IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.438 of 2010

CNR No. BRHC010368462010

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PRADEEP MAHTO S/O Nand Lal R/O Vill.-Bagwan,P.S.-Bakhri In The District Of Begusarai.

... ... Appellant/s

Versus

STATE OF BIHAR

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Raj Kumar, Advocate
	:	Mr. Rajnish Kumar, Advocate
	:	Mr. Sarvottam Kumar, Advocate
For the Respondent/s	:	Mr.Dilip Kumar Sinha, App

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR SINGH
and
HONOURABLE MR. JUSTICE ANSUL

CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE ANSUL)

Date : 01-10-2026

Heard the learned counsel for the appellant as well as learned APP for the State.

2. The present appeal has been filed on behalf of the appellant against the judgment of conviction dated 25.03.2010 and order of sentence dated 29.03.2010 passed by the learned Additional District and Sessions Judge-IV, Begusarai in Sessions Trial No. 360 of 2007, whereby and whereunder the appellant has been convicted under Section 302 of the Indian Penal Code and under Section 27 of the Arms Act and was sentenced to undergo imprisonment for life and a fine of Rs. 10,000/- and in default of payment of fine he has to suffer simple imprisonment for six

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months under Section 302 of the Indian Penal Code. Further the appellant was sentenced to undergo rigorous imprisonment for three years for the offence punishable under Section 27 of the Arms Act. The sentences were directed to run concurrently.

3. The prosecution was initiated on the filing of Bakhri P.S. Case No. 25 of 2007. The informant lodged the information at 05:00 PM on 25.03.2007 stating his father and uncle had taken palm tree and date tree on lease and used to draw toddy and sell toddy. On 25.03.2007 at around 04:00 PM, he and his father (Sukho Sada) went to draw toddy from the palm tree of Ramkishun Mahto along with his Mama Satan Sada. When they reached near the palm tree at 04:50 PM, the neighboring shop owner Pradeep Mahto reached there. His father stated that he used to steal the palm-collected clay pots. His father started abusing the persons who used to steal the same. Pradeep Mahto stated that if he will not give toddy then the person would surely take the clay pot. A heated exchange started taking place between his father and Pradeep Mahto. The father of Pradeep Mahto, namely, Nand Lal, and Damodar Mahto and Ramkishun Mahto were together. In the meantime, Pradeep Mahto rushed to his house, brought a pistol and shot his father. The shot hit him on the neck. His Mama was on the palm tree. They asked to kill his Mama also. Subsequently

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they all fled away. The informant claimed that Pradeep Mahto killed his father and that the same was read over to him before his co-villager Etwari Sada. Informant was examined.

4. After investigation police submitted charge-sheet against the appellant and learned Chief Judicial Magistrate, Begusarai took cognizance against the appellant on 05.07.2007 and the case was committed to the Court of the Sessions Judge on 01.08.2007. Thereafter, the charges have been framed against the appellant under Section 302 of the Indian Penal Code and under Section 27 of the Arms Act on 09.10.2007.

5. During the course of the trial altogether 14 witnesses including the informant were examined including P.W.-1 namely Binod Mehta, P.W.-2 namely Savita Devi, P.W.-3 Satan Sada, P.W.-4 Prayag Rai, P.W.-5 namely Jabahar Singh, P.W.-6 namely Ashok Sada, P.W.-7 namely Etwari Sada, P.W.-8 namely Shubhak Sada, P.W.-9 namely Hito Sada, P.W.-10 namely Pawan Sada (informant), P.W.-11 namely Jago Sada, P.W.-12 Dr. Binod Kumar Sharma (doctor), P.W.-13 namely Ashok Kumar Singh and P.W.-14 namely Ravish Kumar Mishra (Investigating Officer).

6. Out of 14 witnesses, all the independent witnesses, namely, P.W. 1, P.W. 2 and P.W. 4 were declared hostile.

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7. P.W. 1 Binod Mahto was examined. He did not support the prosecution case and was declared hostile.

