

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.123 of 1994

(Against the Judgment of conviction and order of sentence dated 09.03.1994 passed by the learned
Additional Sessions Judge-I, Patna, in Sessions Trial Case No. 144 of 1987)

Brind Singh @ Birendra Singh, son of Gandhi Singh, Resident of village
-Bhergawan, P.S. Gaurichak, District-Patna.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with

Criminal Appeal (DB) No. 128 of 1994

Suresh Ram, son of Late Haricharan Ram, Resident of village – Bhergawan,
P.S. Gaurichak, District – Patna.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

(In Criminal Appeal (DB) No. 123 of 1994)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Anil Kumar Singh, Advocate
Mr. Mahesh Prasad-3, Advocate

For the State : Mr. S.C. Mishra, APP

(In Criminal Appeal (DB) No. 128 of 1994)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Anil Kumar Singh, Advocate
Mr. Mahesh Prasad-3, Advocate

For the State : Mr. D.K. Sinha, APP

**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

And

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)**

Date : 28-08-2018

Both the above stated appeals have been preferred
against the common Judgment of conviction and sentence order
dated 09.03.1994 passed by the learned 1st Addl. Sessions Judge,
Patna in Sessions Trial Case No. 144 of 1987, by which and
whereunder, the learned trial Court convicted both the above



stated appellants for the offences punishable under Sections 302/34 and 201 of the Indian Penal Code and Section 27 of the Arms Act and, accordingly, sentenced them to undergo Rigorous Imprisonment for life for the offence punishable under Section 302/34 of the I.P.C., to undergo Rigorous Imprisonment for five years for the offence punishable under Section 201 of the I.P.C. and to undergo Rigorous Imprisonment for three years for the offence punishable under Section 27 of the Arms Act. However, all the sentences were ordered to run concurrently. Since, both the appeals are arisen out of the same common Judgment, the aforesaid appeals were heard together and a common Judgment is being passed in both the above stated appeals.

2. P.W.1 Sahendra Singh gave his fardbeyan to S.I. Gaurichak Police Station on 06.08.1986 at 8.30 A.M. to this effect that on previous day, he along with his uncle Ramjatan Singh (deceased) had gone to attend a sessions case in Patna and while returning to their home, they got down at Beldarichak at about 5.00 P.M. and went to Mahdipur to meet one Lakhan, where they stayed for near about half an hour and, thereafter, they proceeded towards their village by crossing the Dargha river and reached near the Ahra of village Kansari at about 8.00 P.M. He further claimed that as soon as, he and his uncle Ramjatan Singh reached near Ahra of village Kansari, appellants and three others being armed with gun and pistol



came there and F.I.R. named accused Gandhi Singh ordered the others to assault the enemies upon which co-accused Bindeshwar Singh @ Shivdulari Singh opened fire on his uncle as a result thereof, his uncle having sustained fire arm injury fell down on the ground. Thereafter, appellants Birendra Singh and co-accused Akhlesh Singh also made firing on the deceased. The informant, having seen the above stated heavy firing, ran towards south side and reached at village Bhergawanchak, where he gave information regarding the aforesaid incident to P.W.6 Vidyanand Singh, who happens to be his relative (Fufa). He claimed that he along with P.W.6 went to his village and narrated the entire incident to P.W.4 Suresh Singh, but, out of fear, he as well as his other family members, including P.W.4 and P.W.6, did not dare to go to the place of occurrence and in the next morning, when he along with his other family members went to the place of occurrence, he saw the blood fallen on the P.O. and the slippers of his uncle were lying there. He also noticed the sign of dragging of dead body. He searched the dead body of his uncle, but failed to trace out the dead body. Thereafter, he went to the Gaurichak Police Station and gave his fardbeyan. The fardbeyan of P.W.1 was sent to Fatuha Police Station, where Fatuha P.S. Case No. 280 of 1986 for the offences punishable under Sections 147, 148, 149, 302 and 201 of the I.P.C. and Section 27 of the Arms Act was registered on



06.08.1986 and the formal F.I.R. was drawn up against the appellants and three others for the above stated offences on the same day. However, the F.I.R. was put up before the concerned Magistrate on 08.08.1986.

