

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.309 of 2019

Arising Out of PS. Case No.-73 Year-1994 Thana- BANMANKHI District- Purnia

Prabhat Narayan Choudhary, Son of Late Laxmi Narayan Choudhary,
Resident of Village - Gangali, P.S.- Banmankhi, District - Purnea.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 118 of 2019

Arising Out of PS. Case No.-73 Year-1994 Thana- BANMANKHI District- Purnia

- 1. Nand Kishor Singh, S/o Late Singhawar Singh, resident of village-Gangali,
P.S-Banmankhi, District- Purnea.
- 2. Raj Kishor Singh, S/o Late Singhawar Singh, resident of village-Gangali,
P.S-Banmankhi, District- Purnea.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 148 of 2019

Arising Out of PS. Case No.-73 Year-1994 Thana- BANMANKHI District- Purnia

Nirbhay Narain Choudhary, S/o Satya Naryan Choudhary, R/o Village-
Gangali, Police Station- Banmankhi, District- Purnea.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 409 of 2019

Arising Out of PS. Case No.-73 Year-1994 Thana- BANMANKHI District- Purnia

Raj Narayan Choudhary, Son of Late Laxmi Narayan Choudhary, Resident of
Village- Gangali, Police Station- Banmankhi, District- Purnea.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s



Appearance :

(In CRIMINAL APPEAL (DB) No. 309 of 2019)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Ritwik Thakur, Advocate
Ms. Vaishnavi Singh, Advocate
Ms. Kiran Kumari, Advocate
For the Respondent/s : Mr. Abhimanyu Sharma, APP
For the Informant : Mr. Vindhyachal Singh, Sr. Advocate
Mr. Prashant Kumar, Advocate

(In CRIMINAL APPEAL (DB) No. 118 of 2019)

For the Appellant/s : Mr. Shailendra Kumar Singh, Advocate
For the Respondent/s : Mr. Abhimanyu Sharma, APP
For the Informant : Mr. Vindhyachal Singh, Sr. Advocate
Mr. Prashant Kumar, Advocate

(In CRIMINAL APPEAL (DB) No. 148 of 2019)

For the Appellant/s : Mr. Raj Kumar, Advocate
Mr. Rohit Kumar, Advocate
Ms. Beauty Verma, Advocate
For the Respondent/s : Mr. Abhimanyu Sharma, APP
For the Informant : Mr. Vindhyachal Singh, Sr. Advocate
Mr. Prashant Kumar, Advocate

(In CRIMINAL APPEAL (DB) No. 409 of 2019)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Ritwik Thakur, Advocate
Ms. Vaishnavi Singh, Advocate
Ms. Kiran Kumari, Advocate
For the Respondent/s : Mr. Abhimanyu Sharma, APP
For the Informant : Mr. Vindhyachal Singh, Sr. Advocate
Mr. Prashant Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE NANI TAGIA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 30-11-2023

1. All the four appeals (five appellants in all) have been heard together and are being disposed of by this common judgment.

2. On behalf of the appellants, Mr. Ajay Kumar Thakur, learned Advocate has led the arguments. The State has been represented by Mr. Abhimanyu Sharma,



learned APP. The Advocate for the informant Mr. Vindhyachal Singh, learned Senior Advocate assisted by Mr. Prashant Kumar, learned Advocate has assisted us on behalf of the prosecution.

3. The appellants have been convicted under Sections 302/149 and 323/149 of the Indian Penal Code, *vide* judgment dated 17.12.2018 passed by the learned Presiding Officer, Fast Track Court-I, Purnea in Sessions Trial No. 33 of 1995 (C.I.S. No. 1435 of 2013, T.R. No. 314 of 2017) arising out of Banmankhi P.S. Case No. 73 of 1994. By order dated 22.12.2018, they have been sentenced to undergo R.I. for life, to pay a fine of Rs.10,000/- each and in default of payment of fine, to further suffer imprisonment for two months for the offence under Section 302/149 of IPC and to undergo R.I. for one year for the offence under Section 323/149 of IPC.

