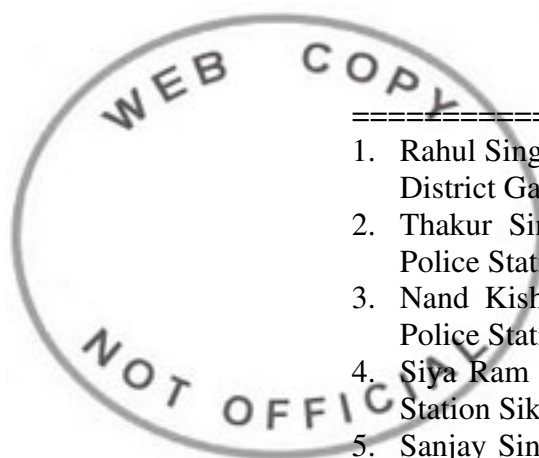




IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.101 of 2010

Arising Out of PS.Case No.64 Year- 1998 Thana -null District- BUXAR

- 1. Rahul Singh son of Ganga Singh, resident of village and Police Station Ganmar, District Gazipur, U.P.
- 2. Thakur Singh son of late Ramashray Singh, resident of village Majhariya, Police Station Buxar (Industrial), District Buxar
- 3. Nand Kishore Singh son of late Budhan Singh, resident of village Bhadar, Police Station Sikraul, District Buxar
- 4. Siya Ram Singh son of late Budhan Singh, resident of village Bhadar, Police Station Sikraul, District Buxar
- 5. Sanjay Singh son of Ganga Singh, resident of village & P.S. Gahmar, District Gazipur U.P.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

Criminal Appeal (DB) No. 172 of 2010

Arising Out of PS.Case No.64 Year- 1998 Thana -null District- BUXAR

- 1. Ram Suresh Singh son of Late Budhan Singh
- 2. Lal Babu Singh son of Siya Ram Singh, both resident of village Bhadar, P.S.- Sikraul, Distt.- Buxar

.... Appellant/s

Versus

The State Of Bihar

.... Respondent/s

With

Criminal Appeal (DB) No. 1075 of 2013

Arising Out of PS.Case No. 64 Year- 1998 Thana -SIKRAUL District- BUXAR

Ram Narayan Singh S/O Late Parmeshwar Singh, Resident Of Village- Bhadar, P.S. Sikraul, District- Buxar.

.... Appellant/s

Versus

The State Of Bihar

.... Respondent/s

Appearance :

(In CR. APP (DB) No.101 of 2010 & CR. APP (DB) No.172 of 2010)

For the Appellant/s : Dr. Manoj Kumar, Advocate
Mrs. Sweety Sinha, Advocate
For the Informant : Mr. Binod Kumar Singh, Advocate
Mr. Satyendra Prasad Singh, Advocate
For the Respondent/s : Mr. Ashwani Kumar Sinha, APP
Mr. S.C. Mishra, APP

(In CR. APP (DB) No.1075 of 2013)

For the Appellant/s : Mr. Rakesh Singh, Advocate
For the Respondent/s : Mr. S.N. Prasad, 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: 21-06-2016

Appellants Rahul Singh, Thakur Singh, Nand Kishore Singh, Siya Ram Singh, Sanjay Singh of Cr. Appeal (DB) No.101 of 2010 and Appellants Ram Suresh Singh, Lal Babu Singh of Cr. Appeal (DB) No.172 of 2010 have been convicted and sentenced to R.I. for life and fine of Rs.10,000/- under Section 302/34 I.P.C., in default of which R.I. for another one year, R.I. for seven years and fine of Rs.5000/- under Section 307/34 I.P.C., in default of which R.I. for another six months, R.I. for four years and fine of Rs.3000/- u/s. 27 of the Arms Act, in default of which R.I. for four months and R.I. for two years under Sections 148 and 379 I.P.C. respectively by judgment dated 10/18.12.2009 passed by the Additional Sessions Judge, Fast Track Court IVth, Buxar in Sessions Trial No.144 of 1999. Appellant Ram Narayan Singh of Cr. Appeal (DB) No.1075 of



