

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.37 of 2021**

Arising Out of PS. Case No.-173 Year-2004 Thana- MOTIHARI MUFASIL District- East
Champaran

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LAXMI SINGH @ LAXMI KUMAR SINGH @ MUNNA SINGH @
LAXMI NARAYAN SINGH, Son of Binda Singh, Resident of Nanhkar,
Police Station- Patahi, District- East Champran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 57 of 2021

Arising Out of PS. Case No.-173 Year-2004 Thana- MOTIHARI MUFASIL District- East
Champaran

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MOHAN SINGH, S/o Sri Braj Kishore Singh, R/o Village-Rampur Khajuria,
P.S.-Dumariyaghat, District-East Champaran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

(In CRIMINAL APPEAL (DB) No. 37 of 2021)

For the Appellant/s : Mr.Sanjeev Ranjan, Advocate

For the Respondent/s : Ms. Shashi Bala Verma, APP

(In CRIMINAL APPEAL (DB) No. 57 of 2021)

For the Appellant/s : Mr.Umesh Chandra Verma, Advocate

For the Respondent/s : Ms. Shashi Bala Verma, APP

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

and

HONOURABLE MR. JUSTICE KHATIM REZA

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH)**

Date : 08-12-2022

By the impugned judgment and order dated

13.02.2020/15.02.2020 passed by the learned Additional Sessions



Judge-XVI, East Champaran, Motihari in Sessions Trial No. 433 of 2006, the appellants have been convicted and sentenced as under:

In Criminal Appeal (DB) No. 37 of 2021				
Laxmi Singh	Conviction under Section	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
	302/34 of the IPC	For Life	50,000/-	SI for 6 months
In Criminal Appeal (DB) No. 57 of 2021				
Mohan Singh	Conviction under Section	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
	302/34 of the IPC	For Life	50,000/-	SI for 6 months

2. A *fardbeyan* of the informant Ram Kishore Thakur (PW-4) recorded by the Sub-Inspector Shri Krishna Prasad (not examined at the trial) of Motihari Police Station on 22.09.2004 is the basis for registration of Muffasil (Motihari) P.S. Case No. 173/2004 levelling the offence punishable under Section 302/34 of the Indian Penal Code (for short “IPC”).

3. The prosecution’s case as unfolded in the *fardbeyan* is that on the date of occurrence i.e. 22.09.2004, the husband of the informant Sudhanshu @ Sudhanshu Kumar Singh @ Pappu Babu (the deceased) had come to the informant’s residence on a motorcycle with his co-villager Ravinder Kumar Singh (another deceased) and had asked the informant and his brother Nawal



Kishore Thakur (PW-5) to accompany them to his village Patahi. It is the further case of the prosecution that thereafter the informant (PW-4), his brother (PW-5) proceeded with the said two deceased persons on two different motorcycles. On their way to the village Patahi, four miscreants who were in two motorcycles, intercepted. Two of them were identified by the informant as Ranjan Kumar Singh and Shailendra Singh. The informant further disclosed that Ranjan Kumar Singh fired at the deceased Sudhanshu Kumar Singh whereas Shailendra Kumar Singh shot at Ravinder Singh. When the informant and his brother attempted to apprehend them, the two persons, who were driving the two motorcycles, pointed pistols towards the informant and his brother and they subsequently managed to escape. Both the injured died instantaneously on the spot. Names of these appellants surfaced during the course of investigation.

4. Upon completion of investigation, the police submitted final report on 20.09.2005 to the extent it related to these two appellants; as according to the police, the appellants were innocent. However the learned Magistrate court, it appears, after taking cognizance of the offence by an order dated 20.09.2005 decided to proceed against all the four persons, including these two appellants with the other two main assailants



namely Ranjan Kumar Singh and Shailendra Kumar Singh. Subsequently, the case was committed to the court of sessions. Charges were framed on 03.04.2007 against these appellants for commission of the offences punishable under Section 302/34 of the IPC and Section 27 of the Arms Act.

5. As the appellants denied the charges against them and claimed to be tried, they were put to trial. At the trial altogether five prosecution's witnesses were examined including the informant (PW-4), his brother Nawal Kishore Thakur (PW-5) who claimed to be the eye witnesses of the occurrence as was claimed by the informant in the first information report itself. PW-1 and PW-3 came to be declared hostile at the instance of the prosecution as they did not support the prosecution's case. PW-2 is apparently a hearsay witness.

6. The Investigating Officer was not examined at the trial. The postmortem report was not proved at the trial. Apparently, the doctor who had conducted the postmortem was not examined.

