

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Appeal (DB) No.389 of 2009**

Arising Out of PS.Case No. -0 Year- null Thana -null District- MUZAFFARPUR

Nandu Bhagat @ Nand Kumar Singh son of late Punai Bhagat @ Ram Lochan Singh, resident of village Ragho Majhali, Police Station Bochan in the district of Muzaffarpur

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

**Criminal Appeal (DB) No. 370 of 2009**

Arising Out of PS.Case No. -0 Year- null Thana -null District- MUZAFFARPUR

1. Raju Bhagat son of late Punai Bhagat @ Ram Lochan Singh
2. Chandra Shekhar Bhagat son of Sri Raju Bhagat
3. Ram Singar Bhagat son of Sri Babaji Bhagat
4. Yogi Mahto son of Munilal Mahto, all residents of village Ragho Majhali, Police Station Bochan in the District of Muzaffarpur

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

**Appearance :**

(In CR. APP (DB) No.389 of 2009 & CR. APP (DB) No.370 of 2009)

For the Appellant/s : Mr. Akhileshwar Prasad Singh, Sr. Advocate  
Mr. Amrit Anunay, Advocate  
Mrs. Anita Kumari Singh, Advocate

For the Respondent/s : Mr. A.K. Sinha, APP

**CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH**

**and**

**HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA**

**ORAL JUDGMENT**

**(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)**

**Date: 11-05-2016**

Appellant Nandu Bhagat @ Nand Kumar Singh of

Criminal Appeal (DB) No.389 of 2009 has been convicted and

sentenced to R.I. for life and fine of Rs.10,000/- under Section 302



I.P.C., in default of which simple imprisonment for another two months, R.I. for three years under Section 148 I.P.C., R.I. for three years under Section 27 of the Arms Act and Appellants Raju Bhagat and Chandra Shekhar Bhagat of Criminal Appeal (DB) No.370 of 2009 have been convicted and sentenced to R.I. for life and fine of Rs.5000/- each under Section 302/149 I.P.C., in default of which simple imprisonment for another one month each, R.I. for three years under Section 148 I.P.C. and Appellants Ram Singar Bhagat and Yogi Mahto of Criminal Appeal (DB) No.370 of 2009 have been convicted and sentenced to R.I. for 3 years under Section 148 I.P.C., by judgment dated 31.3.2009 and 2.4.2009 respectively passed by the Additional Sessions Judge, F.T.C. No.V, Muzaffarpur in Sessions Trial No.205 of 2007.

2. The case of the Informant Babu Lal Paswan (P.W.3) is that on 25.08.2016 he had gone to his fields along with his son Sunil Paswan (P.W.8) and his father deceased Jagdeo Paswan. At around 1 P.M. six accused persons including the present Appellants came there and told them to stop from ploughing the fields, so they told the tractor driver which had come to plough the other fields not to plough their fields. After this they worked for a while and when they were returning home suddenly the Appellants Nandu Bhagat @ Anand Kumar Singh, Raju Bhagat and Chandra Shekhar Bhagat came with



arms and surrounded his father. Thereafter Appellant Nandu Bhagat @ Anand Kumar Singh fired at on the left side of his chest, on account of which he fell down there and died. He then saw accused Ramnath Sahni, Appellant Yogi Mahto (now dead) and Appellant Ram Singar Bhatgat coming from that side saying that the work was done and, therefore, they should run away. He sent his son Sunil Paswan (P.W.8) to the Police Station to give information at which they came to his house. On arrival of the police he gave the fard beyan. He alleged that it was on account of land dispute that his father had been killed by the accused persons.

3. During trial the prosecution examined eight witnesses. P.W.1 Lal Babu Rai did not support the case of the prosecution and has been declared hostile.

4. P.W.2 Lala Paswan claims to be an eye witness, who stated that on the date of occurrence at about 3 P.M. he suddenly heard a hulla and when he ran to the fields of Bechu Sahni he saw Jagdeo Paswan, Babu Lal Paswan (P.W.3) and his son Sunil Paswan (P.W.8) coming from that side. Ramnath Sahni, Nandu Bhagat, Raju Bhagat, Chandra Shekhar Bhagat, Ram Singar Bhagat and Yogi Bhagat were exhorting to kill the deceased, at which Appellant Nandu Bhagat fired at Jagdeo Paswan while others had surrounded him, on account of which he fell down dead. When the police came he



recorded the fard beyan of P.W.3 upon which he also signed. He proves the same as Exhibit 3. He described the location of the disputed land and that he himself was working in the field of Tuntun Babu where several other persons were also present. In cross examination he admitted that he is the nephew of the deceased meaning thereby he is the brother of the deceased.