2013 has been convicted and sentenced to R.I. for life and fine of Rs.10,000/- under Section 302/149 I.P.C., in default of which S.I. for another one year, R.I. for three years under Section 148 I.P.C. and R.I. for six months and fine of Rs.1000/- under Section 27 of the Arms Act, in default of which S.I. for another six months by judgment dated 21/24.9.2013 passed by the Additional Sessions Judge, Fast Track Court IVth, Buxar in Sessions Trial No.115 of 2002.

2. The case of the Prosecution according to Srikant Singh is that on the night of 4.12.1998 he had gone to look after his boring since on Thursday his boring had been stolen, at about 11 P.M. 10-12 persons variously armed were seen crossing by. When they saw the miscreants they started to run. However, the accused persons told them that they were from armed forces and asked them to surrender. Anil Singh, who was with him, started to fire with his licensee gun, but they were asked to put up their hands. They then came close and shot dead Rakesh Singh and Gopal Singh. He identified co-villagers Parmeshwar Singh and his son Appellant Ram Narayan Singh as one of the miscreants. They then ran towards the village Bhadar and came back along with rest of the villagers and saw Anil Singh injured and the Rakesh Singh and Gopal Singh dead nearby. The accused persons had taken away the licensee gun of Anil Singh. This information was given to the police on the next day at 8 A.M. near Dubouli.

3. It appears that whereas only Appellant Ram Narayan Singh was named in the First Information Report subsequently supplementary charge sheet was submitted against a number of persons including the present Appellants of Criminal Appeal (DB) No.101 of 2010 and Criminal Appeal (DB) No.172 of 2010, who faced separate trials.

4. Whereas Appellants Rahul Singh, Thakur Singh, Lal Babu Singh, Nand Kishore Singh, Ram Suresh Singh, Siya Ram Singh, Sanjay Singh faced trial in Sessions Trial No.144 of 1999, Appellant Ram Narayan Singh faced trial in Sessions Trial No.115 of 2002.

5. It appears that some of the witnesses were common in both the Sessions Trials inasmuch as P.W.1 Sunil Kumar Singh was examined as P.W.1 in the subsequent trial. P.W.2 Ram Pravesh Singh was examined as P.W.6. P.W.3 Satyendra Narayan Singh was not examined in the subsequent trial. P.W.4 Santosh Kumar Singh was examined as P.W.5. P.W.5 Srinkant Singh, the Informant, was examined as P.W.2. P.W.6 Anil Kumar Singh was examined as P.W.4. P.W.7 Ram Nath Singh was examined as P.W.3. P.W.8 Raman Singh @ Timil Singh was not examined in the subsequent trial nor was P.W.9 Hare Ram Singh and P.W.10 Laxman Singh. P.W.11 Dr. Hari Narayan Pandey was examined as P.W.7 in the subsequent

trial, whereas P.W.12 Professor T.K. Laheri was not examined in the subsequent trial and P.W.13 Shabhabuddin Khan, the Investigating Officer, was examined as P.W.8 in the subsequent trial.

6. On behalf of the defence, in Sessions Trial No.144 of 1999 Baban Singh (D.W.1) and Kumbh Nath D.W.2) Singh were examined. D.W.2 is on the point that no names were disclosed by any of the witnesses when the villagers reached the place of occurrence.

7. In Sessions Trial No.115 of 2002 Appellant Ram Narayan Singh examined Chhathu Singh (D.W.1), Sunil Kumar Singh (D.W.2), Paras Nath Singh (D.W.3) and Bhikhari Singh (D.W.4) on the point that Appellant Ram Narayan Singh was not in the village on the date of occurrence or that there was previous enmity between him and the prosecution.

8. The defence of the Appellant is not of denial of the factum of occurrence but merely to the point of their complicity which is absurd as will be evident from the evidence of the eye-witnesses.