7. Upon conclusion of the evidence of the prosecution's witnesses, in compliance with the requirement under Section 313 of the Cr.P.C., learned trial court asked the appellants to explain the circumstances emerging against them



based on the evidence of the witnesses. The appellants denied all such evidence against them.

8. After having analysed the evidence of the prosecution's witnesses and other materials on record, the trial court has held the appellants guilty of commission of the offence punishable under Section 302 read with 34 of the Indian Penal Code and acquitted them of the charge under Section 27 of the Arms Act. As has been noted, at the outset, the appellants have been accordingly sentenced to imprisonment for life with fine.

9. Heard Mr. Sanjeev Ranjan, learned counsel appearing on behalf of the appellant in Criminal Appeal (DB) No. 37 of 2021, Mr. Umesh Chandra Verma, learned counsel appearing on behalf of the appellant in Criminal Appeal (DB) No. 57 of 2021 and Ms. Shashi Bala Verma, learned Additional Public Prosecutor for the State in both the appeals.

10. Learned counsel appearing on behalf of the appellants have submitted that the entire case of the prosecution is apparently based on the evidence of PW-4, the informant and PW-5 his brother who claimed at the trial to be the eye witnesses. It is evident from the First Information Report that they did not know these appellants and they were not knowing the names of these appellants. It is also not disputed, they contend, that the



appellants were not put on T.I. Parade during the course of investigation. For the first time, nearly seven years after the date of occurrence, the informant (PW-4) and his brother (PW-5) identified in the trial court, these appellants as the persons who had participated in the commission of the offence. They contend that in view of long lapse of time from the date of occurrence, keeping in mind the fact that the appellants were not put on T.I. Parade, the evidence of PW-4 and PW-5 becomes weak on the point of identification of these appellants by them. Mr. Sanjeev Ranjan, learned counsel has placed reliance on a Supreme Court's decision in case of *Jayan vs. State of Kerala* reported in **2021 SCC OnLine SC 961** to bolster his contention. They have further submitted that it was brought to the notice of the trial court which fact has been noted in the impugned judgment that the main assailants Ranjan Kumar Singh and Shailendra Kumar Singh came to be acquitted in a separate trial based on almost identical set of evidence. They have submitted that failure on the part of the prosecution to prove the postmortem report, non-examination of the investigating officer and the doctor were fatal for the prosecution to establish its case at the trial. They accordingly contend that the finding of conviction recorded by the trial court is erroneous and unsustainable as it is not based on proper



appreciation of the evidence adduced at the trial. They have submitted that by no stretch of imagination it could have been concluded in the facts and circumstances of the case and the evidence adduced at the trial that the prosecution was able to establish its case beyond all reasonable doubts at the trial.

11. Learned Additional Public Prosecutor representing the State has defended the finding of conviction and has submitted that PWs. 4 and 5 were natural eye-witnesses. The circumstance in which they were present at the place of occurrence were duly explained by them in their evidence at the trial. She has further submitted that though the postmortem report was not duly proved at the trial, the same was there on record and the trial court after having perused the postmortem report reached a conclusion that the ante-mortem injuries reported in the postmortem report corroborated the prosecution's case as set out in the first information report and supported by the evidence of prosecution's witnesses (PW-4 and PW-5). She accordingly contends that the impugned judgment does not require any interference.

12. We have perused the impugned judgment and order of the trial court carefully and have also gone through the lower court records. We have given our thoughtful consideration to the



rival submissions advanced on behalf of the appellants and the State.

13. In the facts and circumstances as emerging from the evidence adduced at the trial, we are of the view that in the absence of the postmortem report being duly proved at the trial, the conviction could not have been recorded by the trial court of the offence punishable under Section 302/34 of the IPC. Further, the appellants were not named in the FIR. Their names emerged during the course of investigation. No T.I. Parade was held. The prosecution's witnesses i.e. PW-4 and PW-5 identified these appellants for the first time at the trial in court. In such situation, non-examination of the Investigating Officer, in our opinion, materially prejudiced the case of the appellants. Taking into account the cumulative effect of the absence of cogent evidence to substantiate the prosecution's case beyond all reasonable doubts, we are of the view that finding of conviction recorded by the trial court is unsustainable.

14. The impugned judgment and order of the trial court dated 13.02.2020/15.02.2020 passed by the learned Additional Sessions Judge-XVI, East Champaran, Motihari in Sessions Trial No. 433 of 2006 is accordingly set aside.

15. The appeals are allowed. The appellants stand



acquitted of the charge of offence punishable under Section 302/34 of the IPC.

16. The appellants are in custody. Let them be released forthwith if not required in any other case.

(Chakradhari Sharan Singh, J)

(Khatim Reza, J)

Rajesh/gauravkr

AFR/NAFR	NAFR
CAV DATE	NA
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