3. P.W.8 Jaduvir Singh, the then S.I. of Gaurichak Police Station, took the charge of investigation. He inspected the place of occurrence, seized the blood stained earth, recorded the statement of witnesses and in course of investigation recovered trunk of the dead body and amputated left leg were sent for Postmortem examination. P.W.8 received the Postmortem report and after completion of the investigation, he submitted Chargesheet against the appellants and one Gandhi Singh as well as Shiv Dulari Singh showing them absconders. So far as accused Akhlesh Singh is concerned, before submission of Chargesheet, he died and as a result thereof, he was shown in Chargesheet as dead.

4. The cognizance of the offence was taken and the case of the appellants as well as co-accused Gandhi Singh was committed to the court of Session in usual way and, accordingly, appellants along with Gandhi Singh stood trial and they were charged for the offences punishable under Sections 302/34 and 201 of I.P.C. and Section 27 of the Arms Act.

5. In course of trial, prosecution examined, altogether, nine witnesses and got exhibited certain documents



including the seizure-list, inquest report and Postmortem report. The statement of appellants and co-accused Gandhi Singh was recorded under Section 313 of the Cr.P.C. in which they denied the prosecution story and claimed their false implication on account of previous enmity. The appellants and co-accused Gandhi Singh got examined one defence witness as D.W.1, who proved Ext. A and Ext. B.

6. The learned trial Court, after hearing the parties and scrutinizing the evidences available on the record, convicted the appellants in the manner as stated above, whereas acquitted the co-accused Gandhi Singh of the charges giving him benefit of doubt.

7. Learned counsel appearing for the appellants challenged the impugned Judgment of conviction and sentence order arguing that the learned trial Court has failed to appreciate the evidences available on the record in proper manner. He submits that the entire prosecution case based upon the deposition of P.W.1, who claims himself to be an eye-witness of the alleged occurrence, but the materials available on the record go to show that P.W.1 is not an eye-witness of the alleged occurrence as he was not with the deceased, when the deceased was killed. Continuing his submission, learned counsel for the appellants submits that P.W.1 claims that he along with deceased had gone Patna to attend criminal case, but except oral evidence



nothing has been brought on record by the prosecution to prove that P.W.1 and deceased had gone Patna to attend criminal case and on contrary, defence has brought Ext.A and Ext.B to show that on the alleged date of occurrence neither deceased nor P.W.1 had appeared, in person, before the criminal Court, rather, they were represented by their learned counsel under Section 317 (2) of the Cr.P.C. He further submits that conduct of P.W.1 also creates doubt about his claim, because P.W.1 has admitted in his evidence that when the appellants and others started making indiscriminate firing upon the deceased, he went running to the house of P.W.6, who happens to be his relative and thereafter, along with P.W.6 he went to his village, where he remained for whole night. Learned counsel for the appellants further submits that above stated conduct of P.W.1 is quite unnatural, because, neither he nor P.W.6 as well as other villagers made attempt to go to the place of occurrence in the said night to know what happened with the deceased. He submits that, as a matter of fact, in the next morning, when P.W.1 learnt about the missing of his uncle, he lodged the present case and, as a matter of fact, P.W.1 is not an eye-witness of the alleged occurrence.

8. He, next, submits that according to prosecution case, a trunk and amputated leg were recovered and P.W.1 as well as other witnesses claimed that they had identified



the trunk and amputated leg on the basis of clothes and disease of Filaria, but the aforesaid story was improved by the prosecution in course of trial as P.W.8 has admitted in his evidence that the aforesaid fact had not been disclosed either by P.W.1 or by the other prosecution witnesses at the time of recovery of trunk and amputated leg. He further submits that the recovery of trunk and amputated leg were at the advance stage of decomposition and, therefore, it is obvious that it was not possible for P.W.1 and others to identify the trunk and amputated leg as of deceased of the present case because the aforesaid recovered trunk and amputated leg were not identifiable and, therefore, the prosecution has failed to prove this fact beyond all shadow of reasonable doubts that the recovered trunk and leg were of uncle of P.W.1.

