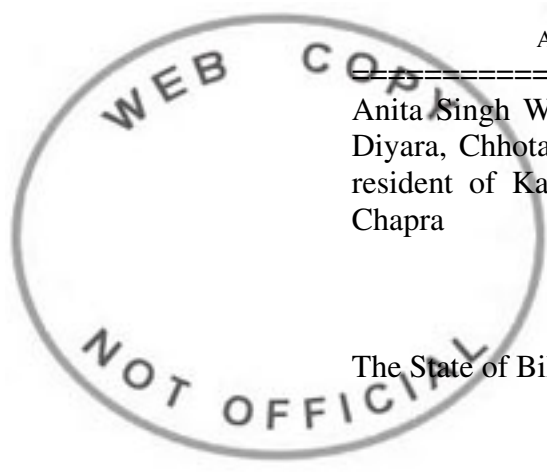




IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.932 of 2009

Arising out of PS.Case No. 228 Year-2005 Thana –Nagar Chapra District- SARAN

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Anita Singh W/o Late Salil @ Salil Singh Permanent Resident of Village- Sitab
Diyara, Chhotaka Supan Tola, P.S.- Rivilganj, Distt.- Saran At Chapra, Presently
resident of Kailash Niwas, Court Devi P.S.- Bhagwan Bazar, Distt.- Saran At
Chapra

The State of Bihar

Versus

.... Appellant/s

.... Respondent/s

--With--

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Criminal Appeal (DB) No. 856 of 2009

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Sheo Kumar Yadav, S/o Sri Rama Shankar Yadav, R/o Moh. 11o, Mal Avenue,
P.S. Hussaingaj, Distgrict – Lucknow (U.P.)

The State of Bihar

Versus

.... Appellant/s

.... Respondent/s

with

=====

Criminal Appeal (DB) No. 943 of 2009

=====

Naveen Kumar Singh, S/o Indu Bhushan Singh, R/o Kashi Bazar, P.S. Bhagwan
Bazar, District – Saran at Chapra.

The State of Bihar

Versus

.... Appellant/s

.... Respondent/s

=====

Appearance :
(In CR. APP (DB) No. 932 of 2009)

For the Appellant : Mr. Shishir Pinaki
Mr. Rakesh Kumar
Mr. D.N. Singh

(In CR. APP (DB) No. 856 of 2009)

For the Appellant : Mr. Fakhruddin Ali Ahmad
Mr. Lubna Naaz
Anjum Perveen

(In CR. APP (DB) No. 943 of 2009)

For the Appellant : Mr. Vindhya Keshri Kumar, Sr. Adv.
Mr. Neeraj Sanidh
For the State (In all Cases) : Mr. A.K. Sinha (A.P.P.)
Mr. S.N Prasad (A.P.P.)
Mr. A. Sharma (A.P.P.)

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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: 08-02-2016

Heard learned counsel for the Appellants and learned counsel appearing on behalf of the Additional Public Prosecutor. It has been stated that the learned counsel for the informant was informed about the above appeals being taken up for hearing, which was duly printed on the Cause List as well but none appears on his behalf.

2. The Original Appellant Salil @ Salil Singh of Cr. Appeal No. 932 of 2009 has been convicted under Section 302/120B of the I.P.C. and sentenced to undergo Rigorous Imprisonment for life whereas Sheo Kumar Yadav of Cr. Appeal No. 856 of 2009 and Naveen Kumar Singh of Cr. Appeal No. 943 of 2009 have been convicted under Section 302/34 of the I.P.C. and sentenced to undergo Rigorous Imprisonment for life and fine of Rs. 25000/-, in default of which one year Rigorous Imprisonment and also three years sentenced to Rigorous

Imprisonment under section 27 of the Arms Act by a Judgment dated 25/27.08.2009 passed by the Second Additional District & Sessions Judge, Saran, Chapra in Sessions Trial No. 176 of 2007/36 of 2009 arising out of Chapra Town P.S. Case No. 228 of 2005.

3. It appears that Appellant Salil @ Salil Singh died after which Anita Singh, his wife, was substituted as the original Appellant was in Government Service and there were still a few years for him to retire before his conviction.

4. The case of the prosecution, according to Md. Abbas (P.W.3), is that on the night of 10.11.2005, while he was at home, he suddenly heard shots of firing at which he went out and saw the deceased having sustained fire arm injuries. He along with one Pawan Kumar (P.W.9) picked him and took him to Sadar Hospital where he was declared dead. He stated that he did not see anyone fighting or running away from the place of occurrence. On this information, a case against unknown was instituted for the murder of deceased Prem Prakash Singh.