4. The sentences have been ordered to run concurrently.



5. One Amit Kumar @ Bambam was shot dead in the occurrence with respect to which the subject FIR was lodged by his uncle, viz., Mahendra Prasad Choudhary (P.W. 6).

6. In the aforementioned FIR (Banmankhi P.S. Case No. 73 of 1994, dated 14.03.1994), it was alleged that he and others including the deceased had gone to Banmankhi and were returning to the village. On way, the son of P.W. 6, viz., Hem Kumar Choudhary (P.W. 3) wanted to have tea. All of them stopped at a tea stall. At that time, another brother of P.W. 6, whose name has not been disclosed in the FIR, came with some nervousness and informed P.W. 6 and others that somebody from the village had communicated to him that the accused Lakshmi Choudhary (since deceased) and his son/Raju Chaudhary (appellant/Raj Narayan Chaudhary) have armed themselves with their weapons and are pacing up and down in front of their house. Some other persons, who are also armed, are



accompanying them. There appeared to be a possibility of some untowards incident. P.W. 6 was, therefore, suggested by his brother that they should return home before the sunset. P.W. 6 thereafter sat in his car and proceeded for his village home, whereas his brother/ Devendra Prasad Choudhary (P.W. 2) proceeded for the village home on his scooter. Upendra Prasad Choudhary (P.W. 5) bestrode a horse for reaching his village home. P.W. 6 has later claimed that after going to some distance, he found appellant/ Raj Narayan Choudhary coming from the village side on his motorcycle at great speed. No sooner he saw P.W. 6 and others, he made an about-turn to his village. Though, P.W. 6 harboured apprehension about some mishap but then he had never anticipated that he and his associates would be attacked by the accused persons/ appellants. No sooner had the car reached in front of the house of Lakshmi Choudhary at about 06:00 P.M., P.W. 6, still sitting in the car, saw that the horse which was being driven back home by



Upendra Prasad Choudhary was shot at by Lakshmi Choudhary and as a result of that, the horse fell down and so did Upendra Prasad Choudhary. P.W. 6 thought that his brother had died. He wanted to alight from the car but Lakshmi Choudhary, appellants/Raj Narayan Choudhary, Satya Narayan Choudhary and Nirbhay Narayan Choudhary and others started damaging the car by means of *lathi*. He was also informed by one Shyam Prasad Yadav (P.W. 1) that his nephew/Amit Kumar @ Bambam (deceased) is being dragged away by Lakshmi Choudhary and Prabhat Choudhary. P.W. 6, thereafter saw the appellant/Raj Narayan Choudhary firing from his weapon from a close distance, hitting the deceased (Amit Kumar @ Bambam) in his head. Because of such firing, Amit Kumar died instantaneously. His head was blown off. P.W. 6, thereafter, ran towards his nephew but by that time he had already died. It was at that time that appellant/Raj Narayan Choudhary snatched his licensed revolver and



handed it over to one Bechan Mandal and asked him to give it to his mother. Seeing this, P.W. 6 became unconscious. On regaining his consciousness, he found himself admitted in Primary Health Centre, Banmankhi, where his *fardbeyan*/statement was recorded by S.I. Manoj Kumar (P.W. 9) at 08:15 P.M.

7. No specific cause of occurrence was stated by P.W. 6 in the *fardbeyan*/statement except the concerted action of the accused persons in killing the deceased, injuring others and taking away his licensed weapon.

8. On the basis of the aforementioned *fardbeyan*/statement, Banmankhi P.S. Case No. 73 of 1994, dated 14.03.1994 was registered for investigation for the offences under Section 147, 148, 149, 341, 342, 323, 307, 379, 427 and 302 of the IPC and Section 27 of the Arms Act.

9. It further appears from the records that except for appellant/Raj Narayan Choudhary, the other



appellants were summoned to face Trial under Section 319 of the Cr.P.C.

10. The Trial Court, after having examined twelve witnesses on behalf of the prosecution and none on behalf of the defence, convicted the appellants under Sections 302/149 and 323/149 of the IPC.