9. He next submits that according to P.W.1, the alleged occurrence took place at about 8.00 P.M. in an open place and the appellants had inimical term with him as well as deceased and, furthermore, according to P.W.1 he was also with the deceased when deceased sustained fire arm injury, but it is surprising enough as to why the appellants spared the informant, particularly, in the circumstance when the informant had also inimical term with the appellants. He further submits that moreover, there was complete dark at the time of alleged occurrence and admittedly, there was no means of identification



and, therefore, it is difficult to believe upon the claim of the P.W.1.

10. He next submits that P.W.1 has claimed that he along with deceased crossed the Dargha river by boat and the P.W.8 states in his evidence that, in course of investigation, he recorded the statement of boatman, but the aforesaid boatman was not shown as a witness in Chargesheet nor he was examined in course of trial and, therefore, non-production of boatman before the Court creates doubt about the above stated claim of P.W.1. He next submits that P.W.6 is relative of P.W.1 and P.W.1 claims that just after the occurrence, he went to the house of P.W.6 and informed him about the alleged occurrence, but P.W.6 Vidyanand Singh was tendered by the prosecution and the Apex Court has held in a decision reported in *AIR 1995 Supreme Court 1601* that tendering of a witness is amount to his non-production before the Court and, therefore, the aforesaid fact also creates doubt about the genuineness of the prosecution case and the appellants are entitled to get the benefit of acquittal, but the learned trial Court committed error in convicting and sentencing the appellants.

11. On the other hand, learned Addl. Public Prosecutor supported the impugned Judgment of conviction and sentence order arguing that P.W.1 has claimed that he along with deceased had come to Patna to attend criminal case and his



uncle stayed at Patna city court, whereas he came to Patna District Court and, thereafter, he returned from Patna District Court along with his uncle proceeded to home.

12. Learned Addl. Public Prosecutor further submits that Ext.A and Ext.B produced on behalf of the defence at least, show this fact that on the alleged date of occurrence, a criminal case was pending against the deceased and in that criminal case date was fixed.

13. Learned Addl. Public Prosecutor further submits that P.W.1 is eye-witness and he claims that the deceased was killed by appellants and others and P.W.1 further claims that having seen the heavy firing he fled away from the place of occurrence and out of fear neither he nor his other family members dared to return to the place of occurrence in the night of alleged occurrence and, therefore, the aforesaid claim of P.W.1 is quite natural and the claim of P.W.1 cannot be doubted only on this ground that he had not returned to the place of occurrence in the night of the alleged occurrence.

14. Learned Addl. Public Prosecutor further submits that P.W.1 and other prosecution witnesses, specifically, stated that they had identified the trunk and amputated leg of the deceased on the basis of clothes and slippers and, therefore, the prosecution successfully established the identification of dead body of deceased.



15. He next submits that, admittedly, the appellants and others had inimical term with the deceased and it is well settled principle of law that enmity cuts in both ways. He, further, submits that in the present case the evidence of P.W.1 as well as other circumstances clearly establishes that it were appellants and their associates, who kidnapped and murdered the deceased and, therefore, the prosecution case cannot be rejected only on the ground that P.W.1 and deceased had inimical terms with the appellants and others.

16. Having heard the above stated contentions of the parties, we went through the record along with lower Court's record.

17. P.W.2 Ambika Singh is the witness of seizure list and has proved his signature on seizure-list (Ext.1). This witness claimed that the in his presence, P.W.8 had seized the blood from a field. This witness is relative of P.W.1.

18. P.W.3 Ramanugrah Singh and P.W.6 Vidyanand Singh have been tendered and they have stated nothing in their respective cross-examinations.

