav were known to him prior to the occurrence. He also ascertained that deceased was his relative and engaged in the business of ready-made cloth having earning of about Rs. 2000/- per month. It was stated that on the date of occurrence, he along with deceased went to Jinhara Market at about 11:00 A.M. by bicycle, where he remained for 2 - 2½ hours and again proceeded to return at about 3:00 P.M. It was also ascertained that they were also surrounded by the accused persons, but no harm was caused. It was stated that the deceased was pulled down from his bicycle and was shot after travelling 25 steps ahead. Initially, they were stand there but subsequently due to fear, they started to move away. He and Sanjay Sah (PW-10) were not caught hold by any accused persons. It was stated that after receiving bullet injury, Ravindra Sah was fell down to the ground. He saw the occurrence while he was running away from the place of occurrence. It was said that they brought deceased to police station from place of occurrence on cot and reached Laxmipur Police Station at about 7:00 P.M. He remained there for 15-20 minutes, whereafter a slip was given to him by police station Incharge for treatment and thereafter he along with others brought Ravindra Sah to the District Hospital, Jamui, where he



was declared brought dead. He deposed that the deceased Ravindra Sah was his brother. The place of occurrence was full of blood. He denied the suggestion that Ravindra Sah was killed by some unknown persons. He stated that the bicycle of his deceased brother was not seized by police. The police collected blood-stained blood. He heard the sound of 6-7 round of firing. His brother was in black full pant and full shirt. When he returned to place of occurrence with co-villagers, his brother was unconscious and his eyes was blinking somehow. He found the wound of six bullet on the body of his brother. Police seized four empty cartridges and three bullets from the place of occurrence. He says that he is not the witness of seizure list. It was said that bullet was not produced before him during the trial.

19. **PW-1 is Baby Devi**, who is the wife of the deceased Ravindra Sah. It appears from her testimony that she is not the eye witness of the occurrence, rather she stated about the occurrence as said to her by PW-7 (informant), but in cross-examination, she ascertained that ransom was demanded from her husband by accused Gulabi Yadav.

20. Same is about **PW-3 Puniya Devi**, the mother of informant, to whom the occurrence was stated first by the



informant (PW-7) after returning to the village.

21. **PW-4 is the Sajan Kumar Sah**, who is a co-villager and it was deposed by him that he was said about the occurrence by PW-7 and PW-10 and while stating so, both of them were nervous. He ascertained that after receiving information, he along with Baby Devi, Puniya Devi, Shanti Sah, Upendra Prasad, Sanjay Sah, Krishna Deo Pd. Gupta, Dilip, Chandra Shekhar, Sachhidanand Rajak and other villagers went to the place of occurrence. He saw the blood at the place of occurrence. He also testified that by the time of their arrival at the place of occurrence, the deceased was in unconscious condition, but died before reaching to the Government Hospital, Jamui.

22. **PW-5 is Shanti Sah**, who is also not the eye witness of the occurrence and was informed about the occurrence by PW-7 and PW-10. He appears to be a witness of seizure list, where he supported the seized empty cartridges and bullets, which were seized at the place of occurrence by police, which upon his identification exhibited during the trial as **Exhibit '3'**. He also ascertained the presence of blood at the place of occurrence.

23. **PW-6 is Upendra Prasad**. He also deposed to



know about the occurrence from PW-7 & PW-10.

24. **PW-8 is Sakaldeo Sah.** He is also the co-villager and came to know about the occurrence from PW-7 & PW-10. He is the witness of the inquest and supported the inquest report by identifying his signature, which upon his identification during trial was exhibited as **Exhibit '2'**.

25. **PW-10 is Sanjay Sah.** He accompanied the informant but turned hostile during the trial. It was stated by him that he does not know anything about the occurrence but came to know that Ravindra Sah was killed. He failed to disclose the name of the person and also said that his statement was not recorded by the police. He was declared hostile and when suggestion was placed before him regarding occurrence by the State *qua* involvement of accused/appellants, it was simply denied. Upon cross-examination, he said that he has given his statement under free-will.

26. **PW-11, is Satyendra Nath Tiwari,** who brought the seized and sealed material before the court during trial having mark M/R No. 5/07, which he opened before the court under the court permission. The seized material having four empty cartridges, two was of misfired and one live cartridge, which were produced before the court. The aforesaid material



exhibits were marked with Laxmipur P.S. Case No. 27/07 and M/R No. 05/07. The bullet was of 9 mm. The empty cartridge was also of 9 mm. The date was mentioned as 27.02.2007. He deposed to brought the aforesaid seized material before the court as per direction of S.H.O. of Laxmipur Police Station and said that it is the same materials. Upon his identification, the seized empty cartridges were exhibited as **Exhibit- I, Exhibit- II, Exhibit- III, Exhibit- IV**. The two misfired bullets were exhibited as material **Exhibit V & VI** and live cartridge was exhibited as **Exhibit- VII**.

