

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**CRIMINAL APPEAL (DB) No.1103 of 2016**

Arising Out of PS. Case No.-44 Year-2007 Thana- SAMHO District- Begusarai

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Harishankar Singh @ Haria, Son of Dashrath Singh, resident of Village-  
Sihma, Police Station-Matihani, District-Begusarai.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Shashak Shekhar, Advocate

For the State : Mr. Binod Bihari Singh, APP

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**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR**

**and**

**HONOURABLE MR. JUSTICE HARISH KUMAR**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)**

**Date : 11-05-2023**

Heard Mr. Shashank Shekhar for the appellant  
and Mr. Binod Bihari Singh for the State.

2. The appellant has questioned the judgment  
and order of conviction dated 26.09.2016 and  
01.10.2016, respectively, passed by the learned  
Additional Sessions Judge-V, Begusarai in Sessions Trial



Case No. 181 of 2010, arising out of Shamho P.S. Case No. 44 of 2007, whereby he has been convicted under Section 302 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for life, to pay a fine of Rs. 25,000/- and in default of payment of fine, to further suffer simple imprisonment of one year.

3. The appellant has been charged of killing his brother-in-law, namely, Mani Singh, while the appellant was sleeping in the house of the deceased, by means of an axe.

4. The F.I.R. was lodged by one of the nephews (P.W. 7) of the deceased, who had not been residing in the same house in which the occurrence is said to have been taken place.

5. Sita Ram Singh (informant - P.W. 7) has alleged in his First Information Report, which was lodged on 07.11.2007 at about 08:00 A.M., that on the previous day of 06.11.2007, his uncle/deceased came with the appellant to his own house at 2 O'clock on the



day and both of them ate rice and fish. In the night, the deceased slept in the *Verandah* of the house, whereas the appellant was offered the cot which was shared by one of the sons of the deceased, who at the relevant time was only five years of age. In the dead of night, the son of the deceased, who has been examined in this case as P.W. 5 (Ram Prit Singh), heard some sound which made him wake up. He saw that the appellant slit the throat of his father by means of an axe. The son of the deceased started shouting. On hearing such cry, the informant claims to have gone to the house of the deceased where he found the deceased dead with his throat slit. He also raised alarm which attracted people of the family and neighbourhood. A day prior to the occurrence, the aunt of the informant (wife of the deceased) along with her another son and daughter had gone to Begusarai. He, therefore, alleged that the appellant has killed the deceased.

6. On the basis of afore-noted *fardbayan*



statement, a case was registered for investigation for the offences under Sections 302/34 of the Indian Penal Code *vide* Shamho P.S. Case No. 44 of 2007.

7. During the course of investigation, the complicity of the wife of the deceased, namely, Babita Devi was also found and keeping the investigation pending against her, charge-sheet was submitted against the appellant. This Court has been informed that the wife of the deceased also ultimately was charge-sheeted and as against her, a separate trial is proceeding.

8. After the submission of charge-sheet against the appellant, cognizance was taken, whereafter the case was committed to the Court of *Sessions* for trial.

9. The Trial Court, after examining 10 witnesses on behalf of the prosecution and none on behalf of the defence, convicted and sentenced the appellant as afore-noted.

10. One Warish Kumar (P.W. 1), who is a neighbour of the deceased, has alleged that on the day



of occurrence, in the dead of the night, he heard a noise and shout of one of the sons of the deceased, namely, Ram Prit Singh (P.W. 5). He along with others ran to the house of the deceased. He reached the house of the deceased first and, thereafter, many other persons of the neighbourhood including the informant (P.W. 7) arrived. The axe, which was used in the occurrence, was found lying near the dead-body of the deceased. According to him, the police arrived at the house of the deceased only the next day and seized the weapon of assault (Exhibit-1). He does not claim to have seen the occurrence of assault and had reached the house of the deceased only after the throat of the deceased had been slit. P.W. 5, a minor son of the deceased, kept on crying during his stay at the house. Ajay Singh (not examined), Shyam Bihari (not examined) and Sita Ram Singh (informant and nephew of the deceased) arrived. P.W. 1 denied the suggestion that he had not spoken before the police that he had seen the appellant running



away from the place of occurrence. He has categorically stated that he saw the appellant running away from the place of occurrence.

