

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.343 of 2018

Arising Out of PS. Case No.-362 Year-2015 Thana- LAKHISARAI District- Lakhisarai

Lal Singh son of Abhay Shankar Singh resident of village Adarsh
Lakshmipur, P.S. Barahiya, District Lakhisarai.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 423 of 2018

Arising Out of PS. Case No.-362 Year-2015 Thana- LAKHISARAI District- Lakhisarai

Vikash Kumar Singh @ Munna son of Vidyasagar Singh, Resident of Village-
Garh Laxmipur, P.S.- Barhaiya, District- Lakhisarai.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 473 of 2018

Arising Out of PS. Case No.-362 Year-2015 Thana- LAKHISARAI District- Lakhisarai

Arvind Singh Son of Late Chandrashwar Singh, Resident of Village-
Mandach Kharjama, P.S.- Telhara, District- Nalanda.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :
(In CRIMINAL APPEAL (DB) No. 343 of 2018)
For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Ms. Vaishnavi, Advocate
Mr. Nilesh Kumar, Advocate
For the Respondent/s : Mr. Sri Mayanand Jha, APP
(In CRIMINAL APPEAL (DB) No. 423 of 2018)
For the Appellant/s : Mr. Ansul, Advocate
Mr. Anuj Kumar, Advocate
Mr. Anjani Parashar, Advocate
For the Respondent/s : Mr. Ashwani Kumar Sinha, APP
(In CRIMINAL APPEAL (DB) No. 473 of 2018)
For the Appellant/s : Mr. Vindhya Keshari Kumar, Sr. Advocate
Mr. Neeraj Kumar @ Sanidh, Advocate



For the Respondent/s : Mr. Ravi Shankar Pathak, Advocate
Mr. Birendra Kumar Singh, Advocate
Mr. Sri Abhimanyu Sharma, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 28-06-2023

We have heard Sri Ajay Thakur, assisted by Ms.

Vaishnavi for appellant/Lal Singh in Cr. App(DB) No. 343 of 2018; Sri Ansul for appellant/Vikash Kumar Singh @ Munna in Cr. App(DB) No. 423 of 2018 and Sri Vindhya Keshari Kumar, learned Senior Advocate assisted by Sri Neeraj Kumar @ Sanidh, Advocates for appellant/Arvind Singh in Cr. App(DB) No. 473 of 2018.

2. All of them have been convicted under Section 302/34 of the Indian Penal code and have been sentenced to undergo R.I. for life, fine of Rs. 5000/- each; and in default of payment of fine to further suffer imprisonment for three months. Appellant/Lal Singh has been convicted additionally under Sections 498(A) of the IPC; Section 3/4 of the Dowry Prohibition Act and Sections 25, 26 and 27 of the Arms Act. For the offence under Section 498(A) of



the IPC he has been sentenced for two years. No sentence has been passed against for the offences under Sections 3/4 of the Dowry Prohibition Act. With respect to the offence under Sections 25, 26 and 27 of the Arms Act, has further been sentenced for three years each for the offence 25 and 26 of the Arms Act and for seven years under Section 27 of the Arms Act vide judgment of conviction and order of sentence dated 20.02.2018, 22.02.2018 respectively passed by the learned Additional District & Sessions Judge, 1st , Lakhisarai in connection with Sessions Trial No. 203 of 2015, arising out of Lakhisarai P.S. Case No. 362 of 2015.

3. The FIR has been lodged by one Ranjeeta Kumari @ Punam Kumari (P.W. 2), who is the wife of appellant/Lal Singh. She has alleged that she was married to Lal Singh in the year 2013. Because of the persistent demand of dowry of Rs. 2 lakhs and a motorcycle, the relationship between the spouses was very strained. After a brief stay in her matrimonial home, P.W. 2 claims to



have come back to her father's house. For non-fulfillment of dowry demand, Lal Singh had earlier threatened the father of P.W. 2.

