

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.238 of 2018

Arising Out of PS. Case No.-220 Year-2014 Thana- NOKHA District- Rohtas

Ekram Singh @ Baliram Singh S/o Bishwanath Singh, R/o Village-
Gamhariya, P.S.- Nokha, District- Rohtas.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 293 of 2018

Arising Out of PS. Case No.-220 Year-2014 Thana- NOKHA District- Rohtas

1. Kamla Singh, S/o Late Dhani Singh,
2. Pappu Singh @ Ranjeet Bihari Singh @ Ranjeet Bahadur Singh S/o Siya
Ram Singh, Both R/o Village- Gamhariya, P.S.- Nokha, District- Rohtas.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 478 of 2018

Arising Out of PS. Case No.-220 Year-2014 Thana- NOKHA District- Rohtas

Jhunna Singh @ Ranjeet Singh @ Munna Singh S/o Late Lalan Singh, R/o
Village- Gamhariya, P.S.- Nokha, District- Rohtas.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 238 of 2018)

For the Appellant/s : Mr. Bindhyachal Singh, Sr. Advocate
Ms. Nikit Mittal, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, APP

(In CRIMINAL APPEAL (DB) No. 293 of 2018)

For the Appellant/s : Mr. Krishna Pd. Singh, Sr. Advocate
Ms. Meena Singh, Advocate

For the Respondent/s : Mr. Ajay Mishra, APP

(In CRIMINAL APPEAL (DB) No. 478 of 2018)

For the Appellant/s : Mr. Ravindra Nath Dubey, Advocate
Ms. Punam Kumari, Advocate

For the Respondent/s : Mr. Satya Narayan Prasad, APP



CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE SHAILENDRA SINGH)
Date : 14/07/2023

Heard the learned counsel for the parties.

Since all these appeals arise out of the same judgment of conviction and order of sentence, they are being disposed of by this common judgment.

The appellants, namely, Ekram Singh @ Baliram Singh, Kamla Singh, Pappu Singh @ Ranjeet Bihari Singh @ Ranjeet Bahadur Singh and Jhunna Singh @ Ranjeet Singh @ Munna Singh (hereinafter referred to as A1, A2, A3 and A4 respectively) faced trial for the offences under Sections 302 read with 34 of Indian Penal Code (*for short "IPC"*) and Section 27 of the Arms Act in connection with Nokha P.S. Case No.220 of 2014 registered under Sections 341, 342, 302, 307/34 of the IPC and Section 27 of the Arms Act.

Altogether seven accused persons including the appellants jointly faced trial for the alleged offences, of



whom, three accused persons, namely, (i) Murari Singh @ Murlidhar Singh, (ii) Arun Singh and (iii) Anuj Singh were acquitted, giving them the benefit of doubt. The appellants herein have been convicted for the offences under Section 302 read with 34 of IPC and under Section 27 of Arms Act and they have been sentenced to undergo R.I. for life, a fine of Rs.30,000/- each under Section 302 of the IPC and in default of payment of fine, to further suffer imprisonment for a period of three months, R.I. for five years and a fine of Rs.20,000/- each under Section 27 of the Arms Act and in default of payment of fine, to further suffer imprisonment for a period of two months. Both the sentences have been directed to run concurrently.

The gravamen of the allegation as narrated in the FIR is that the appellants/A1, A3 and A4, on 30.12.2014 at 12:00 p.m., started putting soil excavated from a "Karah" in the field of the informant where potato-crops were grown. On this being objected



to by the informant, victims and his uncle, the accused persons stopped their work, threatened the informant and went away. Thereafter, in the evening at 5:00 p.m., when the informant, his father, namely, Gajendra Tiwary, his cousin namely Bibhav Tiwari and his uncle namely Janardan Tiwari were returning from their field towards their village and had reached near Gamharia Trimuhani chowk, then A1 and A3, carrying pistols in their hands, surrounded them. The other appellants and co-accused persons (since acquitted) also came there on a Bolero vehicle belonging to A3 variously armed and surrounded the informant and the victims. The appellant/A2 ordered the other appellants and co-accused persons (since acquitted) to kill the prosecution party. The informant and others started running towards their house but the accused persons chased them. Then A1 opened fire at the informant's father with a pistol from a close range. He fell down and then the appellant/A4 fired at informant's cousin, namely, Bibhav



Tiwari and caused firearm injury to him from very close range near his eye. Thereafter, the accused persons opened fire at the prosecution party. The informant and others entered into a house to hide themselves and because of that, none of them sustained firearm injury. The appellants and other accused persons, thereafter, fled away on the Bolero vehicle. The informant and others then came at the spot where the victims were lying and found his father dead and the cousin seriously injured, who was taken to the hospital, but he also died during the course of treatment.