8. P.W. 2 Smt. Savitri Devi also did not support the prosecution case and was declared hostile.

9. Satan Sada (P.W. 3) deposed. He stated that Sukho Sada (the deceased) was the brother of his son-in-law. He supported the occurrence and claimed to have witnessed the occurrence. He clearly stated that a dispute occurred between the parties and finally Pradeep Mahto brought pistol and shot at him. In para-13 he stated that he was not with Sukho Sada at 06:15. At para-11 he stated that he used to draw toddy from the tree himself and on 25.03.2007 at 06:00 PM he was at his residence. He again stated that at 06:15 he was not with Sukho Sada and that he had already died. In para 15 he stated that there was only one sound of firing and there was no person there to purchase toddy or drink toddy. In para 18 he has stated that while coming down from the palm tree he saw Sukho Sada in a fallen condition near the palm tree of Ramkishun and he saw that he has sustained gunshot on his neck. In para-19 he states that he did not see anyone standing at the place of occurrence. He stated that after the occurrence Etwari Sada, Pawan Sada, Ashok Sada and Kali Miyan came. It is more relevant to note that Satan Sada has been referred to in the FIR as

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the person who accompanied the deceased at the time of occurrence but his deposition clearly shows that he was not an eyewitness to the occurrence and he had not seen the actual occurrence taking place.

10. P.W. 4 Prayag Rai deposed. He claimed to have seen the deceased but denied the knowledge as to how the killing took place and he was also declared hostile.

11. P.W. 5 Jabahar Singh also claimed to be a hearsay witness. In response to the court question he stated that people at the place of occurrence were stating that Pradeep Mahto had killed and fled away. He stated that Etwari Sada was stating that Pradeep Mahto had killed.

12. P.W. 6 is Ashok Sada. He stated that he was near the palm tree. He saw that Pradeep went to his house brought pistol and shot Sukho Sada. He claims to have signed the fardbeyan. He was witness to the FIR as well as inquest report. In para-12 he stated that he used to give toddy under lease to the criminals and a fight had also taken place sometime prior to the occurrence with regard to payment of toddy. He also stated that the criminals had threatened him whose name he does not know but Sukho Sada did not inform about the occurrence. This had happened ten days prior to the occurrence and after that for 5-6 days he did not go to the

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shop. In para-21 he stated that Sukho Sada was accompanied by a labour Satan Sada. He stated that he has left his house at 04:00-04:15 PM and an hour thereafter, the news came that Sukho Sada has been killed. In para-22 he clearly stated that Satan Sada came to house and told that Sukho Sada had been killed. After receiving information from Satan Sada his wife Khakhri Devi, Pawan Sada and all of them, including him, went there. When he went there he saw his brother Sukho dead. In para 24 he clearly stated that criminals had come to the shop a week earlier and had threatened to kill. In para-25 he stated that Khakhri Devi did not take the name of any criminal due to fear and police officials took the statement of Khakhri Devi and her LTI.

13. As per the statement of this witness, it is clear that he is not an eyewitness to the occurrence. Moreover, he stated that Pawan Sada the informant, Khakhri Devi and he all of them went after the information provided by P.W. 3 (Satan Sada). Apparently this was the first information which was recorded but the police which reached there on its own information completely suppressed the said information.

14. Interestingly enough the statement of Khakhri Devi was not recorded formally by the police as it appears that the entire case diary does not contain the statement of this most important

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witness i.e. the wife of the deceased. The suppression of the initial information with regard to the occurrence and non-examination of the wife of the deceased by the police raises extremely serious doubts about the investigation, raises extremely serious doubts and puts a serious question mark on the information provided by Pawan Sada, son of the deceased, P.W.-10.

15. P.W. 7 Etwari Sada deposed. He also claimed to be an eyewitness to the occurrence. He claimed to have signed both the inquest and FIR. In para-10 he clearly stated that he was at the *Khaini-Biri* shop when he heard the *Hulla* that Sukho Sada had been killed. He stated that he started weeping after hearing this and when he reached there he saw his brother lying there. He states that on his *Hulla* Pawan Sada (P.W.-10), Satan Sada (P.W.-3), Ashok Sada (P.W.-6), Hito Sada (P.W.-9), Prayag Rai (P.W. 4), Jabahar Singh (P.W. 5), Savitri Devi (P.W. 2) came. In para-12 he admitted that he has given the statement to the police that while he was at the shop of *Khaini-Biri* he heard the *Hulla* that his brother has been killed and saw his dead body. This makes it clear that he was not an eyewitness to the occurrence.

