

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1253 of 2024

Arising Out of PS. Case No.-127 Year-2020 Thana- BIHRA District- Saharsa

Rajesh Yadav Son of Late Ramji yadav Resident of Village - Bishanpur, P.S. - Bihra, District - Saharsa

... .. Appellant

Versus

1. The State of Bihar
2. Amit Yadav Son of Bucho Yadav Resident of Village - Bishanpur, Ward No.09, P.S. - Bihra, District - Saharsa
3. Gunay Yadav Son of Late Dukha Yadav Resident of Village - Bishanpur, Ward No.09, P.S. - Bihra, District - Saharsa
4. Khokha Yadav Son of Late Raghunath Yadav Resident of Village - Bishanpur, Ward No.09, P.S. - Bihra, District - Saharsa
5. Arvind Yadav Son of Khokha Yadav Resident of Village - Bishanpur, Ward No.09, P.S. - Bihra, District - Saharsa
6. Kiran Devi Wife of Khokha Yadav Resident of Village - Bishanpur, Ward No.09, P.S. - Bihra, District - Saharsa

... .. Respondents

Appearance :

For the Appellant/s	:	Ms. Rashmi Jha, Advocate
For the Resp. Nos.2, 4 to 6:	:	Ms. Meena Singh, Advocate
For the Resp. No.3	:	Mr. Amarnath Jha, Advocate
For the State	:	Ms. Km. Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA)

Date : 02-04-2026

Heard Ms. Rashmi Jha, learned counsel for the appellant, Ms. Meena Singh learned counsel for the respondent nos. 2, 4 to 6, Mr. Amarnath Jha, for the respondent no. 3 and Ms. Shashi Bala Verma, learned APP for the State.



2. The present appeal has been preferred under proviso to Section 372 of the Code of Criminal Procedure, 1973 (now Section 413 of the Bharatiya Nagarik Suraksha Sanhita, 2023 or B.N.S.S.) challenging the judgment and order dated 14-08-2024 passed by the Court of learned Sessions Judge, Saharsa in Sessions Trial No.127 of 2021 (arising out of Bihra P.S. Case NO. 127 of 2020) whereby and whereunder the respondents have been acquitted by the learned trial court from the charges levelled against them under Sections 147,148, 323/34, 302/149, 307/149, 324, 341, 504, 506 of the Indian Penal Code (hereinafter referred to as 'IPC').

3. The records of this appeal have been placed before this Court for consideration of the prayer of the appellant.

Prosecution case

4. The prosecution case, based on the written report of the informant, namely Rajesh Yadav is that on 14.06.2020 at about 07.00 PM, while the informant's brother Sakkan Yadav @ Sikandar Yadav was returning from tea shop and reached near his house, on account of a land dispute, all the named accused persons along with 3 to 4 unknown persons, variously armed with farsa, dabiya and iron rod, forcibly took him to their door. Upon exhortation given by Arvind Yadav to kill him, Khokha Yadav and Amit Yadav caught hold of his hands, while Kiran Devi held his waist and Gunai Yadav gave farsa blow on his head, on account of



which the informant's brother got severely injured with bleeding injuries and fell down. It is further alleged that Arvind Yadav, Kiran Devi, Amit Yadav and Gunai Yadav continued to indiscriminately assault his brother resulting in injuries all over his body. Upon protest, the accused persons also threatened the informant and his family members and fled away. The injured victim was taken to hospital for treatment where he was declared dead whereafter post-mortem was held and the dead body was handed over to them. Brijendra Yadav, Mukesh Yadav, Suresh Yadav and other villagers are alleged to have seen the occurrence and there is a further allegation that Kiran Devi took out Rs.1 Lakh from his brother's pocket and snatched gold chain.

5. On the basis of the above-mentioned written report of the informant- Rajesh Yadav, Bihra P.S. Case No. 127 of 2020 dated 15.06.2020 under section 147, 148, 149, 323, 324, 307, 302, 379, 504 and 506 of the IPC was registered by the police officials against 6 named accused persons including Respondents No. 2 to 6 and 3 to 4 unknown accused persons.

6. After completion of the investigation, police submitted charge-sheet on 06-09- 2020 vide charge-sheet No. 159 of 2020, against four accused persons namely Khokha Yadav (R-4), Arvind Yadav (R-5), Amit Yadav (R-2), Gunay Yadav (R-3) and subsequently, on 31-12-2020 supplementary charge-sheet vide



charge-sheet No. 272 of 2020 was submitted against Kiran Devi (R-6).