4. On 18.05.2015, the appellants along with one Pavitra Singh had come to her father's house at about 04:15 in the evening. Immediately after their arrival at her house, the appellants had put up a demand for dowry. Her father tried to reason out with them but to no avail. There were heated exchanges between her father and the appellants. Appellants/Vikash Singh @ Munna and Arvind Singh exhorted Lal Singh, on which he took out a pistol from his waist and fired at her father, as a result of which he fell down dead. On the sound of firing and on the cries of P.W. 2 and her mother (P.W. 1), many persons of the neighbourhood arrived. Seeing them, the appellants ran away but they were apprehended. One of the accused persons viz. Pavitra Singh could manage to escape.

5. On the basis of the aforementioned fardbeyan statement recorded by Hari Shankar Kashyap, the I.O. of



the case (P.W. 5) at the house of the deceased at 6:40 P.M., Lakhisarai P.S. Case No. 362 of 2015 was registered for investigation against the appellants under Sections 498(A), 302/34 of the IPC and Sections 3/4 of the Dowry Prohibition Act and Sections 25(1-B)A, 26, 27 and 35 of the Arms Act.

6. The police, after investigation, submitted chargesheet against the appellants, whereupon cognizance was taken and the case was committed to the Courts of Sessions for trial.

7. The trial court after having examined seven witnesses on behalf of the prosecution and two on behalf of the defence convicted and sentenced the appellants as aforesaid.

8. The learned Advocates for the appellants have submitted that the prosecution has not been able to prove the case beyond all reasonable doubts.

9. The deposition of P.W. 2 and her mother (P.W. 1) are highly inconsistent, suggesting that the implication



of the appellants is only an afterthought. The relationship between the spouses were very strained but appellant/Lal Singh had made efforts to have the issues resolved. It was only for such purpose that perhaps he had visited the house of the deceased along with three others for bringing his wife back to her matrimonial home.

10. Under such circumstances, it is argued, it was difficult to presume that Lal Singh, on the exhortation of the other appellants, would kill the deceased. There were other ways of eliminating the deceased which would have been easier to execute than going to his house with relatives and friends in a car and making themselves liable for being prosecuted for murder.

11. The other flaws in the prosecution have also been pointed out by all the appellants only to demonstrate that the occurrence did not take place in the manner as suggested by the witnesses.

12. With respect to the weapon of assault having been seized, it has been urged that the informant/P.W. 2



did not state in the first instance about such weapon having been thrown by Lal Singh after firing at the deceased. The ballistic report of the Sergeant Major which is shown to have been exhibited is not on record nor the appellants were made available the same for them to respond to it during trial.

13. Appellant Vikash Kumar Singh @ Munna and Arvind Singh have further argued that but for the act of exhortation levelled against them, there is no other allegation. In fact, appellant/Vikash Kumar Singh @ Munna is only the driver of Lal Singh whereas Arvind Singh is the husband of the sister of Lal Singh, who was not even known to P.W. 2 from before. It has thus been urged that it was very convenient and profitable for P.W. 1 and P.W. 2 to have falsely framed the appellants, perhaps for the purposes of appropriating the property of Lal Singh as he was the only male heir in his family and for which there had been an insistence, in the past, on the part of the deceased and P.W. 2 to transfer the property in the name



of P.W. 2, the non-fulfillment of which desire had led to the strained relationship between the spouses.

14. Additionally, it has been argued that the gaps in the prosecution case make the version of the witnesses at the trial very doubtful and motivated.

15. As opposed to the aforementioned contention, Sri Abhimanyu Sharma, learned Advocate for the State has argued that the appellants were caught while fleeing from the house of the deceased by the local persons and handed over to the police. This fact itself establishes that the appellants had visited the house of the deceased. The weapon of assault was also found in the house of the deceased. The strained relationship between Lal Singh and his wife (P.W. 2) was the propelling factor for the murder. All the appellants thus have participated in the killing of the deceased and mere few lapses on the part of the investigating agency would not justify any interference by this Court against a well considered judgment of conviction and sentence against the appellants.