A case *vide* Nokha P.S. Case No.220 of 2014 was registered for investigation under Sections 341, 342, 302, 307/34 of the IPC and Section 27 of the Arms Act. After the completion of investigation, the police charge-sheeted seven accused persons including the appellants, who faced the trial jointly.

A total of eight prosecution witnesses were examined at the trial.



As documentary evidence, the signature of PW1, informant and one other person, namely, Narendra Tiwari on the fardbeyan were proved and the same were marked as Exhibits-1, 1/1 and 1/2 respectively. The postmortem reports of the victims were also proved and marked as Exts. 2 and 3.

After the completion of prosecution evidence, the statement of the appellants/accused were recorded by the Trial Court and in defence evidence, only one witness as DW 1 was produced and examined by the appellants.

The Trial Court convicted and sentenced the appellants and acquitted three co-accused persons for the offences charged.

Mr. Bindhyachal Singh, the learned senior Advocate for A1 mainly argued that the prosecution has suppressed the earliest version of the occurrence and has subsequently registered the fardbeyan of the informant. There are vital contradictions amongst the



material witnesses of the prosecution namely Janardan Tiwari (PW 1) and Deepak Kumar Tiwari (PW5), who claimed to be the eye-witnesses of the occurrence. It has further been argued that the manner in which the victim/Gajendra Tiwari was shot at is not possible in view of the evidence of the medical expert. The injury which was sustained by victim/Gajendra Tiwari could not have been caused from behind while he was fleeing and on this ground alone, the Trial Court ought to have disbelieved the entire case. It has further been contended that the investigation is absolutely faulty as admittedly the blood stained earth and clothes of the victims were not seized by the police which also failed to recover the firearms used in the crime. The three used cartridges recovered from the scene of crime were also not sent for ballistic expert's opinion. There is a serious contradiction regarding the specific role of A2, who had instigated the main assailants. There is also a great divergence amongst the material witnesses of the



prosecution regarding the manner in which the appellants had arrived at the P.O. It was argued that the FIR is ante-dated and that no independent witnesses were examined. The prosecution has withheld all the independent witnesses including the persons whose houses are situated near the P.O.

Mr. Krishna Pd. Singh, the learned senior Advocate for A2 and A3 and Mr. Ravindra Nath Dubey, the learned Advocate for A4, have advanced almost the similar arguments.

Mr. Abhimanyu Sharma, Mr. Ajay Mishra and Mr. Satya Narayan Prasad, the learned Addl. Public Prosecutors in all these appeals, have vehemently refuted the contentions advanced on behalf of the appellants. They submitted that the present case is based on the evidence of two material witnesses of the prosecution, who are the eye-witnesses of the occurrence. Both the said witnesses have fully supported the prosecution case as well as the genesis of



the occurrence and the contradictions in their evidence pointed out by the appellants are not material. The prosecution has adduced sufficient and cogent evidence to prove the presence of all the appellants as well as their act of committing murder of the victims in furtherance of their common intention. The learned Trial Court has rightly convicted and sentenced the appellants.

We have heard the learned counsel for the parties and have perused the evidence on the record.

In the present case, the FIR is based on the fardbeyan of the informant who was examined as PW 5 and the same is the most natural statement as after the occurrence, it was recorded within three hours and there are no materials to show that it was ante-dated. The important facts narrated in the FIR are as follows:-

(a) **The Genesis of the Occurrence:-** Allegedly, the appellants/ A1, A3 and A4 were throwing excavated soil in the field of the prosecution party in which potato-



crops were grown and when this was objected to by them, then the appellants though stopped their work but threatened them. P.W. 1/Janardan Tiwari, who is stated to be an eye-witness of both of the parts of the occurrence, deposed the same facts in the examination-in-chief, though regarding the presence of one co-accused (since acquitted) and A2, he has narrated some contradictory facts but it does not appear to be of any consequence. He has deposed that the accused persons were throwing soil on his field, owing to which his potato-crops were being destroyed and for that, the appellants / A1, A2, A4 and co-accused Murlidhar Singh @ Murari Singh (since acquitted) were using JCB machine. This was objected by the deceased/Gajendra Tiwari when the accused persons stopped their work and threatened the prosecution party and went away.

Similar evidence was given by PW 5 who is the informant of this case. The deposition of this witness is similar to PW 1 regarding the genesis of the occurrence



of murder. He has also stated about the presence of the A2 at the place of occurrence of first part, though in his fardbeyan, the names of A2 and accused Murari Singh (since acquitted) do not find place as being present at the first place of occurrence. In this regard, a contradiction appears between the statements of both the witnesses.

