

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 504 of 2011

Arising out of P.S. Case No. -43 Year- 19971 Thana -Mohania
District- BHABHUA (KAIMUR)

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Ramakant Singh, Son of Ram Dal Singh, Resident of Village-
Darwash, Police Station-Mohania, District-Kaimur at Bhabhua.

.... Appellant/s

Versus

The State of Bihar.

.... Respondent/s

with

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Criminal Appeal (DB) No. 282 of 2011

Arising out of P. S. Case No. -43 Year- 1997 Thana -Mohania
District- BHABHUA (KAIMUR)

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Ram Dal Singh S/o Late Somer Singh Resident of Village- Darwah,
P.S.- Mohania, District- Kaimur at Bhabhua.

.... Appellant/s

Versus

The State of Bihar.

.... Respondent/s

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Appearance :

(In CR. APP (DB) No.504 of 2011)

For the Appellant/s: M/s. Mr.Kamal Nayan Choubey, Sr. Adv.

: Mr. Ashok Kumar Garg, Adv.

: Mr. Ambuj Nayan Choubey, Adv.

: Mr. Yogendra Kumar Dwivedy, Adv.

: Mr. Akhilesh Kumar Pandey, Adv.

: Mr. Animesh Kumar, Adv.

For the Informant : Mr. Rewti Kant Raman, Adv.

For the State : Mr. A. Sharma, APP.

(In CR. APP (DB) No.282 of 2011)

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

For the Informant : Mr. Rewti Kant Raman, Adv.

For the State : Mr. A. Sharma, APP.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

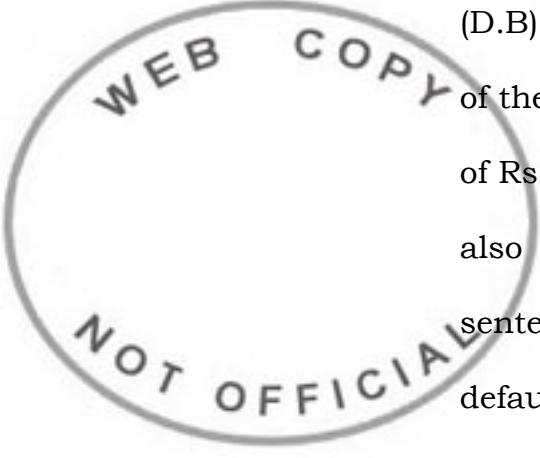
and

**HONOURABLE MR. JUSTICE RAJENDRA KUMAR
MISHRA**

ORAL JUDGMENT

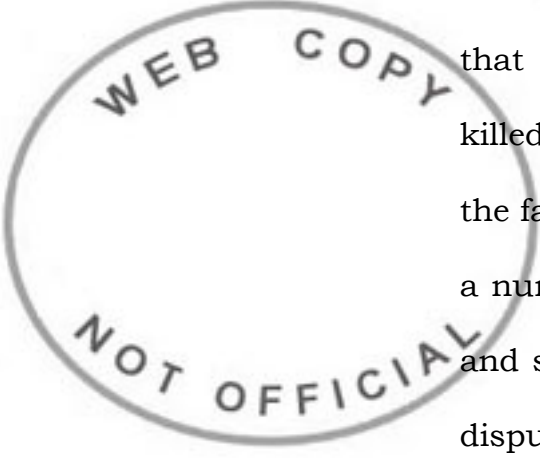
(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 20-05-2016



01. The Appellant, Ramakant Singh of Cr. Appeal (D.B) No. 504 of 2011 has been convicted under Section 302 of the Indian Penal Code and sentenced to R.I. for life and fine of Rs. 15,000/- in default of fine further R.I. for two years and also convicted under Section 27 of the Arms Act and sentenced to R.I. for four years and fine of Rs. 2,000/- and in default of fine further R.I. for one month and the Appellant, Ram Dal Singh of Cr. Appeal (D.B.) No. 282 of 2011 has been convicted under Section 302/34 of the Indian Penal Code and sentenced to R.I. for life and fine of Rs. 15,000/- in default of fine further R.I. for two years by a judgment of conviction and order of sentence dated 16/28.03.2011 by the Additional Sessions Judge, F.T.C.-II, Kaimur at Bhabhua in S.Tr. No. 386 of 1998/65 of 2010 arising out of Mohania P.S. Case No. 43 of 1997.