9. On the other hand, the Counsel for the Informant submits that even though the Informant has named two other accused persons and not named any of the Appellants in his First Information Report, however since the injured witness Anil Singh named all the Appellants, their conviction deserves to be maintained.

10. Before we proceed we wish to point out that whereas

Appellants Rahul Singh and Sanjay Singh belong to village Gahmar, Appellant Thakur Singh belongs to village Majhariya and Appellants Lal Babu Singh, Nand Kishore Singh, Ram Suresh Singh, Siya Ram Singh and Ram Narayan Singh belong to the same village as the Informant i.e. Bhadar.

11. After having gone through the evidence on record and heard the respective Counsels, we are of the opinion that the witnesses are not reliable on the point of complicity of the Appellants, for which reason we are inclined to grant them benefit of doubt. We accordingly discuss the evidence below.

12. P.W.1 Sunil Kumar Singh, who was an eye witness, stated in Sessions Trial No.144 of 1999 that while he along with Srikant Singh (P.W.5), Anil Singh (P.W.6), the two deceased Rakesh Singh and Gopal Singh, Timil Singh (P.W.8) were together in the orchard, 10-15 persons came firing and abusing them. He identified three of them, out of which Nand Bihari Singh was his co-villager whereas Appellants Sanjay Singh and Rahul Singh belonged to village Gahmar. He then hid in a ditch and saw the accused firing at the two deceased and Anil Singh. He ran towards the village and when returned he saw two deceased Gopal Singh and Rakesh Singh dead. Injured Anil Singh was taken to Buxar Hospital, from there to B.H.U.

From cross examination it appears that he is a close

relative of Anil Singh and he was examined on the same day at Banaras. He stated that he spoke to the Informant Srikant Singh after about 1-1½ hours but not about the occurrence and he did not disclose the names of any of the accused persons to him.

He conceded that the Appellants Sanjay Singh and Rahul Singh were nephews of the same village and there was previous enmity between them.

In the subsequent trial after stated about having identified Nand Bihari Singh and Appellants Sanjay Singh and Rahul Singh he disclosed that the names of Parmeshwar Singh, Ram Narayan Singh, Thakur Singh, Siyaram Singh, Ram Suresh Singh, Loha Singh alias Nand Kishore Singh, Lalbabu Singh were mentioned by Anil Singh. In cross examination he once again explained that he was a close relative of the two deceased and the Informant. He also stated that the house of Accused Parmeshwar Singh i.e. the father of Ram Narayan Singh was about 200-250 yards away from his house and in between were houses of many other persons.

It is thus notable that this witness has stated about identifying three accused persons including the Appellants Sanjay Singh and Rahul Singh but their names did not find mention in the First Information Report even though he is said to have met the Informant, who was his close relative before the institution of the fard

beyan. We also find that Anil Singh witness has not mentioned about disclosing the names of rest of the accused persons to any one including the present witness and, therefore, the hearsay evidence of this witness on the point of identification of rest of the accused persons has to be necessarily rejected.

13. P.W.2 Ram Pravesh Singh is a formal witness merely on the point of seizure of some articles. Similarly in the next trial also he was a formal witness and proved his signature on the seizure list marked as Exhibit 1 to 1/3.

14. P.W.3 Satyendra Narayan Singh is the brother of deceased Gopal Singh, who stated that on the date of occurrence he along with the Informant, Timil Singh (P.W.8), Sunil Singh, Anil Singh, the two deceased Gopal Singh, Rakesh Singh had gone to search their pumping set which had been stolen. In course of which when they reached the orchard of village Dubouli 10-15 persons variously armed and rest in a police uniform came towards them. He identified. He identified Appellant Lal Babu Singh (mentioned as Ram Babu Singh) and Suresh Singh. He then ran towards the village and came back with 50-60 persons and saw Anil Singh injured and his gun having been snatched away. They also found Gopal Singh and Rakesh Singh lying dead under the trees. The Choukidar was called, who sent the injured to the Hospital.