The learned counsel for the appellants have drawn the attention of this Court towards the said contradiction but we do not find the contradiction to be so material because the manner of occurrence of the first part has been fully supported and established by both the witnesses. Such contradictions do not appear to be material as by unnecessarily showing presence of A2 and Murari Singh at the time and place of commission of first part of the occurrence would not have given any benefit to the prosecution.

Though the I.O. may not have made any investigation in respect to the use of JCB but in view of



the ocular testimony regarding the use of a JCB, the lapse on the part of investigating officer would not affect the prosecution case. Moreover, the investigating officer (PW 8) was cross-examined regarding the occurrence of first part and his evidence also appears to be supportive of the main prosecution version.

Accordingly, we are of the view that in the present case, the prosecution has succeeded to prove the genesis of the occurrence.

(B) Time of Occurrence:- Regarding the date and time of occurrence, the main prosecution witnesses/P.Ws.1 and 5 stood firm during cross-examination. Neither these witnesses nor the investigating officer have revealed any fact which is contradictory to the time and date of occurrence. The same has not even been disputed by the appellants.

Accordingly, we are of the view that prosecution has been successful in proving the date and time of both parts of the alleged occurrence.



(C) Place of Occurrence:- In the case in hand, two locations have been provided; one, a field belonging to the informant and the other, Gamharia Trimuhani chowk. The first place of occurrence relates to the genesis of the occurrence as discussed above and the evidence of PW 1, PW 5 and PW 8 are sufficient to prove the same. In this regard, the statement of PW 1 in paragraph 5 of his chief-examination is relevant in which he has stated that the soil excavated from a drain was being put on his field in which there were standing crops of potato. Regarding the P.O., the witness was cross-examined at length particularly with regard to the size of drain, excavation work and boundaries of the same, but he remained firm to his stand.

PW 2/ Ajay Tiwari has deposed on almost similar lines.

Pws. 5 and 8 were also cross-examined regarding the place of occurrence. But the prosecution could not elicit any contradiction from them.



The second place of occurrence where the murder was committed is Gamharia Trimuhani chowk, which is about 25 yards away from the informant's house. In this regard, the evidence of PWs.1, 5 and 8 are very relevant. PW 1 has deposed that while returning to his home from his field, when he and others reached at Gamharia Trimuhani chowk, A1 and A3 arrived there on a Bolero vehicle along with others, whereafter the second part of the occurrence took place. Similar evidence was given by PW 5, who is the eye-witness of the occurrence of second part and as per both the witnesses, Gajendra Tiwari (father of the informant) died on the spot and the cousin of the informant who was shot at by the A4 fell down at the distance of 12 yards from where Gajendra Tiwari had fallen down. Accordingly, as per the evidence of this witness, both the victims fell down at Gamharia Trimuhani chowk at a distance of about 10 to 12 yards from each other after sustaining firearm injury. In this



regard, the evidence of the I.O. (PW 8) is also important. He has deposed in the examination in chief that he had visited Gamharia Trimuhani chowk where the informant and his family members were surrounded by the accused persons and there was a distance of 10 to 12 meters in between both the places of occurrence and during the inspection, he had found blood-spots at the place where the victims were found lying. Three used cartridges were also recovered and seized from there. Though this witness accepted that he noticed the blood spots there but in the entire cross-examination, he did not say anything to doubt the P.O. Pws. 2 and 3 have also proved the place of occurrence.

Accordingly, we are of the view that there is sufficient evidence to prove the place of occurrence.

(D) The manner of occurrence; specific acts of the accused persons (appellants) and the weapons used in the alleged crime:

According to the prosecution story, initially the



appellants/A1, A3 and A4 started throwing soil in the field of the victims which was objected by them and then the accused persons/appellants threatened the informant, his uncle and the victims of dire consequences and thereafter, on the same day in the evening, when the victims, informant and his uncle were returning from their field, then on the way, the appellants and other co-accused persons (since acquitted) attacked at them with firearms. In that course, some of the accused persons came to the P.O. on a Bolero vehicle. Appellant/A1 caused firearm injury on the head of the informant's father from a close range by using a pistol and appellant/A4 caused firearm injury to the cousin of the informant. The father of the informant died on the spot while his cousin died during the course of medical treatment.

On going through the deposition of Pws. 1 and 5, the manner of occurrence appears to have been established. Though there is some discrepancy in their



statements but those are not material. Their statements with regard to the presence of co-accused/Murlidhar Singh (since acquitted) as well as A2 at the said place and their specific role of catching hold of the victim/Bibhav Tiwari, there are some contradictory statements of witnesses but the same do not appear to be material contradictions in view of the testimonies of PW 1 and PW 5 which is completely consistent with the prosecution story.