19. P.W.4 Suresh Singh is the cousin of P.W.1 and this witness admits that he came to know about the alleged occurrence from P.W.1 in the night of 05.08.86. This witness further claims that in the next morning, he along with P.W.1 and his other family members went to place of occurrence and found



blood, slippers and sign of dragging over the place of occurrence. This witness also states that the dead body, kept in a bag, was recovered from Pararua river. This witness claimed that on the basis of Dhoti, Ganji, Lungi and inner wear of the deceased as well as on the basis of amputated leg of the deceased, he identified the dead body of deceased. This witness admits that village Bhergawanchak is about 500 yards east from Ahra of village Kansari and village Bhergawan is about 500 yards east from Bhergawanchak. This witness further admits that in the night of alleged occurrence, P.W.1 disclosed him as well as villagers about the alleged occurrence, but none could dare to go to the place of occurrence in the same night. This witness at para 8 of his cross-examination states that he had made statement before the Police to this effect that he had identified the recovered leg of deceased on the basis of Filaria disease. He had also made statement before the Police that he identified the trunk of deceased on the basis of his clothes and slippers. This witness further admits that appellant Brind Singh had lodged a criminal case against him and others including the deceased and P.W.1 and P.W.6 and in the aforesaid criminal case, he also well as others were convicted. He also admits that there was land dispute between the deceased and the appellants and others.

20. P.W.5 Surendra Singh is also a witness on the



recovery of dead body and this witness claims that he had identified the dead body of deceased Ramjatan Singh in presence of the Police. This witness happens to be the full brother of P.W.4, but except on the point of identification of dead body, this witness states nothing about the alleged occurrence nor claims that in the night of alleged occurrence P.W.1 came to village and gave information regarding the alleged occurrence.

21. P.W.7 Dr. Chandreshwar Singh states that he did the Postmortem on the dead body of Ramjatan Singh on 11.08.86 at 11.00 A.M. and found the following:-

(i) The head of the body was cut at the level of floor of mouth leaving a portion of lower jaw with some loosen teeth in the socket and chin having some sparse grey hairs. Head was absent. The body was in advance stage of decomposition, maggot infested and foul smelling.

(ii) Incised punctured wound in number over the right shoulder top 1"x1/4"x muscle deep situated side by side at a distance of 1/4".

(iii) Both arms were amputated at elbow joints. Maggot infested.

(iv) Both lower limbs amputated at knee joints. Maggot infested and decomposed. Left leg amputated at



the level of knee joint was kept by the side of the body separately, Maggot infested and decomposed.

(v) Wound of entrance of the right side abdomen below the costal margins at anterior auxiliary line level of size of $\frac{1}{2}$ "x $\frac{1}{2}$ " communicating with chest and abdominal cavities with burning and tatooing of the area around the wound.

(vi) Incised punctured wound on left side of abdomen maggot infested with abdominal viscera protruding through which was of black colour-decomposed and maggot infested with abdominal viscera protruding through which was of black colour-decomposed and maggot infested of size of 6"X4"X communicating with abdominal cavity situated at para umbilical region along with the line of umbilicus on the left side.

(vii) Punctured wound 1 $\frac{1}{2}$ " X 1 $\frac{1}{2}$ " in the middle of right side of abdominal wall below injury No. (v) communicating with the abdominal cavity.

(viii) Cavitating wound with heavy maggot infestation situated over right hip with fracture of the hip bone and other pelvic bone. Right and left hip bones were found fractured into pieces.

On dissection internal organs were found decomposed, liver ruptured into pieces. Ribs on



projectible bullet was found lodged in the inner wall of left parietal wall in the 10th rib level in mid auxiliary line with fracture of 10th rib which was projecting out side. The bullet was recovered, preserved and handed over to the Chaukidar for its delivery to the Police.

This witness proved Postmortem report as Ext.3.

