

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.923 of 2015

Arising Out of PS. Case No.-328 Year-2003 Thana- SABAUR District- Bhagalpur

Fulan Das @ Fulman Das Son of Sipahi Das, Resident of Village- Parhari,
P.S.- Sabour, District- Bhagalpur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 924 of 2015

Arising Out of PS. Case No.-326 Year-2003 Thana- SABAUR District- Bhagalpur

1. Ajay Das, Son of Late Chigar Das.
2. Mahesh Das, Son of Late Chigar Das.
Both residents of Village - Parghari, P.S. - Sabaur, District - Bhagalpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 416 of 2018

Arising Out of PS. Case No.-328 Year-2003 Thana- SABAUR District- Bhagalpur

Bechan Das @ Becha Das @ Bechan, S/o Late Jageshwar Das, R/o Village-
Parghari, P.S. Sabour, District-Bhagalpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :
(In CRIMINAL APPEAL (DB) No. 923 of 2015)
For the Appellant/s : Mr. Kartik Kumar Sinha, Adv.
Mr. Kamal Kumar Sinha, Adv.
Ms. Surya Nilambri, *Amicus Curiae*
For the Respondent/s : Mr. Binod Bihari Singh, APP
(In CRIMINAL APPEAL (DB) No. 924 of 2015)
For the Appellant/s : Mr. Subodh Prasad, Adv.
Ms. Madhu Prasad, Adv.
Ms. Surya Nilambri, *Amicus Curiae*
For the Respondent/s : Mr. Binod Bihar Singh, APP



(In CRIMINAL APPEAL (DB) No. 416 of 2018)

For the Appellant/s : Mr. Davendra Kumar Pandey, Adv.
Ms. Surya Nilambri, *Amicus Curiae*
For the Respondent/s : Mr. Binod Bihari Singh, APP

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

Date : 02-05-2023

1. We have heard Mr. Kartik Kumar Sinha, the learned advocate for the appellant/Fulan Das @ Fulman Das (in Cr. Appeal (DB) No. 923 of 2015) and Mr. Subodh Prasad, the learned advocate for the appellants/Ajay Das and Mahesh Das (in Cr. Appeal (DB) No. 924 of 2015).

2. We have also heard Ms. Surya Nilambri, who had been appointed as *amicus curiae* by the predecessor Bench in both the appeals.

3. Cr. Appeal (DB) No. 416 of 2018, preferred by the appellant/Bechan Das, has also been tagged along with the aforementioned two appeals arising out of the same occurrence. In this appeal, two Sessions Trial were amalgamated viz. Sessions Trial No. 603 of 2006 and Sessions Trial No. 1370 of 2006, and a common judgment was delivered by the Trial Court. In this case also, Ms.



Surya Nilambri, the learned *amicus* has assisted us.

4. In all the three appeals, Mr. Binod Bihari Singh, the learned APP for the State has appeared.

5. These appeals have been preferred against the judgment dated 09.09.2015 and the consequent order of sentence dated 11.09.2015 passed in Sessions Trials No. 1296 of 2008 and 1061 of 2009 and the impugned judgment of conviction dated 31.01.2018 and the consequent order of sentence dated 02.02.2018 passed in Sessions Trial No. 603 of 2006 and Sessions Trial No. 1370 of 2006 by the learned Additional District & Sessions Judge-III, Bhagalpur, whereby the appellant Fulan Das @ Fulman Das (in Cr. Appeal (DB) No. 923 of 2015) and the appellants Ajay Das and Mahesh Das (in Cr. Appeal (DB) No. 924 of 2015) have been convicted under Section 302 of the Indian Penal Code and Section 27 of the Arms Act and have been sentenced to undergo R.I. for life under Section 302 of the IPC, to pay a fine of Rs.5000/- each and in default of payment of fine, to further undergo S.I. for one year; R.I. for three years, to



pay a fine of Rs. 2000/- each and in default of payment of fine to further undergo S.I. for two months for the offence under Section 27 of the Arms Act.

6. The appellant Bechan Das (in Cr. Appeal (DB) No. 416 of 2018), has been convicted under Sections 302/149, 147 and 148 of the Indian Penal Code and has been sentenced to undergo R.I. for life, to pay a fine of Rs. 10,000/- and in default of payment of fine to further undergo S.I. for six month for 302 IPC and to further undergo R.I. for two years, for 147 and 148 IPC. However, all the sentences have been directed to run concurrently.