16. P.W. 8 is Subhak Sada. He is a post occurrence witness and he did not claim to have witnessed the occurrence.

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17. P.W. 9 is Hito Sada. He claims to have heard the sound of firing and stated that when he went to the house of Pradeep then he heard the Hulla that Sukho Sada was killed by Pradeep. He clearly does not claim to be an eyewitness to the occurrence.

18. P.W. 10 is Pawan Sada (the informant). He claims to be an eyewitness as per the FIR though his claim of being an eyewitness has clearly been denied by P.W. 7, in para 11, statement of P.W. 6 in para 22 as well as in statement P.W.-3 at para 18 and 19. He claimed to have witnesses the occurrence. He stated that Ashok Sada (P.W.-6), Etwari Sada (P.W.7) and Satan Sada (P.W.3) witnessed the occurrence. It is clear from their depositions that they are neither eyewitnesses nor have they supported the claim of the informant to be an eyewitness. The cause of animosity has been detailed by this person. In para-23 he has stated that he had captured the 12-13 Kattha land of Pradeep. He states that he did this after the killing of his father. In para 22 he clearly rules out that he could be the eyewitness of the occurrence. He states that Satan came back shouting about killing then people at his house started weeping then he, his mother Khakhri Devi, Etwari Sada, Jabahar Sada and Ashok Sada went to the place of occurrence.

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When he went there he saw the dead body lying flat. His mother got unconscious.

19. P.W.-11 is Jago Sada. He had not claimed to be an eyewitness to the occurrence.

20. P.W. 12 is the doctor. The defence has not challenged the homicidal nature of death. However, the deceased had sustained one gunshot on his neck. The entry wound was on the left side of the neck and the exit wound was on the right side of the neck. There was blackening and tattooing seen over the margin of entry wound. Though this may not hold much relevance, the prosecution had not talked about the distance from which the gunshot was fired.

21. The I.O. states that he found blood on the place of occurrence which was seized. He states that the formal FIR was lodged at 11:00 PM though the time of occurrence was 04:15PM. The police apparently reached the place of occurrence on its own information. The formal FIR seems to have been lodged at 11:00 PM. It is clear that the FIR number, i.e., 25 of 2007 could only be given at the time of lodging of the formal FIR. Yet the inquest report which was prepared on 25.03.2007 at 05:45PM at the place of occurrence contains the case number at column no. 1. This clearly shows that the FIR is an antedated document. This coupled

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with the omission to bring the statement of Khakhri Devi on record and its complete absence from the records would show that seven hours which transpired between the occurrence and the police reaching the place of occurrence was used to suppress the initial version coming out of Khakhri Devi and manufacture a new FIR with altogether different allegations. The allegation of Ashok Sada in para-24 and 25 clearly states that Khakhri Devi had told the Officer in-Charge about the threats made to her husband a week prior to the occurrence and out of fear she did not inform anybody about the occurrence. This has also to be seen with reference to para 12-13 of the deposition of Ashok Sada where he clearly states about the threats made to the deceased by the accused persons just ten days prior to the occurrence. This clearly shows that the FIR does not contain the first version of the incident and the version that has come up on record is a fabricated and antedated version which seems to have been created after much consultation.

22. This Court is aware that the delay is only seven hours. However, the suppression of the initial version of the wife of the deceased, the complete absence of her statement from the record, the reference to the same by Ashok Sada (P.W. 6) in paragraphs 24 and 25, and the antedating of the inquest report

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clearly show that the initial version has been given a go-by and that, thereafter, the documents were prepared with clear fabrication. This is the threat that has been talked about in the case of ***Thulia Kali Vs. The State of Tamil Nadu*** reported in ***(1972) 3 SCC 393***, ***Mehraj Singh Vs. State of U.P.*** reported in ***(1994) 5 SCC 188*** and ***Chhotkau Vs. State of U.P.*** reported in ***(2023) 6 SCC 742***. One would need to couple it with the delay in sending the FIR to the Magistrate. The fardbeyan seems to have been recorded on 25.03.2007 at 05:00 PM.