7. Upon submission of charge-sheet, the learned Chief Judicial Magistrate, Saharsa took cognizance under sections 147, 148, 149, 323, 324, 341, 326, 307, 302, 504, 506 of IPC against Respondents No. 2 to 5 vide order dated 09-12-2020, and further on 11-01-2021, he was pleased to take cognizance under the same provisions as stated above against Respondent No. 6. Original as well as supplementary records were amalgamated on the request of the Ld. PP and was committed to the Court of Sessions vide order dated 20-03-2021, giving rise to Sessions Trial No. 127 of 2021. Accordingly, the trial proceeded against five accused persons.

8. Further, Learned Trial Court proceeded to frame charges under Sections 147, 148, 149, 341, 323, 324, 326, 307, 302, 504, 506 IPC against the aforesaid accused persons/respondents No. 2 to 6, vide order dated 24-11-2021, to which they pleaded not guilty and claimed to be tried.

9. The prosecution, to substantiate its case during trial, has examined three witnesses and has exhibited two documents, while the defence has not adduced any evidence, either oral or documentary. The list of prosecution witnesses and documents exhibited on behalf of prosecution are mentioned hereinbelow in a tabular form:



List of Prosecution witnesses

Prosecution Witness No.	Name of witness	Description
PW-1	Buchan Yadav	Hostile
PW-2	Rajesh Yadav	Informant
PW-3	Pramod Jha	I.O. (2 nd)

List of Exhibits on behalf of Prosecution

Exhibit No.	Description of the Exhibit	Proved by/Attested by
Exhibit 'P1'	Signature of PW-2 on written petition.	Exhibited by PW-2
Exhibit 'P1'	Registration on written application	Exhibited by PW-3

10. The statement of the accused persons under Section 313 Cr.P.C was recorded on 09-07-2024, wherein they have denied the allegations and have claimed to be innocent.

Finding of the Learned Trial Court

11. The learned trial court, upon analyzing the evidence and deposition of the prosecution witnesses with respect to the charges levelled against the respondents, arrived at the conclusion that the prosecution has failed to prove and establish well beyond reasonable doubt, both the criminal act and intent of the accused persons and that the prosecution was not able to bring home the charges against the accused persons. Accordingly, the accused persons/respondents stood acquitted of the charges framed under Sections 147, 148, 149, 341, 323, 324, 326, 307, 302, 504, 506 IPC, by extending the benefit of doubt and thus



accused persons Arbind Yadav (R-5), Kiran Devi (R-6) and Khokha Yadav (R-4) discharged from the liabilities of their bail bonds and accused Gunay Yadav (R-3) and Amit Yadav (R-2) were directed to be released from custody, if not required in any other case.

Submission on behalf of the Appellant

12. The learned counsel on behalf of the appellant/informant submits that the learned Trial Court has not considered the gravity of the offence involved in the present case as well as completely ignored the grave procedural lacunae, which is hazardous to a fair trial. The learned Counsel mainly focused her argument on the fact that the material witnesses such as the first Investigating Officer (S.I. Arvind Kumar Mishra) and the Doctor (Dr. Shekhar Prasad Biswas) who conducted post-mortem on body of the deceased and whose evidence would have had a deep and pervasive impact on the entire prosecution case leading to a just and fair decision, were although summoned by the learned Trial Court, the court did not ensure to look into the service report of summons of all witnesses. The Court proceeded to even issueailable warrants against some witnesses but records do not reveal the service report of execution of the same.

13. It has further been submitted that the learned Trial Court issued non-ailable warrants against the non-examined prosecution witnesses vide order dated 08-04-2024 but despite



issuance of the same, they did not appear. It is also pointed out that no proper and effective steps were taken to secure the appearance of the official witnesses, such as the first Investigating Officer and the doctor and their non-appearance hampered the proper adjudication of the case.

14. Learned Counsel has further submitted that the learned Trial Court has dealt with this important issue of examination of witnesses in a very casual and mechanical manner and merely passed orders of issuance of summons etc. without even ensuring their proper execution. As a consequence of such negligent approach, the charge-sheet witnesses, which includes the private witnesses Pravesh Kumar, Salo Devi and Santu Yadav and the first Investigating Officer S.I. Arvind Kumar Mishra, were not examined at all and it may be pointed out here that it was the first Investigating Officer who conducted the major part of the investigation and had even recorded the statement of witnesses during the investigation, as such he was an extremely important witnesses of the prosecution.