7. All the appellants in these three appeals are alleged to have killed one Vakil Das, aged about 35 years, for which the FIR was lodged by the father of the deceased, namely, Govind Das, which led to the institution of Sabour P.S. Case No. 328 of 2003 for the offences under Sections 147, 148, 149 and 302 of the Indian Penal Code and Section 27 of the Arms Act.

8. In the aforementioned case, several persons were



charge-sheeted at different points of time and therefore, four Sessions Trial were initiated. However, two of the Sessions Trial viz. Sessions Trial No. 1296 of 2008 and 1061 of 2009 were amalgamated and a common judgment was passed against the appellants Fulan Das @ Fulman Das (in Cr. Appeal (DB) No. 923 of 2015) and Ajay Das and Mahesh Das (in Cr. Appeal (DB) No. 924 of 2015).

9. Two other Sessions Trials viz. Sessions Trial No. 603 of 2006 and Sessions Trial No. 1370 of 2006, respectively were also amalgamated and again a common judgment was delivered in the aforementioned two Sessions Trials, convicting the appellant Bechan Das (in Cr. Appeal (DB) No. 416 of 2018) and acquitting the co-accused Sakko @ Sakho Das, who was tried along with the appellant Bechan Das.

10. Govind Das, the father of the deceased as noted above, had lodged the First Information Report on 22.12.2003, at about 03.00 O'clock in the day alleging that on the same day at about 12:00 O'clock in the



afternoon, while his son Vakil Das was sleeping in his house, appellant Mahesh Das came, woke him up and asked his son to accompany him outside the house. He was taken towards western direction. The informant and his wife Samari Devi, who has been examined as P.W.6 (in the amalgamated Sessions Trial No. 1296 of 2008 and Sessions Trial No. 1061 of 2009), also followed him. No sooner had the deceased reached near the house of Sudin Das (P.W.3), the appellants Fulan Das, Ajay Das, Bechan Das, Sakho Das and several others who were hiding, surrounded the deceased and the appellant/ Mahesh Das fired from his pistol which hit the deceased in his waist. Thereafter, the appellant/ Ajay Das is said to have fired again which hit the deceased in his neck. It has further been alleged that thereafter the appellant/Fulan Das and one Bhatto Das, fired on the deceased on his chest. Parmeshwar Das, one of the accused persons who was not put on trial, is also alleged to have fired another shot at the back of the deceased. All the accused persons present at the place of occurrence supported the other accused



persons in killing the deceased. The deceased died instantaneously. The accused persons thereafter scattered away. The occurrence, according to the father of the deceased, was witnessed by his agnates, namely, Jangli Das and Jicho Das and some other villagers also. Both Jangli Das and Jicho Das have not been examined in either of the trials.

11. The cause of occurrence as stated in the FIR is the wrong appropriation of his seven decimals of land over which he had constructed a house under Indira Awas Scheme about two years ago, which was protested by the deceased. Because of such protest, the occurrence took place and all the accused persons, after having conspired with each other, killed the deceased. The FIR was lodged in front of Rajendra Sah, the local Mukhiya of the village, who has been examined as P.W.7.

12. During the trial, Narayan Das (P.W.1) and Yogi Paswan (P.W.2), who were the witness to the inquest, did not support the prosecution case. Narayan Das (P.W.1) has specifically stated that when he came



back from the matrimonial home of his daughter, he learnt that the son of the informant was killed. Yogi Paswan (P.W.2) claims to have signed on a blank piece of paper at the instance of Officer-in-Charge of the Police Station. He did not know anything about the occurrence.

13. Similar is the deposition of Sudin Das (P.W.3), before whose house, the occurrence is said to have taken place. Though he knew the fact that Vakil Das was murdered but on the date of occurrence, he had gone out of the village to attend a religious congregation. He did not witness the dead body of the deceased. He has denied that he had made any statement before the police that after he returned from the religious congregation, he saw the dead body of the deceased and that his parents and wife were all lamenting his death.

14. Mukesh Das (P.W.4) who has not been named in the FIR, has stated that on the day of occurrence at about 12:00 O'clock in the day, he was coming from the side of the house of the deceased when he saw the appellant/Fulan Das and one Bhatto Das



indulging in a fight with the deceased. Thereafter both the persons named by him shot at the deceased. The deceased had suffered five gun shot injuries as a result of which he died.