22. P.W.8 Jaduvir Singh is the Investigating Officer. This witness states that the place of occurrence is Ahra of village Kansari, which is an open place. This witness further states that the place of occurrence is about 500 yards in east side from Kansari village, which falls between village Bhergawan and Kansari. This witness also states that he found the mark of dragging and also found blood, which was seized by him. He also found one pair of slippers. He prepared sketch map. This witness further states that on 09.08.86, he got information that dead body of a male has been recovered from Pararawa river where he went and found P.W.4, who was present there from before and P.W.4 claimed that the recovered dead body was of his uncle Ramjatan Singh though both hands, legs and head of the aforesaid dead body were missing. He further states that left leg of the dead body was recovered near the place from where the trunk of dead body was recovered. This witness further states that distance between the place of occurrence from Gaurichak Police Station is about 5 to 6 kilometers. This witness



also admits that he had recorded the statement of boatman Prayag Mallah, but he had not figured him as witness in the Chargesheet. This witness admits that P.W.4 had not stated before him that there was specific mark on the slippers nor had claimed that he had identified the trunk on the basis of clothes.

23. P.W.9 Ramgahan Yadav is a formal witness. He proved the material exhibits.

24. P.W.1 claims that on 05.08.86, he along with his uncle came City Court, Patna to attend a criminal case. He further claims that his uncle stayed at Patna City court, whereas he went to Patna Civil Court and after attending the case pending in Patna Civil Court he returned to Patna City Court from where he along his uncle Ramjatan Singh proceeded towards his village. He further stated that at about 5.00 P.M. he as well as his uncle got down at Bhergawanchak from the bus and went to Mahdipur to meet their relative. He further states that he as well as his uncle crossed the Dargha river by a boat while they were going towards their village and reached near Ahra, appellants and others came there and on the order of co-accused Gandhi Singh, co-accused Bindeshwar Singh opened fire, which hit to his uncle and, thereafter, appellant Brind Singh and named accused Akhlesh Singh, too, opened fire on his uncle. He further claims that he came running to Bhergawanchak, where he met P.W.6 and disclosed the above



stated incident. He further claims that he along with P.W.6 came to his village and disclosed the above stated incident to P.W.4 and other family members, but out of fear he as well as others could not dare to go to the place of occurrence. This witness claims that in the next morning they went to the place of occurrence and lodged the case. He further claims that on the alleged date of occurrence, his uncle had wore Dhoti, Ganji Baniyan and inner wear as well as hawai slipper. This witness further claims that on 09.08.86, the dead body was recovered from Pararua river. This witness further claims that he identified the dead body on the basis of clothes. He further claims that since the appellants and other accused were of his village, he identified them at the time of alleged occurrence. This witness also admits the land dispute and previous litigation. On being cross-examined at para-13, he admits that Bhergawan is a big village and some villagers of Bhergawan village have licensee rifles and this witness further admits that village Bhergawanchak is situated towards west side of his village at the distance of 500 yards. This witness further states that Radho Singh is his maternal nephew and the aforesaid Radho Singh was having licensee of gun at the time of alleged occurrence. This witness admits that he as well as deceased Ramjatan Singh were accused in a case, which had been lodged by the defence. This witness further admits that he had not given any



information to Chowkidar, Dafadar in respect of the alleged occurrence in the night of alleged occurrence. This witness further stated that while he was returning from Patna Civil Court, he had gone to Patna City. He further admits that at the time of alleged occurrence, there was flood in Dargha river and entire area was inundated in the flood. This witness further admits that no one had assaulted to him at the time of alleged occurrence as he started fleeing from the place of occurrence. This witness, further, admits that he had given information of the alleged occurrence to P.W.6 as well as his family members and co-villagers.

25. From perusal of the evidences available on the record, it is quite obvious that except P.W.1 not a single prosecution witnesses has claimed to have seen the alleged occurrence and, therefore, it is obvious that entire prosecution case hinges upon the statement of P.W.1. Admittedly, P.W.1 claims that the alleged occurrence had taken place at about 8.00 P.M. and after the occurrence, he went to the house of P.W.6 and gave information to him about the alleged occurrence and, thereafter, he as well as P.W.6 went to the village of P.W.1 and narrated the entire story to P.W.4 and others. It has come in the evidence that the distance between place of occurrence and the village of P.W.6 was about 500 yards and the several persons had licensee gun in the village of P.W.6. Furthermore, it has also