15. With regard to the doctor who conducted the Post Mortem examination on the body of the deceased, it is submitted that he was neither examined during the course of the trial nor any effort was made to get the post-mortem report marked an exhibit. It has thus been contended that in the background of the fact that there is a direct allegation against the accused persons/



respondents that the deceased was brutally assaulted, which stood supported by the post-mortem report indicating incised injuries caused by sharp cutting weapon to be the cause of the death, the examination of the doctor conducting the post-mortem and proving the Post Mortem Report during trial assumes extreme significance. It has thus been submitted that a grave miscarriage of justice has been caused by the non-examination of material witnesses which eventually led to the acquittal of the accused persons, which has been caused on account of failure of duty on the part of both the learned Public Prosecutor and the learned Trial Court.

Submission on behalf of the State/ Respondents

16. The learned APP for the state and the learned counsel for the respondents No. 2 to 6 have submitted at the outset that the judgment of the learned Trial Court does not suffer from any illegality, in as much as, the same is based upon proper consideration of evidences which were adduced during trial. The prosecution has produced only three witnesses out of which PW-1 did not support the case of the prosecution and as such was declared hostile, whereas PW-3, who is the second Investigating Officer of the case has clearly stated that he only submitted charge-sheet and did not take statement of any witnesses in this case. PW-2, the informant of this case, is the only witness claiming to be an eye-witness but since his sole testimony was not



treated as that being of 'sterling quality', in absence of other corroborative evidences, could not be made sole basis of conviction and rightly led to a judgment of acquittal, granting benefit of doubt.

17. It has further been submitted that despite issuance of summons and other processes, the witnesses of the prosecution chose not to appear, and in this background the judgment of acquittal does not warrant any interference.

Analysis and consideration

18. Having heard learned counsel for the parties, considering the evidence led at the trial as well as upon perusal of records, this court finds that instead of entering into the merits of the case, the issue raised through the submissions made on behalf of the parties and a vital argument arising therefrom needs to be first addressed and analyzed. We are thus, taking into consideration the appellant's argument relating to non-examination of material witnesses/chargesheet witnesses on account of the closure of the prosecution evidence without taking proper and legal recourse to ensure the attendance of these witnesses during trial.

19. It is noticed that the prosecution in order to substantiate its case, examined only three out of total seven witnesses named in the charge-sheet and the supplementary charge-sheet, being PW-1 Buchan Yadav, a co-villager who was



declared hostile during trial, PW-2 the informant of the case and PW-3 the second Investigating Officer who had submitted charge-sheet. It is apparent that the remaining chargesheet witnesses and most importantly the first Investigating Officer who conducted the entire investigation, including the examination of place of occurrence and recording of statements of witnesses during investigation was not examined. The doctor who conducted the post-mortem examination on the body of the deceased, was also not examined nor the post-mortem report could be proved during trial.

20. Upon perusal of the records, it transpires that initially, on the date of framing of charges i.e., on 24-11-2021, a general order issuing summons to prosecution witnesses was passed and thereafter summons were issued to the prosecution witnesses vide order dated 12-04-2023. The subsequent order sheet indicates that bailable warrant of arrest were also issued upon the non-examined, non-official witnesses upon receiving of service reports of summons. Further, PW-1 & PW-2 were examined on 02-06-2023 and 10-08-2023, respectively. But, so far as the Investigating Officer is concerned (not clearly mentioning whether it was the first Investigating Officer or the second Investigating Officer), summons were issued vide order dated 23-08-2023 and by the same order, noticing the fact that the Investigating Officer did not mention the name of the doctor in



the witness column of Charge-sheet, the learned Trial Court directed to issue summons to the doctor through Civil surgeon, Saharsa. From the order-sheet dated 05-09-2023 of the learned Trial Court, it appears that the attendance of the doctor, Dr. S.P. Biswas was filed but since the Presiding Officer was on leave, the matter was posted on 30-09-2023, however, on the next few dates no prosecution witness was in attendance and the direction was given to the learned Public Prosecutor to produce the remaining witnesses.

21. The records further indicate that without the service report of bailable warrants, NBW was issued to the non-examined Prosecution Witnesses vide order dated 08-04-2024 whereafter PW3 was examined on 09-05-2024. As late as on 30-05-2024, there was a direction to issue summon specially against the first Investigating Officer S.I. Arvind Kumar Mishra and giving a last chance to the learned Public Prosecutor for producing the remaining witnesses including the first Investigating Officer vide order dated 24-06-2024. The learned Trial Court finally closed the evidence on 01-07-2024 on the prayer of accused persons and the case was thus, fixed on 09-07-2024 for recording of the statements of the accused persons under section 313 Cr.P.C.

