

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 172 of 2012

Arising out of P.S. Case No. -14 Year- 1994 Thana -Nasriganj
District- Rohtas at Sasaram

Hardeo Singh S/o Late Ram Parwesh Singh Resident of Village-
Atimiganj, Police Station- Nasriganj, District- Rohtas at Sasaram.

.... Appellant/s

Versus

The State of Bihar.

.... Respondent/s

with

Criminal Appeal (DB) No. 178 of 2012

Arising out of P.S. Case No. -14 Year- 1994 Thana -Nasriganj
District- Rohtas at Sasaram

Binod Singh S/o Late Ramanuj Singh Resident of Village Atimiganj,
Police Station Nasriganj, District Rohtas at Sasaram.

.... Appellant/s

Versus

The State of Bihar.

.... Respondent/s

with

Criminal Appeal (DB) No. 179 of 2012

Arising out of P.S. Case No. -14 Year- 1994 Thana -Nasriganj
District- SASARAM (ROHTAS)

Pramod Singh S/o Late Ramanuj Singh Resident of Village
Atimiganj, Police Station Nasriganj, District Rohtas at Sasaram.

.... Appellant/s

Versus

The State of Bihar.

.... Respondent/s

Appearance :

(In CR. APP (DB) No. 172 of 2012)

For the Appellant/s : Mr. Sada Nand Roy, Adv.

For the Respondent/s: Smt. S. B. Verma, APP.

(In CR. APP (DB) No. 178 of 2012)

For the Appellant/s : Mr. Dharmendra Kumar Singh, Adv.

For the Respondent/s: Mr. G.P. Jaiswal, APP.

(In CR. APP (DB) No. 179 of 2012)

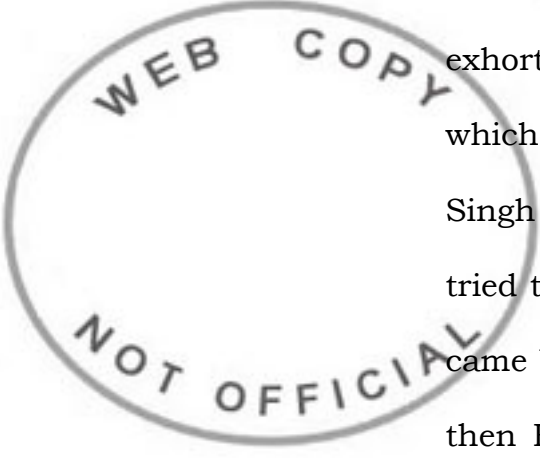
For the Appellant/s : Mr. Dharmendra Kumar Singh, Adv.

For the Respondent/s : Mr. S.C. Mishra, APP.

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR
MISHRA
ORAL JUDGMENT
(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)
Date: 29-01-2016

01. The Appellants have been convicted under 302 IPC and sentenced them to undergo R.I. for life with fine of Rs. 10,000/- and in default of payment of fine they shall undergo S.I. for one year and the Appellants, Pramod Singh and Binod Singh have also been convicted under Section 27 of the Arms Act and sentenced them to undergo R.I. for three years and fine of Rs. 1,000/- by the Additional Sessions Judge-V, Rohtas at Sasaram in S.Tr. No. 677 of 1994/Tr. No. 161 of 2009 by judgment of conviction dated 24.01.2012 and sentence dated 01.02.2012.

02. The case of the prosecution according to Ranvijay Singh, P.W. 5 is that on 29.01.1994 at about 4.15 P.M. his co-villagers Shyam Lal Singh, Gokul Singh, Ayodhya Choudhary and Surendra Ram were playing cards whereas his brother, Ram Prasidh Singh (deceased) also came and sat down. He himself was scattering fertilizer in the fields whereas his father, his uncles Yadunandan Singh, P.W. 3 and Ram Nagina Singh, P.W. 6 were cutting fodder. It is then at about 4.15 P.M. six accused persons variously armed including the Appellants came there and in furtherance to their common intention caught his brother, Ram Prasidh Singh in the presence of the rest of the Appellants. He himself, his brother,