16. P.W. 2 has reiterated at the trial that she was married to Lal Singh in the year 2013 but because of his insistence for payment of additional dowry, she could live in her matrimonial home only for few days. On one of such days, Lal Singh had pointed a pistol towards her whereafter the deceased came to her parental home.

17. On 18.05.2015 at about 6:30 P.M., the appellants had come to her house. At that time, her mother (P.W. 1) was on the roof-top who came down stairs on seeing the appellants. Her father (deceased) made the appellants sit in the veranda and tea and snacks were offered to them. The deceased had, since the beginning of the conversation, reasoned out that he did not have sufficient money to give to Lal Singh. Enraged by his refusal to part with any money or motorcycle as demanded, appellants/Vikash Singh @ Munna and Arvind Singh exhorted Lal Singh to kill the deceased. When this was being done, P.W. 2 stood behind the curtain nearby and saw Lal Singh taking out a pistol from his waist and



firing at the deceased. She thereafter ran behind the appellants. Many neighbours, who had assembled there, caught the appellants while fleeing away on foot. Thereafter the police arrived and arrested the appellants.

18. What is relevant to note in the deposition of P.W. 2 is that she has admitted that she did not know Vikash Singh @ Munna from before. She learnt about him only at the police station when he spoke about his parentage. She has also stated in her cross-examination that the deceased was caught and then shot at. The persons from the neighbourhood, who were sitting in a neighbouring saloon, came and apprehended the appellants. She along with her mother was also taken to police station and they stayed there till the entire family had arrived at the police station. She was brought back home on a police jeep. It was at the police station that the names of the appellants were inquired. She has also admitted in her deposition that at the time of occurrence, except for her and her parents no one else was available.



She had witnessed the entire occurrence. Neither she nor her mother had informed the police. Therefore she could not tell the court as to on whose information the police had arrived at her house after the occurrence. Her father had earlier filed a case against Lal Singh and Pavitra Singh for having threatened the family of dire consequences. She had no idea about the property details of Lal Singh. She has but refuted the suggestion that only because of the property of Lal Singh, the deceased had married her of to him and had been insisting for transferring the property in her name which was not agreeable to appellant Lal Singh.

19. Another suggestion by the prosecution that in a Panchayati convened for settlement of dispute between the spouses, Lal Singh and his mother became agreeable to transfer the property in her name.

20. A weird suggestion also was given to her that seeing the anger of the appellants who were shouting at the deceased, her mother (P.W. 1) had brought an



unlicensed weapon from the roof-top and that weapon got misfired, killing the deceased.

21. In this context, it would be profitable to refer to the deposition of the mother of P.W. 2 viz. Manju Devi, who is the wife of the deceased. She has supported the prosecution version but for the first time has introduced the story of Lal Singh having thrown his pistol in the veranda after killing the deceased. She claims to have arranged for seating of the appellants in the verandah. Lal Singh had come inside the courtyard for few minutes whereafter he again joined his other two companions and tea was served to them only in the verandah.

22. What is relevant to note in her deposition is that according to her, the appellants were trying to make good their escape by boarding the vehicle with which they had come, when they were apprehended.

23. The suggestion given to her that the appellants had come under an arrangement for taking back P.W. 2 to her matrimonial home was denied by her. She



has admitted that the relationship between appellant/Lal Singh and P.W. 2 was bad from the beginning of the marriage.

