

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (DB) No.254 of 1993**

Sessions trial no. 73/121 of 1992 arising out of Patahi P.S. case no. 42/1991
District- EASTCHAMPARAN (MOTIHARI)

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1. Binoy Singh, Son of Bachu Singh,
2. Akloo Sahni, Son of Bathu Sahni,
All resident of Village- Jihuli, P.S. Patahi, District- East Champaran.

.... Appellant/s

Versus

1. The State of Bihar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Binoy Singh
Mr. Mohit Shriwastava, Advocate
(Amicus curiae)
For the Respondent/s : Mr. Shiwesh Chandra Mishra

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)
Date: 01-02-2018

1. This criminal appeal has been preferred against the impugned judgment of conviction and sentence order dated 30.4.1993 passed by the Addl. Sessions Judge VI, East Champaran in Sessions trial no. 73/121 of 1992 by which and whereunder he convicted the appellants including deceased appellants for the offence punishable under section 302/34 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for life for the offence punishable under the above stated section 302/34 of the Indian Penal



Code.

2. Originally, the present appeal was filed by all four convicted appellants but during the pendency of this appeal, appellant no.1, Ramswarath Singh and appellant no.3, Bhola Singh died and accordingly, appeal on their behalf was abated vide order dated 22.9.2017 and accordingly, present appeal has been heard only for the above two appellants, namely, Binoy Singh and Akloo Sahni.

3. The brief fact, which lies to file this criminal appeal, is that PW 4 Bindeshwari Singh gave his fardbeyan to PW 7 Chandrika Prasad on 25.7.1991 at 12.30 p.m. to this effect that on the same day, he had gone to Tenhiya tola to inform his labourers and while he was returning from Tenhiya tola and reached east of the aforesaid tola, he saw the appellants and three other FIR named accused assaulting his brother by means of **Paghariya**. He described the manner in which the appellants and other FIR named persons assaulted his brother. He, further, stated that he tried to save his brother but he was threatened by FIR named accused Nagendra as a result whereof he could not go near his brother. He, further, stated that 14 years ago the uncle of original appellant no.1 was murdered and in the aforesaid murder case, he as well as



his deceased brother were made accused and that was the reason, appellants and others committed murder of his deceased brother. He, further, disclosed that the above stated occurrence had taken place at about 7.30 a.m. He, further, stated that the above stated occurrence was witnessed by Biswanath (not examined), Jiwach Singh (PW5) and Lal Babu (not examined) and others.

4. On the basis of fardbeyan of PW 4, Patahi P.S. case no. 42/1991 was registered for the offence under section 302/34 of the Indian Penal Code. Formal FIR was drawn up. However, after submission of the charge sheet, cognizance was taken as well as commitment was made in usual course. In Sessions trial no. 73/121 of 1992, appellants including deceased appellants and one Gona Sahani were put on trial and accordingly, they were charged for the offence punishable under section 302/34 of the Indian Penal Code. However, in course of trial, trial of Gona Sahani were separated vide order dated 4.3.1993 and accordingly, appellants including deceased appellants were tried only in the above stated sessions trial.

5. In course of trial, prosecution examined, altogether, seven witnesses and also got exhibited documents



such as post mortem report and inquest report. The statements of the appellants were recorded under section 313 of the Code of Criminal Procedure in which they denied the prosecution case.

6. Defence also got examined two defence witnesses as well as got exhibited some documents. The learned court below, having analyzed the evidences available on record, passed the impugned judgment of conviction and sentence order, particularly, relying upon the testimonies of PW1, PW 4 and PW 5 who claimed themselves as eye witnesses of the alleged occurrence.

7. Learned counsel appearing for the appellant no.1 Sri Binoy Singh as well as Sri Mohit Shrivastava, learned Amicus curiae appearing for appellant no.2 assailed the impugned judgment of conviction and sentence order arguing that the statements of so-called eye witnesses are full of contradictions but even then the trial Judge relied upon testimonies of the aforesaid prosecution witnesses. They, further, submitted that in course of trial, it came to light that deceased was a dreaded criminal whereas so-called eye witnesses are family members and relative of the deceased. They, further, submitted that it also came to light that the



informant (PW 4) and the deceased had inimical term with the appellants and, as a matter of fact, it also came to light that the deceased was killed by some unknown persons in the early morning of the alleged occurrence but the learned trial Judge, having discarded the aforesaid circumstances as well as evidences of the defence witnesses, passed the impugned judgment of conviction and sentence order which is not in accordance with law.

8. On the contrary, learned Additional Public Prosecutor appearing for the State supported the impugned judgment of conviction and sentence order arguing that all eye witnesses have supported the prosecution case and apart from this, post mortem report as well as testimony of PW 6 clearly goes to show that the deceased sustained several injuries and died of the aforesaid injuries. He, further, submitted that PW 7 has proved the place of the occurrence and, therefore, there is no doubt regarding involvement of the appellants and others in commission of murder of the deceased and, therefore, this court should not interfere into the impugned judgment of conviction and sentence order.

9. As we have already stated that, altogether, seven prosecution witnesses were examined by the prosecution in



course of trial, out of them PW2 and PW 3 are formal witnesses. PW2 is witness on the seizure list and stated that in his presence, PW 7 had seized blood stained soil from Tenhiya Bandh. Similarly, PW3 is witness on the inquest report. Both the above stated witnesses have stated that they had not seen the actual killing of the deceased.

