

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.301 of 1992

Arising out of PS.Case No.-100 Year-1989 Thana-Bihta District- PATNA

1. Sudheshwar Singh.
2. Sahja Singh.
Both sons of Hardeo Singh.
3. Akhtor Mian, Son of Sk. Akbar Mian.
All residents of Village Nagar Bihta, P.O. Sai, P.S. Bihta, District Patna.

.... Appellants

Versus

The State of Bihar

.... Respondent

with

Criminal Appeal (DB) No. 352 of 1992

Arising out of PS.Case No.-100 Year-1989 Thana-Bihta District- PATNA

1. Rajeshwar Singh, Son of Late Hardeo Singh.
2. Hakim Minya, Son of Nizzmuddin Minya.
Both residents of Village Nagar Bihta, P.S. Bihta, District Patna.

.... Appellants

Versus

The State of Bihar

.... Respondent

Appearance :

For the Appellants : Smt. Maruti Kumari, Amicus Curiae
(in both the appeals)

For the State : Sri Dilip Kumar Sinha, APP

CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE AMARESH KUMAR LAL

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 13-01-2015

The five appellants of the two appeals were tried by the learned 12th Additional Sessions Judge, Patna in two sessions trials bearing Nos. 129 of 1990 and 313 of 1990 by being charged with committing offences under Sections 302/34 and 341 of the Indian Penal Code. Appellant Rajeshwar Singh was also charged



under Section 27 of the Arms Act. The five appellants were held guilty by judgment dated 17th of July, 1992 of committing the offences under Sections 302/34 and 341 of the Indian Penal Code. In addition to the above conviction, appellant Rajeshwar Singh was also held guilty of committing the offence under Section 27 of the Arms Act. The appellants were heard on sentence on the same day and each of them was directed to suffer rigorous imprisonment for life under Section 302/34 of the Indian Penal Code. No separate sentence was imposed upon any of the appellants for being convicted under Section 341 of the Indian Penal Code. As regards appellant Rajeshwar Singh and his conviction under Section 27 of the Arms Act, he was directed to suffer rigorous imprisonment for two years. Sentences upon appellant Rajeshwar Singh were directed to run concurrently.

2. The prosecution case is contained in the First Information Report (Ext.3) lodged by P.W.4 Ramjee Singh who happened to be the father of deceased Ramesh Kumar Singh. It was stated by him that his son Ramesh Kumar Singh was thrashing wheat in his *Khalihan* situated south of the house of P.W.4 and the informant was also very much present there. As soon as the thrashing was completed, the deceased went to a well to fetch water where the five appellants were waiting for him. The appellants



caught the deceased upon which he raised alarm. P.W.4 along with Sarfuddin Ansari (P.W.2), Awdhesh Singh (P.W.1), Baliram Singh (not examined), Sanjay Kumar Sharma @ Sanjay Kumar Singh (P.W.3) and younger son of the informant along with Mala Devi the daughter of the informant, rushed towards the well to find that appellant Rajeshwar Singh was carrying a *Fasuli* while appellant Hakim Mian was armed with a *Chhura*. Appellant Sudheshwar Singh, Sahja Singh and Akhtar Mian had caught the deceased and appellant Rajeshwar Singh and Hakim Mian were giving blows to him with their respective weapons, i.e., *Fasuli* and *Chhura* as a result of which injuries were caused to the deceased who fell unconscious there. The informant stated that when he and his companions were proceeding towards his son to save him, appellant Rajeshwar Singh fired a country made pistol blank so as to scaring the informant and his companions away and also warned the informant and others not to come near the accused persons. The informant stated that he and his companions did not go further out of fright and when the accused persons had left the scene of occurrence, he and others went near his son Ramesh Kumar Singh to find that he was bleeding profusely from his neck and head and that he was unconscious.

3. The informant put his injured and unconscious son Ramesh Kumar Singh in a three wheeler and brought him to Bihta

Hospital where the compounder who was present there declared his son dead.