In cross examination he specifically stated that he was not an eye witness to the actual murder and that when he reached along with the villagers after 20-25 minutes all the accused had fled away. It was suggested to him that in fact Appellant Sanjay Singh, who was the son-in-law of Ram Suresh Singh, had instituted a case against him and his brother but he denied the same. He then conceded that he was on bail in one case in which Appellants Ram Babu Singh and Ram Suresh Singh were witnesses. It was also suggested to him that in fact they were aggrieved that Appellant Sanjay Singh had got lands from his maternal grand parents and it was for this reason that he was falsely implicated. At the end he conceded that he was on bail in the case instituted by Appellant Sanjay Singh, who belonged to village Gahmar.

Notably this witness has not been examined in the next trial. We find from his evidence that even though he has named Appellants Lal Babu Singh and Ram Suresh Singh but he has conceded that there was a reason for him to implicate the two since they and Appellant Sanjay Singh were either witnesses or the Informant of the case against him.

15. P.W.4 Santosh Kumar Singh has been declared hostile in both the Sessions Trials.

16. P.W.5 Srikant Singh, the Informant, has stated that



on the previous day of the occurrence his boring machine had been stolen, so he along with Anil Singh (injured), the two deceased Gopal Singh and Rakesh Singh, Satyendra Singh (P.W.3), Sunil Singh (P.W.1) and Raman Singh (P.W.8) had gone looking for it. Anil Singh had a licensee double barrel gun. He then saw 10-12 persons, who came in a police uniform and fired at them. Anil Singh also fired. He identified co-villager Parmeshwar Singh and his son Appellant Ram Narayan Singh. He then mentioned that they ran away and when they returned they saw two deceased Gopal Singh and Rakesh Singh dead and Anil Singh having sustained injuries. The Daroga jee came and recorded his fard beyan which he proves as Exhibit 2 upon which Satyendra singh (P.W.3) had also signed.

In cross examination he described the place of occurrence being an orchard and that he returned to the spot of the occurrence only the next morning with several co-villagers at about 8 A.M. when the Daroga Ji came. This witness was examined as P.W.2 in the subsequent trial but repeated the complicity of only two accused persons, namely, Parmeshwar Singh and his son Appellant Ram Narayan Singh. He denied knowledge that Chhathu Singh and Raghubar Singh had instituted a criminal case upon Anil Singh, Ramnath Singh, Kapil Singh, Sidhi Singh and Gobardhan Singh or that Parmeshwar Singh had also instituted a case against the aforesaid

persons except Anil Singh.

We thus find from his evidence that he identifies only two accused persons who did not face trial and specifically admits that Satyendra Singh (P.W.3) was a witness to the fard beyan but there is direct contradiction in the evidence of the two witnesses on the point of identification of the accused including the Appellants. Whereas Satyendra Singh names Appellants Lal Babu Singh, Suresh Singh (Ram Suresh Singh) the Informant named Appellant Ram Narayan Singh and does not name Appellants Ram Suresh Singh and Lal Babu Singh even though they lived in the adjoining village.

17. P.W.6 Anil Kumar Singh is the injured witness, who stated that he along with the two deceased Rakesh Singh, Gopal Singh and Sunil Singh, Srikant Singh, Satyendra Narayan singh and Timil Singh had gone to the orchard looking for the boring machine which had been stolen one day before. It was then that 10-15 persons came variously armed in police uniform, out of which he identified Appellants Siyaram Singh, Ram Suresh Singh, Nand Kishore, Singh, Lalbabu Singh, Accused Nand Bihari Singh, Appellant Ram Narayan Singh, his father Parmeshwar Singh alias Mukhiya, Appellants Thakur Singh, Sanjay Singh and Rahul Singh. He further stated that all the accused persons surrounded all of them and thereafter Appellant Ram Suresh Singh fired at him on his chest whereas Lal

Babu Singh fired at Rakesh Singh and Appellant Ram Narayan Singh fired at Gopal Singh. Ram Narayan Singh fired at him second time. While they wanted to fire again the villagers came and started firing at the miscreants so they all ran away. He wrapped his wound with a towel and became unconscious and was removed to Dumraon and thereafter to Buxar and then to B.H.U. for treatment.