24. The investigating officer of this case viz. P.W. 5 had conducted the inquest and had sent the dead body for post-mortem. He had found a pistol in the verandah of the house of the deceased which was seized by him and a seizure list was prepared. He also informed the Forensic Science Laboratory, Bhagalpur for seizing the blood at the place of occurrence. The samples were thereafter collected by the FSL experts. He has also supported the prosecution case that three of the accused persons viz. the appellants were apprehended by the neighbours who were arrested and were remanded to custody. The ballistic report about the weapon was identified by him which is shown to have been exhibited with objections. He had found a Maruti Car parked near the house of the deceased. However he did not spot any blood at the place where the weapon of assault was found to have been thrown. He had



interrogated the owner of a Paan Shop viz. Prakash Choudhary but no one else from the neighbourhood. The vehicle was however seized by him on the next day. He had also prepared the arrest memo in front of the witnesses Vijay Kumar and Shashi Bhushan. It would be relevant to note that Vijay Kumar (P.W. 6) has been declared hostile whereas Shashi Bhushan has not been examined. What is even more interesting is that he had recorded in the case diary that the appellants had been assaulted by the neighbours and injury report of the appellants were also prepared which was attached with the case records but at the trial such document was not there.

25. Dr. K. Abhijeet (P.W. 4) found two gun shot injuries on the person of the deceased when he conducted the post-mortem on 19.05.2015. A circular lacerated wound with inverted margin was found over left temporal region of the skull which was assessed to be the wound of entry. There was a corresponding wound of exit with everted margin which was also in the kind of a lacerated



wound. The cause of death in his opinion was due to hemorrhage and shock because of firearm injury in the brain. The time of the death was fixed within 24 hours of the post-mortem examination.

26. In his cross-examination, he has affirmed that though the direction of the wound has not been mentioned in the post-mortem report as there was no tattooing mark. There was only a circular wound, on which no predictions could be made regarding the direction. One Hari Shankar Kashyap (P.W. 5) has proved the inquest report.

27. From the deposition of the witnesses, it appears that the relationship between P.W. 2 and appellant Lal Singh never improved after marriage. P.W. 2 therefore stayed for only 4 to 5 days in her matrimonial home whereafter she chose to stay with her parents.

28. A combined reading of the deposition of P.Ws. 1 and 2 further reflects that attempts were being made to resolve the dispute towards which some initiatives were taken. Appellant Lal Singh had visited the house of



the deceased earlier also for the purposes of taking back P.W. 2 to her matrimonial home. There could have been the same intention of the appellants in this instance also when he accompanied by three others had come to the house of the deceased.

29. Appellant Vikash Kumar Singh @ Munna is the driver of Lal Singh whereas appellant Arvind Singh is the brother-in-law of Lal Singh. In the earlier case lodged by the deceased against Lal Singh and another, these two appellants (Vikash Kumar Singh @ Munna and Arvind Singh) were not referred to or implicated with any charge.

30. In fact, from the deposition of witnesses, it further appears that Vikash Kumar Singh @ Munna had visited the house for the first time whereas Arvind Singh did not even attend the marriage of P.W. 2 with the appellant Lal Singh. But it was known to both P.Ws. 1 and 2 that Arvind Singh had married the sister of appellant Lal Singh.



31. In this background we have tried to find out whether evidence against appellants Vikash Kumar Singh @ Munna and Arvind Singh are strong enough to hold them guilty of the act of murder with the aid of Section 34 of the IPC.

32. There is no evidence which would indicate that these two appellants were aware that Lal Singh was carrying his pistol with him. In the FIR, there is only a vague reference of exhortation by Vikash Kumar Singh @ Munna and Arvind Singh but whether such exhortations were acted upon by the appellant Lal Singh in killing the deceased requires to be established.

33. What makes us a little suspicious is the manner in which the investigation has been conducted. We have noted that P.W. 2 in her first statement has clearly stated that after executing the murder of the deceased, the appellants, boarded the car and tried to make good their escape. If this would have been the case, it would have been difficult for them to have been apprehended by



the neighbours. Before the trial court, she corrected herself and said that the appellants first boarded the car with which they had come but then for making good their escape, they came out of the car and started running.