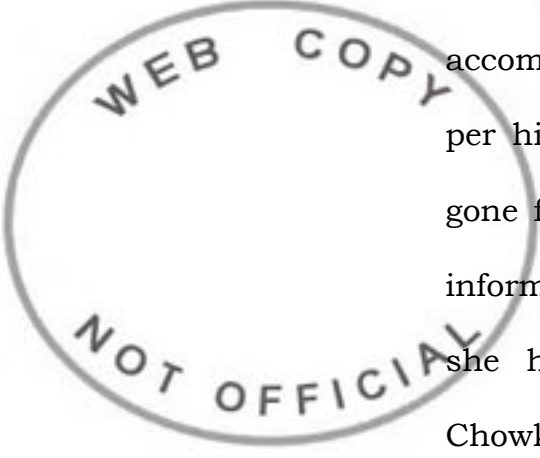
father and uncles came there and started to save him but they were also fired at. They saw Dhananjay Singh on the exhortation of his father-in-law fired at the deceased due to which he fell down. Then Appellants, Binod Singh and Pramod Singh and Dhananjay Singh also fired causing his death. They tried to put the dead body on the cot but the accused persons came back again and dragged the dead body to a distance and then Hardeo Singh with "Gandasa" cut his head and took it with them raising slogans. He stated that the occurrence was seen by himself, his father, Hari Nandan Singh (P.W. 2), his uncle, Yadu Nandan Singh (P.W. 3), his maternal uncle, Ram Nagina Singh (P.W. 6) and Ram Narayan Singh (P.W. 10 declared hostile). He stated that the reason for the occurrence was some dispute in which the deceased was siding with Lakhmina Kunwer in a land dispute and that in 1979 the father of accused, Binod Singh namely Ramanuj Singh had been murdered in which the deceased was an accused.

03. During trial the prosecution examined ten witnesses.

04. P.W. 1, Kanhaiya Pandey, P.W. 4, Feku Rawani and P.W. 10, Ram Narayan Singh a witness named in the Fardbeyan have not supported the case of the prosecution and had been declared hostile. P.W. 9, Mukhtar Singh is a formal witness who had only submitted charge-sheet whereas P.W. 8, Dilram Roy is the Investigating Officer, P.W. 7, Dr. Dharmdeo is the Doctor who had conducted the Post-mortem

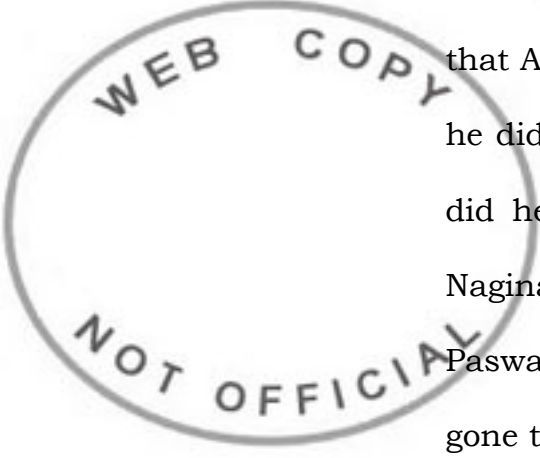
Examination Report, P.W. 2, Hari Narayan Singh, P.W. 3, Yadunandan Singh, P.W. 5, Ran Vijay Singh @ Bambam Singh, P.W. 6, Ram Nagina Singh are eye-witnesses. Since they belong to the same family, we are inclined to scrutinize their evidence cautiously.

05. P.W. 2, Hari Nandan Singh, the father of the Informant while supporting the manner of occurrence has repeated the story of the Fardbeyan and that they were witnesses to the occurrence. He also stated that the accused persons raised slogans while running away with the head of the deceased. He also stated that the cause of occurrence was because of the deceased siding with Lakmina Devi. He further stated that Chhedi Singh was the father of accused Binod Singh and it was suspected that the deceased had a role in his murder. It was for this reason that the occurrence had taken place. He further stated that the Police had come to the village at 7 P.M. and inspected the place of occurrence in his presence and thereafter taken his statement after that of Ranvijay Singh, the Informant. He also stated that he had given a statement under Section 164 Cr.P.C. and that he had identified the father-in-law of Binod Singh in the Test Identification Parade. His attention was drawn to the earlier statement recorded under Section 161 Cr.P.C that he had stated earlier that he had not seen as to who had shot at his son, Ram Prasad Singh. He further stated that it was on the information of his wife that the Police had come to the place of



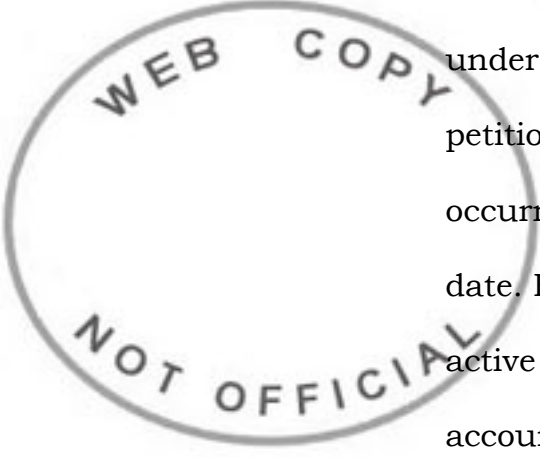
occurrence. He also stated that on the way Choukidar, Bahadur Paswan had met his wife and he had also accompanied her to the Police Station. Bahadur Paswan, as per him had not gone from the place of occurrence but had gone from outside the village. He gave a specific answer that information was given to the Police Station by his wife after she had learnt about the occurrence. His wife and the Chowkidar had returned along with the Police to the place of occurrence.

