

**(2006) 05 JH CK 0027**

**Jharkhand High Court**

**Case No:** Criminal Appeal No. 162 of 1991P.

Anil Yadav and Others

APPELLANT

Vs

The State of Bihar (now  
Jharkhand)

RESPONDENT

---

**Date of Decision:** May 4, 2006

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Evidence Act, 1872 - Section 32
- Penal Code, 1860 (IPC) - Section 147, 148, 149, 302

**Hon'ble Judges:** N. Dhinakar, C.J; Rakesh Ranjan Prasad, J

**Bench:** Division Bench

**Advocate:** Anuj Prakash and Ashish Jha, for the Appellant; C. Prabha, APP, for the Respondent

**Final Decision:** Allowed

---

**Judgement**

1. The appellant Nos. 1 to 5 were arrayed as A-1 to A-5. Appellant Nos. 1 to 3 were charged u/s 148 IPC and appellant Nos. 4 and 5 were charged u/s 147 IPC. They were also charged u/s 302/149 IPC and the trial judge, finding the appellants guilty, as charged, while sentencing each one of them to imprisonment for life for the offence of murder, found appellant Nos. 1 to 3 guilty u/s 148 IPC and sentenced each of them to undergo three years rigorous imprisonment. The appellant Nos. 4 and 5, on being found guilty u/s 147 IPC, were sentenced to undergo two years rigorous imprisonment. The appeal is against the said conviction and sentence.

2. Tauki Marik, deceased in this case, is the father of PW-9, Srimant Marik. According to the prosecution, there were land disputes between the deceased and the appellants.

On 22.1.1989 at about 7.00 a.m. the deceased Tauki Marik accompanied by his son, PW-9, Srimant Marik, was proceeding to the house of Janardhan Mandal for

purchasing fodder. While they were on their way, the appellant accosted them. The 1st appellant was armed with a pistol, 2nd appellant and 3rd appellant were armed with Garasa and Barchi respectively and 4th and 5th appellants were armed with Lathis. They surrounded the deceased and the 1st accused Anil Yadav shot at him. On receiving gun shot injury, the deceased fell down in front of the house of PW-2, Bhudeo Mandal. The 2nd accused, Chaturbhuj Yadav, struck on his head with Garasa while 3rd accused, Bhushan Yadav, struck him with Barchi, 4th accused, Subhash Yadav, and 5th accused, Chaniklal Yadav, beat him with lathi. Srimant Marik, PW-9, tried to rescue his father but he was pushed away. On hearing cries, villagers gathered, including PW-4, Kaushalya Devi, who is the wife of the deceased, and PW-5, Krishna Devi, the daughter of the deceased. The occurrence was witnessed by PW-6, Binod Marik, PW-7, Jyotish Yadav, apart from PW-9, Srimant Marik. The appellants went away from the place and the deceased was taken to Godda hospital. On the way, he died. On getting information, PW-11, Ashok Kumar Singh, Officer-in-charge of Godda Police Station reached the scene of occurrence to whom PW-9, Srimant Marik, gave Fardbayan, Ext.3. This was registered as a crime under Ext.6. During the course of investigation, inquest was conducted over the dead body by the Officer. The inquest report is Ext.5. After the inquest, the dead body was sent to the hospital for autopsy and the doctor conducted autopsy (the doctor, who conducted autopsy, was not examined before the trial court).

3. After the completion of investigation, final report was filed and the appellants denied the circumstances, put against them u/s 313 of the Code of Criminal Procedure.

5. The learned Counsel appearing for the appellants submits that Ext.3, the Fardbayan, could not have come into existence, in the manner suggested by the prosecution, and there must have been another complaint with the police and that the documents were manipulated by the investigating agency so as to implicate the appellants with the crime on account of prior motive. It is his further submission that the prosecution not having proved the cause of death of the deceased, Tauki Marik, the appellants are entitled for acquittal.

