

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.530 of 2011

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1. Nawal Singh S/o Late Sheoram Singh R/o Vill. Bhagwatpur, P.S. Kashichak, Distt. Nawadah
 2. Bisheshwar Singh S/o Late Sheoram Singh R/o Vill. Bhagwatpur, P.S. Kashichak, Distt. Nawadah
 3. Navlesh Singh S/o Ram Sagar Singh R/o Vill. Bhagwatpur, P.S. Kashichak, Distt. Nawadah

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

----with----

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Criminal Appeal (DB) No. 632 of 2011

Arvind Singh, S/o Late Masudan Singh, R/o Vill. Bhagwatpur, P.S. Kashi Chak, District – Nawada.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Yogesh Chandra Verma, Sr. Adv. Mr. Devendra Prasad Singh, Mr Uma Kumari
For the Informant	:	Mr. Sunil Kumar Mr. Jitendra Kumar
For the State	:	Mr. A.K. Sinha, A.P.P. Mr. S.C. Mishra, 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: 25-05-2016

Heard learned counsel for the Appellants and learned
counsel appearing on behalf of the Additional Public Prosecutor as
well as learned counsel for the Informant.



2. All the above named Appellants have been convicted under section 302 I.P.C. read with section 34 I.P.C. and sentenced to undergo Rigorous Imprisonment for life and fine of Rs. 5,000/- each. Further Appellant Arvind Singh has been sentenced to undergo Rigorous Imprisonment for 5 years and fine of Rs. 5,000/- for the offence under section 27 of the Arms Act and further all the above Appellants have been convicted one month Simple Imprisonment for the offence under section 341 I.P.C., in default of which, 6 months further Rigorous Imprisonment each of the Appellants.

3. The case of the prosecution, according to Sabhapati Singh (P.W.5) is that on 05.06.2007 Pappu Singh, nephew of the Informant, had gone to the shop of Tuntun Singh to buy a cigarette at about 08.00 P.M. just then the present Appellants and one Laddu Singh surrounded him and thereafter, Appellant Arvind Singh fired at his neck on account of which he fell down. The Appellant Navlesh Singh said that he is still alive on which Appellants Bisheshwar Singh and Nawal Singh dragged the deceased towards their house and accused Laddu Singh fired at the deceased on his chest on account of which he died. Chandramauli Sharma (P.W.2), Dinesh Singh (P.W.8), Ramashray Singh (P.W.1), Narayan Singh (not examined) and Ramcharitra Singh (not examined) also saw the occurrence. He alleged that his nephew Pappu Singh had been killed

on account of previous dispute. This information was given at the village of the occurrence.

4. The prosecution examined altogether 12 witnesses.

5. Learned counsel for the Appellants submits that the initial version given by P.W.8 Dinesh Singh has been suppressed by the prosecution, thus, leaving a reasonable doubt upon the veracity of the belated statement. Moreover, there is no repetition of firing on the Appellant Arvind Singh, who purportedly came with sole intention of killing the deceased and hence, he can be punished only under Section 307 of the I.P.C. Further, submission is that the place of occurrence has not been proved, inasmuch as there is no trail of blood or dragging found from the first place to the second place of occurrence.

6. On the contrary, the counsel for the Informant submits that the Police has well proved his case by consistent evidence, both ocular and objective. Therefore, the conviction of the Appellants should be maintained. Further submission is that all the Appellants had the common intention of committing death of the deceased for which they had surrounded, shot, dragged and shot him again. Only six months back, the deceased had an altercation with Laddu Singh, a close family member of the present Appellants and therefore, there is no scope of acquittal of any of the Appellants.

7. To appreciate the aforesaid arguments, we would like to discuss the evidences of the 12 witnesses examined on behalf of the prosecution.

8. P.W.1 Ramashray Singh, who is the uncle of the deceased, stated that on 05.06.2007 at about 8.00 P.M., he was standing at the *Gumti* of Tuntun Singh, when he saw the Appellants and accused Laddu Singh surrounding the deceased Pappu Singh and Appellant Arvind Singh fired at him on the neck. Thereafter, Appellant Navlesh Singh declared that the deceased was still alive and started to drag him towards his house along with Appellant Bisheshwar Singh. They brought the dead body to the field of Sabhapati Singh, where the accused Laddu Singh fired once again, which hit him on the chest.

