

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1297 of 2019

Arising Out of PS. Case No.-23 Year-1989 Thana- AHİYAPUR District- Muzaffarpur

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1. BHIKHARI SAHANI, Son of Thithar Sahani Resident of Village - Akbarpur, P.S.- Ahiyapur, District- Muzaffarpur
 2. Lagan Sahani, Son of Bhola Sahani Resident of Village - Akbarpur, P.S.- Ahiyapur, District- Muzaffarpur
 3. Sita Ram Sahani, Son of Bhutta Sahani Resident of Village - Akbarpur, P.S.- Ahiyapur, District- Muzaffarpur
 4. Lawan Sahani, Son of Bhola Sahani Resident of Village - Akbarpur, P.S.- Ahiyapur, District- Muzaffarpur
 5. Ram Ekbal Sahani @ Baudhi Sahani, Son of Thithar Sahani Resident of Village - Akbarpur, P.S.- Ahiyapur, District- Muzaffarpur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant Nos. 1 & 4	:	Mr. Sanjeev Kumar, Advocate
		Mr. Adarsh Ranjan, Advocate
		Mr. Rakesh Kumar Ranjan, Advocate
For the Appellant Nos. 3 & 5	:	Mr. Ravi Bhardwaj, Advocate
For the State	:	Ms. Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

and

HONOURABLE MR. JUSTICE RANA VIKRAM SINGH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)

Date: 19-09-2026



1. The appellants, namely, Bhikhari Sahani, Lagan Sahani, Sita Ram Sahani, Lawan Sahani and Ram Ekbal Sahani @ Baudhi Sahani, were found guilty under Sections, 302/149, 203/149, 452/149 and 380 of the Indian Penal Code and were convicted under Section 235(1) of the Cr.P.C. They were sentenced to suffer rigorous imprisonment for life for the offence punishable under Section 302/149 of the I.P.C. and to pay a fine of Rs. 10,000/-, in default simple imprisonment for four months; rigorous imprisonment for eight years for the offence punishable under Section 307/149 of the I.P.C. and also to pay a fine of Rs. 8,000/-, in default simple imprisonment for three months; rigorous imprisonment for five years for the offence punishable under Section 452/149 of the I.P.C. and also to pay a fine of Rs. 5,000/- each, in default simple imprisonment for three months each; rigorous imprisonment for five years under Section 380 of the I.P.C. and a fine of Rs. 5,000/-, in default simple imprisonment for three months.

2. The impugned judgement of conviction and order of sentence is under challenge in the instant appeal.

3. Prosecution case in brief is that one SI, Subodh Kumar Tiwary of Ahiyapur Police Station recorded statement of one Kameshwar Singh on 19th of February, 1989 at 11.00 P.M.,



who stated before the Police Officer that on the same day at about 09.00 P.M., he was watching television, sitting in front of northern side room of his house. His mother was staying with her one year old daughter on the southern side room. Two other daughters of the informant, namely, Neelam Devi and Leela Kumari were lying in another room. On the southern side room, another daughter of the informant, namely, Mithu Kumari was staying with the mother of Kameshwar Singh. Electric bulbs were lighting on the Verandah and outside the Verandah. At about 09.30 p.m., the mother of the informant knocked at the door of the informant. He opened the door. When his mother told him that some people had assembled under an Indian Gooseberry Tree (Amla Tree), situated on the eastern side of their house, the informant opened the window of the eastern side wall and found, Bhikhari Sahani, Baudhi Sahani, Lagan Sahani, Lawan Sahani, Chulhai Sahani, Sita Ram Sahani, Chhatru Sahani, Sudam Sahani, Radhey Shyam Sharma, Ram Vinay Singh, Ram Ekbal Singh, Ashok Singh, Dilip Singh, Ram Lakshan Singh, Sheo Shankar Thakur, Purushottam Thakur, Shambhu Rai, Gurukul Sahani and two unknown persons along with them standing under the said tree and discussing about something. The informant raised a doubt and he fled away



through the back side door. When he reached at a distance of about 100 yards from his house, he heard the sound of gun shot. Then, he raised hue and cry, saying dacoit dacoit. His cry attracted one Ram Das Sharma, Rameshwar Sharma and his uncle Ram Vachan Singh and other 8-10 people of their village. In the meantime, they heard sounds of 4-5 gun shots, followed by sounds of repeated gun shots. The informant rushed to the local police station, informing the incident to the police. Police party came to his house. He found the main door of his house broken and the boxes and articles were lying scattered in the rooms. He also saw his sister Neelam lying dead in the southern side room in a pool of blood. All valuable articles, including ornaments were stolen. His second sister Leela Kumari was also lying with serious injuries on her persons. Subsequently, she also died. The informant found most of the household articles broken and lying scattered in the house. The miscreants committed the offence due to land dispute between him and one Ram Laxmakn Singh.

