

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 110 of 2016

Arising Out of PS. Case No.-420 Year-2007 Thana- Lakhisarai District- Lakhisarai

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1. Rudal Sahni S/o Bhikhari Shani, resident of Village- Tartar P.S.- Ghoswari, District- Patna.
 2. Prasadi Sahni S/o Balo Sahni, resident of Village- Newdar Ganj, Gandhi Tola P.S. Lakhisarai, District- Lakhisarai.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

with

Criminal Appeal (DB) No. 7 of 2016

Arising Out of PS. Case No.-420 Year-2007 Thana- Lakhisarai District- Lakhisarai

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1. Ashok Ram, Son of Ram Dev Ram,
 2. Shankar Sahni, Son of Late Akal Sahni,
 3. Nago Sahni, Son of Late Akal Sahni
- All are Resident of Village - Nemdarganj, P.S. + District - Lakhisarai.

... .. Appellants

Versus

The State of Bihar

... .. Respondent/s

with

Criminal Appeal (DB) No. 32 of 2016

Arising Out of PS. Case No.-420 Year-2007 Thana- Lakhisarai District- Lakhisarai

Mishri Sahni, Son of Sri Mahabir Sahni, Resident of Village:- Nemdarganj, P.O + P.S.: Lakhisarai, District:- Lakhisarai.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

(In Criminal Appeal (DB) No. 110 of 2016)

(In Criminal Appeal (DB) No. 7 of 2016)

(In Criminal Appeal (DB) No. 32 of 2016)



For the Appellants : Mr. Kanhaiya Prasad Singh, Sr. Advocate
Mr. Bhim Sen Prasad, Advocate
Mr. Pratik Mishra, Advocate
Mr. Niranjana Parihar, Advocate

For the Respondent/State: Mr. Mayanand Jha (A.P.P.)
Mr. Ajay Mishra (A.P.P.)

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 16-03-2018

In all the aforesaid three appeals, appellants were convicted by common judgment in Sessions Trial No. 287 of 2008 (arising out of Lakhisarai P.S. Case No. 420 of 2007) by Sri Ravindra Singh, learned 2nd Additional District & Sessions Judge, Lakhisarai (hereinafter referred to as the 'Trial Judge') and as such, all the three appeals were heard together and are being disposed of by this common judgment.

2. All the appellants were convicted on 10-11-2015 for commission of offence under Sections 302/34 and 201 of the Indian Penal Code, 1860 (for short "I.P.C."). The convict Prasadi Sahni (appellant no. 2 in Cr.Appeal DB No. 110/2016) was further convicted for commission of offence under Section 27 of the Arms Act, 1959 (for short "Arms Act") and by order of sentence dated 20-11-2015, all the appellants were sentenced to undergo rigorous imprisonment for life under Section 302/34 of the I.P.C. and they



were imposed fine of ₹ 5,000/- (five thousand) each. In default of payment of fine, they were further directed to undergo rigorous imprisonment for three months. All the appellants were further sentenced to undergo rigorous imprisonment for five years under Section 201 of the I.P.C. with fine of ₹ 5,000/- (five thousand) each and in default of payment of fine, they were directed to further undergo rigorous imprisonment for three months, whereas, convict Prasadi Sahni (appellant no. 2 in Cr.Appeal DB No. 110/2016) was also sentenced under Section 27 of the Arms Act to undergo rigorous imprisonment for three years alongwith fine of ₹ 3,000/- (three thousand) and in default of payment of fine, he has been directed to undergo rigorous imprisonment for further two months. All the sentences were directed to run concurrently.

