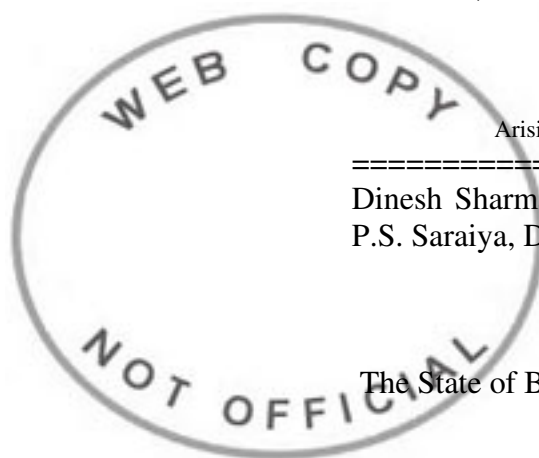




IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.916 of 2014

Arising Out of PS.Case No. -125 Year- 2008 Thana -SARAIYA District- MUZAFFARPUR

Dinesh Sharma S/o Late Bhup Narayan Sharma, Resident of Village Gorigawan, P.S. Saraiya, District Muzaffarpur.

The State of Bihar
Versus
With
Appellant/s
Respondent/s

Criminal Appeal (DB) No. 922 of 2014

Arising Out of PS.Case No. -125 Year- 2008 Thana -SARAIYA District- MUZAFFARPUR

Kaushal Kishore Singh Son of Late Bajrangi Singh, Resident of Village - Gorigawan, P.S. Saraiya District - Muzaffarpur.

The State of Bihar
Versus
With
Appellant/s
Respondent/s

Criminal Appeal (DB) No. 123 of 2015

Arising Out of PS.Case No. -125 Year- 2008 Thana -SARAIYA District- MUZAFFARPUR

Ram Ishwar Singh @ Rameshwar Singh Son of Saryug Singh, Resident of Village - Gorigawan, P.S- Saraiya, District - Muzaffarpur.

The State of Bihar
Versus
With
Appellant/s
Respondent/s

Criminal Appeal (DB) No. 129 of 2015

Arising Out of PS.Case No. -125 Year- 2008 Thana -SARAIYA District- MUZAFFARPUR

Ashok Singh son of Late Chandrika Singh, Resident of Village- Gaurigama, P.S.-

Saraiya, District- Muzaffarpur

The State of Bihar

Versus

.... Appellant/s

.... Respondent/s

Appearance :

(In CR. APP (DB) No.916 of 2014 & CR. APP (DB) No.922 of 2014 & CR. APP (DB) No.123 of 2015)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Imteyaz Ahmad, Advocate
Mr. Nilesh Kumar, Advocate
Mr. Shashank Shekhar, Advocate
Mrs. Kiran Thakur, Advocate

For the Respondent/s : Mr. Ashwani Kr. Sinha, APP
Mr. Maya Nand Jha, APP
Mr. S.C. Mishra, APP

(In CR. APP (DB) No.129 of 2015)

For the Appellant/s : Mr. Mukesh Kumar, Advocate
Mr. Shivjee Singh, Advocate

For the Respondent/s : Mr. A. Sharma, APP

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 23-06-2016

Appellant Dinesh Sharma of Cr. Appeal (DB) No.916 of 2014, Appellant Kaushal Kishore Singh of Cr. Appeal (DB) No.922 of 2014, Appellant Ram Ishwar Singh @ Rameshwar Singh of Cr. Appeal No.123 of 2015 and Appellant Ashok Singh of Cr. Appeal No.129 of 2015 have been convicted and sentenced to R.I. for life and fine of Rs.10,000/- each under Section 302/34 I.P.C., in default of which R.I. for another six months, by judgment dated 18/19.11.2014 passed by the 8th Additional Sessions Judge, Muzaffarpur in Sessions

Trial No.787 of 2008/ Sessions Trial No.329 of 2009.

2. The case of the Prosecution according to Nawal Kishore Singh (P.W.5) is that on 9.6.2008 at about 9 P.M. his brother deceased Lalbabu Singh along with Niraj Singh (P.W.1) was going on a motorcycle, whereas he himself and one Ajay Kumar Singh (not examined) were seated on another motorcycle and returning home. The motorcycle of his deceased brother was behind them. When they reached on Gobardhan bridge they saw Dinesh Singh, Appellant Dinesh Sharma, Lalan Singh and Ashok Singh standing there. When their motorcycle crossed the bridge he heard his brother Lalbabu Singh screaming. So they stopped and saw the aforesaid accused persons having caught hold of the deceased. Appellants Ram Ishwar Singh and Kaushal Kishore Singh also reached there and they took out pistols from their person and shot at his brother, on account of which he died there and then. The reason for the occurrence was that his sister-in-law, wife of deceased Lalbabu Singh, was the present Mukhiya whereas the deceased himself was the Up-Mukhiya. It was on account of political reasons that several accused persons named in the First Information Report had conspired to kill the deceased. He alleged that several villagers had seen the occurrence. This statement was given by the Informant on the very same day at 11.15 P.M. on

Gobardhan bridge itself.