4. On the basis of the said statement, police registered Ahiyapur P.S. Case No. 23 of 1989 under Sections 147, 148, 149, 325, 452, 302, 380 of the Indian Penal Code and Section 27 of the Arms Act against the F.I.R. named accused persons and



took up the case for investigation. Investigation completed with filing of charge-sheet under the above-mentioned penal provisions in the Court of the learned Chief Judicial Magistrate, Muzaffarpur.

5. By an order, dated 23rd May, 1989, the learned Chief Judicial Magistrate took cognizance of offence against 23 numbers of charge-sheeted accused persons and committed the case record to the Court of Sessions. The learned Sessions Judge subsequently transferred the case to the Court of the learned Additional Sessions Judge, Fast Track Court, 1st Court at Muzaffarpur for trial. When the case record was received by the learned Trial Judge, four accused persons were reportedly dead. Charge was framed against 19 accused persons. Subsequently, 15 accused persons faced trial. On conclusion of trial, the learned Trial Judge recorded order of acquittal in favour of 10 accused persons while the appellants were convicted and sentenced for the offence stated hereinabove.

6. It appears from the lower court records that to bring home the charge, prosecution examined in all 15 witnesses. Amongst them, P.W. 1, Bilash Choudhury, P.W. 2, Ram Swarup Choudhury, P.W. 3 Ram Sewak Das, P.W. 4 Mahesh Sahani, P.W. 5 Kaushal Kishor Sharma, P.W. 6 Krishna Mohan Sharma,



P.W. 7 Ganeshi Sahani, P.W. 8 Mahendra Sahani and P.W. 9 Mahesh Sharma support the prosecution case.

7. P.W. 10 Ram Bachan Singh stated in his evidence that on 19th of February, 1989, at about 09.00 p.m., he was staying in a small hutment at his agricultural land (bathan). At that point of time, he heard hue and cry of number of people. He also heard the sounds of firing and bombing. Hearing the sounds of firing and bombing, he rushed towards his house. On the way he met Ram Das Sharma, Rameshwar Sharma, Mahesh Sahani and others. When he reached near his house, he saw Kameshwar running towards him. He told P.W. 10 that dacoits had attacked his house. He also told him that they could identify 4/5 persons amongst the miscreants. As per Kameshwar, amongst the dacoits, there were Bhikhari Sahani, Lagan Sahani, Ram Ekbal Sahani @ Baudhu Sahani, Ram Vinay Singh and Ashok Singh, to whom he could identify. Saying this, Kameshwar ran towards the police station. The witness also found some persons fleeing towards eastern side, but he could not identify them. The witness further stated that police came to the place of occurrence. He went to the house of Kameshwar and found two young women lying dead in pool of blood. The mother of Kameshwar and the deceased women, Ram Pari Devi told P.W.



10 that she suffered bullet injury on her hand. She also stated that Ashok Singh fired at her.

8. P.W. 11, Kameshwar Singh is the informant and P.W. 12 Ram Pari Devi supposed to be only eye-witness of the occurrence.

9. PW-11 stated that on the date of occurrence he was present in his house and was watching television when he heard the sound of firing. According to him, several persons gathered outside his house and the accused persons came towards his door. He stated that when firing was heard, he closed the door. He also referred to the presence of several persons, including Ram Babu, Rameshwar Chaudhury, Mahendra Sahani, Bhola Babu, Lalababu Singh, Ganeshi Sahani and Kamal Sahani, and attributed the occurrence to the persons named by him.

10. He further stated that after the occurrence he noticed damage to the television and other articles kept in the house. He spoke about the condition of the premises and the injuries suffered by the members of his family. He also stated that his mother was taken by the police to the hospital and that statements were thereafter recorded.

11. In cross-examination, the witness was questioned extensively about the time and manner in which his statement



was recorded, his written statement and the names of the accused persons mentioned therein. He stated that his written statement was prepared at his door and that he had signed it. He was confronted with the suggestion that the names of the accused persons were not mentioned in his earlier version and were subsequently introduced, which he denied.