02. The case of the prosecution according to the Informant (P.W. 6), Jitendra Singh @ Kashi Singh who is the uncle of the deceased is that while he and his uncle deceased, Ramashish Singh at about 6 P.M. were going to his fields for overseeing the operation of cutting crops and reached near the house of Bigan Karmakar and Most. Jagna Kuwar suddenly somebody screamed "Maro Maro" from the back. He turned back and saw the Appellant, Ramakant Singh with a pistol and his father, the Appellant, Ram Dal Singh exhorted his son Appellant, Ramakant Singh to fire then Appellant,



Ramakant Singh fired at the back of his uncle on account of which he fell down. Appellant, Ram Dal Singh then exhorted that another one person had been left who should also be killed. Hearing this, he ran to his house and told the rest of the family members about the occurrence and then along with a number of family members went to the place of occurrence and saw his uncle dead. The cause of occurrence was a land dispute and that a number of criminal cases were going on between the parties. He then went to the Police Station and gave his fardbeyan before the Mohania Police on the same day at 11.30 P.M.

03. During trial the prosecution examined eight witnesses.

04. P.W. 1, Chinta Devi is the niece of the deceased stated that at about 6 P.M. on the date of occurrence she heard a sound of firing from the north so she came home and saw the two Appellants running and enter into their house. Allegedly, Appellant Ramakant Singh had a pistol in his hand. Just then the Informant, Jitendra Singh @ Kashi Singh, her brother came running and stated that Appellant, Ramakant Singh had shot at the deceased so she went to the place where her uncle was lying with firearm injury on the back. Soon thereafter Subhadra Devi, Kusum Rani, Leelawati and Manikraji Devi, P.W. 2 all came to the place of occurrence. She stated that Appellant, Ram Dal Singh was her agnate and

uncle by relation with whom they had land dispute and the deceased had been killed because he was very active.

In cross-examination, she stated that the deceased was not married and was aged about 50-52 years and she did not know as to which land was under litigation. She further stated that in a criminal case instituted against the uncle, by the accused he had been convicted. She stated that on the said lane only their house and that of the accused existed and both of them were in the middle of the village. She explains the area and the location of the houses of Bigan Karmkar and Most. Jagna Kuwar where the occurrence is said to have taken place. She stated that there were about 10-20 houses in the vicinity of the place of occurrence. It was suggested to her that the occurrence had taken place in a manner that the Informant had not disclosed the names of the accused persons but she denied the same.

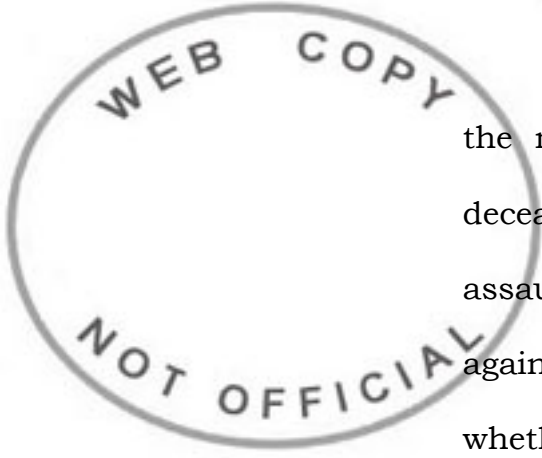
05. P.W. 2, Manikraji Devi is the "Bhabhi" of the deceased who stated that at about 6 P.M. while she was in her courtyard she suddenly heard a sound of firing from the west and when she came out of door she along with Chinta Devi, P.W. 1 saw her son, Kashinath Singh, P.W. 6 come running. He informed that the deceased had been killed by the Appellants, Ramakant Singh and Ram Dal Singh. On hearing this, she went to the place of occurrence and saw the dead body which was still bleeding. The reason for the

occurrence was earlier dispute between the accused and the deceased.