15. The aforesaid Mukesh Das has also reiterated in his deposition that the murder had taken place because of dispute over the land. Additional ground was stated by P.W.4 for the occurrence viz. that appellant/Fulan Das had misbehaved with the sister of the deceased, for which a Panchayati was held in the village. He has also stated that all the members of the family of the deceased, out of fear of the accused persons, have left their homes and are staying outside the village. The mother of the deceased was also residing with her married daughter in a different village. He also claims to have been sent to jail at the instance of the accused persons. Therefore, he out of fear had also been residing outside his village. His statement was recorded by the police after 8 to 10 days of the occurrence. At the trial, he has denied the suggestion that he had told the Investigating Officer



that he had learnt by way of rumour that the deceased had been killed.

16. Though his attention was drawn to many of the statements given by him before the police but the same could not be tested as the I.O. of the case has not been examined and no explanation has been offered for his non-examination. He does not claim to have any relationship with the accused persons but has close association with the family of the deceased.

17. After the amalgamation of the trials, the mother of the deceased was examined as P.W.6, who has named many persons apart from the appellants who had shot at the deceased. She has specifically stated that there were 15 to 16 accused persons, all of whom were armed with lethal weapons and that she could identify everyone of the accused persons. She has identified the appellants in the dock. Before the Trial Court, supporting the prosecution version, she had stated that she and her late husband were forced to remain at one side and in their presence, their son was killed. However, she has



specifically stated that the appellants/Fulan Das, Ajay Das and Mahesh Das and some outsiders had shot at the deceased and all other accused persons who were present in the vicinity supported them. The police had arrived in the village at about 05:00 O'clock in the evening. She did not remember whether she was present at that time at the place of occurrence when the police had arrived. When the case was lodged by her husband, the brother of her husband Singo Das was also present. The statement recorded by the Officer-in-Charge was read over to her late husband and then only his signature was obtained.

18. Appellants/Ajay Das and Mahesh Das are own brothers and their houses are situated to the west of the house of the deceased. The suggestions given to her about the deceased having stolen a firearm weapon of one Dewan Singh, a leader of the criminal gang and that aforesaid Dewan Singh, was pressuring the deceased for returning such firearm weapon, was denied. She claimed to know Mukesh Das, who had also witnessed the occurrence and has denied the suggestion that Mukesh



Das has deposed in favour of the prosecution only because of his friendship with the deceased. However, she did not know whether Mukesh Das, was available in the village on the date of the occurrence.

19. As noted above, Rajendra Das, who is one of the signatories (as a witness) to the FIR and Mukhiya of the Village has been examined as P.W.7, who has denied that FIR was lodged by late Govind Das in his presence. Though he identified the signature of Govind Das on the FIR, he signed on such document on the asking of the Officer-in-Charge, as he was asked to do so in his capacity as Mukhiya of the village. He, however, did not read the contents of the FIR nor was it read over and explained to him.

20. Since the I.O. had not been examined, one Ganesh Mandal, instead was examined as P.W.8, who had identified the handwriting of the Investigating Officer, namely, C.P. Yadav (Ext.3). He has no idea about the case and did not even know whether at the time of deposition, the I.O. was alive or dead.



21. Two defence witnesses have been examined only to demonstrate that on the date of occurrence, the parents of the deceased were scraping grass in the respective homes of those two witnesses. This was for the purposes of discrediting the correctness of the statement that they had followed the deceased when he was taken to some distance from his house and was shot dead.

22. The learned advocates for the appellants have stated that the prosecution has not been able to prove the case beyond all reasonable doubts. It has been urged that except for Mukesh Das, who has not been named as a witness in the FIR and the mother of the deceased, no other witness saw the occurrence. The agnate of the informant and the deceased, namely, Jivach Das has also not been examined. The mother of the deceased came from a different village to depose against the appellants after 7 to 8 years of the occurrence. It has further been pointed out that the statement of Mukesh Das (P.W.4), and the mother of the deceased (P.W.6),