His attention was drawn to his earlier statements. On reading of which we find that they are of very minor nature. Certain queries were made about some cases instituted in the year 2002 by the father of Appellant Nandu Bhagat and also a case instituted by Ramnath. He stated that after his uncle had fallen he, his brother (P.W.3), Sunil Paswan (P.W.8) had ran there and sat along with them for about 1-1½ hours till such time as the police came.

5. P.W.3 Babu Lal Paswan is the Informant, who stated that he along with his son (P.W.8) and father deceased had gone to oversee the operations of ploughing of their lands by a tractor, at which the accused persons including the Appellants came and stopped them from doing so. They then left. When the Informant, his father, and son were returning and reached the field of Bechu Sahni suddenly Ramnath Sahni along with six persons came and surrounded his father. On the exhortation of Ramnath Sahni, Appellant Nandu Bhagat is said to have fired at the deceased twice, on account of which he fell



down dead. The rest of the accused persons ran saying that the work was done. He described the land dispute between himself and the accused persons and that his father must have been 90 years of age and used to walk with help of stick and that the lands of Ramnath Sahni and Appellant Nandu Bhagat had been partitioned from that of his father. He also explained the genesis of the occurrence and why the dispute had arisen on account of the land.

In cross examination he asserted that two firings had been resorted to, which had hit the deceased. He stated that his son Sunil Paswan (P.W.8) was about 25-30 laggies behind him and he had been told to inform the police and he brought the police along at night. He stated that there was no criminal case against the family members of Appellant Nandu Bhagat and his father. He stated that there were two criminal cases against him and his father. His attention was drawn to the earlier statement but none of them appear to be very significant.

6. P.W.4 Uma Paswan is a hearsay witness, who stated that on the date of occurrence he learnt from Sunil Paswan (P.W.8) that Appellant Nandu Bhagat, Appellant Yogi Mahto (now dead), Ramnath Sahni had shot his grand father dead. He then went to the place of occurrence and saw the dead body. In cross examination certain questions were asked but they are of no relevance.



7. P.W.7 Hira Sahni has been declared hostile, whereas P.W.8 Sunil Paswan is the son of the Informant and grand son of the deceased. He stated that on 25.2.2006 when he along with his father and grand father were getting ploughed their fields the accused persons including the present Appellants came and told them to stop. They then told the tractor driver to leave and started to return home. When they reached the field of Bechu Sahni suddenly Ramnath Sahni and Appellant Nandu Bhagat came and on the order of Ramnath Sahni, Appellant Nandu Bhagat fired at the deceased, on account of which he fell down dead.

In cross examination he stated that he had gone to his fields at about 10 A.M. and the accused persons had stopped them from ploughing the fields at 11.30 A.M. He described the location of his fields as also that the house of Appellant Nandu Bhagat would be about 3-4 kilometers away from their house. He stated that he was about 3-4 laggies behind the deceased and when he had reached about 2 laggies the occurrence had taken place. He further stated that he had gone to the Police Station but had met only the Munshi, since the Officer Incharge was not available, and he did not record his statement. There is nothing else which is of note in his cross examination and the attention of this witness drawn to the earlier statement is on very minor points.

8. P.W.5 Dr. Mumtaz Ahmad conducted the postmortem examination on the dead body of the deceased Jagdeo Paswan and found the following injuries on his person :

(i) Lacerated injury 1.7"x ½"x internal cavity deep with inverted margin was found on left lateral side of chest 5½" lateral and ½" below left nipple.

On dissection left 5<sup>th</sup> rib was fractured and left lung and myocardial were lacerated. Blood and blood clots were found inside chest cavity and eight pellets were recovered from left lung myocardial.

The death was due to shock and hemorrhage as a result of injuries mentioned above, caused by fire arm. He proves the postmortem examination report as Exhibit 5.