3. Short fact of the case is that on 02-09-2007, a written report was submitted by Prabhakar Kumar (P.W.7 and brother of the deceased) addressed to the officer incharge of Lakhisarai Police Station. In the written report, the informant disclosed that on 01-09-2007 (Saturday) at about 6:30 PM, after completing marketing, he was returning from Lakhisarai market to his village *Sadaibigha* alongwith his brother



Diwakar Kumar (P.W.4). Just ahead of them, his younger brother Kamalakar Kumar @ Chintu Singh (deceased) was proceeding to home. While they reached in between village *Babhangama* and *Sadaibigha* and reached near *Newdarganj* (*Godhitola*), he saw that about 7-8 accused persons were carrying illegal arms i.e. *katta*, *lathi* etc. Among whom, he identified:

<u>Sl.</u>	<u>Name</u>	<u>Appellant No. in Cr.App.DB No.</u>	<u>Carrying in hand</u>
1.	Prasadi Sahni	A2 in 110 of 2016	Pistol
2.	Mishri Sahni	App. in 32 of 2016	Pistol
3.	Ashok Ram	A2 in 7 of 2016	Lathi
4.	Nago Sahni	A3 in 7 of 2016	Lathi
5.	Shankar Sahni	A2 in 7 of 2016	Lathi
6.	Sukho Sahni	Not tried, All 1 to 6 resident of village Newdarganj, PO + PS – Lakhisarai.	
7.	Rudal Sahni	A1 in 110 of 2016, R/o vill. Tartar (Mokama), Patna presently r/o Newdarganj, Lakhisarai.	Katta

It was further disclosed in the written report that besides aforesaid accused persons, other unknown accused persons, had surrounded his brother Kamalakar Kumar @ Chintu (deceased) and by using abusive language exhorted that today they will finish him (*आज खेल खत्म कर देंगे*). Thereafter, his brother raising alarm started fleeing away. In the meanwhile,



Ashok Ram (A1 in Cr.App. DB No. 7 of 2016) gave *lathi* blow on his head, whereby Kamalakar Kumar @ Chintu (deceased) fell down. The informant disclosed that he and his another brother, due to fear, concealing themselves in Maize field, witnessed the occurrence. The informant disclosed that all the accused persons dragged his brother for about 20 feet northern side to Haranhar river and thereafter, they loaded him on a boat. The informant, by way of concealing himself, was noticing all the occurrence. He further stated that while his brother started squirming and raised objection then Prasadi Sahni (A2 in Cr.Appeal DB No. 110/2016) from his pistol fired on him and Rudal Sahni (A1 in Cr.Appeal DB No. 110/2016) gave *katta* blow on his neck, whereby his brother instantaneously fell down. The informant further disclosed in his written report that Prasadi Sahni (A2 in Cr.Appeal DB No. 110/2016) and Rudal Sahni (A1 in Cr.Appeal DB No. 110/2016) by using filthy language said that it appears that victim had died and as such, in the mid of river by way of cutting his body in pieces, they would throw in the river. Thereafter, informant and his brother hurriedly went to his village and informed villagers about the occurrence and after about two hours, they came to Newdarganj near Haranhar



river, however; nothing could be noticed despite vigorous search. Since, it was late night, the informant did not go to police station and in the morning, he submitted written information. The reason for the occurrence was explained by the informant that Rudal Sahni (A1 in Cr.Appeal DB No. 110/2016) was hardened criminal and he was involved in gang war, however; his brother Chintu (deceased) was opposing the same. The informant claimed in its written report that due to the said reason, all accused persons, conspiring together in a well-planned manner, had killed his brother Kamalakar Kumar @ Chintu Singh by giving fire-arm injury and injury by *katta* and dead body of his brother was cut into pieces and it was thrown in the mid of the river.

4. On the basis of said written report, on the same date i.e. on 02-09-2007 at 2:30 PM, a formal F.I.R., vide Lakhisarai P.S. Case No. 420 of 2007, was registered for offence under Sections 302, 201, 34 of the I.P.C. and Section 27 of the Arms Act against seven named accused persons, which include all the six appellants. After investigation, only accusation against Ashok Ram (A1 in Cr.App.DB No. 7 of 2016) was found true and as such, on 19-11-2007, chargesheet was submitted against him keeping investigation open against other. After