12. The witness was also confronted with his previous version regarding the presence and role of the accused persons and with the circumstances in which the police recorded his statement. His evidence was further tested with reference to the physical features of the house, the position of the doors and rooms and the possibility of seeing the persons outside from inside the house.

13. Thus, while PW-11 has given an account of firing at his house and the presence of the persons whom he named, the material aspects emerging from his cross-examination relate to the consistency of his version regarding the identity of the accused, the stage at which their names were disclosed, his previous statements and the physical possibility of witnessing the occurrence from the place where he claims to have been present.

14. PW-12 stated that, at the time of occurrence, he



was at his house and heard the sound of firing. He described the presence of several persons and stated that the accused persons came towards the house and firing took place. He attributed different weapons to different accused persons and stated that injuries were caused during the occurrence. He also stated that the injured persons were taken for medical treatment.

15. The question of identification of the accused persons was specifically tested in cross-examination. The witness did not identify all the persons in the dock in the same manner; in respect of some persons he claimed to recognise them, while in respect of others he stated that he could not identify them. He was also questioned about his previous acquaintance with the accused and about the manner in which their names came to be mentioned.

16. PW-12 thereafter gave a detailed description of the house in which the occurrence allegedly took place. He described the room in which he was present, the adjoining rooms, the courtyard, the Verandah and the doors connecting the different portions of the house. He also explained the directions of the rooms and the routes by which a person could move from the rooms to the courtyard and towards the outside.

17. This part of his evidence is relevant because the



witness claims to have witnessed the occurrence from within the house. His description therefore provides the basis for examining from where he could have seen the assailants, the route through which they approached or left and whether the movement and visibility stated by him were physically possible. He was also questioned regarding the condition of the house and the lighting/electric arrangement at the relevant place.

18. In the latter part of the cross-examination, PW-12 was confronted with his earlier version regarding the occurrence, the persons present, the identity of the accused and other particulars of the place of occurrence. Suggestions were put to him that certain facts stated before the Court had not been stated earlier and that the prosecution version had subsequently developed. He denied those suggestions.

19. Accordingly, the material features of PW-12's evidence are his account of the firing and injuries, his accused-wise identification, his detailed description of the house and the visibility/movement possible from there, and the questions raised in cross-examination regarding his earlier version.

20. P.W. 13 Subodh Kumar Tiwary recorded the fard beyan of Kameshwar Singh and on the basis of the said fard beyan, the formal F.I.R. was filled up. At the instance of P.W.



13, fard beyan of this case was marked as Exhibit-1/A and the formal F.I.R. was marked as Exhibit-3. It is further found from his evidence that he himself took up the case for investigation. In his evidence, he described that the place of occurrence is in the pucca house of Kameshwar Singh situated at Chaturi Punas. In his evidence, he also stated that in front of the said house on the western side, there is a Verandah. There is an open portion in the Verandah and at the middle of the said open portion, there is entrance door of the house. On the eastern portion of the house, there are four rooms. On the western portion of the house, there is a Verandah (Osara) with tiled roof. Northern and southern side of the house was bounden by brick built walls. On the northern wall of the house, there is a gate, which remained closed. On the western side of the said building, there is a door through which one can go outside. On the northern side of the courtyard, there is a tube-well. The Investigating Officer found the wooden lock of the main door broken. He opined that the wooden lock of the main door was broken with the help of axe and the pieces of woods of the door and lock were lying scattered on the way leading to Verandah. Northern side wall of the house also had marks of strikes by sharp and heavy weapons. On the eastern side wall of the room of P.W. 12, there



was a television set. The Investigating Officer also found the iron boxes kept in different rooms broken and wearing apparels and other valuable documents found lying scattered. In front of southern side door, he found one empty cartridge of .315 bullet. The bolt of the door of the said room was found to be broken. He also found the dead body of Neelam Devi lying in pool of blood. A one-year old baby was found on the lap of the deceased in living condition. In the same room, he also found the dead body of another sister of the informant lying in pool of blood. The household articles, cloths, beds etc. were lying in scattered condition. There is a window on the eastern side wall through which entire outside scene was visible. The Investigating Officer prepared the inquest report over the dead body of Neelam Kumari and Leela Kumari. It is found from his cross-examination that the Superintendent of Police reached the place of occurrence. After his arrival, the fard beyan was not written in presence of the Superintendent of Police. It is corroborated by the P.W. 13 that Ram Pari Devi received injury by gun-shot on her arm and she was sent to SKMCH, Muzaffarpur for medical treatment.