06. P.W. 3, Yadunandan Singh is an eye-witness who supported the fact that he was chopping fodder in the house of Rajdev Kahar along with Hari Nandan Singh, P.W. 2, Ram Nagina Singh, P.W. 6 when suddenly they heard sound of firing then they came out they saw the persons who were playing cards running whereas Dhananjay Singh had caught hold of the neck of the deceased from the back whereas Appellants, Binod Singh, Pramod Singh, Hardeo Singh and the father-in-law of Binod Singh were present. Then he also stated that on hearing sound of firing the Informant joined these witnesses and all of them tried to save themselves. They saw Appellant, Binod Singh firing at the deceased and thereafter Appellant, Pramod Singh and Dhananjay Singh also firing at him. The accused then dragged the dead body to a distance and thereafter Hardeo Singh cut away the head of the deceased and took it along with him raising slogans. He also stated about the motive for the occurrence. He explained the



relation-ship with the Informant and his father, P.W. 2 and that he was his brother and in cross-examination he stated that Amir Singh was the brother of accused, Hardeo Singh and he did not know as to who was an accused in his murder nor did he know as to who was accused in the murder of Ram Nagina Singh. He further stated that Chowkidar, Bahadur Paswan had come to the place of occurrence and thereafter gone to the Police Station. The wife of Hari Nandan Singh, P.W. 2 had also gone running to the Police Station after visiting the place of occurrence and that the Police had come along with a Chowkidar and the wife of P.W. 5.

07. Ranvijay Singh, the Informant stated that wife and his brother were sitting around while Shyamlal Singh, Gokul Singh, Ayodhya Chaudhary and Surendra Ram were cutting fodder when the accused persons came there along with some unknown persons and thereafter Binod Singh fired at his brother (deceased). The accused persons caught hold of the deceased while the rest of the card players ran away and on the orders of his father-in-law, Binod Singh fired at the deceased on account of which he fell down injured then Pramod Singh, Dhananjay Singh shot him. They then dragged the deceased to a distance where Hardeo Singh chopped off the head of the deceased and took it along with them raising slogans. He repeats that the cause of occurrence was the land as mentioned in the Fardbeyan. He further stated that Police had come to the village at about 7.30 P.M. and he identified



signature on the Fardbeyan as (Exhibit-1). He also states that he had given his statement before the Magistrate recorded under Section 164 Cr.P.C. and that he had filed a protest petition. In cross-examination, he described the place of occurrence and also that he was playing cards on the said date. He explained that there was Shambhu Kahar who was an active member of IPF who had assaulted his brother on account of which there was a police case against him. There were other cases also pending. There was counter-case also between the parties and it appears that the deceased and the witnesses were accused therein. At one point in time, he stated that the assailants of his brother had covered their faces. He stated that he did not disclose about the occurrence to Chowkidar, Bahadur Paswan or to any of the witnesses who came there. He, however, conceded that the Chowkidar had been sent to the police at about 6 P.M. at which it had come around 8 to 8.30 P.M. He gave confusing statement as to when exactly the fardbeyan was recorded and whether it was at the place of occurrence or at the Police Station. He also stated that he had seen his father and his uncle conferring with each other before the Police arrived as to how the case was to be instituted.

08. P.W. 7, Dr. Dharamdeo performed post-mortem and found the following injuries:

“External injuries:- (i) *The Head was chopped off from the middle of the Neck with absence of head & upper half of neck. Circumference of the stump of Neck of trunk*



side is about 6" anteroposteriorly and about 4 ½" laterally. The wound of stump is postmortem in nature and caused by sharp weapon.

(ii) Lacerated wound 2 ¼"x1 ½" x deep to chest cavity with scorched blackened margin on left side of front of neck with fracture of left clavicle and the left first Rib.

(iii) Abrasion 4½"x 1½" on left side of front of chest near the left border of sternum.

(iv) One lacerated wound with scorched blackened margin measuring ½"x ¼"x deep to subcutaneous on left side of back of chest medial to medial border of the left scapula, one metallic foreign body of irregular shape recovered from subcutaneous tissue of back of chest about 1½" below the wound no. 4.