submission of chargesheet, on the same date i.e. 29-11-2007, the learned Magistrate took cognizance of the offence and thereafter, the case of Ashok Ram (A1 in Cr.App.DB No. 7/2016) was committed to the court of sessions on 18-02-2008 and thereafter it was numbered as Sessions Trial No. 287 of 2008. Subsequently, charge against Ashok Ram (A1 in Cr.App.DB No. 7/2016) was framed on 01-05-2008. However, subsequently supplementary chargesheet against remaining six accused, including one Sukho Sahni (not tried) was submitted on 31-05-2009 showing all the chargesheeted accused persons as absconder. After submission of chargesheet, on 23-11-2009, all the appellants, except Ashok Ram (A1 in Cr.App.DB No. 7/2016), surrendered in the court and they were taken into custody. It is clarified that before surrender of five appellants, against Ashok Ram (A1 in Cr.App.DB No. 7/2016) chargesheet was already submitted and his case was committed to the court of sessions. The case of remaining five appellants was committed to the court of sessions on 10-06-2011 and thereafter, on 25-08-2011, jointly charge was framed against appellant Nago Sahni (A3 in Cr.App.DB No.



7/2016), Shankar Sahni (A2 in Cr.App.DB No. 7/2016), Mishri Sahni (Appellant in Cr.App.DB No. 32/2016), Rudal Sahni (A1 in Cr.App.DB No. 110/2016) and Prasadi Sahni (A2 in Cr.App.DB No. 110/2016) for commission of offence under Sections 302/34, 302 of the I.P.C. and Section 27 of the Arms Act. After charges were framed, on two dates firstly against Ashok Ram (A1 in Cr.App.DB No. 7/2016), which was framed on 01-05-2008 and remaining accused on 25-08-2011, the prosecution started to examine witnesses and for the first time, P.W.1 Baliram was examined as witness on 6th February, 2012.

5. The prosecution, to establish its case during trial, examined altogether 8 (eight) witnesses. Out of eight witnesses:

“P.W.4 Divakar Kumar, brother of the deceased and P.W.7 Prabhakar Kumar (informant & another brother of the deceased) were examined as eye-witnesses,

P.W.1 Baliram, P.W.3 Ajay Singh and P.W.6 Ram Pravesh Singh, who were co-villagers, were examined as hearsay witnesses.



P.W.2 Rajnarayan Singh is a formal witness, who had proved the inquest report, which was marked as **Ext. 1** and dead body challan, which was marked as **Ext. 2**.

P.W.5 Nandan Kumar is also a formal witness, who has proved his signature on inquest report, which was marked as **Ext. 1/B** and he had also claimed to identify the deceased on the basis of cloth i.e. one *gamachha* (गमछा), which was found on the dead body.

P.W.8 Dr. Atul Kumar Mallick on 11-09-2007 was posted as Professor, Forensic Science Department, Jawaharlal Nehru Medical College and Hospital and he has examined remains of the so called dead body and he proved its report, which was marked as **Ext.5**. During trial, the prosecution had not produced investigating officer and as such, in absence of investigating officer, the case had proceeded and concluded.”

6. Sri Kanhaiya Prasad Singh, learned senior counsel appearing on behalf of appellants in aforesaid appeals, after referring to entire evidence, has argued that the prosecution case appears to be not probable, particularly; in view of the fact that though informant (P.W.7) and P.W.4 Divakar Kumar,



who were own brother of the deceased, had claimed to have witnessed entire occurrence, on so called time and date of occurrence i.e. 6:30 PM on 01-09-2007, without any rhyme and reason on the next date of the occurrence i.e. on 02-09-2007 at about 2:00 PM, instead of giving *fardbeyan*, had filed a written report before the officer incharge of the police station, in which, he had claimed that he had seen the occurrence. Sri Singh submits that the conduct of the informant appears to be not natural. According to him, if own brother of the informant was done to death in his presence, in normal course, he would have immediately rushed to the police station, but for the whole night, he kept himself in his house and on the next date, he went to the police station and filed written report. He further submits that entire prosecution case has come into cloud of doubt, since in the case, prosecution has not been able to establish place of occurrence, that too in absence of investigating officer. He submits that the so called inquest report as well as report of the doctor (P.W.8) also create serious doubt on the prosecution case. It has been argued that though according to the informant, occurrence had