In cross-examination, he explained that the deceased was his own nephew. He further submitted that deceased Pappu Singh and the accused had altercation and minor assault over irrigation and it is on account of this reason that there was tension between them. He clarified that as soon as the accused came, they fired and also threatened him when he started screaming. The distance between the first and second place of occurrence was about 60 steps and once again, he said that the deceased was dragged to the next place of occurrence and blood had fallen on the way. He saw

accused Laddu Singh firing at the deceased in the torch light, since it was a dark night. He conceded that the deceased had been convicted in a case of murder. It was suggested to him that, in fact, the deceased Pappu Singh was a veteran criminal and had been killed for other reasons and the accused had been made an scape goat.

9. P.W.2 Chandramauli Sharma stated that he was coming from Mushahari Tola at about 8.00 P.M. on the date of occurrence and reached the *Gumti* of Tuntun Singh, where a light was burning. Binod Singh (P.W.7) was sitting in the *Gumti*, whereas deceased Pappu Singh had come to buy a cigarette, just then all the Appellants and accused Laddu Singh came and surrounded him and then Appellant Arbind Singh fired at him due to which he fell down, then Navlesh Singh said that the deceased was still alive and he should be dragged, at this Appellants Navlesh Singh and Bisheshwar Singh dragged the deceased and took him to the field of Sabhapati Singh, where Laddu Singh fired on his chest, which he saw in torch light. He stated that there was some dispute over irrigation between accused Laddu Singh and deceased Pappu Singh. He explained the relationship between himself and Sabhapati Singh (P.W.5). He also explained the relationship of Ramashray Singh (P.W.1) and P.W.8 Dinesh Singh. It, thus, appears that the Informant Sabhapati Singh, he himself, Ramashray Singh (P.W.1) and Dinesh Singh (P.W.8) all

belonged to the same family. He stated that at that point of time about 7 to 8 persons were present at the *Gumti* and all of them had a torch. He was also threatened by the miscreants. He clarified that the accused persons had caught hold of the deceased by his legs and hands and carried and then again he was dragged at a distance of about 20 to 25 feet. He stated that Pappu Singh had been convicted in a case of murder.

His attention was drawn to the details in the manner of occurrence.

10. P.W.3 Ramanuj Singh stated that on the date of occurrence, while he was at home, suddenly he heard sound of firing and went to the place of occurrence and saw the deceased dead. P.W.2 Chandramauli Sharma, P.W.5 Sabhapati Singh, P.W.1 Ramashray Singh and Bhuneshwar Singh (not examined) were also present there. Firstly, he said that he learned that accused Laddu Singh, Sabhapati Singh (P.W.5), Ramahray Singh (P.W.1) and Ramcharitra Singh had killed the deceased then he said that P.W.2 Chandramauli Sharma told him that accused Laddu Singh shot at the deceased. He then stated that two months back Pappu Singh had a dispute over irrigation of fields, but he did not clarify as to with whom the dispute had taken place. He is a signatory to the seizure list, which he proves as Exhibit-1. He stated that deceased Pappu

Singh was his nephew.

11. P.W.4 Kuleshwar Singh stated that he was also standing at the *Gumti* of Tuntun Singh, where the deceased Pappu Singh was buying a cigarette just then the Appellant and Laddu Singh arrived and Arvind Singh shot at the deceased Pappu Singh then Appellants Navlesh Singh and Bisheshwar Singh dragged Pappu Singh towards their house where accused Laddu Singh fired once again on his chest due to which he died. The reason for the occurrence was land dispute.

In cross-examination, he stated that the dead body was dragged and taken to the next place of occurrence, where 10 to 15 persons were present. He surprisingly stated that there was no enmity between the parties and about six months back a minor dispute had taken place between them over irrigation.