6. We have heard Mrs. C. Prabha, learned A.P.P., appearing for the State, on the above contentions.

7. The case of the prosecution is that Tauki Marik was murdered and that appellants are responsible for the said murder. The prosecution, before the trial court, to establish that the deceased died on account of homicidal violence, did not examine the doctor who conducted autopsy, though the post mortem certificate was marked as Ext.2 through an Advocate's clerk, PW-10.

8. A perusal of the judgment of the trial court at paragraph-13 shows that inspite of several adjournments granted to the prosecution, the doctor was not produced and, therefore, the said document was allowed to be marked u/s 32 of the Evidence Act.

We are at a loss to understand as to why the trial court thought it fit to mark the post mortem certificate issued by the doctor through an Advocate's clerk and then to hold that the content stands proved through the Advocate's clerk. The Advocate's clerk is not a competent witness to speak about the autopsy conducted by a doctor. Though, PW-10 stated that he knew the handwriting and signature of the doctor, he admitted in his cross-examination that the said document was not prepared in his presence. It is, therefore, clear that the answer given by PW-10 that he knew the handwriting and signature of the doctor cannot be believed and in any event we do not find any material for us to infer that PW-10 would have seen the handwriting and signature of the doctor on earlier occasion for him to identify the same in the post mortem certificate. It is also an admitted fact that the trial court did not take any coercive steps for procuring the doctor so that he could give evidence.

9. In the above circumstances, we are of the view that the contents of the document do not get proved through the evidence of an Advocate's clerk.

10. The prosecution before the trial court examined PW-6, Binod Marik, PW-7, Jyotish Yadav, and PW-9, Srimant Marik, as witness to the occurrence. PW-4, the wife of the deceased, who was also examined as a witness to the occurrence, was disbelieved by the trial court. According to the witnesses and in particular according to PW-9, who is the son of the deceased, after the deceased suffered injuries, he was taken to Godda hospital and on the way he died. He has also stated that he left the dead body at the hospital and returned home. According to PW-11, the officer, who conducted inquest, on getting information about the occurrence, he went to the scene village and on finding PW-9 recorded his statement, Ext.3, at 12.30 P.M. on 22.1.1989. A perusal of Ext.6, the printed first information report, shows, that it was registered as a crime at 12.30 p.m. on 22.1.1989 at Godda Police station. Though, PW-11 claimed that he recorded the statement of PW-9 at the village at 12.30 p.m. and registered it as a crime at 2.30 p.m. at the police station, the inquest report, Ext.5, shows that the inquest was conducted at the police station and not at the hospital where, according to PW-9, the dead body was left. PW-9, in his cross-examination, admitted that two days after the occurrence, he went to Godda police station and gave a statement on which his signature was obtained.

11. In the above circumstances, we find it difficult to accept that Ext.3 is the real first information in this case. If Tauki Marik died on the way to Godda hospital and the body was left at the hospital then dead body could have been at the police station for the inquest to be conducted over it. If the dead body was brought back to the village by PW-9 and others and thereafter a complaint was given by them at the village and recorded by PW-11 at 12.30 p.m. then inquest must have been conducted after registration of the crime at 2.30 p.m. The said inquest also ought to have been conducted at the place where the dead body was found; but perusal of Ext.5, as we have noticed earlier, shows that it was conducted at the police station. Therefore, it is doubtful as to who had taken the dead body to the police station. The

evidence of PW-9 is at total variance with the evidence of PW-11, the Investigating officer. We, therefore, do not accept that the complaint, Ext.3, had been given at 12.30 p.m. on 22.1.1989. The said complaint was also received by the court only on 24.1.1989, for which there is no explanation. In the above circumstances, we find it difficult to accept the evidence of the eye witness.

12. In view of the above discussion, we are of the view that the appellants are to be acquitted and they are, accordingly, acquitted. The appeal is allowed and the conviction and consequence sentence imposed upon the appellants is, hereby, set aside.

The appellants, who are on bail; are discharged from the liability of the bail bonds.