11. Be it noted that the I.O. of this case, *viz.*, Karu Yadav, who has only submit charge-sheet, has been examined as P.W. 9. The police officer who conducted the investigation, after recording the First Information Report, has not at all been examined and no explanation also has been offered for his non-examination.

12. This, it has been argued, has caused serious prejudice to the case of the appellant as no attention could be drawn of the witnesses of their having made earlier statements before the police and such contradiction in the statement of trial could not be proved.

13. Shyam Kishore Singh (P.W. 2), one of the brothers of the deceased, has also not claimed to have seen the occurrence, but he has admitted of having seen



the appellant and two others running away from the place of occurrence. He had identified the appellant and others in the light of the bulb, which was kept lit in the night over the *BISCOMAUN* building. He claims to have gone to the house of the deceased after the occurrence, where he saw the dead-body of the deceased. The axe was found embedded in the neck of the deceased. However, he did not know the cause of the occurrence.

14. What is really important to note is that P.W. 2 also was one of the first visitors to the house of the deceased in the night when he had seen the deceased having been covered by a piece of cloth, which appeared to be rotten.

15. Where was the time, it has been argued on behalf of the appellant, to cover the dead-body with any cloth and if there was, who did it? According to the prosecution case, there was nobody available at the house of the deceased except him (P.W. 2), the appellant and the five years' old son of the deceased. In



his presence, the informant (Sita Ram Singh) had come. Others persons who visited the place were recounted as Amar Singh, Upendra Singh and Deol Singh, none of whom have been examined at the trial.

16. Ajay Kumar (P.W. 3), a neighbour of the deceased, also claims to have gone to the house of deceased on hearing the sound of cries. When he had arrived at the place of occurrence, the deceased had not yet died but was writhing in pain. He also saw the throat of the deceased slit by means of an axe. A different kind of disclosure was made him that the wife of the deceased had illicit relation with the appellant, who is her brother. He had also seen the weapon of assault which was blood stained. The police has seized the axe and he had signed on such seizure-list (Exhibit-1/1). He also claims to be distantly related to the deceased.

17. One Purushottam Kumar @ Fekan Singh (P.W. 4), another distant relative of the deceased, has



also not claimed to be an eye-witness to the occurrence. He was not even present in the village when the occurrence is said to have taken place. He only learnt from his co-villagers that the appellant had killed the deceased. He did not even identify the informant of this case.

18. The deposition of Ram Prit Singh (P.W. 5), the son of the deceased who had witnessed the occurrence while he has only five years old, has made a peculiar statement at the trial. At the time of trial, he was only ten years of age and the Trial Court after putting initial questions to him found that he was capable of understanding the questions put to him and was also capable of answering them. At the trial, he reiterated the fact in his examination-in-chief that he was sleeping by the side of his father (deceased) on a cot and the appellant cut his throat by means of an axe. However, in cross-examination, he has made a complete volte-face and has stated that in the night of the



occurrence, he was sleeping along with his mother inside the house and not in the *Varandah*. One Vijay Singh, about whom nothing is known and who has not even been examined, raised *hulla*. Thereafter, P.W. 5 alleges that he and his mother came out of the house and found his father dead. Aforenoted Vijay Singh informed P.W. 5 and his mother that the appellant had killed the deceased. When the police had come, her mother also was questioned/interrogated. She was also made to give her signature to the police. Before the police, the P.W. 5 did not claim to be an eye-witness to the occurrence. He has repeated in his cross-examination that the factum of murder was communicated to him and his mother by aforesaid Vijay Singh. He has also disclosed before the Trial Court that there is no good relationship between his mother and P.W. 7 (the informant).

19. One of the daughters of the deceased, viz., Rekha Kumari has been examined as P.W. 6 whose statement assumes relevance only for the fact that she



claims to have gone to Begusarai along with her mother for the purposes of treatment before the occurrence. While at Begusarai, there was a telephone call from her house, requiring her and her mother to immediately return home. When they returned home, she found her father dead with his throat slit. She learnt from the local people and other relatives that the appellant had killed her father.

