

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.953 of 2019**

Arising Out of PS. Case No.-16 Year-2017 Thana- SHEKHPURA District- Sheikhpura

SUNIL KUMAR Son of Sri Rajendra Prasad Resident of Village-Etahra,
Police Station-Ariyari, District-Sheikhpura (Bihar).

... .. Appellant/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 1061 of 2019

Arising Out of PS. Case No.-16 Year-2017 Thana- SHEKHPURA District- Sheikhpura

BALMUKUND YADAV @ RAVIKANT Son of Banarsi Prasad Yadav
Resident of Village- Kare, P.S. and District- Sheikhpura

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 1067 of 2019

Arising Out of PS. Case No.-16 Year-2017 Thana- SHEKHPURA District- Sheikhpura

RAJU KUMAR @ NARENDRA KUMAR RAJU Son of Ramsuresh Yadav
Resident of Mohalla - Station Road, Inday, P.S.- and Distt - Sheikhpura.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 1112 of 2019

Arising Out of PS. Case No.-16 Year-2017 Thana- SHEKHPURA District- Sheikhpura

DHARMENDRA PASWAN Son of Krishna Paswan Resident of Mohalla
Station Road, Inday, P.S. and District- Sheikhpura.

... .. Appellant/s



Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 1137 of 2019

Arising Out of PS. Case No.-16 Year-2017 Thana- SHEKHPURA District- Sheikhpura

NANDAN YADAV S/O Munna Yadav R/O village- Indai, P.S.- Sheikhpura,
District- Sheikhpura

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 953 of 2019)

For the Appellant/s : Mr. Rajesh Kumar Singh, Sr. Advocate

For the Respondent/s : Mr. Sujit Kumar Singh, APP

(In CRIMINAL APPEAL (DB) No. 1061 of 2019)

For the Appellant/s : Mr. Pratik Mishra, Advocate

Mr. Arun Kumar, Advocates

Mr. Raghubir Chandrayan, Advocate

Mr. Satyam Kumar, Advocate

For the Respondent/s : Mr. Ajay Mishra, APP

(In CRIMINAL APPEAL (DB) No. 1067 of 2019)

For the Appellant/s : Mr. Rabindra Prasad Singh, Advocate

Mr. Anil Kumar Singh, Advocate

For the Respondent/s : Ms. Shashi Bala Verma, APP

(In CRIMINAL APPEAL (DB) No. 1112 of 2019)

For the Appellant/s : Mr. Rabindra Prasad Singh, Advocate

Mr. Anil Kumar Singh, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, APP

(In CRIMINAL APPEAL (DB) No. 1137 of 2019)

For the Appellant/s : Mr. Manish Kumar No. 2, Advocate

Mr. Nilendu Kumar Choudhary, Advocate

For the Respondent/s : Ms. Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

and

HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA

Oral JUDGMENT

(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)

Date : 30-03-2026

The appellants, namely, Sunil Kumar, Balmukun

Yadav @ Ravikant, Raju Kumar @ Narendra Kumar Raju,



Dharmendra Paswan and Nandan Yadav faced trial in Sessions Trial No. 20 of 2018 arising out of Sheikhpura P.S. Case No. 16/2017 in the 1st Court of the learned Additional Sessions Judge, Sheikhpura dated 17.01.2017 of the charges under Section 302/34 of the IPC and Section 27 of the Arms Act and the learned Trial Judge *vide* his judgment and order of conviction dated 22nd July 2019 convicted the above-named appellants and sentenced them to suffer life imprisonment for the offence punishable under Section 302/34 of the IPC and also to pay fine of Rs. 10,000/-, in default of payment of fine further imprisonment for one year each. The above-named convicts were also sentenced to rigorous imprisonment for 5 years each for the offence punishable under Section 27 of the Arms Act and also to pay fine of Rs. 2,000/- each in default further imprisonment of 03 months each.

2. The said order of conviction and sentence dated 22nd July 2019 passed by the learned Additional Sessions Judge, 1st Court at Sheikhpura is under Challenge in the instant appeal.

3. Since, all the appeals arise against the one and identical judgment, we propose to dispose of the appeals by the following judgment.

Factual Matrix.