5. During trial, the prosecution examined 12 witnesses. P.W.1, Chandra Prakash Singh and P.W.2, Lalti Devi, are brother and wife of the deceased respectively. They stated that they were at home on the date of occurrence. They came to know



about the occurrence from the Television News. Chandra Prakash Singh (P.W.1) called up the deceased on his mobile phone no. 9431439732 but it was switched off. He then proceeded to the Hospital where the dead body was kept and found the mobile missing. A few months latter, they were informed by P.W.5, Jimdar Kumar Rai and P.W.6, Brahm Prakash Rai that they had seen Appellant Naveen Singh firing at the deceased. They then were taken to the Magistrate where the statements were recorded under section 164 Cr. P.C. Lalti Devi (P.W.2) further stated that since the mobile of the deceased was being misused, which information she gave to the Police.

6. P.W. 3, Md. Abbas, is the informant, who once again repeated the factum of the occurrence without taking names of any miscreants. He proves signatures on the fardbeyan as Exhibit 1/1 and on the F.I.R. as Exhibit 1.

7. P.W.4, Chandrama Kumar, is a hearsay witness, who is only on the fact that on the day of shooting, the deceased Prem Prakash Singh had been taken to Sadar Hospital by one Abbas, where he was declared dead.

8. P.W.5, Jimdar Kumar Rai, stated that on 10.11.2005 at about 8/8.15 pm. he had gone to the house of Prem Prakash Singh but he did not find him there. He then went to his



old house near the Co-operative Bank where he was present. He gave him *Prasad* and started to leave so the deceased also came at the gate. While he was going towards his house, he heard some sound at which he saw 5-6 persons fighting with deceased Prem Prakash Singh. Out of them, he identified Appellant, Naveen Singh. He then went there and told them as to what they were doing at which he was threatened on the point of pistol so he went away from there. Then he heard a sound of firing and deceased crying out saying “Naveenba has shot him”. He stated that he did not disclose to anyone about the occurrence on account of fear and did so only after three months to P.W.1 (Chandra Prakash Singh) and P.W.2 (Lalti Devi), the brother and wife of the deceased respectively, after which he went to the Police and got recorded the confessional statement under section 164 Cr. P.C., which he proves as Exhibit-1/2. In cross examination, he stated that he did not inform anyone at the house of the deceased after seeing the occurrence nor did disclose the name of anyone and he reached his house on the very same night. He further stated that at point of time, except the informant Md. Abbas, no one else was present. He explained that he had gone to Rohtak for next three months and only when he returned he gave information to Chandra Prakash Singh (P.W. 1) and Lalti Devi (P.W.2).

9. P.W. 6 Brahm Prakash Rai stated that on 10.11.2005, while he was going towards the East he saw some persons having organized a meeting on the way and threatened him. They were saying Naveen Kumar to fire at deceased at which he did so. He saw the occurrence and left for his home. He stated that he had seen the occurrence in the torch light. In cross-examination, he disclosed that the deceased was his own brother-in-law (husband of his sister). He further stated that on the date of occurrence, he had gone to the house of the deceased alone to deliver the *Chhath Prasad* where his sister (P.W.2) was also present. He was welcomed with Tea and Snacks and in 10/15 minutes he left. He further disclosed that apart from him, there was no outside at the place of occurrence nor did he meet anyone on his way home and admittedly he disclosed this fact about 3 to 4 months after the occurrence. In order to explain non-disclosure, he stated that he had not attended the last rites of the deceased on account of fear. It was later that he went to the house of his brother-in-law and disclosed to his sister that he had witnessed the occurrence and also informed the brother of the deceased (P.W.1). At one point of time in cross-examination, he stated that when he was threatened by accused persons, he had given information to the Sadar Police Station but on the very next day out of

nervousness, he stated this fact. He also stated that he had given his statement under section 164 Cr. P.C. on his own volition and application. He then admitted that he used to talk to family members of Prem Prakash Singh every now and then. He stated that he had not identified Naveen Singh himself and his brother-in-law i.e. the deceased, had disclosed that he was his friend and it is then he learnt his name. In cross-examination, he also disclosed that it was a dark night and he could identify only in the torch light.

10. P.W.7, Dr. Jai Prakash Singh, who performed the Postmortem of the dead body of the deceased and found following injuries :

1. A lacerated wound with charr margin on the back of right lumber region 2" lateral to mid line measuring 1 ½" x ½" x cavity deep.

2. A lacerated wound on posterior surface of lower end of right arm with charr margin of the wound measuring ¼" diameter x muscle deep. This was wound of Utterance of Firearm.

3. A lacerated wound on anterior surface of lower end of right arm measuring ½" diameter x muscle deep.

On dissection of injury no.1, the wound traversed the skin, muscles of posterior abdominal wall, peritoneum, lacerating the right kidney and intestines and a bullet was recovered lodged in the intestine.