4. The reason or the motive for the occurrence as stated by P.W.4 in the First Information Report was that there was some dispute in between him and accused Rajeshwar Singh for certain land and the said accused Rajeshwar Singh had warned him that he would kill one of his sons. It appears from perusal of the First Information Report that a line was inserted as the last statement of the victim in it in which it was stated that his son had a gun shot injury on his back. P.W.5, S.I. Ashok Kumar was the Officer-in-Charge of Bihta Police Station and he ordered the First Information Report to be drawn up by the writer constable posted in the police station, namely, one Pandey who after drawing up the statement read the contents over to the informant who accepted the same to be correctly written and put his signature. The document First Information Report has been marked Ext.3. The informant had come as per the evidence of P.W.5 with the dead body of his son and, as such, he held inquest upon the dead body very much in the premises of the police station in presence of witnesses. The inquest report prepared in token of holding the inquest upon the dead body was marked Ext.4. He recorded the further statement of the informant and at about 1 A.M. in the very night came to the place of occurrence

and inspected the same.

5. As per P.W.5, the occurrence had taken place on the *Pucca* road which was running by the side of a well. There were faint blood spots near the well and also on the earth situated on the western part of the well. Those blood stains were seized by preparing seizure memo. It was a big well and an *Ashoka* tree was standing by its side. It was situated very well by the side of the river. A primary school was located at a distance of about 15 yards west of the well and at a distance of about 30 yards in the north western corner of the premises of the primary school was the *Khalihan* of the informant. The Investigating Officer found a thrasher installed there and also found some bundles of wheat kept there. Village Bihta was situated at a distance of about 5 yards in the north of the primary school. The Investigating Officer recorded the statements of witnesses and went to search the accused persons who were found absconding by him. He received the post-mortem examination report on 20.05.1989 from the doctor. He had dispatched the dead body in the very night when he had inspected the place of occurrence for post-mortem examination. After concluding the investigation, the Investigating Officer (P.W.5) submitted charge sheet for the trial of the accused persons.

6. During cross-examination by the defence, the



Investigating Officer stated that he did not find any wheat which had been thrashed nor did he find any fodder which was the end product of thrashing. Neither, the Investigating Officer could find any empty cartridge nor any other weapon on or around the place of occurrence. It further appears that he came to inspect the place of occurrence again in the next morning as as per his evidence he was not sure that he had appropriately inspected the place of occurrence and had in fact seen and located relevant incriminating articles or materials there. P.W.5 stated that the reason for holding the second inspection of the place of occurrence was also that the injuries which were found by him on the dead body definitely indicated as if the deceased had bled profusely from his injuries and there ought to have been copious blood at the place of occurrence but he simply found some traces in the form of sprinkled blood here and there. But what appears further from the evidence of P.W.5 was that during his second inspection of the place of occurrence, he could not lay his hand upon any important incriminating material and that raised a suspicion in his mind as if the deceased had been murdered at some other place and his body had been dumped on the road near the well. Thus the objective finding and the opinion of the Investigating Officer as regards the murder of Ramesh Kumar Singh was something different from that what had been alleged by the

informant.

7. At any rate the trial, as noted above, culminated into the impugned judgment and order of sentence.

8. The defence of the appellants was of innocence and false implication.

9. Out of the six witnesses, P.W.6 was Dr. Shailendra Kumar who had held post-mortem examination on the dead body of the deceased Ramesh Kumar Singh and he found as many as ten incised wounds of different dimensions on various parts, organs and body of the deceased. In addition to the ten incised wounds, he found one oval lacerated wound measuring $\frac{1}{2}$ "x $\frac{1}{4}$ "xchest cavity deep with inverted and blackened margin surrounding the skin. In the opinion of P.W.6, it was the wound of entry which was located over the anterior chest wall on the right side below the right sterno-clavicular joint. The standing existing wound was found measuring 1"x $\frac{1}{2}$ "xchest cavity deep over the back of the trunk on left side at the level of 4" lateral to T eleven vertebra. The margin of the wound was everted. The probe which was passed through injuries no. 11 and 12, i.e., the two gun shot injuries of entry and exit passed through and through so as to confirming that they were corresponding wounds of entry and exit and in the opinion of P.W.6, the injuries had been caused by bullet and because of the exit wound, the recovery of the