34. We have no material before us to know as to who all apprehended them. None of such persons have been brought to the witness stand. Who informed the police also is not known. This is relevant because the information to the police after the murder would have been a relevant information regarding the cause and the perpetrators of the murder. The I.O. does not state during the trial as to who informed the police to come to the house of the deceased. What was the procedure adopted by the I.O. in taking custody of the appellants and remanding them also remains unknown. An arrest memo is said to have been prepared with two local persons as witnesses; one of whom has been declared hostile, who has said that he knows nothing about the occurrence and the other has not been examined at the trial.



35. These set of facts, in conjunction with the clear deposition of P.W. 2 that after recording of the fardbeyan at her house, P.W. 2 and P.W. 1 had gone to the police station where they had stayed for about half an hour or till the time the other members of the family had arrived. P.W. 2 was later reached back her home at the instance of police.

36. We are at a loss to understand as to the necessity of taking P.Ws. 1 and 2 to the police station when the fardbeyan had already been recorded at the house of the deceased. Such visit to the police station would have been necessary if the arrested accused persons had to be identified. This does not appear to be the situation in the case at hand.

37. Both P.Ws. 2 and 1 knew the appellants and P.W. 2 named them with specific charge in the fardbeyan. Was it then that the accused persons were brought from somewhere else to the police station and were made to be identified for further confirmation by P.Ws. 1 and 2 or that



P.Ws. 1 and 2 had gone to the police station of their own to complain about the murder of the deceased.

38. All these questions would have been answered if the witnesses to the arrest memo would have been examined at the trial. The arrest memo also is not on record to confirm that the appellants were arrested while fleeing away from the house of the deceased. The car on which the appellants are said to have come was found parked near the house of the deceased which was seized only on the next day. There is no investigation or confirmation of the fact that the vehicle belonged to anyone of them or had been procured on hire.

39. The vacillating statements of P.Ws. 2 and 1 regarding the appellants of having first tried to escape on car and thereafter getting down from the car to be apprehended by the local persons, appears to be rather strange. If the appellants could manage to come out of the house and board the vehicle, it would have been easier for them to have driven away than to get out of the car and



be apprehended by the locals and then handed over to the police.

40. Is it for this reason that the injury reports of the appellants, who had received injuries while scuffling with the neighbours was not brought on record? If it were part of the record, there would have been some confirmation of the fact that they were prevented from making good their escape by the neighbours and in the process they received injuries.

41. There is yet another aspect of the case which bothers us. The P.W. 2, while giving a detailed statement in her fardbeyan and her deposition before the trial court, did not at all state about Lal Singh having thrown his weapon after firing at the deceased but such story was introduced only through the mouth of P.W. 2. The ballistic report though is said to have been exhibited but we do not find any exhibit number nor do we find it in the records of the case.



42. We have tried to find it out from the case diary and we noticed that the report does not state anything *viz.* whether it had been used in the recent past or was there any trace of firing from such weapon e.g. Carbon soots in the barrel.

43. We are not in a position to fathom the reason for such reports not having been brought on record. We deprecate such casual approach of the trial court in not even numbering the exhibits though stating in the judgment that it has been exhibited.

44. The learned counsel for the appellants in this context have suggested that only to close down the investigation by apprehending the accused persons and recovering the weapon of assault, such story of appellant Lal Singh having thrown the weapon after the assault in the verandah of the house was introduced.

45. After having said that, we do also reckon that no evidence has been offered before the trial court which



could completely demolish the factum of murder in the house of the deceased.

46. There could have been a different sequence of events than what has been projected by the witnesses but the fact remains that the deceased has died in his own house. It would be too much for us to speculate that the deceased was killed by somebody else and because of the enmity with Lal Singh, he and his associates have been framed at the instance of P.Ws. 2 and 1.