11. Hence this appeal.

12. It may not be out of place here in this context to state that on the written report of appellant/Raj Narayan Choudhary, Banmankhi P.S. Case No. 74 of 1994 was also registered for investigation, as a counter version of the occurrence where three persons from the side of accused persons were injured.

13. Both the cases were investigated by the same Investigating Officer and in the counter case lodged by appellant/Raj Narayan Choudhary, three of the persons of the side of the prosecution have been



convicted and sentenced for ten years for the offence under Section 307 of the IPC.

14. Mr. Ajay Kumar Thakur, learned Advocate assisted by Mr. Raj Kumar and Mr. Shailendra Kumar Singh, learned Advocates for the appellants has submitted that the FIR (Exhibit-7) is absolutely unbelievable for the reason that the narration of events does not fit in the time-lines suggested by the prosecution. The FIR was registered at 08:15 P.M. in the hospital after P.W. 6 regained his consciousness. However, much before that, the inquest was prepared by P.W. 9 sometimes at 05:30 P.M. The inquest was signed by one Sita Ram, who has not been examined at the Trial and one of the nephews of P.W. 6, who too has not been examined.

15. The inquest report was prepared at the place of occurrence, where the dead body was found lying. The place was found to be in close vicinity of the house of the accused persons.



16. What is most noticeable is that one of the sons of P.W. 6, viz., Hem Kumar Choudhary (P.W. 3) had visited the police station with the information about the death of his cousin at about 06:30 in the same evening, but perhaps without any details of who all had taken part in the assault and who had killed the deceased. Normally, such information to the police by a close relatives of the deceased should have been taken as the first information regarding the occurrence.

17. The I.O. (P.W. 9) of this case admits of the aforementioned fact, viz., of P.W. 3 having come to the police station with the information of death of the deceased at 06:30 P.M. and which information was recorded in the station diary. Till such time, P.W. 9 or anybody in the police station had no idea about the name of the assailant(s). The police had only the information that a murder had taken place in village Gangeli, falling under Banmankhi police station. That the inquest report was prepared by around 05:30 P.M.



makes even this statement by P.W. 3 and confirmed by the I.O. of this case (P.W. 9) somewhat doubtful, so far as the time is concerned. The inquest report would have been prepared only on the arrival of the police party at the place of occurrence. Even at that time i.e. at 05:30 P.M., if the police party could find out one of the relatives of the deceased to sign the inquest report, he could have also obtained necessary information to record the FIR. That not having been done and the FIR being recorded in Banmankhi Primary Health Centre at 08:15 P.M. definitely suggests a different story, at least different from the prosecution version of P.W. 6.

18. There is nothing on record to indicate as to how P.W. 6 or three others who were injured in the occurrence had received treatment in Banmankhi Primary Health Centre.

19. Were they brought to that place by somebody or they went by their own?

20. P.W. 6, during his trial, has not



deposed anything regarding the manner in which he was taken to the hospital.

21. With respect to others, the I.O. (P.W. 9) has categorically stated that all of them, without waiting for the deceased to be rendered any medical aid, travelled to the hospital on their own and got themselves treated. It may be reiterated here that for the injuries caused on the person of P.W. 6 and two others, three persons of the prosecution side have been convicted and sentenced for the offence of attempting to murder.

22. What must have happened?

23. What was the *casus-belli* leading to the fight between two group of villagers?

24. According to P.W. 6, a buffalo belonging to his brother had strayed in the field of brother of appellant/Raj Narayan Choudhary, which was attempted to be impounded by the appellant/Raj



Narayan Choudhary, which has been touted to be the immediate cause of the flare-up.

25. This appears to be completely unbelievable.

26. The prosecution party as also the appellants have been residing the village for a very long time. For enmity, there is only a record of Section 107 of Cr.P.C. proceeding between Lakshmi Choudhary (since deceased) and P.W. 6.