4. One, Santosh Kumar Singh, Inspector of Police and the then S.H.O. of the Sheikhpura police station recorded a suo motu statement on 17th January 2017 at about 7:30 pm at Sheikhpura District Hospital stating *inter alia* that on the same date he along with S.I. Ram Bhajan Singh and some members of Armed Police Forces were conducting patrolling duty at Teen Muhani More. During their duty, the SHO received a phone call in his official Mobile number bearing 9431822682 from a mobile number 8409228344 at about 6:10 pm disclosing the name of the caller as Ujjwal Rai, a Junior Engineer, MNREGA, Sheikhpura Block, informed him that he took shelter inside Maria Ashram, Sheikhpura, One Sunil Kumar, P.R.S., Karya Panchayat was calling him to come outside the gate to record some false entries in his Measurement Book.

5. In order to work out the said information, the above-named police officer reached Maria Ashram with Force and found that a person was lying on the ground near the gate of the said Ashram and another person was running to escape. The police party tried to chase him but the said person fled away scaling the boundary wall of the Ashram and the field thereafter. The person who was lying on the ground disclosed himself as Ujjwal Raj. He received gunshot injury immediately the police officer took him by



his police jeep to the hospital on the way he disclosed that he was being threatened by the Mukhiya of Karya Panchayat . Balmukund Yadav @ Ravi Kant, and P.R.S. Sunil Kumar to make wrong entry in the Measurement Book Book in respect of the works conducted under the MNREGA Scheme which he refused to do. On the date of occurrence Sunil Kumar called him in front of the gate of Maria Ashram when he refused to go there, one Nandan Yadav, Raju Kumar, Dharmendra Paswan entered inside the Ashram and forcibly brought him in front of the gate of the said Ashram. He saw Balmukund Yadav standing there with a pistol in his hand and P.R.S. Sunil Kumar was also with him. The victim was not going outside of the gate out where the then Balmukund instructed Nandan to fire at him. Nandan resorted to firing which struck in his chest then, Balmukund and Sunil fled away towards Station by a motorcycle and other three persons fled away towards Maria Ashram. By that time the informant and other personnel reached there. It is also stated that the victim, namely, Ujjwal Raj died during medical treatment in the hospital as a result of gunshot injury.

6. On the basis of aforesaid *suo motu* complaint, the police registered Sheikhpura P.S. Case No. 16 of 2017 dated 17th January 2017 at 09:00 pm and took the case for investigation. The



investigation ended in submission of charge-sheet against the above-named accused persons before the learned Chief Judicial Magistrate at Sheikhpura.

7. On commitment of the case, the learned Sessions Judge, Sheikhpura transferred the same to the 1st Court of learned Additional Sessions Judge, Sheikhpura for trial and disposal.

8. During trial, prosecution examined 8 witnesses. Out of the said 8 witnesses two witnesses, namely, PW-2 (Nitish Kumar) and PW-5 Dharmendra Kumar Pandit did not support the prosecution's case and were declared hostile.

9. PW-6 is the informant who was posted as the SHO, Sheikhpura P.S.

10. PW-1, Ram Bhajan Singh is an Inspector of Police.

11. PW-3, Ravi Nandan Kumar is the driver of the police vehicle by which the SHO, Sheikhpura and other police personnel reached the spot.

12. PW-4, Dr. Ravi Shankar Sharma conducted *post-mortem* examination over the dead body of the deceased.

13. PW-7 is also a police personnel who was appointed in the Technical Cell of the Sheikhpura District police office as Technical Assistant on 23rd May 2017. On that day, he revived the CDR and CAF of the following phone numbers: (i) 949228344, (ii)



9199494113, (iii) 754953215, (iv) 8294299042, and (v) 7870740401.

14. Finally, PW-8, Amit Sharan was the SDPO of Sheikhpura who conducted investigation of the case and finally submitted charge-sheet against the appellants.

Submission on behalf of the appellants.