(v) One lacerated wound with scorched blackened margin measuring ½"x ¼"x deep to abdominal cavity on left side of lumbar region of the back with tissue burnt injuries (tattoo marks) around it.

The injury nos. II, III, IV and V have been opined by the Doctor as anti-mortem in nature out of which wound nos. II, IV and V have been opined to be caused by Fire Arms and injury no. (iii) has been opined by the Doctor to be caused by hard and blunt substance.

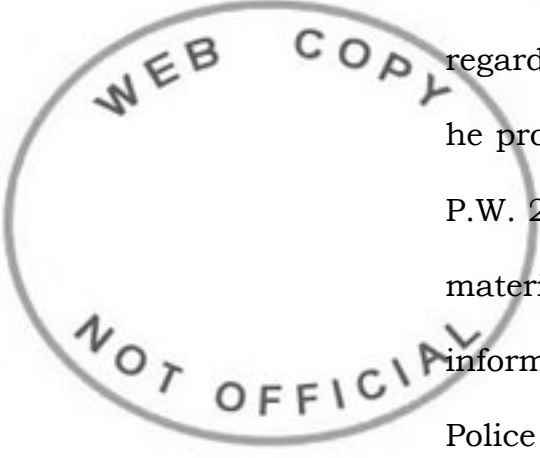
On dissection the Doctor has found the following injuries:-

(i) Head:- Head and upper part of neck is absent.

(ii) Throat: Chest cavity full of blood with left lung and "plura" intact. On circular plastic body, two rounded foreign bodies black in colour and made of thick paper and light in weight recovered from left side of chest cavity.

(iii) Abdomen: Post abdominal wall bearing wound no. (v), peritoneum perforated at the wound no. (v) abdominal cavity filled with blood with rupture of abdominal aorta.

The cause of death has been opined by the Doctor as haemorrhage and shock produced by the injury nos. (ii), (iv) and (v) causing intrathoracic and intra abdominal injuries.



09. P.W. 8, Dilram Roy, the Investigating Officer stated that on the date of occurrence he heard a rumour with regard to the object at which occurrence he instituted a Sanha he proceeded to the place of occurrence. Witnesses along with P.W. 2 and P.W. 3 supported the case of the prosecution in all material particulars. He further stated that he had received information while he was the Officer In-charge, Nasriganj Police Station and proceeded to the place of occurrence after having heard about the same on rumour. His signature is exhibited as (Exhibit-3) and the First Information Report as (Exhibit-4) as also the Inquest Report (Exhibit-5). He stated that he found blood-stains at the place of occurrence which he seized of which he prepared a seizure-list (Exhibit-6). In cross-examination, he explained that since cognizable offence was disclosed in the Sanha he had proceeded to the place of occurrence. He did not find any signs of card playing at the place of occurrence nor blood from the place of occurrence to the temple where the head of the deceased was cut. His attention was drawn to the statement of P.W. 2, Hari Nandan Singh, P.W. 3, Yadunandan Singh, P.W. 5, Ran Vijay Singh from which it appears that they were not eye-witnesses to the actual firing.

10. On going through the evidence of the witnesses, we find that the Informant has stated in Court that the miscreants had covered their faces, under which circumstances, we fail to comprehend as to how any of the

witnesses could identify the accused and name them in the First Information Report. Further, we find it is their story that there was heavy fog on the said date.

11. We, also, find that there is direct evidence that the wife of the deceased, sister-in-law of P.W. 2 and aunt of P.W. 6 had gone to the Police Station along with the Chowkidar, Bahadur Paswan after having come to the place of occurrence and evidently learnt about the same. Under which circumstance, naturally the Court would want to know as to what was the earliest version. This also makes the present Fardbeyan delayed and ante timed in such circumstances.

12 We, also, find that the consistent story of the prosecution is that the accused raised slogans and there is a reference to activity of IPF independent members which creates a doubt in the mind as to whether this act was perpetrated for some other reasons by some other persons. Moreover, none of the card players who alone were witnesses has been produced by the prosecution in support of the evidence of either interested or related witnesses. For these reasons, we are not inclined to rely on the sole testimony of interested witnesses.

13. In such circumstances, we are inclined to allow the Appeals and the judgment of conviction dated 24.01.2012 and sentence dated 01.02.2012 passed by the 5th Additional Sessions Judge, Rohtas at Sasaram in S. Tr. No. 677 of 1994/Tr. No. 161 of 2009 is, hereby, set aside. The Appellants are discharged from the liabilities of their respective bail

bonds. The Appellants, Binod Singh and Pramod Singh who are in custody, shall be released forthwith, if not wanted in any other case.



Vikash/-

(Anjana Prakash, J.)

(Rajendra Kumar Mishra, J.)

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