taken place in the evening on 01-09-2007, a completely decomposed body was shown to be recovered from the side of the river after three days from the date of the occurrence. At this stage, he has referred to the evidence of P.W.2 Rajnarayan Singh, who was a police official and had prepared inquest report. He submits that in his evidence, the P.W.2 has deposed that he had virtually prepared inquest in respect of a skeleton. It has been argued that within three days of the so-called occurrence, it was impossible to notice skeleton. At least decomposed dead body was required to be seen by the police official, but in his evidence, he stated that he had prepared inquest of a skeleton. Sri Singh has further argued that prosecution has miserably failed to establish regarding identification of the dead body. He submits that in the case, witnesses have come forward to identify the deceased by means of identifying a *gamachha*, which was wrapped on the neck of the dead body and under-garment of the deceased. He submits that it is improbable that a dead body can be identified by third person only with such type of cloth, which is commonly used by all the persons, otherwise no other cogent



evidence was shown for identification of the dead body of the deceased. He further submits that the informant in his evidence has stated that after the occurrence in the same evening at about 9:00 PM, he informed his parents, who were at the relevant time in Delhi on a mobile phone, but he had not taken any pain to inform the police even on mobile. This is quite unnatural. On aforesaid grounds, it has been argued that prosecution has miserably failed to establish its case beyond all reasonable doubt. He has also by way of referring to **Ext. 5** i.e. report of P.W.8 Dr. Atul Kumar Mallick in respect of remains of the dead body submits that though in the inquest report, it was disclosed that skeleton was recovered, but at the time when remains were received by P.W.8, these were kept in a wooden box in number of pieces. Besides this, on the bones of the so called deceased, no mark either fire-arm or any mark was noticed by P.W.8. Even on the basis of such remains, it was difficult to come to the conclusion that as to whether the skeleton was of male or female and this was the reason that P.W.8 had anatomically examined bones and thereafter, he had come to the conclusion that the bones were of a male person



and in vague manner, age of the dead body was shown. On aforesaid ground, it has been argued that prosecution has not proved its case beyond all reasonable doubt, rather it was completely a case of false implication.

7. Sri Mayanand Jha, learned Addl. Public Prosecutor, opposing the appeals, has argued that in the case, occurrence was witnessed by two persons, who were none else but brother of the deceased. By way of referring to evidence of P.W.4 and P.W.7, it has been argued that there is no inconsistency in the evidence and as such, the learned Trial Judge has rightly passed the judgment of conviction and sentence.

8. Besides hearing learned counsel for the parties, we have minutely examined the entire materials available on record and after going through the same, *prima facie*, we are of the opinion that prosecution has not proved its case beyond all reasonable doubt. Before proceeding, it would firstly be necessary to examine the evidence of P.W.7, who is none else but own brother of the deceased and informant of the case.

9. In his evidence, P.W.7 stated that on the date and time of occurrence i.e. 6:30 PM on 01-09-2007, he alongwith



his brother Divakar Kumar was returning from Lakhisarai to his village and when he reached Gorhitola, then he noticed that his brother Kamlakar Kumar @ Chintu Singh was moving ahead of them and he was intercepted by all the aforesaid appellants, who were armed with pistol, *katta* & *lathi* and thereafter, he (Chintu) was assaulted by Ashok Ram by means of *lathi*. The said assault was given by *lathi* on his head, whereafter, he fell down. The accused persons subsequently by dragging him taken to northern side and loaded him on a boat. Subsequently, his brother while tried to oppose, Prasadi Sahni (A2 in Cr.Appeal DB No. 110/16) gave shot from pistil, Rudal Sahni (A1 in Cr.Appeal DB No. 110/16) gave *katta* blow on his neck, whereby his brother fell down and died. The accused persons by using filthy language said that the victim had died and they decided to divide the dead body in pieces and to throw it in the river. After witnessing all the occurrence, the informant with his brother P.W.4 returned back to his village and after two hours with villagers, he again arrived at the place of occurrence, but no trace of his brother was found and on the next date, he went to the police station and got an application