20. Mr. Shashank Shekhar, the learned Advocate for the appellant has submitted that if her statement is to be believed, neither the mother nor P.W. 5 were present in the village home where the occurrence is said to have taken place.

21. The informant has been examined as P.W. 7, who claims to have first learnt from P.W. 5 only that the appellant had killed the deceased. During trial, a new story was introduced by him, viz., that the deceased had sold some of his land to one Naresh Paswan and the proceeds of such sale was given by the wife of the



deceased to the appellant, which had angered the appellant. The appellant not only had slapped his wife, but also tried to assault the appellant. However, the dispute was resolved with the intervention of local persons. It was only in this background, P.W. 7 alleges, that the deceased was killed on the night of the occurrence by the appellant. The wife of the deceased, thereafter, had left the house. He has but clearly admitted that he never saw the occurrence and when he had reached the house of the deceased, the only person available was Ram Prit Singh (a minor son of the deceased aged about five years/ P.W. 5). The proceeds of sale of land was not given by the wife of the deceased to the appellant in his presence. He has also stated that a day prior to the occurrence, there had been a dispute between the appellant and the deceased which was witnessed by not only P.W. 7 but many other persons of the village.

22. Another son of the deceased, viz., Ram



Niwan Singh, who too was on the cusp of adulthood, has been examined as P.W.8, who is only a hearsay witness of the occurrence. He claims to have first learnt about the occurrence from one of the villagers.

23. As noted above, the police officer, who conducted the investigation, was not examined.

24. Karu Yadav, the police officer who submitted the charge-sheet against the appellant, keeping the investigation pending against the wife of the deceased, has been examined as P.W. 9, who has nothing better to offer except for the fact that he had submitted the charge-sheet against the appellant.

25. This takes us to the deposition of the doctor, the importance of which also recedes in the background for the reason that even if his deposition and the report submitted by him is to be believed that the deceased was hit with an axe leading to his death, it would not make out any case against the appellant as there does not appear to be any person in the list of the



prosecution witnesses, who can surely be said to have witnessed the occurrence.

26. After taking us to all the deposition of the witnesses referred to above, Mr. Shashank Shekhar has submitted that the Trial Court has wrongly convicted the appellant for killing the deceased. The Trial Court, it has been argued, has relied upon the wavering statement of P.W. 5, whose mental capability of understanding the question, remembering the facts and answering to the Court appears to be highly doubtful. At the time of the occurrence, he was only five years of age and was hardly eleven years of age when he deposed before the Court as a witness. No doubt the Trial Court did not find him to be *non-compos mentis*, but from the analysis of the deposition made by him, it has been argued, it would appear that it would have been much safer not to rely upon him for any material particulars of the case.

27. In the cross-examination, P.W. 5 states that he slept with her mother when the occurrence took



place on the *Verandah* of the house. If this be so, then he has not seen the occurrence. He has further stated that one Vijay Singh raised alarm and he only informed P.W. 5 and his mother that the appellant had killed the deceased. Who is Vijay Singh is not known. He has also not been examined. The afore-noted Vijay Singh has also not been named by any one of the witnesses who reached at the place of occurrence shortly after the deceased was done to death. The very story of P.W. 5 sleeping with his mother in the night of the occurrence inside the house appears to be incorrect for the reason that all the witnesses who reached in the night, immediately after the occurrence, did not find anybody in the house except the dead-body of the deceased and P.W. 5. The falsity of the statement made by P.W. 5 becomes further apparent from the deposition of her sister and brother, both of whom claimed to have gone to Begusarai along with their mother for medical treatment.



28. Thus, for all practical purposes, the deposition of P.W. 7/informant is also rendered highly doubtful. His knowledge about the occurrence is solely based on what was narrated to him by P.W. 5 immediately after the occurrence. P.W. 5 himself, as noted-above, did not see the occurrence but was told by one Vijay Singh about the same.

29. In this context, the learned counsel for the appellant has further submitted that there could be motive of P.W. 7 in falsely framing the appellant. The appellant is a close relative of the deceased and the informant does not have good relationship with the wife of the deceased. There could be some underlying layers of the motive of P.W. 7 becoming the informant of this case and coming up with a story which has been found to be faltering at the seams.