12. P.W.5 Sabhapati Singh was also at the *Gumti* of Tuntun Singh on the night of the occurrence, when he saw the Appellants and accused Laddu Singh having surrounded the deceased and then Arbind Singh having fired at him, when he fell down, then Navlesh Singh said that the deceased was still alive and should be taken towards his house at this Appellants Navlesh Singh and Bisheshwar Singh dragged the deceased and took him towards his fields, where Laddu Singh fired on his chest. He proves his signature

on the *fardbeyan*, which is marked as Exhibit-2.

In cross-examination, he stated that deceased Pappu Singh was his nephew. He further stated that while dragging blood had oozed on the ground and none of the family members had tried to intervene in the transaction. He further stated that he had gone to the Police Station at 8.15 P.M. along with Ramashray Singh (P.W.1) and Shailendra. Thereafter, the Police came at 11.00 P.M. His statement was not recorded at the Police Station not did he know about any entry having been made in the Register. He confirmed that the deceased had been sentenced to life imprisonment in a case of murder. It was suggested to him that the deceased had been killed in another manner and the accused had falsely been implicated for reasons of earlier dispute.

13. P.W.6 Renu Devi is the wife of the deceased, who stated that her husband had gone to buy cigarette, when she heard *hulla* that the present Appellants and Laddu Singh had killed her husband. Hearing this, she ran to the place of occurrence. She clarified that she had not seen the occurrence and she had seen the dead body in the fields and the dead body had fallen in a ditch and was mud-splattered. As for motive, she stated about six months back there was a minor brush with the accused, but there was no case in this regard.



14. P.W.7 Binod Singh is the shopkeeper, who stated that on the date of occurrence, the deceased had come to buy cigarette then the Appellants came there and surrounded the deceased. Appellant Arvind Singh then fired at the right side of the neck at which, he fell down. Appellant Navlesh Singh then said that the deceased was still alive. At this Appellant Navlesh Singh and Biseshwar Singh dragged him towards the field of Sabhapati Singh, where accused Laddu Singh shot him a second time at which he died. He stated that there must be about 10 to 15 persons at the place of occurrence along with the present witnesses. He stated that none of the accused persons had caught hold of the deceased. He further confirmed that none of the witnesses tried to intervene in the matter and the deceased was partly dragged and partly lifted to the next place of occurrence.

15. P.W.8 Dinesh Singh also supports the prosecution case and stated that while he was standing at the *Gumti* of Tuntun Singh, the Appellant came to buy a cigarette from Binod Singh (P.W.7), when all the accused persons surrounded him and then Arvind Singh fired on the neck of the deceased, on account of which he fell down dead. Appellant Navlesh Singh said the deceased had not died and dragged the dead body to some distance where accused Laddu Singh fired once again at the deceased. He explained that he

was at the *Gumti* since 10 to 20 minutes back and that the deceased was his nephew and no one intervened in the transaction, even though all of them had a screamed. He confirmed that the accused persons were not on litigating terms with the deceased.

16. P.W.9 Haribans Ram was posted at Kashichak Police Station as Officer-in-Charge and had instituted the First Information Report. He proves the First Information Report as Exhibit-4 as also the paragraphs no. 05 to 128 of the case diary as Exhibit-5 and two charge sheets were submitted in the case. However, he was a formal witness, since he did not conduct any part of the investigation.

17. P.W.10 Dr. Jeetendra Kumar performed Post-mortem of the deceased and found the following injuries on his person :

(i) Lacerated wound on the right side of neck 2" above right clavicle 1"x 1" margin inverted wound of entry.

(ii) Lacerated wound on the neck at posterior side of sternocleidomastoid muscle at the middle. 2 ½" x 2" x muscle deep. Margin averted (wound of exit). Injury Nos. (i) and (ii) communicating with each other.

(iii) Lacerated wound on the left side of back 6" below the angle of scapula 1" x 1" x cavity deep, margin inverted (wound of entry).

On dissection of neck –

Muscle around the wound of neck found lacerated along

its track. Abdomen – found full of blood. Spleen, intestine and liver found lacerated. A metallic body resembling a bullet recovered from the right tube of liver which is properly labeled and sealed. Both side of heart found empty.

