

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.895 of 2017

Arising Out of PS. Case No.-126 Year-2016 Thana- BAUNSI District- Banka

=====

Prafulla Yadav @ Prafulla Kumar Yadav, Son of Sri Shankar Yadav, R/o
Village-Simramore, P.S.-Bounsi, District-Banka.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

with

CRIMINAL APPEAL (DB) No. 831 of 2017

Arising Out of PS. Case No.-126 Year-2016 Thana- BAUNSI District- Banka

=====

Suman Sourabh @ Suman @ Shubham Sourav @ Louli, Son of Sri Govind
Mandal, R/o Village-Acharaj Dam Road, P.S.-Bounsi, District-Banka.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

with

CRIMINAL APPEAL (DB) No. 479 of 2021

Arising Out of PS. Case No.-126 Year-2016 Thana- BAUNSI District- Banka

=====

Sawan Kumar Singh, male, aged about 28 years, S/o Pawan Kumar Singh,
R/o Village-Liladanga, P.S.-Rajmahal (Kajigaon), District-Sahebganj
(Jharkhand).

... .. Appellant/s



Versus

The State of Bihar

... ... Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 895 of 2017)

For the Appellant/s : Mr. Anil Kumar Sinha, Adv.
Mr. Satya Veer, Adv.

For the Informant : Mr. Ajay Mukherjee, Adv.

For the State : Mr. Dilip Kumar Sinha, APP

(In CRIMINAL APPEAL (DB) No. 831 of 2017)

For the Appellant/s : Mr. Ajay Kumar Thakur, Adv.
Ms. Kiran Kumari, Adv.
Md. Imteyaz Ahmad, Adv.
Mr. Ritwik Thakur, Adv.
Ms. Vaishnavi Singh, Adv.
Mr. Purushottam Kumar, Adv.

For the Informant : Mr. Ajay Mukherjee, Adv.

For the State : Mr. Dilip Kumar Sinha, APP

(In CRIMINAL APPEAL (DB) No. 479 of 2021)

For the Appellant/s : Mr. Kaushal Kumar Jha, Sr. Adv.
Mr. Amish Kumar, Adv.

For the State : Mr. Dilip Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 06-10-2023

All the three appeals have been heard
together and are being disposed off by this common



judgment.

2. Mr. Ajay Kumar Thakur, the learned Advocate has appeared on behalf of appellant/Suman Sourabh @ Suman @ Shubham Sourav @ Louli in Cr. Appeal (DB) No. 831 of 2017, whereas Mr. Kaushal Kumar Jha, the learned Senior Advocate has appeared for appellant/Sawan Kumar Singh in Cr. Appeal (DB) No. 479 of 2021. Mr. Anil Kumar Sinha, the learned Advocate has appeared for appellant/Prafulla Yadav @ Prafulla Kumar Yadav in Cr. Appeal (DB) No. 895 of 2017.

3. In all the three appeals, the State is represented by Mr. Dilip Kumar Sinha, the learned APP. Mr. Ajay Mukherjee, the learned Advocate for the informant has appeared in all the appeals.

4. One Dilip Panjiar was shot dead in the night of 01.07.2016 while he had been coming from his shop to his home. His wife/Chandni Kumari (P.W. 16) has lodged a written report in the same night,



alleging that on hearing the sound of firing, she came out of her house and saw that there was a crowd on the road near her house. When she went there, she found her husband lying dead on the road. She has also alleged that the miscreants ran towards the jungle. She had telephonic talk with her husband few minutes ago. She has also alleged that one of the business associates of her late husband, namely, Pradeep Bhuwania had fallen foul with him and was not happy with his growth for quite some while. She, therefore, suspected that perhaps aforesaid Pradeep Bhuwania has got her husband killed.

5. On the basis of the afore-noted written report, a case *vide* Baunsi P.S. Case No. 126 of 2016, dated 01.07.2016, was registered for investigation against Pradeep Bhuwania and about two or three unknown miscreants for the offences under Sections 302/34 of the IPC and 27 of the Arms Act, 1959.