cannot be believed for the reason that (i) P.W.4 was never named by the informant as having arrived at the place of occurrence when the deceased was being shot at; (ii) even P.W.6, the other eyewitness to the occurrence, did not even know whether Mukesh Das (P.W.4) was available in the village to see the occurrence; (iii) P.W.4 only having named appellant Mahesh Das and one Guddo Das to have fired at the deceased; (iv) P.W.6 has named several persons apart from the appellants to have opened fire at the deceased and the deceased having received four gun shot injuries with four wounds of entry and three wounds of exit. Though the deceased died of gun shot but, as has been urged on behalf of the appellants, the case could not be proved against them. The mother of the deceased could not have been believed as she appears to have named several persons which could be either because of the enmity with the villagers due to some land dispute or for any other reason. The further reason to doubt the correctness of the statement of P.W.6, as has been argued by the learned advocates, is that it appears to be rather



improbable that the accused persons, who were there in large number, variously armed would allow P.W.6 and her late husband to witness the occurrence. It also appears to be doubtful, it has been argued, that the parents of the deceased would allow the deceased to go out of the house on the asking of appellant Mahesh Das, with whom there was definite enmity, as he had appropriated the land of the family for constructing a house under the Indira Awas Scheme and for which the dispute has been continuing for about two years. What could be the reason for the wife of the deceased not coming to the Trial Court to offer her deposition as it is also claimed that she was present all through when the deceased was shot at. One additional reason for doubting the correctness of the deposition of P.W.6 has been assigned viz. that she has attributed the role of firing at the deceased to some of the appellants and outsiders. There is no specificity in her accusation.

23. As opposed to the aforementioned arguments, Mr. Binod Bihari Singh, the learned APP for the State, has submitted that the number of witnesses is not important in



a criminal trial but the quality of the evidence is relevant. A mother of the deceased would not shy away from naming the assailants of her son. True it is, it has been argued, that there are some inconsistencies in her statement, but only because of her having named few others who have not been put on trial and against whom charge-sheet was not submitted, would not entitle the appellants to argue that her entire statement was incorrect. It needs no reiteration that under the trial procedure in this country, the principle of *falsus in uno and falsus in omnibus* is not practiced. If the evidence of P.W.6 is scrutinized with care and caution, it would appear to be absolutely consistent with the initial version of the prosecution as laid out by her late husband. Though some other persons also have been named by her but so far as accusation against the appellants are concerned, she has named all of them and has also spoken about the sequence of events which cannot be doubted totally. There could be some difficulty in accepting the statement of Mukesh Das (P.W.4), but that does not make the entire



prosecution case fit to be rejected at the threshold.

24. We have given anxious consideration to the arguments advanced on behalf of the parties and the records of the case.

25. The homicidal death of the deceased stands proved with the deposition of the doctor who has found four gun shot injuries on the deceased. The autopsy was done well within time and there is no doubt that the deceased died of such gun shot injuries.

26. While looking at the case of the prosecution so far as the appellants are concerned we have found that the person before whose house the occurrence had taken place, had no idea about the occurrence except for the fact that he knew that the deceased had been killed. The persons who were named by the informant, who has not been examined because of his death, as having come at the time of the occurrence has not been examined even though two of them were the agnates of the informant and the deceased. The wife of the deceased has also not been examined. It may not be



necessary that all the witnesses need be examined but, in the first instance, the father, mother and the wife of the deceased, according to the FIR, had witnessed the occurrence from a near distance. That they were left unscathed also speaks volumes about the correctness of the accusation. It is unfathomable that the accused persons would allow the witnesses to the murder to go unharmed.

27. Two motives have been assigned for the murder; viz. (i) that the family land of the deceased was used by one of the appellants for constructing his *pacca* house, which was protested and, (ii) the other suggestion of motive came through the mouth of P.W.4, who has stated that there was some dispute with the appellant Fulan Das as he was alleged to have misbehaved with the sister of the deceased, for which a Panchayati was held. However, both the motives could not be proved.

28. It may not be necessary to prove the motive in a criminal case but once the motive is introduced in the prosecution, not taking any effort to establish the



same makes the prosecution case highly doubtful. There is nothing on record to indicate that there was any conspiracy of all the accused persons/appellants to have assembled at one place and to attack the deceased after he was plodded to come out of his house by another appellant, who too has been alleged to have fired at him.