21. P.W. 14, Dr. Awdhesh Kumar was posted as a Resident Surgical Officer in the Department of Surgery,



SKMCH, Muzaffarpur. On 20th February, 1989, he examined Ram Pari Devi and found (i) Burst lacerated wound 1 and ½” x 1 and ½” bone deep on outer aspect of the left arm at deltoid region. (ii) Lacerated wound ½” x ¼” x ¼” on the left lobule of ear catching the lobule of the ear catching the lobule. On the advice of P.W. 14, x-ray of the left arm was done. On examination of x-ray report, P.W. 14 found fracture of upper end of humerus of the left hand of Ram Pari Devi. She was operated and a bullet was extracted from the site of injury. The Medical Officer opined that the injury no. (i) was grievous and caused by gun-shot and injury no. (ii) is simple and caused by hard and blunt substance. Injury report was marked as Exhibit-4.

22. P.W. 15, Ram Padarnath Jha is an Advocate Clerk, who proved the post-mortem report, prepared by Dr. Manoranjan Kumar Srivastava over the dead body of Neelam Kumari and Leela Kumari, marked as Exhibit-5, with objection.

23. It is found from the record that the autopsy surgeon was not examined due to his death during the trial of the case.

24. This is all about the evidence on record on behalf of the prosecution adduced by the witnesses during trial of the



case.

25. We have heard the learned counsel for the appellants and the State respondent.

26. It is found from the evidence on record that the informant did not see the occurrence. As per his statement, he came to know from his mother that some people had assembled under an Amla Tree situated on the eastern side of their house. They were talking in a low voice amongst themselves. Being suspicious, he left the house through the western side door. When he reached about 100 yards away from his house, he heard sounds of firings and bombings. He then rushed to the police station and inform that a dacoity was committed in his house. Thereafter, P.W. 13 along with police force came to the place of occurrence. In his evidence, he stated that his information was not recorded in the police station. On the basis of his oral statement, Subodh Babu, the Police Officer came to the place of occurrence. In paragraph 11 of his examination-in-chief, he stated that he submitted a written complaint to the Superintendent of Police. Subsequently in presence of the Superintendent of Police, Darogaji recorded his statement. It was read over and explained to him and he put his signature on the said statement. His signature was marked as Exhibit-1/1 in



the fard beyan. The evidence of the witnesses in the fard beyan was marked as Exhibit-2.

27. It is urged by the learned Advocate on behalf of the appellants that it transpires from the evidence of P.W. 11 that he made three statements before the police. The first statement was made by him before the SI, Subodh Chaudhury in the police station. The said statement was not recorded. Even it was not recorded in the GD entry book of the police station. The statement made by P.W. 11, Kameshwar Singh in the police station ought to be considered as first information about the incident. However, police had suppressed the said information. It may so happen that the said information may be cryptic in nature and, therefore, the police did not find it necessary to record the said statement. However, the prosecution is absolutely silent about the written complaint submitted by P.W. 11 to the Superintendent of Police. This ought to be treated as F.I.R. However, that written complaint did not see the light of the day.

28. If we consider the written complaint submitted by P.W. 11 before the Superintendent of Police as first information, the so called fard beyan appears to be a statement under Section 161 of the Cr.P.C. and hit by Section 162 of the Cr.P.C.



29. Under such circumstance, we have no other alternative but to hold that the fard beyan which was treated as F.I.R., could not have been treated to be an F.I.R., as it would be hit by Section 162 of the Cr.P.C. Evidently thus, the prosecution is guilty of concealing the initial version from the Court and hence, an adverse inference deserves to be drawn against the prosecution on this count.

30. The decision of the Hon'ble Supreme Court in case of *Allarakha Habib Memon Etc. v. State of Gujarat*, reported in *AIR 2024 SC 4201* supports our observation in this regard.