15. Mr. Mishra, learned Advocate on behalf of the appellant, namely, Balmukund Yadav, has made very short but pertinent submission which the Court must take into consideration and discuss. First, he submits that all the witnesses who supported the prosecution's case are police personnel. The Junior Engineer was murdered because of the fact that he was not agreeable allegedly to make false entries in the Measurement Book of works in MNREGA Scheme during evening hours in the heart of the city, in front of a Christian Ashram. But, surprisingly enough, not a single person were present at the time or soon after the incident to see the occurrence. The prosecution examined two witnesses, namely, PW-2, Nitish Kumar and PW-5 Dharmendra Kumar Pandit who did not support the prosecution's case. They stated on oath before the trial court that they do not have any idea how the deceased received gunshot injury on the date and time of occurrence and how he died. Thirdly, it is urged by the learned Advocate on behalf



of Balmukund Yadav, appellant herein, that the trial court relied on the evidence of the informant (PW-6), who in his *fard beyan* stated that before his death, the deceased on the way to the hospital stated to him that one Nandan fired at him under the instruction of Balmukund Yadav and both Balmukund Yadav and Nandan fled away towards the station by a motorcycle. According to the *fard beyan*, the victim also stated to the I.O. that the other accused persons forcibly brought him from inside the Ashram up to the gate where the incident took place.

16. The learned Advocate on behalf of the appellant, namely, Balmukund Yadav has raised the question as to whether an uncorroborated extra-judicial dying declaration can be the basis of conviction of the appellants specially when the said fact was not corroborated by any other witness. On the contrary, there is every scope to hold that the story of dying declaration was practically concocted for the purpose of this case.

17. In order to substantiate his argument, he refers to the evidence of PW-1, Ram Bhajan Singh who is also an Inspector of Police. He stated in his examination-in-chief that in the way to the hospital, the SHO was asking the victim about the incident and the victim told him that he was not willing to come out of the Ashram.



Then, three persons, namely, Nandan, Raj Kumar and Dharmendra forcibly took him towards the gate and Nandan fired at him.

18. Mr. Mishra refers to the paragraph no. 8 of the cross-examination on behalf of the Dharmendra Paswan where PW-1 stated that the SHO tried to record the statement of the injured person. "The injured stated something to him" and the SHO recorded the same in his diary. PW-1 could not say whether SHO obtained his signature or Left Thumb Impression on the alleged statement of the victim. Thus, it is contended by the learned Advocate on behalf of the appellant, namely, Balmukund Yadav that the prosecution has not produced the original diary which contained the original dying declaration allegedly made by the victim. The statement made in the fard beyan regarding the dying declaration is obviously in writing of the SHO which he wrote from the said diary where the original dying declaration was allegedly written. Thus, in the instant case, the original dying declaration has not been produced. The trial court committed a gross error in accepting the fard beyan as the dying declaration of the deceased.

19. The learned Advocate on behalf of the appellant further submits that when the original dying declaration has not been



produced in Court no conviction is based on such dying declaration.

20. He next refers to the evidence of PW-3, who was the driver of the police vehicle. It is pointed out by him that PW-3 was also not clear when the deceased made dying declaration before the SHO.

21. PW-4, Dr. Ravi Shankar Sharma, is the Autopsy Surgeon, during post-mortem examination, he noticed one wound of entry and a corresponding wound of exit with charred margins and oval in shape between the 5th and 6th intercostal spaces in the anterior chest wall, 5 cm inside the midclavicular line, with inverted skin margins on the left side. He also found a wound of exit of dimension 2.5 cm with blood-stained margins and oval in shape between the 7th and 8th intercostal spaces, 7 cm lateral to the spine, with inverted skin margins on the left side.

22. On dissection, the Medical Officer found that the lung, pleura, pericardium, and heart were ruptured on the left side. During cross-examination, he clearly opined that if the lungs and heart both are ruptured at a time, then the injured would die within few seconds. The Medical Officer also did not find any evidence of medical treatment in or around the place of injury. In cross-examination, the Medical Officer also opined that the nature of



injury which the victim sustained does not permit him to speak any word to anybody. The injuries received by the victim would cause his death at the earliest (शीघ्र ही अति शीघ्र हो जाती है ।). He found charring around the wound of entry, thus, it is presumed that the victim was murdered from a very close distance. In order to prove the said fact, the seizure of wearing apparels of the deceased was absolutely necessary but the I.O. did not seize the said documents.