27. Could such a small incident give rise to a fight in which a vehicle was left battered, many persons on both sides were injured and one persons died of gun-shot injury? It definitely appears to be doubtful.

28. This is actually the issue to be decided in this appeal.

29. The Trial Court has found that the witnesses have been consistent in their deposition



regarding the attack on the car, the information about the possibility of an occurrence sometimes before the occurrence when P.W. 6 and his associates had not come back to the village and about appellant/Raj Narayan Choudhary having been fired from a close distance, which blew off the head of the deceased. The licensed revolver of P.W. 6 was also taken away by force.

30. There is no record of the weapon having been recovered or seized. Admittedly, it was a licensed weapon which could not have been allowed to be retained by the mother of appellant/Raj Narayan Choudhary, who had snatched it from the P.W. 6.

31. Curiously, no conviction has been recorded in any one of the Sections of the Arms Act.

32. What happened to the weapon?

33. That apart, if P.W. 6 had become unconscious immediately after his weapon was snatched



from him and regained consciousness only in the hospital, there does not appear to be any guarantee that he had seen the occurrence or that he was correctly narrating about the incident.

34. The police never searched for the battered car. The same was never exhibited even though it could have form one of the important *corpus delicti*. What is even more surprising is that the Trial Court has convicted all the appellants including appellant/Raj Narayan Choudhary for having killed the deceased but the weapon of assault has not been recovered. Appellant/Raj Narayan Choudhary possesses a gun license. Was the murder committed by a licensed weapon was also an important question to be investigated. The weapon has not been recovered nor is there any conviction under the Arms Act.

35. Mr. Thakur grabs it as a point in his favour that perhaps there was no intention to murder the deceased. There was a scuffle between two groups



of villagers for some reason or the other, which resulted in the injuries of both sides and an unfortunate death on the side of the prosecution.

36. P.W. 6 and others were coming from outside of the village. According to P.W. 6, appellant/Raj Narayan Choudhary had returned to his village after seeing P.W. 6 and others. If there was any intention of causing harm to anyone of the persons either sitting in the car or riding back home on a scooter or a horse, the occurrence could have taken place outside the village, without their being so many people gazing at the occurrence. Therefore, Mr. Thakur has urged that all this explanation was only to explain away the delayed lodging of the FIR, even when the occurrence had taken place much before the time when the FIR was registered.

37. That the statement of P.W. 3/ Hem Kumar Choudhary was not brought on record, is a serious lapse on the part of the prosecution. There can



be no other explanation except deliberate suppression of the document, which would really have disclosed the undiluted and uncontaminated version of the occurrence. There could not be any reason for withholding such statement.

38. As mandated by law, P.W. 9 investigated the counter case also. The same Court has tried the appellants and the accused persons of the counter-case. One version could have excluded the correctness of the other version. Perhaps the Investigator found himself taking a tight-rope walk. An Investigator is not to be partisan; he has to investigate the case in all fairness.

39. With these background facts, it would be necessary to refer to the deposition of P.W. 6 and P.W. 9 in some greater detail.

40. Before the Trial Court, P.W. 6 iterated what he had stated in the FIR, including the manner in which his weapon was snatched by appellant/Raj



Narayan Choudhary. In his cross-examination, he has admitted that he could know about the injuries on his person only when he recovered his consciousness. It has been argued that such statement actually belies the truth. Till the time his weapon was not snatched, there is no statement regarding any attack on P.W. 6. Had he been injured in the occurrence even before he lost his consciousness, he would have surely said so in the *fardbeyan*, which apparently was recorded after he regained his consciousness.

41. It is quite true that all facts may not be put down in the *fardbeyan*/statement which is not to be treated as an encyclopedia of facts, but a fact, so important, *viz.*, presence of physical injury on the person of the maker of the FIR and he not stating about it in his first statement, definitely makes his report doubtful.

42. The injuries suffered by P.W. 6 and his kindred was the reason for the conviction of three of



the persons of the prosecution side. P.W. 6 thus was left with no option but to give an explanation, howsoever unpalatable it might have been, for explaining his presence and lodging his report in the hospital.