31. In the instant case, P.W. 12, Ram Pari Devi was the only eye-witness. In her evidence, she stated that on the date of occurrence at about 09.00 P.M., she heard sounds of conversation of many people outside the entrance door of the house and house of her elder brother. The said persons were taking name of Kameshwar Singh. She informed the matter to Kameshwar. Kameshwar saw them from the eastern side window of their house. There were 20-25 people assembled under an Amla Tree, amongst them, there were Ashok Singh, Ram Vinay Singh, grandson of Dilip Baidya, namely, Likhari Sahani, Baudhi Sahani, brother of Lagan, namely, Lawan



Sahani, Ram Awatar Sahani and Chulha Sahani. Seeing them, Kameshwar Singh fled away. Immediately thereafter, they broke open the entrance door of the house and entered. The accused persons started assaulting Neelam Kumari and Leela Kumari. P.W. 12 was in her room and she heard sounds of firing. After a while, the said two victims stopped shouting. Then P.W. 12 was trying to leave the place. One Baidyaji saw her and shouted that the old woman was fleeing away and she would have to be killed. Then, Lagan Sahani and Baudhi Sahani caught hold of her. Ashok Singh opened fire at her. She received gun-shot injury on the upper part of her left arm. Ashok Singh also snatched away an ear-ring from her left ear, causing bleeding injury. Thereafter, they fled away. On careful scrutiny of entire evidence on record, we find P.W. 12 failed to state the names of assailants who committed murder of Neelam Kumari and Leela Kumari. Only in respect of her injury, she stated that she was assaulted by fire arm injury by Ashok Singh at the upper part of her left arm. Ashok Singh also snatched away his golden ear ring from her left ear.

32. From the evidence of P.W. 11, Kameshwar Singh, it is found that he could identify under electric light of his entrance door, some of the miscreants, namely, Bhikhari Sahani,



Baudh Sahani, Sitaram Sahani, Chulhai Sahani, Shatru Sahani, Vinay Sahani, Purushottam Sharma, Sheo Shankar Thakur, Radhey Shyam Sharma, Upendra Sahani, Ram Vinay Singh, Ashok Singh, Ram Ekbal Singh, Ram Lakshan Singh and 3 to 4 other persons. However, he was not in a position to say as to whether all the named accused persons entered into his house.

33. P.W. 12, named Ashok Singh, Ram Vinay Singh, grandson of Dilip Baidya, namely, Likhari Sahani, Baudhi Sahani, brother of Lagan, namely, Lawan Sahani, Ram Awatar Sahani and Chulha Sahani, who entered into the house. There are discrepancies in the evidence of P.W. 11 and P.W. 12, so far as it relates to the names of the miscreants. P.W. 11 did not name the grand son of Dilip Baidya, namely, Likhari Sahani, brother of Lagan, namely, Lawan Sahani, who assembled in front of their house to commit dacoity. Therefore, the evidence of P.W. 11 and P.W. 12 cannot be taken into consideration in the same manner as they corroborated the evidence of each other.

34. On careful scrutiny of evidence on record, we find that presence of Ashok Singh near the place of occurrence was deposed by P.W. 11 Kameshwar Singh. P.W. 12 Ram Pari Devi stated that she was assaulted by Ashok Singh with the help of a fire arm. She received injury on the upper part of her left arm.



The said injury was corroborated by the injury report prepared by P.W. 14. In spite of such evidence, we are not in a position to come to a conclusive finding beyond any shadow of doubt regarding involvement of appellant, Ashok Singh in committing the offence, because of the fact that the genesis of the prosecution case was suppressed by the prosecution. It is not known to us as to whether, involvement of Ashok Singh was narrated in the written report submitted by the informant to the Superintendent of Police, which ought to have been treated as First Information Report or whether the subsequent fard beyan was exaggerated, especially in respect of the involvement of the said appellant.

35. However, in view of the fact that the prosecution has failed to prove the genesis of the case and written complaint submitted by Kameshwar Singh was placed as First Information Report and the same was suppressed by the prosecution, it casts thick cloud of suspicion on the prosecution case.

36. For the reasons stated above, the judgement of conviction and order of sentence, dated 24th of September, 2019 and 27th of September, 2019, respectively, passed by the Presiding Officer, Fast Track Court-I, Muzaffarpur, in Sessions Trial No. 121 of 1991, arising out of Ahiyapur P.S. Case No. 23



of 1989, G.R. No. 334 of 1989, is set aside.

37. The appeal is allowed, on contest.

38. The appellants are directed to be released from the correctional home at once, if not required in any other case.

39. Office is directed to send the lower court records to the concerned court immediately.

(Bibek Chaudhuri, J)

Rana Vikram Singh, J: I agree.

(Rana Vikram Singh, J)

skm/-

AFR/NAFR	NAFR
CAV DATE	15.09.2026
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