47. Thus, even if the evidence is somewhat inconsistent with respect to the sequence of events, we have no other material to fall back upon to doubt the fact that the deceased was killed in his house. To say that someone else killed the deceased but in order to avenge the old enmity, the appellants have been named would be an argument too far fetched.

48. Thus, it would be difficult for us to speculate anything else except that the appellant/Lal Singh shot at the deceased. Merely because it could not be proved to the



hilt that it was the same weapon which was seized from the place of occurrence, the case against Lal Singh would not fail.

49. Appellant Lal Singh had pointed a pistol towards P.W. 2 within five days of his marriage with her. This was the trigger point for her to come back to her parental home. Lal Singh had earlier threatened the deceased for which a case was lodged and he along with his associates had come to the house of the deceased, the purpose of which could not be established. He may have come for pressurizing the deceased to send his daughter to her matrimonial home or may be under an arrangement of settlement.

50. However, one aspect gets reflected from the deposition of witnesses that there was some insistence on transferring the property of Lal Singh in the name of P.W. 2 for her security. The visit could have been for forestalling such move but the fact remains that the deceased had a heated discussion with the appellant,



whereafter the deceased was shot dead. Though the witnesses have tried to project a case that the deceased was caught and shot at from near distance but the name of the persons who held him back, has not been stated either in the FIR or in the deposition of P.Ws. 1 and 2. The act of firing is not from a very near distance as there is no tattooing or charring mark or presence of carbon soots on the wound of entry. The dead body was found in the verandah and not at the place where the appellants were made to sit when they had come to the house of the deceased.

51. This does not take away the correctness of the version of the prosecution that the deceased was shot at in his house, perhaps because he was not agreeable for parting with Rs. 2 lakhs and a motorcycle.

52. However, whether such killing was on the exhortation of appellants Vikash Kumar Singh @ Munna and Arvind Singh does not get fully established.



53. We say so for the reasons that (i) there was no accusation against them in the past; (ii) P.W. 2 was tentative about the accusation against appellant/Arvind Singh; (iii) Vikash Kumar Singh @ Munna was only a driver who had visited the house for the first time; (iv) Arvind had not even participated in the marriage of appellant Lal Singh with P.W. 2; and (v) the P.Ws. 1 and 2 were brought to the police station where the details of the name and parentage of the appellants was being inquired by the police.

54. Appellant/Lal Singh has been accused of killing the deceased but the circumstances indicate that in the police station, perhaps, a decision had been taken to implicate the other two.

55. Even with respect to the factum of exhortation, we have nothing to infer that the aforementioned two appellants knew that the appellant/Lal Singh was armed with a weapon. True it is that for bringing an accused within the mischief of Section 34 of the IPC,



which is not a substantive offence but only aids the prosecution of such persons who had the common intention of killing the deceased and which common intention could be arrived at the time of occurrence, the absence of any evidence that the appellants had come prepared to execute the murder in case their demands did not prevail, such vague allegation of exhortation at the instance of appellants Vikash Kumar Singh @ Munna and Arvind Singh appears to us to be an afterthought.

56. Thus, after giving an anxious consideration to whole gamut of facts, we find the judgment and order of conviction and sentence of appellant Lal Singh to be justified.

57. His appeal *i.e.* Cr. App (DB) No. 343 of 2018 is dismissed.

58. But giving benefit of doubt to appellants Vikash Kumar Singh and Arvind Singh, the conviction and sentence against them is set aside.



59. Appellants Vikash Kumar Singh @ Munna and Arvind Singh are on bail. Their liabilities under the bail bonds are cancelled.

60. Cr. App (DB) No. 423 of 2018 and Cr. App (DB) No. 473 of 2018 are allowed.

61. A copy of the judgment be transmitted to the Superintendent of the concerned jail for compliance and record.

62. The records of this case also be sent back to the trial court.

(Ashutosh Kumar, J)

(Shailendra Singh, J)

krishna/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.07.2023
Transmission Date	07.07.2023