43. It was only during the trial that the reason behind the occurrence was stated by him, *viz.*, of a cattle having strayed in the field on the other side which was attempted to be impounded.

44. The Investigator (P.W. 9) was posted as an Officer-in-Charge of Banmankhi Police Station on 14.03.1994. The *fardbeyan* of P.W. 6 is in his handwriting. The inquest report was prepared by one Sita Ram Paswan, S.I., Banmankhi, who has not been examined. The FIR was received in the Court on 16.03.1994. He had inspected the place of occurrence and had found the dead body lying in front of a brick-road, where one *kirana* shop was located. About 50 yards from the dead body the battered car of P.W. 6



was parked. In the South-Western corner of the P.O., the house of appellant/Raj Narayan Choudhary and his father Lakshmi Choudhary was located. The occurrence therefore had taken place somewhere near the houses of the appellants and the accused persons.

45. P.W. 9 had seen the injuries on the person of P.Ws. 2, 5 and 6 (Exhibit-9 to 9/3). He admits of having registered the FIR lodged by appellant/Raj Narayan Choudhary as Banmankhi P.S. Case No. 74 of 1994. He himself had investigated both the cases.

46. In paragraph 15 of his cross-examination, he has been candid enough to disclose that Hem Choudhary (P.W. 3) had come to the police station to inform that his cousin has been killed. On such information, an entry was made in the station diary, which was timed at 06:30 P.M. He has further stated before the Trial Court that P.W. 3 did not name anyone of the assailants and had only disclosed that his



cousin had been killed. The damaged vehicle was also noticed by him, but for reasons known to him only, it was not recorded in the police papers.

47. As we have noted earlier, the car was not even seized and thus not made an exhibit of the case. Nothing was investigated by him with respect to the horse having been injured because of the firing. Even the distance of the house of the appellants from the place of occurrence was not noted by him. Though he has denied the suggestion of the witnesses that he was only trying to equalize the allegations on both sides, but from the manner in which he has investigated the case, the suggestions appear to be correct to us. A further suggestion was given to him that he, deliberately, did not investigate whether it was correct that the victim was not rendered any medical assistance, perhaps with the motive of allowing him to die, which would have provided a good opportunity of feeding fat the old grudge. Though, such a suggestion



appears to be rather far-fetched, but at least the delayed lodging of the FIR or the reason for not rendering any medical assistance to the deceased while he was still surviving, was required to be investigated. No clothes were seized from the place of occurrence.

48. We repeat, we are aghast to find that even the weapon of assault which in all its probability would have been a licensed weapon has neither been recovered nor any attempt appears to have been made for recovering the same. Rest all other witnesses, though claimed to be eyewitnesses to the occurrence but with the fallacy in the deposition of P.W. 6 and P.W. 9, it would not be necessary to go in any greater detail into their deposition.

49. That the accused persons of the counter case have been convicted, at least proves one aspect of the matter that the death was in the same transaction.

50. It was appellant/Raj Narayan



Choudhary who was the author of the FIR of the counter case.

51. Did he use his licensed weapon to scare away the crowd?

52. Was the deceased hit accidentally?

53. With no seizure of the damaged vehicle or nothing known about the horse which apparently was injured in the occurrence, the entire story of the accused persons attacking the car, is rendered an unproved statement.

54. No person injured in the counter case has received any gun-shot injury. This, therefore, pre-supposes or at least it could be inferred that they were all armed with *lathi* or any other non-lethal weapon.

55. There is nothing on record which would clearly indicate the immediate cause of the occurrence.
Was there an accident with the vehicle?

56. The relationship between the parties



ante bellum was not so strained so as to keep all of them on guard. Well then, if a firearm weapon was used, it would, for sure, have been used for self-defence or for frightening away the attackers.

57. The conviction of the accused persons in the counter case at least proves that there was some aggression on their part.

58. Would it have justified the use of fire weapon.

59. That the firearm used in the occurrence has not been seized is beyond doubt. None of the appellants have been convicted under anyone of the Sections of the Arms Act.