6. The FIR was attested by Biharilal



Panjiyar (P.W. 7), Pawan Kumar Panjiar (P.W. 14) and Ghanshyam Panjiar (P.W. 18). The other person who had attested the FIR, namely, Satyadeo Singh has not been examined.

7. However, during the course of investigation, the accusation against Pradeep Bhuwania could not be established and he was not sent up for Trial.

8. All the three appellants were *charge-sheeted*, who have faced the Trial. Their implication in the present case is on the basis of a confession given by them to the Investigating Officer of this case, namely, Parikshit Paswan (P.W. 19) but in different cases, namely, Baunsi P.S. Case Nos. 127 of 2016 and 128 of 2016.

9. The Trial Court has examined nineteen (19) witnesses on behalf of the prosecution and four (4) on behalf of the defence and has convicted the appellants under Sections 302/34 of the IPC and



Section 27 of the Arms Act, 1959. They have been sentenced to undergo imprisonment for life and to pay a fine of Rs. 5,000/- each for the offence under Sections 302/34 of the IPC and to undergo imprisonment for three years and to pay a fine of Rs. 3,000/- each for the offence under Section 27 of the Arms Act, 1959. The sentences have been ordered to run concurrently.

10. Mr. Thakur, Mr. Jha and Mr. Sinha, the learned Advocates for the appellants have argued that it is an illustrative case where instead of the accused persons trying to find out some way of wriggling out of the accusation, the investigating agency has provided supposed linkages of the appellants to the crime which *prima facie* is based on no admissible material whatsoever.

11. The sum and substance of their arguments is that if the wife of the deceased (P.W. 16) had heard the sound of firing, the occurrence must



have taken place near her house. If this be so, it has been urged, then it is quite natural that she would have been the first responder and would have come to the place of occurrence before anybody else. That she did is further evident from the fact that she gave the written report at the police station. In the written report/FIR, there is no reference of any one of these appellants; not even suspicion, even though they all hail from the same locality.

12. One Pradeep Bhuwania was suspected to have had his role in the killing of the deceased.

13. Even if it be repetition, it is necessary to again iterate that such written report was signed by five persons, out of whom four have been examined as prosecution witnesses. All those witnesses have, in some way or the other, alluded to the presence of the appellants at the time of occurrence. Some of them have even gone to the extent of identifying two of the appellants. From their narrative, it appears that



appellant/Prafulla Yadav had caught hold of the deceased, whereas one out of the two other appellants fired the fatal shot. The accused persons, thereafter, went away. If the afore-noted four persons, namely, P.Ws. 4, 7, 14 and 18 had seen the occurrence and knew about the participation of the appellants, they would have either told P.W. 16 about the assailants or would have themselves lodged the FIR. Surprisingly, as would appear from the record, their statements were recorded by the Investigator after several days of the occurrence.

14. Apart from this, it has been argued that the Investigator (P.W. 19) claims to have received a secret information on 03.07.2016 that some miscreants were about to commit a crime. After recording such entry in the Station Diary, P.W. 19 along with his police team proceeded for apprehending the miscreants when appellant/Sawan Kumar Singh and two others were arrested and from their



possession, firearm weapons were recovered. On the confession of appellant/Sawan Kumar Singh, the two other appellants were also arrested, who are also said to have confessed their guilt with reference to the killing of the deceased.

15. As noted above, separate cases were lodged, namely, Baunsi P.S. Case Nos. 127 of 2016 and 128 of 2016 under the Arms Act and other sections of the Indian Penal Code. Though, the seizures made in connection with the afore-noted two cases and the confession of the appellants have been brought on record, but the Trial Court was not informed about the status of those cases.

16. Mr. Kaushal Kumar Jha, the learned Senior Advocate representing appellant/Sawan Kumar Singh [*Cr. Appeal (DB) No. 479 of 2021*] has informed us that he was convicted in the afore-noted case under the provisions of Arms Act and was saddled with imprisonment for three years, which he has already



undergone.

17. Mr. Ajay Kumar Thakur, the learned counsel representing appellant/Suman Sourabh @ Suman @ Shubham Sourav @ Louli [*Cr. Appeal (DB) No. 831 of 2017*] has submitted that he was never put on trial in the afore-noted case as he was not sent up by the police.