bullet was not possible. Out of the ten incised wounds the first was measuring 3½"x1"xdeep to neck cavity which had cut the muscles and blood vessels over the right side of the neck. The second was measuring 5"x½"x1" and was situated on he right side of the neck just below injury no. 1. The third incised wound was over the right temporo mandibular joint measuring 3"x½"xmuscle deep while the other, i.e., the fourth injury incised wound was over cheek on its right side, measuring 2½"x1"xmuscle deep just below injury no. 3. The fifth incised wound was over right side of the mandible measuring 3½"x½"xmuscle deep while the sixth was measuring 3"x¼"xskin deep which was just below injury no. 5. The seventh incised wound was over the right mallar prominence measuring 2"x½"xmuscle deep while the eighth was measuring 3"x1"xbone deep and was located over right shoulder. The ninth incised wound was 2"x½"xmuscle incised and was situated over right scapular region. The last and tenth incised wound was measuring 1½"x½"xmuscle deep and was located over left scapular region. On dissection, P.W.6 had found thoracic cavity full of blood and blood clots. The upper lobe of the right lung was found lacerated and pale as was the case with left lower lobe of the left lung. Heart was empty. Liver, spleen and kidneys were pale. The stomach was found containing about two ounces of digested food material. In the

opinion of P.W.6, the injuries were ante-mortem in nature and injuries no. 1 to 10 were caused by some sharp cutting weapon such a *Fasuli* or dagger while injuries no. 11 and 12 had resulted from a firearm and further that the death had occurred within 36 hours of the holding of the post-mortem examination. P.W.6 was further of the opinion that the injuries were sufficient to cause death in the ordinary course of nature which had in fact resulted due to the shock and haemorrhage due to the above noted injuries.

10. What appears from the evidence of P.W.6 is that Ramesh Kumar Singh was indeed murdered. It also appears that most of the blows which were given to Ramesh Kumar Singh as a result of which as many as ten incised injuries were caused, were results of blows given by some sharp cutting weapon. The blows were also, as may appear from the description of the above injuries, had been aimed mostly either at his face or head or at such vital parts of the body, like, chest or back. Those who had assaulted the deceased had a determination to kill Ramesh Kumar Singh by dealing blows with sharp pointed weapon which might be a dagger or a *Chhura* which might be a sharp cutting weapon, like, a *Fasuli* so that the deceased was not spared and was killed. What we further find is that the solitary shot which was fired at him was fired from his back and that too from a very close range as there was charring of



the surrounding skin as may appear from injury no. 11. Might be that finding some resistance coming from the deceased as appears from many injuries which had appeared on the same sight of assault, the assailants had finally decided to annihilate the deceased by firing a vital shot but the opinion of the doctor in spite of having convinced us that it was a case of murder committed with determination we have to find out as to whether the five appellants had participated indeed in the ordinary nature committing the offence.

11. While being taken through the evidence of the witnesses by Smt. Maruti Kumari, the learned Amicus Curiae, we found that as the examination of witnesses progressed during the trial, the prosecution was adding up some spices to its case with some purpose. P.W.1 appears not an eye witness to the occurrence and his presence appears doubtful for the reason that he claimed that he had gone to attend his call of nature at about 8.30 in the evening and picking up the cries of the deceased who was shouting or help, he rushed towards him to find the accused persons giving blows with *Fasuli* and *Chhura*. He does not give any specific name as regards any specific weapon except that appellant Rajeshwar Singh when the witnesses had opened proximity to the deceased had fired a shot warning them not to proceed further else they might also be killed. There was a specific suggestion by drawing the attention of the