30. Apart from this, it has been argued that even the statement of the other witnesses including P.Ws. 1 to 4 that they identified the appellant running



away is somewhat unbelievable. Though one of the witnesses has claimed to identify the appellant in the light of the electric bulb, but such explanation is almost laconic. Nobody could have, it has been urged, identified a person running away from the place of occurrence in the dead of the night without any identifiable source of light. What is more surprising is that one of the witnesses saw two other persons accompanying the appellant running away from the place of occurrence. Who were they has remained a mystery. Whether the house of the deceased was burgled or whether all the witnesses have made wrong statements cannot be ascertained.

31. This is one case where non-examination of the I.O. has really resulted in serious prejudice to the case of the appellant as it was necessary to know as to the previous statements made by the witnesses, which could be neither confirmed nor contradicted because of the non-examination of the I.O.



32. The learned counsel for the State, however, submits that it is expected that a boy of five years of age would not have an eidetic memory, but there is nothing on record to discredit the statement of a son of a slain father, when he says that he saw his father being killed by the appellant. Shortly after the occurrence, it has been argued by the State counsel, P.W. 7 arrived at the place of occurrence where he was told about the appellant having killed the deceased. There was no time gap between the occurrence and the statement made by P.W. 5 to him. Thus, the evidence of P.W. 7 is rendered admissible under Section 6 of the Evidence Act and it cannot be brushed aside.

33. After having heard the learned counsel for the parties and having examined the entire records of this case, we are unable to persuade ourselves to either believe the story or to hold that the judgment and order of conviction is not perverse. As noted-above, P.W. 5 cannot be believed. All parts of his statement before the



trial is full of inconsistencies. We refrain from dubbing such statement as false for the reason that he is a child of eleven years and when he was only five years of age, he claims to have witnessed the occurrence. There is no reason for us but to believe his statement, especially in the light of his disclosure about one Vijay Singh having told him and his mother about the appellant having killed the deceased. And if P.W. 5 cannot be believed, P.W. 7 also is rendered unbelievable for the reason that has only source of information regarding the killing of the deceased by the appellant is P.W. 5. The needle of suspicion has also, during the investigation, veered around the wife of the deceased. We do not have any idea about any material having collected against her.

34. However, so far as the appellant is concerned, his implication in this case appears to be only in the imagination and the utterances of P.W. 5, who was a child at the time of the occurrence and imagination of other P.Ws. Even the identification of the



appellant as having run away from the place of occurrence is not free of doubt for the reason of lack of any source of light to identify the appellant. Who were accompanying the appellant also could not be known.

35. The entire records of this case is mired with suspicion; some unexplained motive and an accusation which could not be proved at all. Though most of the witnesses have lashed out at the appellant of having killed the deceased and have also gone to the extent of alluding unholy alliance between the appellant and the wife of the deceased which perhaps could have been the cause of murder, but conviction and infliction of punishment on a person cannot be based on the fecundity of imagination of witnesses. Nobody has seen the occurrence and, therefore, nobody is to be believed for convicting and sentencing the appellant, who, we are told, is in custody for the last thirteen (13) years.

36. For the reasons afore-noted, the appeal stands allowed. The impugned judgment of conviction



dated 26.09.2016 and the consequent order of sentence dated 01.10.2016 passed by the learned Additional Sessions Judge-V, Begusarai in Sessions Trial Case No. 181 of 2010 arising out of Shamho P.S. Case No. 44 of 2007, dated 07.11.2007 are, accordingly, set-aside.

37. The appellant, viz., Harishankar Singh @ Haria (in Cr. Appeal (DB) No. 1103 of 2016) is acquitted of the charges levelled against him. He is directed to be set at liberty forthwith unless his detention is required in any other case.

38. The appeal is allowed.

**(Ashutosh Kumar, J)**

**(Harish Kumar, J)**

Manoj/Praveen-

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| AFR/NAFR          | AFR        |
| CAV DATE          | NA         |
| Uploading Date    | 16.05.2023 |
| Transmission Date | 16.05.2023 |