He proves the Post-mortem marked as Ext.6.

18. P.W.11 Dilip Kumar was posted at Sahpur O.P. He went to the place of occurrence and had recorded the *fardbeyan* of the Informant, which he proves as Exhibit-7 and the *Panchanama* marked as Exhibit-8 and seizure-list as Exhibit-9. He assumed the investigation and examined the witnesses as also inspected the place of occurrence. According to him, the first place of occurrence was near the west of *Gumti* of Tuntun Singh and in the east was the houses of Shailendra Thakur and Mahendra Thakur were located. He found blood having fallen there. About 200 yards north was the house of the deceased and 25 yards east of it was the dead body. The distance between first and the second place of occurrence was about 59 yards (180 feet) and at the second place of occurrence, plenty of blood was found and it was the field of the uncle of the deceased, Sabhapati Singh. He denied having instituted any *Sanha* in regard to the present occurrence.

In cross-examination, he further detailed the timing of examination of the witnesses and preparation of the documents. He

stated that he did not examine any of the witnesses, who lived on the boundary of the two places of occurrence.

His attention was drawn to the statements of P.W.1, P.W.2, P.W.3, P.W.4, P.W.7 and P.W.8, where they tried to develop the case in regard to direct complicity of the Appellant Arvind Singh and the fact of dragging/lifting of the injured/deceased.

19. P.W.12 Santosh Kumar is a hearsay witness. He stated that on the date of occurrence, he heard the sound of firing at which he came out and then he learnt that the present Appellants and accused Laddu Singh had committed murder of the deceased. There is nothing, which is of note, in his cross-examination.

20. On behalf of the defence, D.W.1 Chandu Manjhi and D.W.2 Chandan Jha have been examined. D.W. 1 stated that the deceased was a criminal and there was no information as to how, he had been killed. Nobody had learnt about the manner of the occurrence.

21. D.W.2 Chandan Jha also stated likewise that the accused had been falsely implicated.

22. On going through the evidence discussed above, we find that on merits the case of the Appellant Arvind Singh stands on a slightly different footing than that rest of the Appellants. Whereas there is consistent evidence that Appellant Arvind Singh fired at the



deceased causing the first injury after which Laddu Singh fired and caused the death and such corroborative injuries were found by the Dr. Jeetendra Kumar (P.W. 10), we find that the evidence against rest of the Appellants is slightly inconsistent. In order to appreciate the inconsistency, we will have to keep in mind that all the witnesses except P.W. 4 Kuleshwar Singh and P.W. 7 Binod Singh belonged to the same family. In the independent evidence of P.W. 4 Kuleshwar Singh, there is no mention of the present Appellants having surrounded the deceased. No doubt, there is consistent evidence that the present Appellants had dragged the deceased to a distance at about 180 feet but the Investigating Officer did not find any marks of dragging nor trail of blood between the first and second place of occurrence. The Doctor also did not find any scratches on the back or person of the deceased, which shows that in all probability, the present Appellants, Nawal Singh, Bisheshwar Singh and Navlesh Singh in Cr. Appeal (DB) No. 530 of 2011 have been implicated in the occurrence only because they belonged to the family of the accused Laddu Singh.

23. We further find that it is the case of the prosecution itself that the deceased and the Appellants were not on active litigating terms and only a minor brush had taken place between Laddu Singh and the deceased about six months back, which was not

repeated.

24. In such circumstances, we think it proper to acquit the Appellants of Cr. Appeal (DB) No. 530 of 2011 for giving them benefit of doubt.

25. In the result, the Cr. Appeal (DB) No. 530 of 2011 is allowed. The Judgment of conviction and Order of sentence dated 11/20.05.2011 passed against the Appellants Nawal Singh, Bisheshwar Singh and Navlesh Singh by the Additional Sessions Judge, F.T.C.-III, Nawadah is set aside. They are acquitted of the charges and they are on bail, therefore, discharged from the liabilities of their bail bonds.

26. So far as Appellant Arvind Singh (Cr. Appeal (DB) No. 632 of 2011) is concerned, finding no merit, the same is dismissed.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

Shailendra/Manish/-

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