witness P.W.1 that during his statement under Section 161 Cr.P.C., he had not stated to the Investigating Officer that he had gone to attend the call of nature rather he had stated that he was very much present in the *Khalihan* where the thrashing was being carried out by the deceased and others, P.W.1 refuted the suggestion and claimed his presence near the scene of occurrence for reasons of attending to the call of nature. The Investigating Officer, S.I. Ashok Kumar stated during his cross-examination that P.W.1 had not stated to him that he was going to attend the call of nature rather he was stated that he was very much present in the *Khalihan* (P.W.5, paragraph-17). Thus, the presence of P.W.1 appears doubtful. The other reason on which we view the evidence of P.W.1 with some doubt is that he stated that he had accompanied the informant and others up to the police station while the dead body of the deceased was being taken there and in that course he further stated that the statement of Ramji Singh (P.W.4) and informant was recorded by the Investigating Officer but the statement of other witnesses was not recorded by the Investigating Officer there. This evidence is contradicted by the evidence of P.W.5 who stated that he had questioned the witnesses and had taken down their statements also. There is no statement by P.W.1 as to when he gave his statement before the police. There was a very direct question put to him in paragraph-5 as to did he not point



out to the Investigating Officer that he and other companions of his except P.W.4 were also eye witnesses to the occurrence and that their statements should be recorded, he stated that none had pointed out that fact to the Investigating Officer. We viewed this statement of P.W.1 with suspicion. If he had indeed accompanied the informant while carrying the dead body to the police station and if at all he had seen the occurrence as per his claim then there was no reason for the Investigating Officer that his statement should have been recorded. So far as the evidence of P.W.2 is concerned, he has himself stated that he was never questioned by the police as appears from his evidence in paragraph-7. Besides after being pursued by the defence by putting certain questions relating to his own presence as appears from paragraph-8, he was very much persistent that he was never questioned by the police. The purpose of taking down the statement or questioning a person who appears acquainted with the facts and circumstances of the case under Section 161 Cr.P.C. is also to have his statement on record so that there is fair trial and the accused has the facility of cross-examining the witness to his statements which he could have made before the police. This is the reason that if a witness had never been questioned further by the police and if his statement is recorded under Section 161 Cr.P.C. then the very evidence of such witness is inadmissible. We, as such, act on that



principle of appreciation of evidence eliminate the evidence of P.W.2 from reconsideration. However, we want to note one attempt of the prosecution which emerges from the evidence of P.W.2. Admittedly it was 8.30 P.M. when the incident had occurred and undisputedly it was night. There was no mention in the very basic prosecution document, i.e., the First Information Report about the lack or availability of any source of light. Probably the prosecution was facing this difficulty and considering that it was leading a very important evidence through P.W.2 by making him to state that it was a moonlit night as appears from the first line of his deposition so as to pointing out to the trial Court that there was sufficiency of source of light facilitating the identification of the accused persons. But the defence appears more clever while conducting the trial of the present case. It was pursuing the witness (P.W.2) in further details as regards the appearance of moon or in Hindi calendars or in ordinary calendars. The witness was put questions as to what was the month of the Hindi calendar and the witness stated that he could not say. To another question which was put to the witness was as to could he say as to which fortnight of a month is known as a moonlit fortnight and which is a dark fortnight, the witness was all at well answering these questions and was choosing the very simple route to escape the trap which had been placed around the witness by stating that he simply



did not know fortnight wise the appearance of moon or disappearance of it as a result of which the defence was put the final nail in the coffin of P.W.2 when it was suggested to it that he was never made statement before the police that the date of occurrence was a moonlit night. Even if P.W.5 the Investigating Officer of the case had not corroborated that suggestion under Section 157 of the Evidence Act, we could have very well brushed aside the attempt of the prosecution to put a source of light in the surrounding areas and at the place of occurrence by claiming the night to be a moonlit night but the Investigating Officer was also stating that the witness had never stated to him that the night was the moonlit night. This important aspect of evidence also was one reason to us for discarding the evidence of P.W.2.