3. On going through the evidence of the prosecution, we find that evidence of independent witnesses i.e. P.W.2/3 and that of the wife of the deceased i.e. P.W.4 leads us to disbelieve the two eye witnesses, namely, P.W.1 Niraj Kumar Singh and P.W.5 Nawal Kishore Singh (Informant) and hence we proceed to discuss the evidence of Prosecution witnesses P.W.2/3 and 4 first.

4. P.W.2 Yugul Kishore stated that on 9.6.2008 at about 9 P.M. while he was at home, he heard a sound of firing. So he went to Gobardhan bridge and saw the deceased Lalbabu Singh lying dead with fire arm injury on his right chest. A day earlier he had seen some persons holding a meeting and he identified Ashok Singh, Sudama Tiwari, Shyam Kumar Singh, Bhagya Narain Singh, Rajesh Singh, Triloki Singh by their voice. Triloki Singh was telling everyone that so long the Mukhiya Lalbabu Singh was alive they would not breathe in peace.

In cross examination he explained that his house was about one kilometer from Gobardhan bridge and before he had reached the family members of the deceased, namely, Nawal Kishore Singh (P.W.5), Niraj Kumar Singh (P.W.1) and Ajay Singh (not examined) were standing there. While he was there for about 20-25

minutes the family members of the Mukhiya had not arrived. He stated that his statement was recorded at the place of occurrence itself at 6 A.M. in the morning.

5. P.W.3 Dhaneshwar Singh, who was a co-villager of P.W.2, also stated that at 9 P.M. of 9.6.2008 he heard sound of firing and then there was a hulla that Lalbabu Singh Mukhiya had been killed on the Gobardhan bridge. On hearing this he went there and saw him dead. He further stated that on the evening of the occurrence at about 7 P.M. while he was in the Repura market he had seen Lalan Singh, Munna Singh, Dinesh Sharma, Kaushal Kumar Singh, Dinesh Singh, Ramesh Singh, Triloki Singh, Harinarayan Singh, Rameshwar Singh, Shyam Kumar Singh, Ashok Singh were sitting there and talking to each other. However, he did not overhear as to what there was talking. He then stated that his village was about one kilometer from Repura market.

6. P.W.4 Gita Devi, wife of Lalbabu Singh, who was the Mukhiya, stated that her husband had gone to Repura market and while he was returning home he was killed by six persons including the present Appellants on Gobardhan bridge. She learnt about the occurrence the next morning from Niraj Singh (P.W.1), who was also seated along with her deceased husband. She explained that the wife

of accused Dinesh Singh had contested the Mukhiya election against her but she had lost. She also explained that the Gobardhan bridge was about one kilometer from her house and before the present occurrence the accused persons had instituted a case against her husband.

The evidence of these three witnesses reveals that while P.W.2 Yugul Kishore and P.W.3 Dhaneshwar Singh reached the place of occurrence soon after and saw the deceased dead, no names were disclosed by anyone at that point in time which is highly suspicious in the facts of the case when as many as three eye-witnesses were present there.

We also find that Gita Devi, the wife of the deceased, who lived merely one kilometer away, was not informed about the occurrence till the next morning. In such circumstances, evidently a reasonable doubt is created as to whether at all the witnesses had seen the occurrence or in fact it was a blind murder. It is in this background that we proceed to test the evidence of P.W.1 and P.W.5.

7. P.W.1 Niraj Kumar Singh stated that on 9.6.2008 at about 9-9.15 P.M. he along with deceased Lalbabu Singh were returning home on a motorcycle. The motorcycle of Ajay Kumar Singh (not examined) and Informant Nawal Singh (P.W.5) ahead of