18. There is no information available with Mr. Anil Kumar Sinha, the learned Advocate representing appellant/Prafulla Yadav @ Prafulla Kumar Yadav [*Cr. Appeal (DB) No. 895 of 2017*] regarding the status of the case against him.

19. The learned Advocates have submitted that whatever may be the facts of the Baunsi P.S. Case Nos. 127 of 2016 and 128 of 2016, there is one thing which is noticeable as very surprising. The appellants were arrested in the morning of 4th of July 2017, when they are said to have made confession and from them, firearm weapons were recovered. Curiously, the other



witnesses in this case were examined by the police after such confession and all of them have made statements which are, in some respects, in consonance with the so-called confession made by the appellants. The learned Advocates, therefore, infer that the implication of the appellants in the present case is the handy-work of the police and the statement of the witnesses, who have later spoken before the Trial Court of their having identified the appellants in the night of occurrence participating in the crime, cannot at all be accepted as correct statement. Even otherwise, those witnesses appear to be completely chance witnesses.

20. Lastly, it has been submitted that the evidence on record clearly depicts that the deceased was killed, perhaps, by any one of his enemies or by the miscreants who would have tried to loot him in the night. The deceased was wearing casual dress, namely, a pair of shorts and T-shirt when he was found dead on the road. The occurrence took place



sometimes after 7:30 P.M. in the night on 01.07.2016.

The deceased and his wife were residing in a house which stood at a secluded place.

21. On behalf of the appellants, it has fairly been conceded that they were actually never targeted by the informant (P.W. 16), but their names have been provided by the police and the witnesses have been tutored to take their names as the participants of the crime before the Trial Court. Thus, the accusation against the appellants is rendered absolutely doubtful. Any conviction on such evidence is absolutely unsafe and unwarranted.

22. As opposed to the afore-noted contention, Mr. Ajay Mukherjee, the learned Advocate for the informant has submitted that there could be some chasm between the sequence of events pointed out by the prosecution but what is important to remember is that on 4th of July, 2016, when one of the appellants was arrested, from the boot of the motor-



cycle, three documents belonging to the deceased was recovered. The documents were the ID card, the bank passbook and one more identity related paper of the deceased. There was no attempt of the police to falsely frame the appellants. The appellants themselves have disclosed that they had participated in the murder of the deceased. There is no evidence on record, Mr. Mukherjee contends, which would suggest or point towards any reason for the police to falsely frame the appellants. There is nothing on record to indicate that the appellants, as miscreants of the locality under the territorial jurisdiction of the concerned police station, had created a nemesis for themselves for the local police to somehow or the other send them to jail. It also does not appear from the records that some innocent persons have been booked in this case as the Investigator was completely clueless about the miscreants.

23. Mr. Mukherjee also denies that in the



endeavour of the police to anyhow bring the case to a logical conclusion, hasty investigation has been made and somehow or the other, the appellants have become the targets. He has further submitted that the occurrence was not propelled by any enmity. It was a plain and simple case of loot where the deceased may have protested as he may have been emboldened by the location where he was confronted and one of the miscreants may have killed him. It is not unknown, Mr. Mukherjee contends, that during the course of investigation, new facts get unfolded on which conviction can safely be based.

24. Similar arguments have been made by Mr. Dilip Sinha, the learned APP for the State.

25. On perusal of the evidence on record, we have found that four of the five persons, who have attested the written report, have made different statements, raising allegation against the appellants at the Trial. There does not appear to be any reason or



accepting their statements as true for several reasons, but primarily on the ground that if they had seen the occurrence, they would have told P.W. 16 about it. They have also made statements before the police quite belatedly.

26. In this context, we have perused the deposition of P.W. 19, the Investigator, who in his cross-examination has also conceded that none of the afore-noted prosecution witnesses have named the appellants when they had given their statements to him during the course of investigation (in Paragraph 42 and 43).

27. We have also found from the deposition of P.W. 19 that immediately after the occurrence, he had visited the village-home of the deceased at *Piluwa*. It was only on 03.07.2016, in the late night, that he had received information about some unknown miscreants about to commit some crime, that he arrested appellant/Sawan Kumar Singh and recorded



his confession. This confession led to the arrest other appellants, who are also said to have confessed on the same lines.