29. The FIR could not be proved. We find no explanation in the records for non-examination of the I.O. of this case. In fact, an attempt to prove the FIR has been made by calling to the witness box, one Ganesh Mandal (P.W.8), who had identified the handwriting of the I.O. However, he did not know whether the I.O. had left the world of living, necessitating his appearance on the witness stand for identifying the signature of the I.O.

30. The non-examination of the I.O. has caused prejudice and a serious one at that, to the case of the appellants as the statements made by P.Ws.4 and 6 were different from the statements made by them before the I.O. which could not be proved even though attention was drawn to their statements before the Trial Court.



31. Apart from this, we find that there has not been any effort of the prosecution to bring forth any evidence of the reason for all the accused persons to have assembled at one place in hiding, only for the purposes of attacking and killing the deceased in presence of his parents and wife.

32. In the Sessions Trial No. 603 of 2006 and 1370 of 2006, in which the appellant Bechan Das and accused Sukho Das were tried, the mother of the deceased Samari Devi was examined as P.W.1. In this instance also, she has named, apart from the appellants and others, Pardeshi Das, Bhatto Das, Tunno Das, Parmeshwar Das and Vinay Das, apart from the persons who were put on trial.

33. The same motive was reiterated by her for the cause of killing her son. In this instance, she has deposed that she and her daughter-in-law had put their signature on the FIR which does not appear to be correct.

34. With respect to Sukho Das, who had been tried along with the appellant Bechan Das, she made



a clear statement that he was not involved in the murder of the deceased. She has but identified all other accused persons.

35. The doctor who was examined as P.W.2 in this trial has repeated his statement about his having found four gun shot wounds. One bullet which was stuck up in the body of the deceased was extricated and was handed over to the police under sealed cover. The cause of death has been stated to be haemorrhage shock and the injuries to the brain suffered by the deceased. The time of occurrence has been placed at 36 hours from the time of the postmortem examination.

36. From the deposition of the doctor, it further appears that out of the four gun shot wounds of entry, three were charred and there were blackening and inverted margin, suggesting that the fire has been resorted to from a very near distance. The brain matter also was found to be lacerated. However, there is no reference of any rigor mortis available even though the postmortem had taken place after approximately 36 hours of the death.



Rest of the witnesses have not supported the prosecution case at this trial as well.

37. Considering this aspect of the matter, the learned Trial Court convicted the appellant Bechan Das (in Cr. Appeal (DB) No.416 of 2018), for the offence under Section 302 with the aid of Section 149 of the Indian Penal Code and acquitted the another co-accused, namely Sukho Das.

38. Thus, from the analysis of the evidence on record, we find that the prosecution has not been able to prove the case beyond all reasonable doubts. The deposition of the mother of the deceased is so much full of inconsistencies that it does not present one intelligible whole.

39. The accusation against all the accused persons thus fails.

40. We could not be persuaded to sustain the judgment of conviction and the order of sentence.

41. For the aforementioned reasons, we allow all the appeals and set aside the impugned judgment of



conviction dated 09.09.2015 and the consequent order of sentence dated 11.09.2015 passed in Sessions Trial No. 1296 of 2008 and 1061 of 2009 and the impugned judgment of conviction dated 31.01.2018 and the consequent order of sentence dated 02.02.2018 passed in Sessions Trial No. 603 of 2006 and Sessions Trial No. 1370 of 2006 by the learned Additional District & Sessions Judge-III, Bhagalpur.

42. The appellants are acquitted of all the charges levelled against them.

43. Since the appellants, namely, Fulan Das @ Fulman Das (in Cr. Appeal (DB) No. 923 of 2015) and Ajay Das and Mahesh Das (in Cr. Appeal (DB) No. 924 of 2015) are in custody, they are directed to be set at liberty forthwith unless their detention is required in any other case.

44. As the appellant Bechan Das @ Becha Das @ Bechan (in Cr. Appeal (DB) No. 416 of 2018) is on bail, he is discharged from the liability of the bail bonds.

45. The Patna High Court, Legal Services



Committee is, hereby, directed to pay Rs. 5000/- to Ms. Surya Nilambari, the learned *amicus curiae*, as a consolidated fee for the services rendered by her.

46. Let the records of this appeal be returned to the concerned court below forthwith.

47. All the appeals stand allowed.

(Ashutosh Kumar, J)

(Harish Kumar, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	11-05-2023
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