9. P.W.6 Raj Kumar Singh is the Investigating Officer, who stated that on 25.8.2006 he was posted as Officer Incharge of Mushahari Police Station and he had recorded the fard beyan of Babu Lal Paswan on the same day, which he proves as Exhibit 6. He assumed the investigation and he proves his endorsement on the fard beyan as Exhibit 7 as also the Inquest report as Exhibit 8. He stated that he inspected the place of occurrence which was the field of Bechu Sahni from where he seized blood stained earth. He proves the seizure



list as Exhibit 9. He found the dead body in the field of Bechu Sahni with a gun shot injury on the left chest. He stated that around the place there were many trees as also the Gandak river was flowing. He recorded the statements of Sunil Paswan (P.W.8), Lala Paswan (P.W.2), Uma Paswan (P.W.4), Babu Lal Paswan (P.W.3) and Hira Sahni (P.W.7). His attention was drawn to the statement of Lal Babu Rai (P.W.1) and that in fact he was a hearsay witness at the earlier point in time. In cross examination he stated that he had received the information about the occurrence from his Munshi on the telephone at 3.05 P.M. when he was in village Rahua in the duty of a previous Minister. He further stated in cross examination that he did not prepare the sketch map where the dead body was found but had given the boundary where it was found. It appears that this witness did not appear for further cross examination.

10. The submission of the Appellants is that the Inquest Report was prepared before the fard beyan and, therefore, it is hit by Section 162 Cr.P.C. The further submission is that the Informant has stated specifically that Appellant Nandu Bhagat @ Nand Kumar Singh had fired twice but only one fire arm injury was found on the person of the deceased, which contradicts the prosecution case and makes it unworthy of reliance. The further submission is that the earliest information given to the police has been suppressed and,

therefore, the present prosecution story should be viewed with some caution and that no independent witness has supported the case of the prosecution even though the occurrence had taken place in the middle of the afternoon.

11. Having gone through the evidence of the witnesses we find that P.W.2 Lala Paswan, P.W.3 Babu Lal Paswan and P.W.8 Sunil Paswan have fully supported the prosecution case as discussed above. No doubt, they belonged to the same family but that by itself would not make them unreliable. The submission of the Appellants that P.W.2 was not an eye witness because in his statement recorded under Section 161 Cr.P.C. he had not stated the fact of being an eye witness. On the contrary, we find that the attention of this witness, which has been drawn, is on minor points and not that he was not an eye witness of the occurrence in which circumstances we cannot reject his evidence on this ground.

12. We further find that even though the Informant has stated that the Appellant Nandu Bhgat @ Nand Kumar Singh had fired twice in cross examination but is fit to be ignored since consistent story of the prosecution right from the beginning was that only one firing was resorted to by Appellant Nandu Bhagat @ Nand Kumar Singh on the left of the chest of the deceased, on account of which he died. This solitary and stray statement of the Informant on

this point does not warrant any attention.

13. We further find that the Investigating Officer found the place of occurrence as stated by the prosecution further corroborating the prosecution case. The fact of earlier land dispute is not disputed by the Appellants thus motive is proved.

14. We find that on appearance of the Investigating Officer an ample opportunity had been given to the defence to cross examine him. Thus, it cannot be said that any prejudice has been caused to them on account of non-appearance of the Investigating Officer any further. The main point, which has been raised by the defence, is that the earliest version was suppressed by the prosecution making it liable for rejection has to be rejected inasmuch as P.W.8 has specifically stated that when he went to the Police Station he only found the Munshi of the Police Station and the Officer Incharge was absent. The Investigating Officer also corroborated this fact and that he received information from his Munshi on telephone and thereafter come to the place of occurrence. The defence had an opportunity to cross examine this witness on this point. We also find that no attention on very serious contradiction was drawn in the evidence of P.W.2 and P.W.3 and, therefore, the non-appearance of the Investigating Officer further has absolutely no bearing on the merits of these cases.

15. However, considering that there is no allegation

whatsoever against the Appellants Raju Bhagat, Chandra Shekhar Bhagat and Ram Singar Bhagat in Criminal Appeal (DB) No.370 of 2009, apart from them having participated in the earlier occurrence and their names have been omitted even by P.W.8, the son of the Informant, we are inclined to give benefit of doubt to them. Hence, Criminal Appeal (DB) No.370 of 2009 is allowed and the Appellants Raju Bhagat, Chandra Shekhar Bhagat and Ram Singar Bhagat, who are on bail, are discharged from the liabilities of their respective bail bonds. As for Appellant Nandu Bhagat @ Nand Kumar Singh in Criminal Appeal (DB) No.389 of 2009, in view of the consistency of the prosecution evidence as discussed above, the said Appeal is dismissed.

**(Anjana Prakash, J)**

**(Rajendra Kumar Mishra, J)**

Narendra/-

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| AFR/NAFR          | NAFR       |
| CAV DATE          |            |
| Uploading Date    | 21.05.2016 |
| Transmission Date | 21.05.2016 |