28. Was it then that the Investigator (P.W. 19) thought of closing the present case by saddling the allegation on the appellants who had been arrested by him?

29. We further find from the records that about the murder of the deceased of the present case, P.W. 19 had received information in the police station that some unknown criminals had killed a person whose dead-body was lying on the road. On such information, he recorded one entry in the Station Diary *vide* S.D.E.- 24 on the same day at about 7:00 P.M. and reached the place where the dead-body was found. This part of the narration of P.W. 19 does not appear to be correct with respect to timing. If P.W. 16 (the informant) is to be believed, the police arrived at the scene after she and others had came to the place of occurrence. If for



a moment the arrival of P.W. 19 at the P.O. at 7:00 P.M., *i.e.*, before the arrival of P.W. 16 and others, is accepted to be true, then also what is important to remember is that he had come to the place of occurrence on the information that the deceased was killed by some unknown criminals. The afore-noted position on facts about the cause of murder was perhaps accepted by the I.O. (P.W. 19) there. It was precisely for this reason that he acceded to the request of P.W. 16 that she would not lodge any *fardbeyan* but would give a written report about the occurrence. P.W. 16 asked one of her younger relatives to write the written report which was handed-over to the I.O. (P.W. 19) at the place of occurrence, which he transmitted to the police station for recording of the formal FIR. In that FIR, the suspect was only one, namely, Pradeep Bhuwania.

30. The Investigator (P.W. 19) appears to have been convinced right from the beginning that the



implication of Pradeep Bhuwania was only in the realm of suspicion as the wife of the deceased had some conversation with her late husband sometime before the occurrence that Pradeep Bhuwania is not maintaining good relations with the deceased.

31. Whatever may be the truth in the matter, Pradeep Bhuwania was neither arrested nor sent up for trial.

32. Was it at that time that the I.O. (P.W. 19) thought of it as a general crime of loot and murder? Perhaps, yes.

33. There is nothing on record to question the correctness of the statement of P.W. 19 (I.O.) that he had received some information two days later about miscreants trying to commit some crime. We say so for the reason that it was not an off the cuff movement of the police party from the police station. The information was recorded as Station Diary Entry No. 23 and the factum of the police party leaving for the place



of occurrence was also recorded as Station Diary Entry No. 24. Till such time, there does not appear to be any evidence to blame P.W. 19 for entertaining any idea of falsely implicating any person. It was a separate information regarding crime to which P.W. 19 came to know and he acted with quite promptitude. Three persons were arrested, one of them being appellant/Sawan Kumar Singh in the raid conducted by the I.O. All the three miscreants, two of whom were not associated with the crime of the present case, had weapons on them. Appellant/Sawan Kumar Singh is then said to have made a statement incriminating himself and also naming his two associates, who are the two other appellants in these appeals.

34. It appears that at that point of time, P.W. 19 had already spun a story of the deceased having been killed by the three appellants. Otherwise, there would have been no reason for the I.O. to have been so imaginative as to find the identity documents



of the deceased with one of the appellants. After committing a crime, the participants of the occurrence would not roam around in the same area.

35. The documents belonging to the deceased, which were recovered from the possession of one of the appellants, cannot be said to be of any monetary value. A passbook, by itself, would not fetch any dividend to the miscreants. It is a matter of common knowledge that things which are not of any use to the snatchers/criminals, that is always disposed off at the earliest.

36. Had the Investigator (P.W. 19) procured some documents for the proper identification of the deceased and then later used it as documents showing it to have been recovered from one of the appellants and then managing and tutoring the witnesses whose statements were recorded much later at the police station who supported the prosecution version later at the Trial?



37. There could be a possibility of this happening.

38. It may sound very speculative but the manner in which the prosecution witnesses Nos. 1 to 5 have claimed to be present at the place of occurrence in the night when the deceased was shot dead raises serious doubts about the prosecution story being true. None of those witnesses who saw the appellants ever gave any statement to the police immediately after the occurrence. In fact, one of them has gone on to state that he knew the elder brother of the deceased and had told him about the occurrence only after sixteen days. It was then that the elder brother of the deceased went to the police station.