In cross examination he explained that Appellant Sanjay Singh and Rahul Singh were brothers and Appellant Sanjay Singh was the son-in-law of Appellant Ram Suresh Singh. He further stated in cross examination that he had sustained injury first of all, thereafter he had fallen down and it was only then that the two deceased had been shot at. Also that Appellant Sanjay Singh of village Gahmar had instituted a case against him, the two deceased Rakesh Singh and Gopal Singh, P.W.3 and others in which Appellants Lal Babu Singh, Siya Ram Singh and Ram Suresh Singh were witnesses. He also conceded that he was examined by the police at Banaras. He stated that he was examined the first time at B.H.U. This witness was examined as P.W.4 in the subsequent trial wherein he also named Appellants Siyaram Singh, Ram Suresh Singh, Nand Kishore singh, Lal Babu Singh, Accused Nand Bihari Singh, Parmeshwar Singh, Appellants Ram Narayan Singh, Sanjay Singh, Rahul Singh and Thakur Singh. He also stated that his signature had been taken on his

statement and that he was examined five days after the occurrence.

18. We thus find that this injured witness has named all the Appellants including the two accused persons named in the First Information Report. We further find that till the time the fard beyan was recorded the injured was very much present at the place of occurrence where the statement was being recorded and there is no evidence that he had become unconscious which would lead as to believe that it was because of mental condition that the names of rest of the persons were not mentioned in the fard beyan on his disclosure. We further find that this witness was examined at least five days after the occurrence which fact is corroborated by the Investigating Officer, who stated that he had examined Anil Singh on 9.12.1998. In such circumstances, a reasonable doubt is created in regard to the complicity of the Appellants not named in the First Information Report.

19. P.W.7 Ram Nath Singh has deposed as a hearsay witness and that the Informant had disclosed that Appellants Ram Suresh, Siya Ram, Lal Babu, Nand Kishore, Thakur Singh, Sanjay, Rahul and Accused Nand Bihari were involved in the occurrence. However, his attention was drawn to his earlier statement that he had not mentioned these names, which fact is corroborated even by the Investigating Officer. Surprisingly he does not mention that the

Informant had disclosed the names of Ram Narayan Singh and Parmeshwar Singh as being involved in the occurrence, which is in direct contradiction to the statement of the Informant given in the fard beyan. This witness was examined as P.W.3 in the subsequent trial wherein he mentioned that the Informant had disclosed the complicity of Parmeshwar Singh and his son Appellant Ram Narayan Singh, who were mentioned in the First Information Report. In such circumstances, evidently this witness is not fit to be relied upon.

20. P.W.8 Raman Singh @ Timil Singh and P.W.9 Hare Ram Singh have been declared hostile, whereas P.W.10 Laxman Singh is formal on the point of recovery of pumping set.

21. P.W.11 Dr. Hari Narain Pandey conducted the postmortem of the two deceased, namely, Gopal Singh and Rakesh Singh and proved the postmortem reports as Exhibit 4 and 4A

The following injuries were found on the person of Gopal Singh :

Ante mortem injuries :

- (i) Lacerated wound about ½ inch diameter with inverted margin leading to chest cavity situated on upper part of back 5" above scapular angle about in the middle of scapula which is wound of entry.
- (ii) Lacerated wound about 1 inch in diameter everted margin profusely bleeding situated ½"

above right nipple i.e. wound exit.

Skull – Brain and meninges – NAD

Chest – thoracic cavity full of blood, both lungs lacerated, chest vessels from heart lacerated.

Abdomen – Stomach contain semi digested food.

Liver – pale, spleen – pale, kidney – pale, Gut – NAD bladder contains small amount of urine.