22. The records of the Trial Court, as examined by this court, reveal that some efforts were made to produce the



witnesses, but so far as the official witnesses i.e., the first Investigating Officer and the doctor are concerned, the efforts can be said to be half-hearted or not executed with such seriousness as to secure the attendance of these witnesses which was extremely important for proper adjudication of this case and for ensuring a fair trial, more so, in the background of the fact that the doctor had appeared on one date while the presiding officer was on leave and yet sincere efforts and effective steps were not taken either on behalf of the Public Prosecutor or the learned Trial Court to get him examined as a witness.

23. Trials may result in conviction or acquittal but it is the solemn duty of the concerned court and the officers of the court to make all endeavors so that the trial is fair and the conclusion of the trial is based on just and proper findings of the court which can only emerge if the norms of a fair trial is followed in its true letter and spirit.

24. At this juncture, this Court is tempted to quote from the case of **J. Jayalithaa Vs. State of Karnataka** reported in **(2014) 2 SCC 401** wherein the Hon'ble Supreme Court deliberated on the concept of fair trial and it reads as hereunder: -

“29. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. It necessarily requires a trial before an impartial judge, a fair prosecutor and an atmosphere of judicial calm. Since



the object of the trial is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities and must be conducted under such rules as will protect the innocent and punished the guilty. Justice should not only be done but should seem to have been done. Therefore, free and fair trial is a sine qua non of Article 21 of the Constitution.....”

25. Further, in the case of **Natasha Singh Vs. C.B.I.** reported in **(2013) 5 SCC 741**, the Hon’ble Apex Court laid down in paragraph-16 as under:

“16. Fair trial is the main object of criminal procedure, and it is the duty of the court to ensure that such fairness is not hampered or threatened in manner. Fair trial entails the interests of the accused, the victims and of the society, and therefore, fair trial includes the grant of fair and proper opportunities to the person concerned, and the same must be ensured as this is a constitutional, as well as a human right. Thus, under no circumstances can a person’s right to fair trial be jeopardised.....”

26. Being conscious of the principles and norms of a fair trial as laid down by the Hon’ble Supreme Court, especially keeping in view the fact that the case at hand relates to a murder trial where the objective of finding the truth should not be frustrated by one or the other reason, including not enough interest taken by the public prosecutor or the duties not adequately discharged by the court concerned. A three Judges Bench in the case of **Shailendra Kumar Vs. The State of Bihar and Others** reported in **(2002) 1 SCC 655** has also dealt with the



examination of the Investigating Officer and the duties of the APP and the concerned Court in the words as quoted hereunder:

“9. In our view, in a murder trial it is sordid and repulsive matter that without informing the police station officer-in-charge, the matters are proceeded with by the court and by the APP and tried to be disposed of as if the prosecution has not led any evidence. From the facts stated above, it appears that the accused wants to frustrate the prosecution by unjustified means and it appears that by one way or the other the Additional Sessions Judge as well as the APP have not taken any interest in discharge of their duties. It was the duty of the Sessions Judge to issue summons to the Investigating Officer if he failed to remain present at the time of trial of the case. The presence of investigating officer at the time of trial is must. It is his duty to keep the witnesses present. If there is failure on the part of any witness to remain present, it is the duty of the court to take appropriate action including issuance of bailable/non-bailable warrants, as the case may be. It should be well understood that the prosecution cannot be frustrated by such methods and victims of the crime cannot be left in a lurch.”

27. Upon examining the records of the present case, this Court also noticed that the High Court during the pre-trial bail proceedings had observed that the trial be concluded expeditiously, preferably within a period of one year from the date of the order which was 29.03.2023, whereafter the learned Trial Court had sought for an extension on 01.04.2024 for three months.



However, the court could neither secure the presence of the first investigating officer nor the doctor who conducted the postmortem examination, which were two very vital witnesses whose examination was imperative for a just decision of the case.