23. PW-6, Santosh Kumar Singh was an informant. He has corroborated the fard beyan submitted by him.

24. PW-8 is the I.O., who at the relevant point of time, was the SDPO of Sheikhpura.

25. We have perused the evidence of PW-8 and we are astonished to note that a senior officer in the rank of SDPO does not know that a police officer cannot record any confessional statement of an accused. There is a specific bar in Section 25 and 26 of the Indian Evidence Act, corresponding to Section 23(1) and Section 23(2) respectively of the B.S.A. It is further found from the evidence of PW-8 that the wife of the deceased lodged a written complaint in the police station. The said written complaint was not produced during trial. The wife of the deceased was also not cited as an evidence on behalf of the prosecution. There is absolutely no evidence as to whether the complaint lodged by



Monika Kumari, wife of deceased Ujjwal Raj was submitted in the police station prior to submission of fard beyan by the SHO or not. Had it been the case, the complaint made by Monika Kumari was filed before the fard beyan submitted by the SHO, then the statement made by the SHO cannot be treated as a statement under Section 154 of the CrPC.

26. From the evidence of the I.O. It is further found that he receives the CDR and CAF of four mobile phone numbers as the deceased received calls from the said mobile phones. On perusal of the CDR, it is found that SIM Card bearing no. 849228344 and 9661382616 were in the name of the deceased. Mobile Phone number 9199494113 stood in the name of one Banarasi Yadav and mobile number 9304203476 was lying in the name of of one Priyanka Devi, mobile no. 9155993713 and 7549503215 were standing in the name of one Sunil Kumar. There is no evidence as to whether this Sunil Kumar is the accused in this case. Lastly, it is pointed out by Mr. Mishra, learned Advocate on behalf of the appellant, namely, Balmukund Yadav that the trial court suprisingly accepted the confessional statement recorded by the I.O. and based on such confessional statement held them guilty. This is absolutely unwarranted, illegal and beyond the provisions



contained in Section 25 and 26 of the Indian Evidence Act. So, he has prayed for acquittal of the accused persons.

27. Mr. Rabindra Prasad Singh, learned Advocate on behalf of the appellant in Cr. App. (DB) No. 1067 of 2019 as well as in Cr. App. (DB) No. 1112 of 2019, Mr. Rajesh Kumar Singh, learned Sr. Advocate on behalf of the appellant in Cr. App.(DB) No. 953 of 2019 and Mr. Manish Kumar No. 2 along with Mr. Nilendu Kumar Choudhary, learned Advocates on behalf of the appellant in Cr. App. (DB) No. 1137 of 2019 have adopted the argument advanced on behalf of the learned Advocate on behalf of the appellant, namely, Balmukund Yadav.

28. In view of our finding, we do not think it necessary to discuss the judgments cited by Mr. Mishra in support of his contention. However, we refer the said judgments for future reference, if any;

(i) *Irfan v. State of U.P.*, reported in **2023 SCC OnLine SC 1060** (relevant paragraphs are 62 to 69)

(ii) *Jitendra Kumar Mishra v. State of M.P.*, reported in **(2024) 2 SCC 666** (see paragraph No. 14 to 18)

(iii) *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*, reported in **(2020) 7 SCC 1** (see paragraph no. 61, 73.1, 73.2 & 84)



(iv) *Anvar P.V. v. P.K. Basheer*, reported in (2014) 10 SCC 473 (see paragraph nos. 14 to 18)

(v) *Takhaji Hiraji v. Thakore Kubersing Chamansing*, reported in (2001) 6 SCC 145

Conclusion

29. It is needless to say that the dying declaration is a statement made by a person while he was dying, stating the reasons for his death. The statements given by the person can be substantial or direct relating to the cause for his death. Only contention of admissibility of dying declaration is that such declaration would be made by a person who is accepting eminent death but having mental faculty to make a coherent statement. There is no form of dying declaration. It may be made by the deceased orally, in writing or by his contact.