come in the evidence that the distance between the place of occurrence and village of P.W.1 was also about 500 yards and in his village also several persons had licensee gun. It has also come in the evidence that the distance between the Gaurichak Police Station and the place of occurrence was 5 to 6 kilometers, but it is surprising enough that even after seeing the assault by the appellants and others on deceased, P.W.1 remained stayed at his village for whole night and did not take any step either to go to the place of occurrence to save the deceased or to go to the Gaurichak Police Station to give information regarding the alleged occurrence, particularly, in the circumstance, when co-villagers of P.W.6 as well as co-villagers of P.W.1 had licensee guns and, therefore, the aforesaid conduct of P.W.1, P.W.4 and P.W.6 is against the conduct of human nature. Moreover, P.W.5 is full brother of P.W.4, but P.W.5 has, nowhere, stated in his deposition that P.W.1 gave information to him in respect of the alleged occurrence in the night of alleged occurrence. Therefore, the aforesaid fact creates doubt about the claim of P.W.1.

26. Furthermore, we find that the defence has brought Ext.A and Ext.B on record and the aforesaid documents go to show that on 05.08.86, the deceased was represented, through his counsel, under Section 317(2) of the Cr.P.C. in a criminal case before the Patna city Court and the aforesaid fact suggests that the deceased was not present at Patna City Court



on 05.08.86 and, therefore, the aforesaid documents put a question mark on the claim of P.W.1 that on the alleged date of occurrence, deceased had gone to Patna City Court to attend his case.

27. Admittedly, headless dead body, kept in a bag from Pararua river was recovered. It is also admitted case of the prosecution that both the hands and both legs of the aforesaid dead body had been amputated and one amputated leg was recovered near the trunk of the dead body and the witnesses identified the dead body on the basis of clothes and the recovered leg of the body. The Doctor has admitted that the aforesaid trunk and recovered leg were at the advance stage of decomposition. Furthermore, the Investigating Officer admitted that the prosecution witness No.5 and other witnesses, who claimed to have identified the dead body on the basis of clothes, had not made statement before him to this effect that they could identify the dead body of the deceased on the basis of clothes and, therefore, the aforesaid fact goes to show that in course of trial, the prosecution witnesses improved their statements.

28. P.W.4 admitted in his cross-examination that appellant Brind Singh had lodged criminal case against the deceased, P.W.1, P.W.4 and others and in the aforesaid criminal case, the deceased and others were convicted prior to alleged occurrence. Therefore, the aforesaid statement of P.W.4 goes to



show that the informant had inimical term with the appellants. No doubt, the enmity cuts in both ways and a person can commit the offence on account of enmity and similarly a person can falsely be implicated due to enmity. In the present case, the circumstances indicate the probability of false implication because as per evidence of P.W.1 at the time of alleged occurrence, he as well as deceased were alone and the appellants and their associates were armed with fire arms and they made indiscriminate firing upon the deceased, but it is surprising enough that they left the P.W.1 unhurt.

29. Furthermore, we find several other infirmities in the prosecution case such as the boatman by whose boat, P.W.1 and deceased claimed to have crossed the river, has not been examined and P.W.6, the own relative of P.W.1, has been tendered and he has stated nothing in respect of the alleged crime, particularly, in the circumstance when P.W.1 claims that after the alleged occurrence, he, immediately, came running to the house of P.W.6 and gave information to him regarding the alleged occurrence and, therefore, in our view, the prosecution failed to establish his case beyond all shadow of reasonable doubts and the appellants are entitled to get the benefit of doubt.

30. On the basis of the aforesaid discussions, both the above stated Criminal Appeals are allowed and,



accordingly, the impugned Judgment of conviction and sentenced order dated 09.03.1994, passed by the Addl. Sessions Judge-I, Patna in Sessions Trial Case No. 144 of 1987 are, hereby, set aside. The appellants are acquitted from the charges giving benefit of doubt to them. The appellants are on bail, therefore, they are discharged from the liabilities of their bail bonds.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Manish/-

AFR/NAFR	N.A.F.R
CAV DATE	N.A
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