On dissection of injury no.2, the wound traversed the skin and muscles on the arm and passed through the anterior surface of arm. Thus, injury no. 2 wound communicated with injury no.3 wound. Injury no. 3 was the wound of exit of firearm. Three to five hours of examination.

Opinion - The cause of death is hemorrhage and shock caused by firearm.

11. P.W.8, Pravin Kumar, is a formal witness, who proves his signature on the Inquest Report as Exhibit-3 whereas P.W.9, Pawan Kumar, even though a seizure witness stated that he did not sign on the seizure list.

12. P.W.10., Vinay Prakash Tiwary, is the Magistrate, who recorded the statement of Jimdar Kumar Rai (P.W.5) and Brahm Prakash Rai (P.W.6). He stated that he did not give any certificate at his hand of Exhibit 4 and 4/1 that these witnesses had given their statements voluntarily.



13. P.W. 11, Shiv Shankar Rajak, is an Officer-In-Charge of Chapra Town Police Station, who stated that he had made an investigation in regard to Airtel Mobile No. 9953160993 and found the holder to be one Sheo Kumar Yadav (Appellant). He also found out that there was no Sheo Kumar Yadav living at the place in Lucknow where he was stated and then he came to Chapra and thereafter, he found out Rama Shankar Yadav, father of Appellant Sheo Kumar Yadav, who disclosed that the mobile phone was given to Binod Singh which was in his use. The address had wrongly been given because Binod Singh did not have a Ration Card that he was living at Luckhnow.

14. P.W. 12 Ramakant Karn, is the Investigating Officer of the case, who stated that on the date of occurrence, he received information and has also the O.D. Slip from Sadar Hospital, Chapra and then recorded the fardbeyan, instituted the First Information Report as Exhibit -6 and also the Inquest Report Exhibit-7. He stated that the place of occurrence was outside the medical shop, which was purportedly owned by the deceased from where he seized blood stained earth. Later on, he was informed that mobile no. 9431439732 belonged to the deceased and was still in use so he took out the print out. It was learnt that it was in constant conversation with two mobile phone numbers i.e.



9431272845 and 9935160993. However, in cross-examination, he stated that Exhibit-8, which was calls print out, had not been certified by any authority by the B.S.N.L. He also stated that he had got recorded the statements of P.W.5, Jimdar Kumar Rai and P.W. 6, Brahm Prakash Rai on 09.03.2006 under section 164 Cr. P.C.

15. On going through the evidence, we find that Appellants have not been named in the F.I.R. The name of Appellant, Naveen Singh, was disclosed on 09.03.2006 i.e. after about four months of the occurrence by P.W.5 and P.W.6 in order to test the evidence of these witnesses in regard to their presence at the place of occurrence, we find from the evidence of P.W.5, Jimdar Kumar Rai, that he had not seen anyone, except Md. Abbas that is the informant at the place of occurrence. P.W.6 Brahm Prakash Rai ruled out the presence of P.W.5, Jimdar Kumar Rai, by saying that he had not met anyone when he was walking down on the road. P.W.6, Brahm Prakash Rai, has also stated in paragraph no.8 that when he went to the house of the deceased he met his sister (P.W.2), who had treated him with Tea and snacks but P.W., Lalti Devi, herself stated that she was not there on the date of occurrence and she had learnt about the occurrence from Television News while at Digha. Both these witnesses have not



given any plausible explanation as to why they had not disclosed the complicity of the Appellant Naveen Singh at the earliest instance. The conduct of P.W.6, Brahm Prakash Rai, who happens to be own brother-in-law of the deceased, is even more suspicious and not natural, on account of which we are not inclined to rely on the eye witnesses P.W.5, Jimdar Kumar Rai and P.W.6, Brahm Prakash Rai.

16. As per original Appellant Salil @ Salil Singh, we find from the evidence on record that apart from the statement that a phone call had been made from the mobile phone of the deceased for about 240 second to his land line too, seven days after the occurrence, there is no further circumstance to connect him with occurrence.

17. As far the Appellant Sheo Kumar Yadav, the circumstance is almost similar that the mobile phone i.e. 9935160993, which stood in his name, was in conversation with the mobile phone of the deceased. We find that Investigating Officer has conceded that there was no certification of the officials of the Company, as required under Section 65(B) of the Evidence Act, which makes this circumstance unworthy of being treated evidence.

18. For the aforesaid reasons, the Appeals are

allowed. The Judgment of conviction and Order of sentence dated 25/27.08.2009 passed by the 2rd Additional District and Sessions Judge, Saran at Chapra in connection with Sessions Trial No. 176 of 2007/36 of 2009 is hereby set aside.

(Anjana Prakash, J.)

(Rajendra Kumar Mishra, J.)

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