30. Section 32(1) of the Indian Evidence Act states that when the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Admissibility of such evidence is based on the jurisprudence aptly stated in a latin maxim - *Nemo moriturus praesumitur mentire*, which means a man will not meet his Maker with a lie in his mouth. In other word the considers that a dying



man can never lie on the verge of his death. It is no longer *res integra* that dying declaration is expected to be made by the deceased within the close proximity of his death. In *Pakala Narain Swami vs. Emperor*, Lord Atkin observed: The circumstances of the transaction which resulted in the death of the declarant will be admissible if such transaction has some proximate relation to the death. In *Uka Ram vs. State of Rajasthan* reported in *(2001) 5 SCC 254*, the following circumstances were directed to be considered before admitting a dying declaration in evidence;

(i) It is made in extremity,

(ii) when the maker of the statement is at his body end,

(iii) every hope of this world is gone,

(iv) every motive of falsehood is silenced

(v) mind induce to speak only truth and declarant had the mental evidence and coherence to make such dying declaration.

31. Though, there is no rule that a dying declaration cannot be recorded by the police officer, it is expected that a dying declaration ought to be made in question and answer form in presence of the Medical Officer who is the best person to certify the evidence of the maker. There are cases where the courts have accepted the dying declaration of a person when a certificate of



fitness was given by the doctor regarding the condition of the deceased.

32. We are not unmindful to note that in *Munna Raj vs. State of Madhya Pradesh* reported in (1976) 3 SCC 104, the Hon'ble Supreme Court observed that the statement made by injured person recorded as FIR can be deemed as a dying declaration and such declaration is admissible under Section 32 of the Indian Evidence Act. It is also observed by the Court that dying declaration must show the whole incident or narrate the case story, corroboration is not necessary in this situation. Dying declaration can be an exclusive for the purpose of conviction.

33. In the instant case, however, fard beyan was not made on the basis of the statement by the deceased. On the contrary, it was the fard beyan of the SHO of the Sheikhpura P.S. wherein he recorded what has been heard by him allegedly from the deceased. Now from the evidence of PW-8, it transpires that the dying declaration was recorded by the SHO in a diary. Fard beyan is not the part of the diary. What has been written in the fard beyan was the true and actual account and reproduction of dying declaration has not been deposed by any of the witnesses on behalf of the prosecution. Thus, in this case, the original dying declaration has not been produced before this Court. If voluntariness of the dying



declaration is considered in association with the evidence of the autopsy surgeon (PW-4), it appears that PW-4 clearly stated that a person who is having injury of rupture of pleura, lung, pericardium and heart cannot speak and he will die within seconds. If we accept the opinion of the Medical Officer (PW-4), the deceased died before arrival of police.

34. The claim of the prosecution that he died in course of medical treatment remains doubtful because the autopsy surgeon did not find any sign of medical treatment in or around the injuries received by the deceased or in other parts of his body. In view of such circumstances, we are not in a position to rely on uncorroborated statement made in the FIR without producing the original dying declaration which was recorded by the SHO in the diary.

35. We have already noted that we are not only surprised and astonished to note that a Judicial Officer in the rank of Additional Sessions Judge does not know that police officer cannot record a confessional statement of the accused while they are in custody and that statement is not admissible in evidence. The learned Trial Judge considered this statement as admissible in evidence marked them as exhibits and based his order of conviction on such confessional statement. The learned Trial Judge does know that he



has adopted not only a wrong process but an illegal procedure in convicting the accused persons. The learned Trial Judge, with all humility we must first note, does not have any idea about the relevancy, admissibility, and acceptance of evidence in a criminal trial. Under such circumstances, we are of the view that the learned Additional Sessions Judge 1st Court, Sheikhpura should be ceased of power of criminal trial and he should be imparted special training on BNS, BNSS and specially on BSA, subject to the final decision to be taken by the Hon'ble the Chief Justice in his Lordship's administrative side. However, we are of the strong view that, by accepting the inadmissible evidence, the accused persons/appellants were unnecessarily compelled to face sentence for years. This obviously violates the solidarity provision of Article 21 of the Constitution, for which the judiciary as a whole has the duty to ensure that, in future, the same wrong may not be committed.

36. Let a copy of the relevant portion of the order be sent to the Hon'ble the Chief Justice for his kind consideration.

Decision

37. For the reasons stated above, we find merit in these batch of appeals. Therefore, all the appeals are allowed on contest. The judgment and order of conviction and sentence are set aside. The appellants are acquitted of the charges and shall be



released at once, if they are in custody and not required in any other case.

(Bibek Chaudhuri, J)

(Chandra Shekhar Jha, J)

suraj/-

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