In cross-examination, she denied knowledge about the reason for the dispute between the accused and the deceased. She stated that there had been an incident of assault earlier of which the accused had instituted a case against the deceased and her son but she did not know as to whether it was on account of land dispute or some other reason. There was no other dispute between them. She also conceded that the accused were her agnates. It was suggested to her that in fact no names had been disclosed to her by the Informant and she had falsely implicated the Appellants.

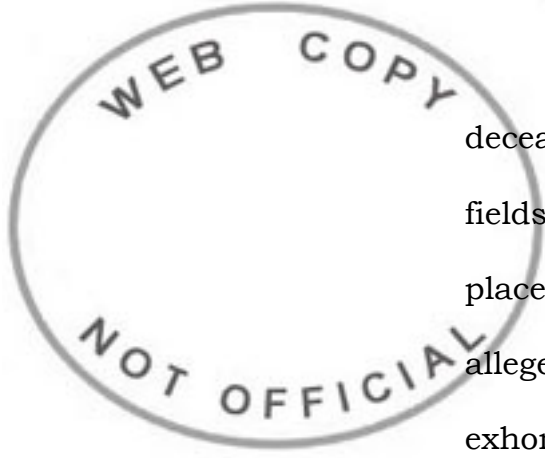
06. P.W. 3, Rani Devi is the cousin daughter-in-law of the deceased who also supported the version of P.W. 1 and P.W. 2 and when her husband, Informant came back he stated that on the exhortation of Appellant, Ram Dal Singh Appellant, Ramakant Singh had fired on account of which he fell down and die. Hearing this, they all went to the place of occurrence and saw the dead body. She also stated the motive was on account of previous litigation also that before the occurrence the accused had assaulted on account of which a case had been instituted against them.

In cross-examination, she stated that since the deceased was a bachelor there was dispute over his land which was going on since long. It was suggested to her also

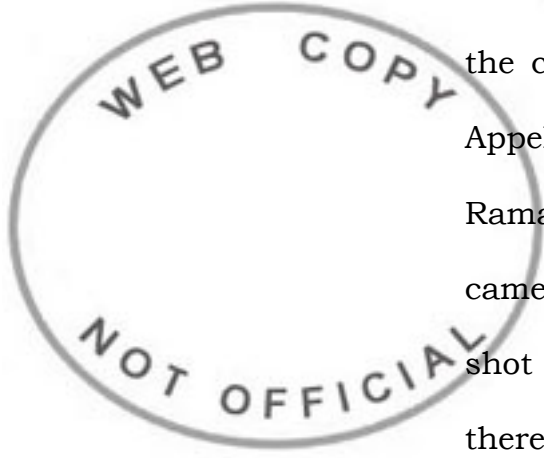


that the Informant had not disclosed the names of the accused persons but she denied the same.

07. P.W. 4, Ramji Singh, the brother of the deceased stated that at about 6 P.M. while he was in the fields he heard a sound of firing and when he reached the place of occurrence he saw his brother dead. He further alleged that the Appellant, Ramakant Singh had fired on exhortation of Appellant, Ram Dal Singh. He was still bleeding when he reached the place of occurrence. The Police collected the blood-stained earth and prepared the seizure-list. He stated that his father, Amir Singh and Sumer Singh were two brothers and the Appellants were the sons of Sumer Singh. He also stated that there had been a partition of the lands since many generations. He denied that a case had been instituted by one Karu Singh because he had forcibly entered his house which case was still going on. He describes the place of occurrence and that it was a heavily populated area. He stated that while he was in the fields he heard sound of firing and the Appellant, Ramakant Singh had killed the deceased. Contrary to the statement of the Informant, he stated that there was no dispute with the accused over the share of the deceased and the accused had instituted a case against the deceased. It was suggested to him as well that Informant had not mentioned the names but accused denied the same.



