

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.182 of 2010

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Ajay Singh S/o Paramhans Singh R/o Vill.- Gular Bagga, P.S.- Mairwan, Distt.- Siwan

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

--With--

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Criminal Appeal (DB) No. 86 of 2010

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1. Suraj Singh, S/o Shri Ramanandan Singh
2. Krishna Singh, S/o Shri Bhola Singh
Both R/o Vill. Gular Bagga P.S. Mairwa, District – Siwan.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (DB) No.182 of 2010)

For the Appellant/s : Mr. Krishna Prasad Singh, Sr. Adv.
Mrs. Meena Singh

For the Respondent/s : Mr. Ashwini Kr. Sinha, A.P.P.
(In CR. APP (DB) No.86 of 2010)

For the Appellant/s : Mr. Udit Narayan Singh, Adv.
For Respondent : Mr. Ashwini Kr. Sinha, 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: 02-05-2016

Heard learned counsel for the Appellants and

learned counsel appearing on behalf of the Additional Public

Prosecutor.

2. All the Appellants have been convicted by a



Judgment of conviction and order of sentence dated 09/14.12.2009 passed by the 1st Additional Sessions Judge, Siwan in Sessions Trial No. 277 of 2009 under section 302/34 I.P.C. and sentenced to undergo Rigorous Imprisonment for life and fine of Rs. 20,000/-each and in default of which, six months Rigorous Imprisonment. Further Appellant Ajay Singh has been convicted under section 27 of the Arms Act and sentenced to undergo Rigorous Imprisonment for three years with a fine of Rs. 2000/-, in default of which, rigorous imprisonment for one month.

3. The case of the prosecution, according to P.W. 2 Kamal Chauhan, father of the deceased is that on 22.12.2006 at about 6:30 P.M. he had an altercation at the shop of Lakshmi Chauhan with Appellant Ajay Singh and thereafter, both went home. At about 10:00 P.M. while he was lying down at his Bathan, suddenly the accused persons namely Ajay Singh, Suraj Singh and Krishna Singh came there and asked about the Informant. His son, deceased Shyam Bihari Chauhan also appeared and asked the Appellants as to why they were looking for his father then co-accused Rama Shankar Singh (not sent up for trial) ordered to kill him. While the rest of the Appellants caught hold of the deceased, Appellant Ajay Singh shot him at the forehead from a close distance. His brother Chhangur Chauhan



(P.W. 3) also told him that about 10-15 minutes back, the Appellants and some other unknown persons had come to the house variously armed looking for him and having information that he was at his *Bathan*, they left for the same. He himself followed the accused persons. The Informant further disclosed that after the occurrence took place, he lit the torch and identified the accused persons. This information was purportedly given at 11.30 pm. before the Officer-In-Charge (P.W.9), Mairwa Police Station, Siwan.

We also find that the First Information Report was instituted the very next morning at 7.30 am. and reached the Court on the same day.

4. During trial, the prosecution examined 9 witnesses. P.W. 1 Jaishree Chauhan is the son of the deceased and had deposed as eye witness. He had not been named in the First Information Report as a witness. He stated that on the night of occurrence, while he was sitting around the fire along with the deceased Shyam Bihari Chauhan, Krishna Singh (not examined), Rupia Devi, his mother (not examined) whereas his father, the Informant Kamal Chauhan was lying in a cot nearby the present Appellants and Rama Shankar Singh came along with 3-4 unknown persons. He could not identify the unknown persons



because they had all covered their faces. They came and asked for whereabouts of the Informant Kamal Chauhan then the deceased asked as to what the matter was, at which co-accused Rama Shankar Singh ordered to kill him. Then the Appellants Suraj Singh, Krishna Singh and Rama Shankar Singh caught hold of the deceased Shyam Bihari Chauhan, the Appellant Ajay Singh shot him on his forehead. Thereafter, all the accused persons ran away. He stated that the occurrence was witnessed by his uncle, Chhangur Chauhan (P.W.3), Ramanugrah (not examined) Surendra Kumar Chauhan (P.W.5) and Om Prakash Chauhan (P.W. 7), who had followed the accused persons.

In cross examination, he explained that the Informant Kamal Chauhan was his father whereas Chhangur Chauhan (P.W. 3) and Om Prakash Chauhan (P.W. 7) were his uncles. In cross examination, interestingly he stated that he had met the investigating Officer at 6:00 am. in the morning and also that in the middle of night, a Police Force had arrived and taken away the dead body to the Police Station and also Darogaji came in the morning and examined first of all the Mukhiya and Sarpanch.

We shall discuss the importance of this evidence later, since we find that the circumstances of the case have given a

reasonable doubt to its veracity.