26.1. Upon cross-examination, he stated that the material was not sealed before him. It was said that the paper fixed on material exhibits is not bearing any signature.

27. Now, we find apposite to discuss the testimony of doctor and Investigating Officer who were examined before the learned trial court as PW-2 and PW-9.

28. **PW-2 is Saiyad Naushad Ahmad**, who is a autopsy surgeon conducted autopsy/post-mortem upon the deceased on 28th February, 2007. At the time of examination, he found *rigour mortis* present all over the body. On examination, he found the following injuries, which are as under:

“Injuries – (I) A round hole with black inverted margin on left side of neck 1/4” dia. It is wound of entry;



(II) A round hole with everted margin 1/2" in diameter on right side of neck – wound of exit;

(III) A round hole with black inverted margin on right shoulder 1/4" in dia- it is wound of entry;

(IV) A round hole with everted margin 1/2" diameter on right deltoid – it is wound of exit;

(V) A round hole with black inverted margin on chest below right nipple 1/4" diameter – it is wound of entry;

(VI) A round hole with everted margin 1/2" in diameter, right to 12th thoracic vertebra – it is wound of exit;

(VII) A hole with black inverted margin 1/4" dia an epigastrium – it is wound of entry;

(VIII) A hole with everted margin 1/2" in dia an right lumbar region – it is wound of exit;

(IX) An oval wound 1/2" x 1/4" with black inverted margin on left iliac region – it is wound of entry;

(X) An oval wound 3/4" x 1/2" with everted margin on right iliac region, it is wound of exit;

(XI) An oval wound 1/2" x 1/4" with black inverted margin on right inguinal region – it is wound of entry;

(XII) A round hole with everted margin on lateral side of right thigh – it is wound of exit;

Wound no. 1 and 2 were inter communicating, similarly wound no. 3 and 4, no. 5 and 6, no. 7 and 8 and 10, no. 11 and 12 were inter communicating.

All above injuries were ante-mortem in nature, caused by



fire-arms.

Cause of death :- Hemorrhage due to above injuries.

Time elapsed since death till holding PM – within 24 hrs.

This PMR is prepared by me and bears my signature mark
it Ext.I.”

28.1. Upon cross-examination, it was stated that total of six entry wounds and all was caused by fire-arms. He did not find any dressing materials on the wounds. He denied the suggestion that post-mortem examination is not correct.

29. **PW-9 is Jitendra Narayan Singh.** He is the Investigating Officer of this case and was posted as SHO/Police Station Incharge of Laxmipur Police Station on the date of occurrence i.e. 27.02.2007. It was deposed by him that the case was registered on the basis of statement of Krishnadeo Pd. Gupta (PW-7), who is the brother of the deceased Ravindra Sah. He identified the endorsement mentioned over written information as same was written by him and upon identification of his handwriting same was exhibited before the trial court as **Exhibit ‘4’**. He visited the place of occurrence. He ascertained that the place of occurrence is south of the river bridge almost about at the distance of 200 yards. He found plenty of blood at the place of occurrence, four empty cartridges, three misfired of 9 mm and one live cartridge. It is ascertained that the place of



occurrence is an isolated place. He prepared seizure list at the place of occurrence itself. The seizure list, upon his identification, exhibited as **Exhibit '3'**. It was ascertained by him that the witness Sanjay Sah (PW-10) and other prosecution witnesses supported the occurrence during investigation. After investigation, he submitted the charge-sheet for the occurrence under Sections 386, 302, 120B, 34 of the IPC along with Section 27 of the Arms Act against the appellants and other accused persons.

29.1. During cross-examination, it was stated by him that there is no hospital between the place of occurrence and the police station. He could not seized the cloth of the deceased. He seized the blood-stained soil, but failed to mention it in the seizure list. It was stated that the bicycle of the deceased was also not seized by him and also blood group was not ascertained.

30. At this stage, it would be apposite to reproduce Section 134 of the Indian Evidence Act, which reads as under:-

“134. Number of witnesses. - No particular number of witnesses shall in any case be required for the proof of any fact.”