08. P.W. 5, Neelam Sanjeev Singh is the brother of the Informant who stated that at 6 P.M. while he was feeding the cattle suddenly he heard a sound of firing and the two Appellants running entering their house. Appellant, Ramakant Singh had a pistol in his hand. Kashi Nath Singh came and disclosed that his uncle Ramashish Singh had been shot at by the Appellant, Rama Kant Singh. He then went there and saw his uncle having sustained a fire arm injury. The motive for the occurrence was a land dispute between the parties. He is a signatory to the inquest which he proves as (Exhibit-5). He stated that his own house and that of the accused was adjacent to each other and in front of same there was a lane and the "Baithka" of the accused on the north of the village. He stated that having heard the firing he had gone towards his house and seen the Appellants entering their house and no one else was in the lane in which lane after 2-3 minutes the Informant came there and they all went to the other section of the house and on the way he informed him about the occurrence. He describes the place of occurrence and that there were many lanes and bye-lanes leading to the area. However, when he reached, there no other family was there and only some co-villagers were standing. He denied knowledge about the exact details of criminal and civil litigations between the parties. It was suggested to him that he had not seen the Appellants entering their house and it



was on account of land dispute that they had been falsely implicated.

09. P.W. 6, the Informant, Jitendra Singh @ Kashi Singh stated that on 21.03.1997 at about 6 P.M. he along with the deceased, Ramashish Singh, uncle (the deceased) were going towards the fields he heard hulla of "Maro Maro" in the voice of Appellant, Ram Dal Singh. It is just then Appellant, Ramakant Singh fired at the deceased which hit him on the back and he fell down. The Appellant, Ram Dal Singh then stated that one person had been left at which he ran towards his house and informed his family members. They then returned to the place of occurrence and later on went to the Police Station and gave his fardbeyan which proves his signature on (Exhibit-1/1). He also proves the signature on the Inquest Report as (Exhibit-1/2).

He reported that before the occurrence there were two criminal cases between them and he did not know about another case in which there was a conviction. There was a Title Suit from before the occurrence. He stated that as soon as the deceased had sustained injury he himself started to run and did not meet any one on the way. Then he met his brother, Neelam Sanjeev Singh, P.W. 5. He stated that he had informed his brother to the extent that the Appellant, Ramakant Singh had shot at the deceased. He further stated that several persons had gathered when they reached the

place of occurrence. He stated that his uncle (the deceased) was not at home in the evening as also he had met him in the house when he was leaving for the fields. He further stated that he was about four yards away from the accused persons.

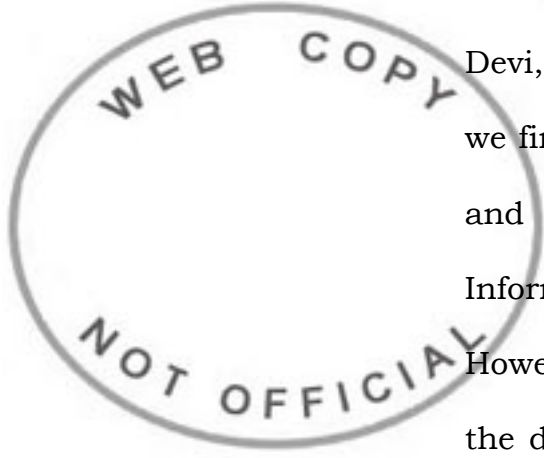
10. P.W. 7, Gupteshwar Mishra is a formal witness who merely brought the Post-mortem Examination Report to the Court and got it exhibited as (Exhibit-2).