12. Coming to the evidence of P.W.3, we may note that there is no dispute in it right from the very inspection of the case, i.e., the First Information Report that P.W.3 Sanjay Kumar Sharma @ Sanjay Kumar Singh is the full brother of the deceased and son of Ramji Singh (P.W.4). We do not know as to whether he was really present at the scene of occurrence but he claimed his presence and further stated that he was taking his breakfast on the *Verandah* of the school which had been brought by his sister Mala Devi (not examined). His brother deceased had gone to the well for fetching



water when he was caught by the five appellants and that appellant Rajeshwar Singh fired the shot into his chest. Ramesh Kumar Singh fell down and other accused persons started giving blows with *Chhura* and *Fasuli*. It was stated that seeing the occurrence being committed, he, his father and other rushed to the place but appellant Rajeshwar Singh fired a shot to scare them away and was further warning them not to come else they would be killed. P.W.3 stated that they went near the deceased and found him unconscious and his clothes were completely soaked in blood. The deceased was brought by him and others to Bihta where a doctor, namely, Lalit Mohan, was there and who attended on the deceased and declared him dead.

The vital change or improvement which appears made by P.W.3 in his evidence is assigning role of firing the shot into the chest of his brother to appellant Rajeshwar Singh. The other trifle but important matter which came into our reckoning was that while the basic prosecution case was that there was no doctor present at the hospital and only a compounder was there who declared the deceased dead, P.W.3 was stating that doctor Lalit Mohan was present there and he attended on his brother and declared him dead. The claim of P.W.3 of seeing the occurrence is not on account of being attracted to it as appears from the evidence of P.Ws. 1, 2 or 4 after hearing the cries of the deceased rather he appears seeing the occurrence from



much from the *Verandah* of the school. He does not say that his brother was shouting for help and that attracted him. What appears from his evidence is that as if he was setting very close to the place of occurrence and it was as clearly visible to him as to identify and describe the manner of occurrence. We may refer to the evidence of P.W.5, S.I. Ashok Kumar who had found that the primary school, where the thrashing work was being carried out, was situated 50 yards in the west of the well. The thrashing work was being done in a Khalihan and that Khalihan was situated about 30 yards away from the primary school building in its south western corner. The Investigating Officer did not find a single grain of wheat nor could he find out a single blade of fodder which could have been the end product or end result of the thrashing exercise. In fact the evidence of P.W.5 appearing in paragraph-24 gives us a picture as if there had not been any thrashing though the claim of P.W.4 the informant was that the thrashing had been started at around 2 P.M. and had come to an end almost at the struck of the incident, i.e., at about 8.30 P.M. and the total number of bundles were only 40. Our personal experience of such exercise of thrashing simply does not convince us that 40 bundles of wheat could be consuming almost over six hours in thrashing. We have all reasons to doubt that indeed there was any thrashing carried out there and that is the reason that there is some



vital variance in claim of the witnesses as regards their presence specially when it comes to P.W.4 who did not speak of the deceased having shout for help after he was caught or captured by the accused persons and the witness rushing to the place of occurrence. He did not speak of rushing to the place of occurrence as is stated by other witnesses; he merely states that after the accused persons had gone, he and others went there. This is one vital aspect of his evidence which renders his evidence doubtful.

The other vital aspect of his evidence, we have already noted, is assigning some serious role to one of the appellants Rajeshwar Singh of firing a shot into the chest of the deceased. It was never the case of the prosecution that any shot had been fired at the deceased. The mere mention was through a subsequent addition in the First Information Report that there was a gun shot injury in the back of the son of the informant. The statement of P.W.3 that Rajeshwar Singh had fired the shot in the chest of the deceased appears a very well thought out plan by the prosecution so as to leading evidence. The prosecution, in our opinion, after having come across the findings recorded by P.W.6 in his post-mortem report regarding the finding of a wound of entry caused by gun shot into the chest of the deceased had probably thought it better to lead even in support of the medical evidence but we have already noted that

evidence which was led by the prosecution in order to supporting the findings recorded by P.W.6 Dr. Shailendra Kumar appears quite contrary to its basic case creating further doubt that P.W.3 could have been a competent witness or could have seen the occurrence with his eyes. We, for these reasons, are inclined not to place reliance upon the evidence of P.W.3.