them. When they reached the Gobardhan bridge suddenly somebody called out to them from a motorcycle following them and asked them to stop. Deceased Lalbabu Singh stopped the motorcycle by which time they reached the Gobardhan bridge. There four persons, namely, Dinesh Singh, Appellant Dinesh Sharma, Lalan Singh and Appellant Ashok Singh were seen standing there. They caught hold of their motorcycle and started to pull it. Accused Lalan Singh pushed him, on account of which he fell down. Then the motorcycle which was following them also reached on which were seated Appellants Kaushal Kishore Singh and Ram Ishwar Singh. Both the Appellants fired at the deceased. When they screamed, the motorcycle of Ajay Kumar Singh and Nawal Singh (P.W.5) which was going ahead also stopped. The motorcyclists, namely, Appellants Kaushal Kishore Singh and Ram Ishwar Singh, fled towards Repura market, whereas rest of the accused fled away towards Chour. He also stated that Bhagya Narain Singh, Sanjeev Singh, Awadhesh Singh, Sudama Tiwari had conspired to kill the deceased, who had just come out of the jail. He further stated that the police arrived at the place of occurrence and recorded the statement of P.W.5 and also recorded his own statement. It also prepared the seizure list on which he signed, which is Exhibit 1. In cross examination he stated that all the accused



were his co-villagers and that there was political rivalry between the parties. He conceded that he along with the deceased and the Informant Nawal Kishore Singh (P.W.5) were accused in two cases, one of which was instituted by accused Munna Singh and the other by Prabhat Kumar Singh. He stated that he had a Betel shop located at Repura market and he had accompanied the deceased on his motorcycle to go home. He specifically stated that the motorcycle of the deceased was fallen at a close distance from the deceased, the significance of which we shall discuss later. He further stated that on hulla Arun Singh, Binod Singh, P.w.2 Yugul Kishore and the family members of the Mukhiya arrived. It was suggested to him that in fact on the date of occurrence Satya Narain Pooja was being held in the house of Appellant Ashok Singh, which was attended by large number of persons of which he feigned ignorance.

8. P.W.5 Nawal Kishore Singh, who is the next eye witness and brother of the deceased, stated that on the date of occurrence he had gone to Repura market along with his brother and they were returning home on a motorcycle. One Niraj Singh (P.W.1) was seated along with the deceased Lalbabu Singh whereas he himself was seated on the motorcycle of Ajay Singh (not examined). Their motorcycle was ahead. When they crossed Gobardhan bridge they saw



four accused standing there, namely, Dinesh Singh, Appellant Dinesh Sharma, Lalan Singh, Appellant Ashok Singh. When they proceeded he heard his brother scream, so Ajay Singh turned the motorcycle and then they saw all the four accused persons having caught hold of the motorcycle of deceased. Just then Appellants Ram Ishwar Singh and Kaushal Kishore Singh came firing and shot at the deceased, on account of which he fell down dead. He himself started screaming and crying, at which several persons gathered. He alleged that the present Appellants along with some other acquitted accused had conspired earlier and held a meeting for eliminating the deceased. He stated that he gave his fard beyan to the Daroga Jee on the same night and proves his signature as Exhibit 2 and that of Ajay Singh as Exhibit 2/1.

In cross examination he stated that he had walked to Repura market to purchase vegetables at about 5.30 in the evening which was about 2 kilometers from his house. He stated that when the motorcycle of the Mukhiya Jee was intercepted they were in the middle of the bridge where the two Appellants, namely, Kaushal Kishore Singh and Rameshwar Singh came and fired at the deceased and that the deceased died there and then itself. It was suggested to him that in fact none of the witnesses were present along with the deceased when he was murdered and they arrived only later on which

of course he denied.

He conceded that he along with the deceased, Niraj Singh (P.W.1), Ajay Singh and others were accused in Saraiya P.S. case No.106 of 2007 in which the deceased had been remanded to judicial custody but he denied the suggestion that accused Ajay Singh, Triloki Singh, Bhagya Narain Singh and Ram Ishwar Singh were witnesses in the said case.

He also conceded that the Gobardhan bridge was about one kilometer from his village. About himself he stated that he reached home only on the next day at 4 P.M. after having got conducted the postmortem. The children of the family, who had learnt about the occurrence, came to the place of occurrence as also the Choukidar had come there. He denied the suggestion that in fact a Pooja was going on in the house of Appellant Ashok Singh.

9. P.W.12 Akhilesh Kumar, the Investigating Officer, stated that on 9.6.2008 while he was posted at Saraiya Police Station and was investigating a case of dacoity, he learnt about the present occurrence on the telephone. He informed his higher police official and reached the place of occurrence along with other Senior officials. He then recorded the statement of the Informant, which was scripted by Surendra Dubey (not examined). He proved the same as Exhibit 4.



On assuming the investigation he instituted a First Information Report which he proves as Exhibit 5. He inspected the place of occurrence which was the Gobardhan bridge. He found an empty cartridge by the side of the road of which he prepared a seizure list which was marked as Exhibit 6. He described the place of occurrence being a lonely place and the dead body was not found on the Gobardhan bridge nor did he find any motorcycle there. He also stated that he learnt about the occurrence on telephone at about 9 P.M. and he only learnt about the deceased having been murdered but there was no mention of any accused.