11. P.W. 8, Sumari Prasad Mandal was the Officer In-charge posted at Mohania Police Station and had instituted the First Information Report of the instant case and assumed investigation. He inspected the place of occurrence and found it to be a lane. The dead body was lying near the house of Bigan Karmkar and Most. Jagna Kuwar, several houses were situated nearby, he collected the blood-stained earth and prepared a seizure-list which he proves as (Exhibit-3) and the Inquest Report as (Exhibit-3/4). He also proves the formal FIR as (Exhibits-5 & 6). He thereafter examined several witnesses and submitted charge-sheet against the two Appellants.

In cross-examination, he stated that he had not seen any document with regard to the land dispute between the deceased and the Appellants.

12. The defence also examined one witness, Ravindra Prasad to bring on record certain document of lands but it does not seem to have any relevance in the present case.

13. On going through the evidence of the witnesses i.e. P.W. 1, Chinta Devi, P.W. 2, Manikraji Devi, P.W. 3, Rani Devi, P.W. 4, Ramji Singh and P.W. 5, Nilam Sanjeev Singh, we find they were the members of the family of the Informant and have given hearsay version. All of them say that the Informant, P.W. 6 informed them about the occurrence. However, we find that Chinta Devi, P.W. 1 who is the niece of the deceased and the sister of the Informant stated that the Informant only disclosed the complicity of the Appellant, Ramakant Singh. Similar is the statement of P.W. 5, Nilam Sanjeev Singh, the brother of the Informant. They, thus, directly contradict the hearsay account of P.W. 2, Manikraji Devi and P.W. 3, Rani Devi who stated that the Informant had disclosed the complicity of both the Appellants. Ramji Singh, P.W. 4 who is the brother of the deceased does not indicate as to how he was disclosing the complicity of the two Appellants. He was neither an eye-witness nor did he state that the Informant had told him about the occurrence. We, also, notice that the Appellants and the deceased used to live next to each other. P.W. 5, Nilam Sanjeev Singh, the brother of the Informant stated that he had seen the Appellant running and entering into their house and Appellant, Ramakant Singh had a pistol in his hand and it was after 2-3 minutes that the Informant came there and disclosed about the occurrence. This does not fit in the manner of occurrence inasmuch as



Informant has stated that when he was targeted by the accused persons he ran towards his house in which circumstances he should have been the first to reach while being chased by the two Appellants.

14. We, also, find that there is no corroboration from any independent source. Even while the place of occurrence was heavily populated not a single witness has appeared to support the prosecution case in any manner whatsoever.

15. The contents of the Post-mortem Examination Report have also not been brought on record, thus, leaving the Court in doubt as to cause of the death of the deceased. Hence, it would be difficult for us to conclude that the deceased had indeed been killed in the manner disclosed by the sole eye-witness, P.W. 6. The principle of law is well decided as how the evidence of the sole witness has to be received. We would thus naturally require that it was essential for the prosecution to prove all aspects of the case beyond all reasonable doubt. However, we find that even though all along the version of the Informant is that the motive for the occurrence was land dispute but neither the prosecution has given details nor a single chit of paper has been produced to prove motive. On the contrary some witnesses imply there was no dispute between them. We, also, find that there is evidence to show that the Appellants had

instituted a criminal case against the Informant and the deceased in which they had been convicted which goes to suggest that in all probability they had a reason to implicate the Appellants.

16. Under these circumstances, we are inclined to hold that the prosecution has failed to prove its case beyond all reasonable doubt and acquit the Appellants. The Appeals are, thus, allowed and the judgment of conviction and order of sentence dated 16/28.03.2011 by the Additional Sessions Judge, F.T.C.-II, Kaimur at Bhabhua in S.Tr. No. 386 of 1998/65 of 2010 arising out of Mohania P.S. Case No. 43 of 1997is, hereby, set aside. The Appellants are discharged from the liabilities of their bail bonds. The Appellant, Ramakant Singh who is in custody shall be released forthwith, if not wanted in any other case.

(Anjana Prakash, J.)

(Rajendra Kumar Mishra, J.)

Vikash/-

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