His attention was drawn to the earlier statement that in fact, he had gone to the place of occurrence on hearing *hulla*. He denied the suggestion but the Investigating Officer corroborated this fact. There is nothing else which is of particular importance in his evidence.

5. However, we take note of the fact that even though his presence is not stated in the First Information Report, he has deposed as being present there in the statement before the Court and has also stated that the accused shot dead the deceased, even though they had come backing for the Informant who was lying well within their sight. According to him, they asked for the whereabouts of the Informant but suddenly shot dead the deceased. We are unable to understand as to why the accused persons targeted the deceased while the informant himself was very much present there. We also take note of the fact that this witness has stated that while the unknown persons had covered their faces, known persons had not done so, which is unexplainable.

6. P.W. 2 Kamal Chauhan is the Informant, who changed his version before the Court and now stated that on the same day at about 6:00 pm. he had an altercation with Appellant



Ajay Singh at the shop of Lakshman Chauhan whereafter he had gone to sleep at his *Pokhra*, where his *Bathan* was situated. He stated that his deceased son Shyam Bihari Chauhan, Krishnan Singh (not examined), Jaishree Chauhan (P.W.1) and his wife Rupia Devi (not examined) were also there nearby around a fire. He was sitting in his open *palani* on a cot, which was not bounded from any side. At about 10:00 pm. the present Appellants along with Ramashankar Singh came with 4-5 unknown persons and they asked as to where he was. His elder son, the deceased, Shaym Bihari Chauhan asked what the matter was, but the accused Rama Shankar Singh ordered the others to catch hold of him and shoot him dead. At which two of the Appellants did so and the Appellant Ajay Singh fired at him on his forehead on account of which he died. He stated that his brother Chhangur Chauhan (P.W.3), Om Prakash Chauhan (P.W. 7) and 5-6 persons had witnessed the occurrence, who had followed the accused persons and that P.W.3 Chhangur Chauhan allegedly disclosed that a little while before the occurrence the accused persons had come to inquire about the Informant. He further stated that Darogaji had come about to two and three half hours later came to his *Bathan* and he gave his *fardbeyan* and the Inquest Report was prepared.



In cross-examination, he stated the particulars about his village and the Mukhiya and denied any knowledge that accused Krishan Singh and Suraj Singh had taken part in election campaign on behalf of the Mukhiya. He denied that Chhangur Chauhan (P.W. 3) had ever contested the Panchayat Election. He further stated that independent witnesses had also come after the occurrence, but he had not disclosed about the occurrence to them and that his village was about half kilometer away from the *Bathan*.

His attention was drawn to the earlier statement that he had not stated about the presence of Jaishree Chauhan (P.W. 1) the deceased, Shyam Bihari Chauhan, Krishna Singh and his wife Rupia Devi, as also that they were all sitting around the fire while he was sitting on a cot. He had also not stated that P.W. 3 Chhangur Chauhan had disclosed that the Informant was at the *Pokhra* at which they had left for *Pokhra* and he had followed them.

7. He admitted that all the witnesses belonged to the same family and that he had not informed anyone before giving his statement to the Police. He further stated that the dead body kept lying till about 12:30. whereafter it was taken away by the Police to the Police Station. He along with rest of the family

members had also gone to the Police Station at night. He asserted that the accused persons were looking him for killing, as also conceded that there was no enmity between the accused persons and the deceased and in fact, they had been implicated on account of altercation in the evening.

8. We find from the evidence of the Informant that he has tried to prove his case by planting P.W.1 as an eye witness at the place of occurrence. We also find that he stated that the accused persons were persistent in looking for him and they had even gone to his house to make inquiry about him and then came to the *Bathan* where he was lying on the cot. Hence, in such circumstances, we find it highly unbelievable that even though he himself was the target of the accused persons, no harm was caused to him even when he was around when his son was killed.

The further suspicious circumstance is that according to him, the dead body was taken to the Police Station at night itself. The importance of this, we shall discuss later.

9. P.W. 3 Chhangur Chauhan stated that on the night of occurrence, while he was playing transistor, the Appellants along with Rama Shankar Singh and 3-4 unknown persons came variously armed, inquired about his brother Kamal Chauhan at which he replied that he was at *Bathan* so they left while he

followed them and saw the occurrence, as stated by the other witnesses. He stated that the Inquest Report was prepared in his presence and he had signed the same.

In cross-examination, he contradicted the Informant by admitting that he had contested the election against one Adalat Chauhan and the Appellants Krishan Singh and Suraj Singh used to campaign in the elections for the rival candidates. Even the wife of the deceased had contested elections.