10. PW 1 is the son of PW 4. This witness stated that at the time of alleged occurrence, he was plucking **Jhingari** in his field and his uncle Kameshwar Singh (deceased) came there and in the meantime, appellants and other FIR named accused came there started assaulting his uncle and in that course, appellant no.2 gave Dab blow on the neck of his uncle and thereafter, remaining persons started cutting his uncle by means of Dab. He, further, submitted that FIR named accused Nawal Singh gave twice bhala blow on both shoulders of his uncle. This witness further stated that he raised alarm which attracted several persons. He, further, stated that he was also chased and threatened by the appellants. This witness has been cross-examined at length by the defence and it is obvious that this witness, specifically, claimed himself to be eye witness of the alleged occurrence but this witness has, nowhere, stated in his deposition



regarding arrival of PW 4. This witness admitted this fact in his cross-examination that there was inimical term of the deceased as well as his father with appellants and others. Although this witness has not stated about presence of PW 4 on the place of the occurrence at the relevant time but on being cross-examined, this witness stated at para 10 of his cross-examination that his father was standing at the distance of four **laggies** from him at the time of alleged occurrence. Further, this witness stated in the same paragraph that his father was never chased by the appellants as well as their associates. This witness further admitted at para 14 of his cross-examination that after the alleged occurrence, he had no talk with his father. At para 16 of his cross-examination, this witness stated that the occurrence had taken place near a Pipal tree and distance between the above stated pipal tree and village Jihuli is about one mile and Sikahi tola is at a distance of 10 bighas.

11. PW 4 is the informant and father of PW 1. This witness stated that he had gone to Tenhiya tola for calling his labourers and returned to his field and saw the appellants and others assaulting his brother and in that course, appellant no.2 cut neck of his brother Kameshwar Singh by means of Dab



whereas appellant no.3, too, cut neck of the deceased whereas appellant no.1 gave dab blow on the mid of the forehead of the deceased and similarly, appellant no.2 gave dab blow on the neck of the deceased and thereafter, FIR named accused Nawal Singh gave bhala blow on the scalp of the deceased. He, further, stated that he was also chased by the appellants and others. He fled away from his field. He stated that the aforesaid occurrence was witnessed by PW 3, Biswanath (not examined) and PW1. This witness stated that alleged occurrence took place due to previous enmity. In para 4 of his cross-examination, he disclosed about pendency of several cases between him and the appellants and others. Similarly, at para 5 of his cross-examination, this witness disclosed regarding criminal cases which had been lodged against the deceased. At para 9 of his cross-examination, this witness stated that he as well as his son (PW1) had seen the occurrence and at that time, they were at their field and the distance between his field and place of the occurrence was about two kathas. This witness could not disclose plot number as well as area of the aforesaid land. This witness admitted that the place of the occurrence was situated at a distance of two miles from his village Jihuli whereas Tenhiya



tola was situated from the place of the occurrence at the distance of 100 Gaj. At para 15 of his cross-examination, this witness stated a new fact that in the morning of the alleged occurrence, he along with his deceased brother had left their home and reached at the place of the occurrence at about 7 a.m. and at that time no any other person was present there. This witness stated that that he remained on the place of the occurrence along with the deceased for near about two minutes and after that went to the place of the occurrence. This witness has admitted that except him none was present at his field at the time of alleged occurrence.

12. Here, we would like to refer that PW 4 had not disclosed the presence of PW 1 in his fardbeyan at the time of alleged occurrence because he has, nowhere, stated in the fardbeyan that PW1 had also witnessed the present occurrence. Therefore, it is obvious that the presence of PW1 at the time of alleged occurrence appears to be doubtful.

13. PW 5 is admittedly relative of PW 4. This witness claimed himself to be eye witness of the alleged occurrence. No doubt, in fardbeyan of PW4 it has been disclosed that occurrence was witnessed by PW5 but in para 15 of his cross-examination, PW4 admitted that except him



none was present at the filed. Moreover, it is difficult to place reliance safely on the statement of PW5 because he happens to be relative and interested witness.

14. No doubt, it is well settled principle of law that testimonies of interested and inimical witnesses can not be thrown into dustbin only on the ground of interestedness and inimical term rather deposition of the interested and inimical witness has to be considered cautiously and carefully. In the present case, long standing enmity between the appellants and the informant is admitted fact. It has come in evidence that prior to alleged occurrence, informant and the deceased were made accused in murder case of uncle of appellant no.2 and in that case, appellant no.2 was a witness and it has also come in evidence that several cases were pending between the appellants and the informant including the deceased. Therefore, if the aforesaid facts are taken into consideration, possibility of false implication can not be ruled out, particularly, in the circumstances, when there are so many contradictions in the depositions of the prosecution witnesses. Therefore, we are of the view that the appellants are entitled to get benefit of doubt.

15. On the basis of the aforesaid discussions, this



criminal appeal is allowed and accordingly, the impugned judgment of conviction and sentence order dated 30.4.1993 passed by the Addl. Sessions Judge VI, East Champaran in Sessions trial no. 73/121 of 1992 is, hereby, set aside. Appellants are acquitted of the charges giving the benefit of doubt. They are on bail. They are discharged from the liability of their bail bonds.

16. Let first and last page of the copy of this judgment be handed over to Mr. Mohit Shrivastava for needful.

(Hemant Kumar Srivastava, J)
(Rajendra Kumar Mishra, J)

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	13.2.2018
Transmission Date	13.2.2018

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