Cause of injury – by fire arm injury

Cause of death – Haemorrhage and shock due to above mentioned injuries.

Time since death – within 24 hours.

The following injuries were found on the person of
Rakesh Singh :

External examination :

(i) Eyes and mouth partially opened, fair complexion, rigor mortis present in all four limbs. Blood stains and both nostrils average body was pale, aged about 20 years.

Ante mortem injuries :

- (i) Lacerated wound about ½ inch diameter situated right side of back 2 inch away of mid line in lower thoracic region. This is wound of entry (into of chest cavity) slight blackening of margin.
- (ii) Averted slit blackening lacerated wound about 1” in diameter left side of chest 1 inch medial and slightly above of the nipple.

On dissection :

Skull – Brain and meninges – NAD

Chest – floral cavity full of blood.
Lung – lacerated wound middle low of lung.
Heart – lacerated near grade vessels.
Chambers – empty.
Abdomen contains semi digested.
Liver, spleen, kidney – bladder almost empty.
Cause of injury – by fire arm injury
Cause of death – Haemorrhage and shock due to
said injuries.
Time since death – within 24 hours.

He is on the same point in the subsequent trial and
examined as P.W.7.

22. P.W.12 Professor T.K. Laheri was posted at B.H.U.
Varanashi on 5.12.1998 and had examined the injured Anil Kumar
Singh and found the following injuries on his person :

- (i) Entry wound on the right chest wall 1½ cm by
the side of nipple.
- (ii) Another wound on the back of scapula in the
ninth inter coastal space which was bleeding.

He proves the injury report as Exhibit 5. He was not
examined in the subsequent trial.

23. P.W.13 Shahabuddin Khan is the Investigating
Officer, who was examined as P.W.8 in the subsequent trial. He stated
that on 5.12.1998 while he had recorded the fard beyan of Satyendra
Singh and proves the same as Exhibit 2. He prepared the inquest



report which is Exhibit 3 series and the seizure of blood stained earth etc which is Exhibit 3/D. He inspected the place of occurrence and found signs of numerous firings in the orchard. He stated that the place of occurrence was about ½ kilometer from village Madar and had examined injured Anil Singh on 9.12.1998. He specifically stated that P.W.7 Ram Nath Singh had not disclosed the names of Appellants Ram Suresh Singh, Siya Ram Singh, Nand Kishore Singh, Sanjay Singh, Rahul Singh and Accused Nand Bihari Singh. In the subsequent trial also this witness has more or less given similar evidence.

24. On going through the evidence as discussed above, we find that Sunil Kumar Singh, Satyendra Narayan Singh, Srikant Singh (informant), Anil Singh (injured), Ram Nath Singh (hearsay witness) have given divergent names in regard to the involvement of accused persons, who had allegedly committed this occurrence. Admittedly all the Appellants were well known to all the witnesses and, therefore, there was no reason as to why there was no consistency in their evidence while naming the accused persons. Even though Appellant Ram Narayan Singh along with his father late Rameshwar Singh have been named in the First Information Report but we find that his name was not disclosed by Sunil Kumar Singh or Satyendra Narayan Singh, who claim to be eye witnesses.

25. In such circumstances, giving benefit of doubt to all the Appellants, all the appeals are allowed and the Appellants Rahul Singh, Thakur Singh, Nand Kishore Singh, Siya Ram Singh, Sanjay Singh of Cr. Appeal (DB) No.101 of 2010 and Appellants Ram Suresh Singh of Cr. Appeal (DB) No.172 of 2010 and Appellant Ram Narayan Singh of Cr. Appeal (DB) No.1075 of 2013, who are on bail, are acquitted from the charges levelled against them and discharged from the liabilities of their respective bail bonds. Appellant Lal Babu Singh of Cr. Appeal (DB) No.172 of 2010, who is in custody, be released forthwith, if not wanted in any other case.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

Narendra/-

AFR/NAFR	NAFR
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