60. The statement of P.W. 6 appears to be doubtful as we have noticed earlier because of the different time-lines of the first report about the occurrence by P.W. 3; inquest report at 06:30 P.M. and FIR at 08:15 P.M.



61. We are conscious of the fact that the truth of the matter has to be collected by keeping the colander of judicial scrutiny clean but when major part of the prosecution story becomes shrouded in doubt and confusion, it would be best, if the entire of it is scrutinized with a clear lens to come out with the correct picture.

62. With all these background facts, it appears to be plausible to us that there would have been some reason for even the appellants to doubt that they are being attacked. In that event, a licensed weapon may have been used but without any intention of targeting anyone of the victims. It could be a case of accidental firing or a firing for scaring away the crowd which, unfortunately, hit one of the victims. The deceased was hit at the back of his head. There is some discrepancy in the statement of the witnesses with respect to the distance from which the deceased was fired at. What was the reason for singling out the



deceased only? His uncle and father were there at the place of occurrence, who could have been the targets.

63. We are of the view that making an attempt to impound the cattle of the other-side would not result in such angst as to target one person of the crowd for firing and killing him. If that were so, P.W. 6 was the main target. We say so for the reason that the proceeding under Section 107 of the Cr.P.C. was pending between Lakshmi Choudhary (since dead) and P.W. 6. All these facts coalesce together only to suggest that a firearm weapon may have been used and the possibility of it being used by the person holding the license, viz., appellant/Raj Narayan Choudhary, but only for the purpose of scaring away the crowd or saving himself and others.

64. At best, the accused persons would have been threatened for their lives. Since there are no other materials for us to discover any exercise of right of private defence and no specific ingredient having



been satisfied for the offence of murder, we are left with no option but to convert the conviction of appellant/Raj Narayan Choudhary, who has been attributed with the act of firing, into one under Section 304 part 1 of the Indian Penal Code.

65. So far as the rest of the appellants are concerned, the materials are totally deficient for sustaining their conviction under any of the Sections in the Indian Penal Code.

66. For the reasons aforementioned, the judgment of conviction and order of sentence dated 17.12.2018/22.12.2018 respectively, in connection with Sessions Trial No. 33 of 1995 (C.I.S. No. 1435 of 2013, T.R. No. 314 of 2017), arising out of Banmankhi P.S. Case No. 73 of 1994, passed by learned Presiding Officer, Fast Track Court-I, Purnea, is set aside.

67. The appellants, viz., Nand Kishor Singh, Raj Kishor Singh and Nirbhay Narain Choudhary in Cr. Appeal (DB) No. 118 of 2019 and Cr. Appeal



(DB) No.148 of 2019 respectively, are on bail. They are acquitted of their charges. Their liabilities under the bail bonds are cancelled.

68. The appellant, viz., Prabhat Narayan Choudhary in Cr. Appeal (DB) No. 309 of 2019 is in custody. He is directed to be released forthwith from jail, if not required or detained in any other case.

69. Cr. Appeal (DB) No. 118 of 2019, Cr. Appeal (DB) No.148 of 2019 and Cr. Appeal (DB) No. 309 of 2019 are hereby allowed.

70. The conviction of appellant, viz., Raj Narayan Choudhary in Cr. Appeal (DB) No. 409 of 2019 is converted into one under Section 304 part 1 of the Indian Penal Code. We have been informed that he has remained in jail for more than seven years. We also convert the sentence to the period which has already been undergone by him. He is directed to be released forthwith from jail, if not required or detained in any other case.



71. Cr. Appeal (DB) No. 409 of 2019 of appellant, viz., Raj Narayan Choudhary is hereby disposed off accordingly.

72. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

73. The records of this case be returned to the Trial Court forthwith.

74. Interlocutory application/s, if any, also stand disposed off accordingly.

(Ashutosh Kumar, J)

(Nani Tagia, J)

Sauravkrsinha/
Manoj-

AFR/NAFR	NAFR
CAV DATE	NA
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