31. It is pertinent to refer **Para 22** of the Hon'ble Supreme court judgment as reported in **Ajai alias Ajju v. State of U.P., 2023 SCC OnLine SC 144**, which reads as under:



“22. Non-examination of Ms. Rashmi and Horam, father of Vijay Pal Singh also has no material bearing. It is the discretion of the prosecution to lead as much evidence as is necessary for proving the charge. It is not the quantity of the witnesses but the quality of witnesses which matters. Smt. Pinky (PW-1) was the injured witness having received grievous and life-threatening injuries. We are not impressed by this argument also.

32. From the aforesaid testimony, it transpires us that the occurrence was witnessed by two prosecution witnesses in terms of the FIR (Exhibit ‘4’) which was authored by PW-7. It seems to us that the occurrence in terms of FIR was seen by two persons namely, Krishnadeo Pd. Gupta (PW-7) and Sanjay Sah (PW-10), who were examined before the learned trial court. PW-7 is the informant of this case and the brother of the deceased and supported the occurrence that how his brother was brutally killed by the appellants/accused, whereas PW-10 turned hostile.

33. It transpires from the deposition of PW-7 that he saw the appellants Jagdish Yadav (appellant no. 1) to fire on the neck of the deceased and Laxman Yadav (appellant no. 2) in the stomach. All the firing was made from the close range as it was fired by surrounding the deceased by the accused persons having both entry and exit wounds. These wounds were also found by PW-2, while conducting autopsy.

34. We are of the view that merely as one of the eye



witness of the occurrence turns hostile during the trial does not makes a ground to disbelieve the another eye witness of the occurrence, who is PW-7 (informant of this case). It also appears to us that ocular evidence is in full corroboration with medical evidence as PW-7 categorically deposed that he heard the sound of 6-7 firings and upon medical examination, six wounds were found by PW-2, who conducted autopsy upon the deceased. In terms of testimony of PW-7, it appears that he was not surrounded or caught hold by any of the accused persons including Anil Singh (appellant no. 3). He could not even saw the appellant Anil Singh to open fire upon the deceased. The seized bullets and empty cartridges were produced before the court. We have no reason to discard the version of PW-7 as the eye witness of the occurrence, where he specifically alleged to see the appellant no. 1 and 2 to shot upon chest and neck of the deceased.

35. It appears to us that rest of the eye witnesses are the hearsay witness of the occurrence, who visited only the place of occurrence after reporting the occurrence by PW-7. These witnesses categorically stated that the occurrence was reported to them by PW-10 also along with PW-7 immediately after returning to village. This deposition appears relevant to



support the version of PW-7 as raised through FIR and also testified during the trial that PW-10 was with him. Though, PW-10 turns hostile but his immediate presence after the occurrence before different witnesses, narrating the version of occurrence cannot be ignored. PW-7 could not say anything incriminating against appellant Anil Singh except as he was present at the place of occurrence. He was not even said to be equipped with any arms and was also not said to commit any overt act. PW-7 categorically stated that he was not caught hold by any of the co-accused persons including the appellant no. 3.

36. Considering the aforesaid, we are of the considered view that we did not find any reason to disbelieve the testimony of PW-7 *qua* Jagdish Yadav (appellant no. 1) and Laxman Yadav (appellant no.2) committing murder of the deceased Ravindra Sah and, therefore, we could not find any occasion to interfere with judgment of conviction as recorded by learned trial court *qua* appellant no. 1 and appellant no. 2.

37. Hence, the appeal stands dismissed with regard to Jagdish Yadav (appellant no.1) and Laxman Yadav (appellant no. 2).

38. So far as conviction of Anil Singh (appellant no. 3) is concerned, it seems to us that prosecution failed to answer



qua his involvement with crime in question. He was said to be present only at the place of occurrence without any overt act. Therefore, it seems to us that prosecution failed to establish its case against appellant no. 3 beyond reasonable doubt, therefore, the impugned judgment of conviction dated 25.09.2018 and order of sentence dated 04.10.2018, passed by learned A.D.J., F.T.C.- 1st, Jamui in S. Tr. No. 12 of 2008/S. Tr. No. 270 of 2008 arising out of Laxmipur P.S. Case No. 27 of 2007 is hereby set-aside.

38. Accordingly, appellant no. 3 namely, Anil Singh is acquitted of the charges leveled against him by the learned trial court. He is directed to be released forthwith, if his presence is not required in any other case. Fine, if any paid, be returned to appellant no. 3 immediately.

39. Let a copy of this judgment along with the Trial Court Records be sent to the learned Trial Court forthwith.

(Chandra Shekhar Jha, J.)

I agree.

(Bibek Chaudhuri, J.)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	24.03.2026
Uploading Date	03.04.2026
Transmission Date	03.04.2026