39. The learned Advocates for the appellants have rightly questioned that even if those witnesses are related to the deceased and residents of the same area, would they not be called chance witnesses for their deposition to be scrutinized with



greater care and circumspection.

40. The law in this regard is very clear.

41. There is no expression as "chance witness" in the Indian Evidence Act, 1872. The expression "chance witness" denotes that such person has been present at a particular place where the occurrence took place but for him to be believed, he would require to give a suitable explanation for his presence at the place of occurrence. This principle has been derived from the law of evidence of other countries which acknowledge that every man's castle is his own home and he must suitably and reasonably explain his presence at other places, especially where an occurrence takes place for him to be believed as a witness. His position as a witness before the Trial Court is but no less than an impartial witness, if his testimony is worth believing. The same standard of test is required to be applied to the deposition of a chance witness as is required for any interested,



related or partisan witnesses. The substratum of the rule is that their evidence have to be put to a colander for winnowing the truth and that their statements cannot be accepted as *ex facie* true.

42. We find from the deposition of P.Ws. 1 to 5 that the explanation given by them about their presence in the dead of the night at a secluded place to be highly doubtful. All of them knew the deceased as also the appellants. They also claimed to have seen the appellants grappling with the deceased. None of them had seen any one of the appellants armed with any lethal weapon. Under such circumstances, there normally should not have been any fear till they became witnesses to the gunshot resorted by one of the appellants as alleged in the prosecution case. Their not stopping to see what actually happened and the appellants running away in the woods, makes the description of the afore-noted witnesses absolutely doubtful. If they had anticipated that the deceased



would be caused some harm, it was only natural that they would have gone to his home and informed the other family members. None of them have shown any such promptitude.

43. True it is that people behave differently in different situations. But in the present case, when, in the first instance, a written report was lodged in their presence where there was no whisper about the participation of the appellants, believing those witnesses who had come up with a new story of having seen the appellants committing the crime at the trial is difficult to accept.

44. Mr. Thakur and Mr. Jha, the learned Senior Advocates, have submitted that even otherwise, in the event of the appellants having been convicted for the offence under Section 302 of the IPC, their specific roles were required to be established. That but may not be necessary in our estimation.

45. We have doubted the very prosecution



version against the appellants.

46. The deceased died a homicidal death is beyond question. The *post-mortem* report and the evidence of the Doctor confirms it. The deceased died of gunshot. The timing of the death is also not in dispute. The place where the deceased had been shot dead has also not been attempted to be challenged by the prosecution or the appellants.

47. The question is whether the appellants were rightly blamed for the murder.

48. The evidence does not give any cogent answer.

49. We find that the manner in which the appellants were made accused in this case suggests a tearing hurry of the local police to anyhow conclude the investigation of this case. One arrest two days later, provided the opportunity for the Investigator to do so. Rest of it followed course.

50. For the reason of the attesting



witnesses making out a different case at the Trial and *prima facie* the allegation appearing to be carved out of the confession so extracted from the appellants, we have doubted the entire prosecution version so far as the appellants are concerned.

51. The conviction and sentence of the appellants, referred to above, is not worthy of acceptance and perforce, we set it aside.

52. All the appellants, above-named, are acquitted of the charges levelled against them.

53. The appellant/Prafulla Yadav @ Prafulla Kumar Yadav [*Cr. Appeal (DB) No. 895 of 2017*] and the appellant/Suman Sourabh @ Suman @ Shubham Sourav @ Louli [*Cr. Appeal (DB) No. 831 of 2017*] are in custody. They are directed to be set at liberty forthwith unless their detention is required in any other case.

54. The appellant/Sawan Kumar Singh [*Cr. Appeal (DB) No. 479 of 2021*] is on bail. His liabilities



under the bail-bonds are cancelled.

55. The appeals stand allowed accordingly.

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

57. The records of these cases be returned to the Trial Court forthwith.

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

(Ashutosh Kumar, J)

(Alok Kumar Pandey, J)

Praveen-II/

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	10.10.2023
Transmission Date	10.10.2023