10. P.W.6 Binod Singh, P.W.7 Arun Kumar Singh and P.W.9 Ram Ishwar Singh have been declared hostile but even in their earlier statement they were on very minor point. P.W.8 Om Prakash Singh is a seizure list witness, who proves his signature on the seizure list, which is Exhibit 1/1.

11. P.W.10 Dr. Bipin Kumar held the postmortem examination on the dead body of the deceased Lalbabu Singh and found the following ante mortem injuries on his person :

- (i) one wound of entry over left side of chest 3 cm x 1½ cm into cavity deep 3 cm medial to nipple. There was burning and tattooing over an area of 5 cm in diameter. Margin of wound was inverted.

(ii) One wound of exit over right side of upper part of back 1 ½” below lower part of scapula bona measuring 1 cm x ½ cm. Margin of wound was inverted.

On dissection – Heart right and left lung were picked through and through.

Chest cavity contained blood and blood clots. There was fracture of fifth rib of left side and sixth rib of right side.

Injury No.(i) and (ii) were continuous to each other. Projectile after penetrating the skin and muscle heart lungs and fracturing ribs passed out side the body from injury no.(ii).

All the internal viscera were pale.

Opinion – Deceased died due to shock and haemorrhage as a result of aforesaid injuries caused by fire arm weapon, such as, country made pistol.

Time since death was within twenty four hours from the time of examination.

He proves the postmortem examination report, which has been marked as Exhibit 3.

12. P.W.11 Nand Kishore Prasad Singh is a formal Police Officer.

13. The defence also examined seven witnesses, namely, D.W.1 Vishwanath Singh, D.W.2 Jai Kumari Devi, D.W.3 Brajesh



Kumar, D.W.4 Shashi Bhushan Singh, D.W.5 Bhola Singh, D.W.6 Lalita Devi and D.W.7 Amarnath Singh on the point that a Pooja was going on in the house of Appellant Ashok Singh on the night of occurrence where even he was present, therefore, there was no question of the Appellants of being one of the assailants at a different location.

14. We thus find that the evidence of the two eye witnesses read together with the Investigating Officer creates a reasonable doubt as to whether at all the deceased was travelling on the motorcycle on the said date along with P.W.1. Admittedly, his motorcycle had fallen down when the deceased was shot dead. It was expected that the same would have been found at the place of occurrence. However, the Investigating Officer specifically stated that he did not find any motorcycle there. None of the witnesses explained as to whether the motorcycle was removed by them after the murder. So in our opinion the non-finding of the motorcycle creates a reasonable doubt as to whether at all the deceased was travelling on the same when the occurrence took place. This by itself would not have been very important but when read together with the evidence of P.W.2 and P.W.3 that after hearing gun shots when they came to the place of occurrence they merely found the deceased fallen dead leads



us to conclude that in fact the deceased in all probability was returning alone by foot when he was shot dead by unknown assailants. Importantly Ajay Singh, on whose motorcycle the Informant is said to have been travelling, has not been examined on behalf of the prosecution. It also seems strange that the Informant was returning home after buying vegetables only at 9 P.M., which is unusual where there is practice of bringing home vegetables earlier in the rural areas so as it to be cooked for dinner. Further if at all he and the deceased were together at Repura market and were returning home there was no reason for the Informant to have boarded the motorcycle of Ajay Singh and not that of his brother i.e. deceased. This in all probability was created so that P.W.1 could be cited as a witness who was seated on the motorcycle of the deceased. Further if P.W.1 and P.W.5 were eye witnesses to the occurrence and also related to the deceased there was no reason why the wife of the deceased was not informed immediately and was so informed only the next morning even though place of occurrence is merely one kilometer away from the house. We further find that there is evidence that the family members of the deceased had come right after the occurrence, so why the names of the assailants were not disclosed to the wife of the deceased immediately after the occurrence, is not explained.

15. For the reasons aforesaid, we are inclined to give benefit of doubt to all the Appellants. Hence, all the appeals are allowed and the Appellant Dinesh Sharma of Cr. Appeal (DB) No.916 of 2014, Appellant Kaushal Kishore Singh of Cr. Appeal (DB) No.922 of 2014, Appellant Ram Ishwar Singh @ Rameshwar Singh of Cr. Appeal No.123 of 2015 and Appellant Ashok Singh of Cr. Appeal No.129 of 2015, who are in custody, be released forthwith, if not wanted in any other case.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

Narendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	