10. Several questions were targeted at him about political equation in village from which it appears that the prosecution was politically active. We also find that he said that Darogaji had come about one and half hours after the occurrence. He had given his statement and Inquest Report was prepared right after. He had then taken the dead body to the Police Station. His younger brother Om Prakash (P.W.7), Informant (Kamal Chauhan) had gone with them. They had reached the Police Station at about 1:30 at night and then at about 4:00 am. had left for Siwan Hospital for getting the Postmortem conducted.

His attention was drawn to the earlier statement that he had not stated that accused persons had come looking for the deceased and in fact, he had stated that he had seen the Appellant Ajay Singh fleeing away along with his companions after having



committed the act and when he reached place of occurrence, he had seen the deceased dead. Most of the statement that he had given in the Court was contradicted by the Investigating Officer in regard to the inquiries about the Informant by the accused persons. He further stated that Devendra Chauhan belongs to another *Tolla* but he was his own caste man and it was from his mobile information was given to the Police Station. He tried to evade that he had not disclosed to Devendra Chauhan about the occurrence which appears highly unlikely and by possible only if he himself had not seen the occurrence.

11. He further stated that the dead body was lying only for about two hours and when the Police arrived it was handed over to them. Taking the dead body, he, his younger brother and informant had gone to the Police Station. It was suggested to him that in fact, the deceased was a wayward person and had been killed for other reasons.

12. We find from his evidence that he is an Inquest Report witness and even he has stated the dead body was taken to the Police Station in the middle of the night.

We also note that he has developed the case in Court to the extent of being an eye witness to the entire occurrence.

13. P.W. 4 Dukhi Chauhan has been declared hostile.

His attention was drawn to the earlier statement that in fact, he had not seen the accused persons and he is a hearsay witness.

14. P.W. 5 Surendra Kumar Chauhan stated that on the night of the occurrence, he went to the place of occurrence and saw the deceased having sustained the fire arm injury on his head. Everyone was screaming that the present Appellants had killed him. However, he did not identify anyone.

In cross-examination, he stated that his house was about half kilometer away from *Bathan* and P.W. 3 Chhangur Chauhan, P.W. 7 Om Prakash Chauhan had also gone along with him on hearing *hulla* about murder of the deceased. He further stated that it was a dark night and extremely cold as also that Kanhaiya Chauhan, Subhash Chauhan (P.W. 6), Rama Shanker Chauhan (not examined) came right after them. He further stated that when they reached there, the Informant was crying saying that the accused persons had killed his son and run away and about 100 persons gathered there and that the Police had come next day about 6:00-7:00 am. and taken the dead body for Postmortem.

In cross-examination, he further stated that he was a nephew of the Informant as also that when he had reached, the rest of the family members of the deceased namely Chhangur

Chauhan (P.W. 3), Om Prakash Chauhan (P.W. 7) Ramdurey Chauhan (not examined), mother of the Informant Kamal Chauhan, brothers Jaishree Chauhan (P.W. 1) and Krishna Singh (not examined) also came and in his presence, they tried to call the Police at night itself.

From his statement it appears that witnesses including the Informant had arrived only after the occurrence and the village was situated about half kilometer away. It also appears from his evidence that the Police had come only the next day between 6:00 to 7:00 am. which corroborates the statement of P.W. 1 Jaishree Chauhan, who had stated that Darogaji had come at 6:00 am. in the morning.

15. P.W. 6 Subhash Chauhan has been declared hostile. His attention was drawn to the earlier statement that in fact, he was hearsay witness.

16. P.W. 7 Om Prakash Chauhan is uncle of the deceased, who stated about the occurrence but it is not clear from the statement as to whether he had witnessed the same. He further stated that the Police had come two hours later and recorded the *fardbeyan* as also prepared the Inquest Report marked as Exhibit-1, in which he and Jhangur Chauhan (P.W. 3) had signed.

In cross-examination, he stated that the Police had

come at 11:30 pm. and he did not know as and when the Inquest Report was prepared. However, he had accompanied the Darogaji to the Police Station where he had signed one document along with P.W. 3 Chhangur Chauhan at the Police Station. According to him, even the Informant had signed the document at the Police Station itself.

His attention was drawn to the earlier statement that he had not given an eye witness account. His house was half kilometer away and both he and Informant live in the same house and he had allegedly accompanied the dead body along with the Informant and P.W. 3 as also the Chaukidar for postmortem and they reached Siwan Sadar Hospital sometime in the morning. He again asserted that he was signatory to one document at the Police Station.

17. P.W. 8 Dr. Sunil Kumar Singh, who conducted the Postmortem of the deceased and found the following Antemortem injuries :

External Injury :

- 1. Lacerated wound with charred and inverted margin (wound of entry) 1" diameter circular deep to cavity over left temporal region.*
- 2. Lacerated wound with averted margin 1 ½" x ½"*

x cavity deep over right side of the forehead. Injury No.1 and Injury No.2 communicate with each other.