written by another person, which was read by him and thereafter he put his signature. He also identified his signature on the written report, which was marked as **Ext. 1**. In his cross-examination in paragraph 3, he disclosed that the report was written by one Neeraj Kumar, however; without any explanation, the said Neeraj Kumkar was not examined as a witness, whereas, P.W.7 in paragraph 15 has categorically stated that he is literate and he had studied up-to Intermediate, but no reason has been assigned as to why the written report was prepared by another person. In paragraph 26 of his cross-examination, he deposed that at the time of occurrence, his mother and father were not in the village and in his house, he informed all regarding the occurrence. He clarified that even after hearing about the occurrence, wife of Chintu (deceased) did not go to the place of occurrence nor she left the house. He further clarified that on the date of occurrence, his mother and father were in Delhi, who were informed on mobile phone on 01-09-2007 at 9:00 PM. In paragraph 31 of his cross-examination, he clarified that on 02-09-2007 at 2:00 PM, he gave written report to the police. In paragraph 33, he accepted



that the wife of deceased Chintu was not produced before the police, whereas, he denied the suggestion that the informant with his another brother P.W.4 Divakar Kumar, due to dispute of partition, had killed his another brother Chintu and this was the reason that they did not produce wife of the deceased for her examination.

10. On going through the evidence of P.W.7, this fact is clear that the informant has not given any explanation as to why on the date of occurrence, he did not inform the police, whereas, in the evening on mobile he informed his parents, who were at Delhi, regarding the occurrence and on the next date at 2:00 PM, he filed a written report before the police. Such conduct of the informant, who was own brother of the deceased, creates serious doubt in the mind of the court.

11. Similarly, P.W.4 Divakar Kumar, who was also full brother of the deceased and informant, has deposed that he had seen the occurrence and in paragraph 23, he claimed that he identified the deceased by noticing *gamachha* on the dead body. However, nothing was indicated as to what was the other thing to identify the dead body, as of his brother. This witness



in paragraph 56 of his cross-examination has said that his brother Chintu was involved in a murder case and he remained in jail also. This suggests that the deceased was also having criminal antecedent. P.W.4 has also proved his signature on the inquest report, which was marked as **Ext. 1/A**.

12. Accordingly, on examination of evidence of two so called eye-witness, one thing has not been clarified by the prosecution as to why after noticing the occurrence on 01-09-2007 at 6:30 PM, they did not immediately inform the police, rather they kept themselves in the house for whole night and on the next date at 2:00 PM, written information was given by the informant side regarding the occurrence. In the case, prosecution has not given any explanation as to how within three days of the occurrence, once a dead body was recovered in completely decomposed condition, even the informant, who is own brother, was not in a position to identify the dead body, as dead body of his brother and this was the reason that P.W.4 said that he could identify the dead body only by noticing *gamachha* on the dead body. In such a short time, there was no reason to notice such decomposed



body. There is conflict in between the evidence of inquest witness as well as evidence of doctor, who examined the remains of the dead body. Inquest witness i.e. P.W.2 has stated that it was only a skeleton, whereas P.W.8 has deposed that bones were kept in a wooden box, which was received in hospital, that too on 11-09-2007, whereas, as per the prosecution case, inquest report was prepared on 04-09-2007. No explanation has been given by the prosecution as to why the remains were received in the hospital on 11-09-2007, whereas, inquest was prepared on 04-09-2007. This again creates serious doubt on the prosecution case.

13. At this juncture, it would be necessary to notice what was noticed by the P.W.8 Dr. Atul Kumar Mallick, who was posted in the Forensic Science Department in the hospital on 11-09-2007. P.W.8 has deposed that on 11-09-2007, he had received a sealed wooden box and on the same date, he had examined highly decomposed incomplete remains of dead body for its examination. In paragraph – 2, he stated that on anatomical examination of bones, he could notice that remains



of dead body was of a human being. For the purpose of establishing sex of the said remains, he stated as follows:-

“(i) Skull: Large and heavy with rough surface for muscular attachments, Glabella and fronto-nasal junction prominent, Orbits squarish with rounded margins, frontal and parietal eminences not prominent, nestroid processes large and blunt.