28. In a situation akin to the one existing in the present case, where the High Court had fixed a preferable time for conclusion of trial, the Hon'ble Supreme Court in the case of **Bablu Kumar and Others Vs. State of Bihar and Another**, reported in (2015) 8 SCC 787, went on to state that keeping in view the concept of fair trial, the obligation of the prosecution, the interest of the community and the duty of the court, the court cannot be a silent spectator or mute observer when it presides over a trial and it is its duty to see that neither the prosecution nor the accused play truancy with the criminal trial or corrode the sanctity of the proceeding. The words of the Hon'ble Apex Court are being quoted hereunder:

“22.....The court is duty-bound to see that neither the prosecution nor the defence takes unnecessary adjournments and take the trial under their control. The court is under the legal obligation to see that the witnesses who have been cited by the prosecution are produced by it or if summons are issued, they are actually served on the witnesses. If the court is of the opinion that the material witnesses have not been examined, it should not allow the prosecution to close the evidence. There can be no doubt that the prosecution may not examine all the material witnesses but that does not necessarily mean that the prosecution can choose not to examine any witness and convey to the court that it does not intend to cite the witnesses. The Public Prosecutor who conducts the trial has a statutory duty to perform. He cannot afford to take things in a light manner.....”



29. The records of the present case further reveal that by order dated 30.05.2024 the office was directed to issue summons against first Investigating Officer, SI. Arvind Kumar Mishra in addition to earlier instances of directing the Public Prosecutor generally to produce remaining witnesses. On 24.06.2024, the learned PP was again directed to produce witnesses including the Investigating Officer, as a last chance given to the prosecution to produce the witnesses. However, there is no service report of the summon being received by the concerned Investigating Officer and no further efforts seem to be made either by the Public Prosecutor or by the Concerned Court to secure his attendance as on the very next date i.e. on 01.07.2024, the prosecution evidence was closed and the date was fixed for recording of the statement of the accused persons under Section 313 of the Cr.P.C.

30. So far as the Doctor is concerned, as earlier noted, even though he made an appearance on a particular date when the Presiding Officer was on leave, no further efforts or reminders were sent for his appearance and on account of his non-appearance, the postmortem report could not be brought on record and the non-examination of the first Investigating Officer also led to non-proving of documents like the inquest report and other material facts which would have had a serious impact on the final decision of the trial.



31. In a criminal case, the fate of the proceedings cannot be left entirely in the hands of the parties as the concept of fair trial entails protection of interests of the accused, the victim and the society at large. Courts thus, have an overriding duty to maintain public confidence in the administration of justice. The concerned court must thus take active interest to elicit and bring on record all relevant materials to find out the truth in order to reach a proper conclusion as regards to the guilt or otherwise of the accused persons so that justice is administered with all fairness to both the contesting parties.

32. Taking into consideration all the foregoing reasons, submissions advanced on behalf of the parties and upon the examination of materials on record, this Court is of the considered opinion that the impugned judgment of acquittal is not based on complete evidence as the entire evidence has not been brought on record, as such, the same has not been appreciated by the learned Trial Court before passing the order of acquittal.

33. Thus, without entering into the merits of the case, we find it expedient in the interest of justice to remand the matter to the learned trial court to ensure service of summons on the concerned I.O. and the doctor and after recording of their evidence, appropriate orders be passed.



34. The impugned judgment of acquittal passed by the Court of learned Sessions Judge, Saharsa in Sessions Trial No.127 of 2021 (arising out of Bihra P.S. Case NO. 127 of 2020) is hereby set aside and remanded to the learned trial court to decide the matter afresh after recording the evidence of the Investigating Officer S.I. Arvind Kumar Mishra and Dr. Shekhar Prasad Bishwas, who conducted post-mortem examination on the body of the deceased, after securing their attendance. It is further directed that after recording the evidence, the learned trial court would proceed to conclude the trial as early as possible and practicable, preferably within a period of four months from the date of receipt of a copy of the order of this Court.

35. The respondent nos.2 to 6 shall surrender in the learned Trial Court within four weeks from the date of uploading of this judgment failing which the Trial Court shall take coercive action to secure their presence. If the respondent nos.2 to 6 surrender in the Trial Court within the aforesaid period, the Trial Court shall allow them to continue on bail on execution of fresh bail bonds to the satisfaction of the Court. The Trial Court shall take appropriate steps to procure presence of the prosecution witnesses and shall also give adequate opportunity to the defence. The trial should proceed on day-to-day basis keeping in view the judgment of the Hon'ble Supreme Court in the case of **The Central Bureau of Investigation vs. Mir Usman @ Ara**



@ **Mir Usman Ali** reported in **2025 INSC 1155**, unless it becomes imperative to adjourn the matter for a cogent reason.

36. Accordingly, the present appeal stands allowed with the aforesaid directions to the learned Trial Court.

37. Let a copy of this judgment together with the entire trial court records be sent down to the Trial Court through the messenger of the Court.

(Rajeev Ranjan Prasad, J)

(Soni Shrivastava, J)

anand/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	16.04.2026
Transmission Date	16.04.2026