23. Section 157 Cr.P.C. provides that the same must be sent to the concerned Magistrate forthwith. The term “forthwith” has been interpreted as 24 hours. Still the FIR reached the learned Magistrate on 28.03.2007. This in itself may not be fatal but considering the overall circumstances of suppression of the statement of the wife of the deceased, anti-dating of the inquest report, the delay of two days assumes significance and this entire sequence robs the prosecution of the spontaneity attached to the First Information Record and thus, the entire process of FIR, preparation of inquest is tainted and it cannot be treated as the first information report connected with the FIR. He clearly states that he had not seen the fallen toddy or the clay pot at the place of occurrence he had not found any footprints also. He clearly states

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that the seized blood was not sent to the FSL and he did not find any *Hasuli* at the place of occurrence. All this would go on to show that the deceased apparently had not gone there to fetch toddy which is the claim of the prosecution.

24. Para-18 of the deposition of the I.O. is clearly revealing. He states that they had come to know about the occurrence through a rumor. He states that station diary number has entered but he had not mentioned the Station Diary Number in the case diary. He also states that he could not remember as to whether it was recorded in that station diary entry that Sukho Sada has been killed by whom. This has to be read with the analysis of the circumstances leading to registration of the FIR and the mystery surrounding the inquest report and FIR. This would give further impetus to the allegation of the defence that the initial version of the case was suppressed and in order to implicate the appellant with whom they had prior animosity this entire story has been manufactured and the deceased was in fact killed by some miscreants who had threatened him a week prior to the occurrence and for which he had not even gone near the toddy tree for five or six days. This had happened in almost immediate proximity of his killing.

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25. P.W.-13 is the formal I.O. who has only stated that he did not receive any information regarding any antecedent of Pradeep Mahto.

26. The case would throw up another issue. It is withholding of material witness under Section 114(g) of the Evidence Act. Adverse inference could be drawn against the prosecution for withholding the material witness. It will be presumed that the witness would have said things which could have proved pre-judicial to the prosecution case. The law in this regard has been settled by Privy Council and afterwards. There was initial dispute with regard to the compulsion of the prosecution to examine all the witnesses. It has finally been settled by the Hon'ble Apex Court that witnesses essential to unfolding of the prosecution case are to be examined whether they support or do not support the prosecution case. The importance of the wife of the deceased with regard to the information regarding the occurrence cannot be overstated. She was the wife of the deceased. She apparently reached the place of occurrence immediately after his killing. According to the witness Ashok Sada (P.W. 6) in para 23 and 24 the police had in fact recorded her statement at the place of occurrence near the dead body. The entire case diary does not contain her statement anywhere. This Court is aware that it is the discretion of the prosecution to examine the witness of his choice. But she was a witness essential to the unfolding of the prosecution

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case especially in a situation where number of persons have claimed themselves to be eyewitnesses and then in their cross-examination have made statements which clearly showed that they were not the eyewitness. These are not material improvements which need to be proved through drawing attention or taking of contradiction in terms of the judgment reported in ***Tahsildar Singh and Another vs The State Of Uttar Pradesh*** reported in ***AIR 1959 SC 1012***. These are the inherent contradictions in the deposition where the statement made in the chief examination is contradicted by the witness himself in his cross-examination. In such a situation no reliance can be placed on any witness claiming himself to be an eyewitness.

27. In view of such where there are serious doubts with regard to mode and manner of lodging of the FIR the veracity and truthfulness of the first information report. The truthfulness of witness regarding having eyewitness to the occurrence a completely deficient investigation where neither the murder weapon was seized nor was the blood sample taken from the place of occurrence nor the cloth of the deceased were seized, nor there was any objective material like empty cartridge in a thru and thru shot or any implement or material showing that the deceased had gone there to fetch toddy, this Court has no option but to disbelieve the entire prosecution case which is not able to stand on its own legs.

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28. In the result, the present appeal stands allowed.

29. Accordingly, the judgment of conviction dated 25.03.2010 and order of sentence dated 29.03.2010 passed by the learned Additional District and Sessions Judge-IV, Begusarai in Sessions Trial No. 360 of 2007 is hereby set aside. Consequently, the appellant of the present appeal is acquitted of the charges levelled against him.

30. The appellant is on bail since 05.07.2011. He is discharged from the liabilities of his bail bond.

31. The Office is directed to send back the trial court records along with a copy of this judgment to the learned trial court, forthwith.

(Sanjay Kumar Singh , J)

(Ansul, J)

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CAV DATE	17.09.2026
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