13. So far as the evidence of P.W.4 the informant is concerned, we may simply say that he was very much going with his son P.W.3 when he was giving a serious go bye to his initial prosecution story. His initial story was that all accused persons had caught his son and had assaulted with *Fasuli* and *Chhura* and when he and other witnesses had attempted to reach out his son, appellant Rajeshwar Singh fired a shot by holding out threats that they might be killed if they dared coming near the appellants. However, while deposing in Court, he was giving some specific roles to different appellants. He stated in paragraph-3, i.e., the very examination-in-chief that Hakim Mian gave a *Chhura* blow to his son while Rajeshwar Singh and other three appellants dealt *Fasuli* blows to his son. The first assault was with pistol that was fired by appellant Rajeshwar Singh whereafter the blows with *Fasuli* and *Chhura* was given by other appellants. These facts appear as, we have noted on the combined reading of paragraphs 1 and 3, we have already pointed



out that assigning specific roles to anyone out of the five appellants was never the initial prosecution story. It was only subsequent to the finding recorded by P.W.6 Dr. Shailendra Kumar that specific roles were assigned and that too to other accused than appellant Rajeshwar Singh who was again assigned having given blow with *Fasuli* to the deceased as may appear from the evidence of P.W.4 in paragraph-3. He was very well confronted by being cross-examined to the improved statements he had made during his cross-examination and he was very well suggested that he in fact did not know that there was no pistol injury on the dead body of his son and only when the Investigating Officer had held inquest upon the dead body and had found a gun shot injury that he got it mentioned in his report that his son had a gun shot wound in his back. The Investigating Officer was also confronted with the above facts of having interested an important fact into the First Information Report and he was denying it but we are very much convinced that the improvement was purposeful and it was targeted individually against the appellants with clear and determined motive of leading evidence of such quality as was to be accepted by the Court for recording the judgment of conviction.

14. In our view, the primary suspicion of the Investigating Officer who found almost no blood at the place of



occurrence was probably true. P.W.3 Sanjay Kumar Sharma @ Sanjay Kumar Singh the full brother of the deceased and son of P.W.4, we have noted gave evidence that on account of being inflicted the injuries the deceased had bled profusely as much as his bearing apparels were completely soaked in it. It appears the true depiction of the result of the injuries which were inflicted to the deceased Ramesh Kumar Singh; he must have bled profusely after having received ten incised wounds and one gun shot wound all on vital parts. But what we find is that the Investigating Officer had found some sprinkling of blood droplets at two spaces, one near the well and the other about 10-15 yards away from there on the road. His very evidence indicates that his mind was working up in doubt as to how no blood was there at the place of occurrence if such number of serious injuries had been inflicted upon the deceased. The officer finding support from the witnesses had sent up the accused persons for trial but we find that particular non-finding of blood in the quantity as was expected in an occurrence of the present magnitude could itself be sufficient to uphold the views of the Investigating Officer that the deceased might have been murdered at some other place and his dead body had been dumped at the place of occurrence. The prosecution case, in our opinion, was not established by acceptable reliable evidence rather it suffered from serious doubt

regarding the very participation of the accused persons in killing the deceased Ramesh Kumar Singh.

15. In the result, both the appeals succeed and the same are allowed by setting aside the judgment of conviction and order of sentence dated 17.07.1992, passed by the learned 12th Additional Sessions Judge, Patna in Sessions Trial No. 129 of 1990 and 313 of 1990. The appellants are acquitted of the charges they had been found guilty of. They are on bail. They shall stand discharged from the liabilities of their respective bonds.

16. We have been assisted by Smt. Maruti Kumari, who was appointed Amicus Curiae to assist this Court today itself. We direct that Smt. Kumari be paid the prescribed fee of one hearing by the Patna High Court Legal Services Committee for assisting the Court. Let the first and last pages of the present judgment be handed over to her.

(Dharnidhar Jha, J.)

(Amaresh Kumar Lal, J.)

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