On Dissection - *Blood and clot in the sub scalp region of skull with fracture of left temporal bone, left parietal and right temporal bone of skull. Blood and clots in cranial cavity laceration of brain matter. Heart – right chamber contains small amount of blood. Left chamber heart found empty.*

Stomach – contains semidigested food material.

Bladder – empty.

Other viscera of the body were found pale and intact.

Cause of death – Due to shock and hemorrhage due to above mentioned Antemortem injury caused by firearm.

There is nothing in his cross-examination. He proves the Postmortem Report as Exhibit-1.

18. P.W. 9 Manoj Kumar, Officer-in-Charge, who stated that he had received information about the murder of Shyam Bihari Chauhan recorded the fardbeyan of Kamal Chauhan which was witnessed by P.W. 2 Kamal Chauhan and P.W. 3 Chhangur Chauhan, which he proves as Exhibit- 2. He

also proves the formal First Information Report as Exhibit-3. He stated that he had prepared the Inquest Report at the place of occurrence and examined the same.

His attention was drawn to the statement of P.W. 4 Dukhi Chauhan and P.W. 6 Subhash Chauhan that they had supported the occurrence by way of hearsay witnesses. He asserted that he had sent the dead body for Postmortem after preparation of the Inquest Report at the place of occurrence itself, on which Chhangur Chauhan (P.W. 3) and Om Prakash Chauhan (P.W. 7) had signed.

19. Considering his cross-examination, it appears that most of the witnesses have been discredited as being eye witnesses. He also further did not find any objective signs to show presence of the witnesses sitting around the fire to corroborate their presence. There was, thus, no objective evidence in support of the prosecution case.

20. On going through the evidence of witnesses, we find certain suspicious circumstances, which lead us to give benefit of doubt to the Appellants. They are enumerated below :

1. We find it difficult to believe the prosecution story that the deceased was targeted even when informant was reportedly present there.



This leads us to the conclusion that the Informant was not present at the place of occurrence and hence, his eye-witness account is not trustworthy. When the edifice on which the prosecution story is based itself becomes shaky, the Court has to be very cautious in receiving the evidence of rest of the witnesses.

2. As to why the assailants who were well known had not covered their faces while some unknown had covered the faces as per the evidence of P.W.1 is also unexplainable.
3. The recording of the *fardbeyan* at 11:30 pm. appears highly doubtful in view of the evidence of P.W. 2 who stated that the Police force had arrived in middle of the night and taken the dead body whereas the Darogaji had come next morning. Most of the witnesses have stated about the Police coming the next morning.
4. The evidence that the dead body was recovered at night by the Police Force is

contrary to the statement of the Investigating Officer, who asserted that he had prepared the Inquest Report at the place of occurrence at 6:00 am., the next morning. He does not explain as to why he had prepared the Inquest the next morning when he had recorded the *fardbeyan* at 11:30 pm. of the previous day.

5. We feel the reason why the witnesses and Investigating Officer have tried to create a story that the Inquest Report was prepared at the place of occurrence itself is merely to fit in with the prosecution case that the *fardbeyan* was given at the earliest instance at night whereas the circumstances suggest otherwise.
6. The two witnesses of the Inquest Report as well as P.W. 1 have asserted that the dead body had been taken to the Police Station in the middle of the night where the document i.e. the Inquest Report was prepared. So there was no question of it being prepared the next morning at 6:00 am. at the place of occurrence.

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7. These contradictions cannot be lightly brushed aside and have to be noted adversely against the authenticity of the documents.
 8. Further the Investigating Officer did not find any signs of the cot where the informant was allegedly sitting/lying or any remnants fire, so the presence of alleged eye witnesses could be confirmed.
 9. We also find witnesses themselves have inter se contradicted each other on material particulars and it appears from their evidence that they had all arrived at the place of occurrence only after hearing *hulla* about the same and none of the witnesses in fact had witnessed the killing.

21. For the aforesaid reasons and discussion all along the judgment, we are inclined to give benefit of doubt to the Appellants. Hence, these Appeals are allowed. The Judgment of conviction and Order of sentence dated 09/14.12.2009 passed against the Appellants by the 1st Additional Sessions Judge, Siwan in Sessions Trial No. 277 of 2009 is hereby set aside. They are acquitted of the charges. The Appellants Suraj Singh and

Krishna Singh are on bail. Hence, they are discharged from the liabilities of their bail bonds. The Appellant Ajay Singh is in jail custody, therefore, he is directed to be released forthwith, if not wanted in any other case.

(Anjana Prakash, J.)

(Rajendra Kumar Mishra, J.)

Shailendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	