(ii) Mandible – Large, heavy with rough surfaces, chin squarish. Body of mandible wide, angle of mandible averted

(iii) Hip Bones- Large and heavy with rough surfaces, greater sciatic notch deep is narrow, obtuatorforamina oval, Ischial tuberosities inverted.

(iv) Sacrum- Large and heavy, long and narrow with uniform curvature all around its surface. Sacral promontory prominent, More than 2 ½ sacral. Vertebra form sacro-iliac articulation.

(v) Long Bones- Available lung bones large and heavy with rough surfaces and marked bending.”

Again for ascertaining age, the bones were examined in following manner:-

“(i) Mandible:- All 16 teeth are present. Angle of mandible is slightly more than 90°. Mental foramina are above middle of body of mandible. These features are seen beyond 30 years.

(ii) Skull – Basisphenoid and basiocciput have fused which occurs by 20-22 years. The inner table shows partial closure of suture of skull. The outer table shows



initiation of closure of sagittal suture in the posterior third. These features are seen within 30-35 years.

(iii) Hip bones- Triradiate cartilage has completely ossified which occurs by 15 years. Iliac crests and Ischial tuberosities have fused at their respective sides, which is seen beyond 21-22 years.

(iv) Sacrum- All five pieces of sacral vertebra have ossified with each other which is seen beyond 25 years of age.

(v) Long bones- Epiphysis of all available long bones have fused with their respective diaphysis which is seen beyond 18-19 years of age.

(vi) Injuries- No ante-mortem injury could be found on the available bones as well as one soft tissue at the time of preliminary examination through the soft tissues were highly decomposed.”

Thereafter, the doctor assessed the age of the said body in between 30 to 35 years. In paragraph 9 of his cross-examination, he clarified that on either of the bones, there was no mark of fire-arm injury nor any injury by *katta*. He reiterates in his cross-examination that body was highly decomposed and it was in how many pieces, he had not written. In paragraph 14, he further clarified that the dead body was kept in box in number of pieces and all the bones were of one human being and after examination, he could not notice the reason for the death.



14. The entire prosecution case may not be believed in its entirety in absence of investigating officer. In absence of investigating officer, the prosecution has miserably failed to establish the place of occurrence also. In absence of establishing place of occurrence, the manner of occurrence has also not been proved beyond all reasonable doubt. Though, P.W.1, P.W.3 and P.W.6, who were co-villagers, had claimed to be hearsay witness and those witnesses have deposed that they were informed by informant and P.W.4. Since the evidence of P.W.4 Divakar Kumar and informant/P.W.7 Prabhakar Kumar itself does not inspire confidence, there is no reason to place reliance on the evidence of hearsay witnesses.

15. In view of facts and circumstances, particularly the fact that prosecution is silent on giving belated information to the police, non-explanation of proving place of occurrence, contradictions in the evidence of inquest witness, evidence of doctor, who examined remains of the dead body, and non-examination of the investigating officer, we are of the opinion that prosecution has not proved its case beyond all reasonable doubt. Accordingly, by way of extending benefit of doubt, it



is necessary to interfere with the judgment of conviction and sentence in respect of appellants of the aforesaid appeals.

16. Accordingly, the judgment of conviction dated 10.11.2015 and order of sentence dated 20.11.2015 passed by Sri Ravindra Singh, learned Additional District & Sessions Judge – II, Lakhisarai in Sessions Trial No. 287 of 2008 {arising out of Lakhisarai P.S. Case No. 420 of 2007) is hereby set aside and all the aforesaid three appeals are allowed.

17. All the appellants are in custody and since their conviction and sentence has been set aside, they are directed to be released forthwith, if not required in any other case(s).

(Rakesh Kumar, J.)

(Arvind Srivastava, J.)

Anay

AFR/NAFR	AFR
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