The Supreme Court in the case of ***Rammi @ Rameshwar vs. State of M.P., reported in (1999) 8 SCC 649*** has observed that when an eye-witness is examined at length, it is quite possible for him to make some discrepancies; no true witness can possibly escape from making some discrepant details; perhaps an untrue witness who is well tutored can only successfully make his testimony totally non-discrepant. Merely because of some inconsistency in such evidence, credit of the witness cannot be impaired. No doubt, Section 155 of



the Evidence Act provides for impeaching the credit of a witness by proof of an inconsistent former statement, but a plain reading of the section would indicate that all inconsistent statements are not sufficient to impeach the credit of any.

From the statements of PW 1 and PW 5, reliable evidence appears to the fore regarding the presence of all the appellants at the place of occurrence and the specific roles of played by them.

So far as the specific role of the appellants/A2, A4 and A1 in the commission of the murder is concerned, PW 5 has fully supported the allegations.

PW 1 has deposed in the chief-examination that appellant/A2 ordered and instigated the other appellants and other co-accused persons to kill the victims and in that course, appellant/A1 caused firearm injury near the right jaw of the victim/Gajendra Tiwari by using a pistol and in the course of fleeing, he saw that appellants / A2 and A4 catching hold the victim/



Bibhav Tiwari. They hid themselves in the house and after that, they learnt from the informant that appellant / A4 had caused firearm injury to Bibhav Tiwari by a pistol.

PW 5 has deposed in his chief-examination that at Gamharia Trimuhani chowk, firstly appellants/ A1 and A3 surrounded them and, thereafter, other appellants and co-accused persons (since acquitted) came on Bolero vehicle, armed with rifle and pistol. The appellant/A2 asked the other appellants and co-accused (since acquitted) to kill the prosecution party. He and others started fleeing but the accused persons chased them. The appellant / A3 caught his father when appellant/A1 fired at him by a pistol who died on the spot. He also saw that appellant / A2 had caught Bibhav Tiwari where co-accused/Murlidhar Singh (since acquitted) was also present and while fleeing, he saw that the appellant/ A4 caused firearm injury to Bibhav Tiwari near his eye by a pistol. Both the witnesses were



cross-examined at length and their attention were also drawn by the defence in respect of the earlier statements made by them during investigation. Though some contradictory statements were made by both the witnesses regarding the manner of occurrence and the presence of the accused and their specific roles in the commission of the occurrence but it appears that those discrepancies and contradictions are minor in nature which does not affect the credibility of the evidence of PW 1 and PW 5.

Accordingly, we are of the view that the manner of occurrence as well as specific roles of the appellants / A2, A4 and A1 are in consonance with the prosecution version.

It has been argued by the appellants that the prosecution witnesses, particularly Pws. 1 and 5 are not the eye-witnesses of the occurrence and in this regard, attention of this Court has been drawn towards paragraph nos.6, 14 and 15 of the deposition of PW 1.



But those parts of his Statement are not of such kind as would raise a doubt regarding his presence at the place of occurrence. In those paragraphs, the witness has mainly revealed the surrounding locations and the details of the vehicle used by the accused in coming at the P.O. as well as the distance between the two places of occurrence. The facts stated by this witness in the said paragraphs go in favour of the prosecution as those only prove the P.O.

The learned counsel for the appellants have also placed reliance on the evidence of PWs No.2, 3 and 4 in order to demonstrate divergence in their statements but we do not find any material from the evidence of these witnesses which weakens the case of the prosecution. We do not find any force in the submission that the place of occurrence has not been proved. Pws. 1 and 5 have proved the place of occurrence. They have stated about the presence of bloodstained soil at the place of occurrence as well as position of the dead-body



of the victim/Gajendra Tiwari as also of the injured/Bibhav Tiwari. This was also supported by the investigating officer who arrived at the place of occurrence within three hours of the commission of the offence.

It has been further argued that in the present case, the medical evidence does not corroborate the prosecution case.

We do not find any force in the said contention also as the postmortem reports (Ext.-2 and 3) with regard to the nature of injuries suffered by the deceased completely supports the specific allegations levelled against the appellants/ A1 and A4, who had caused firearm injuries to the victims from a close range by using pistols. The appellant / A1 allegedly caused firearm injury on the head of deceased/ Gajendra Tiwari and appellant / A4 caused firearm injury to the cousin of the informant, namely, Bibhav Tiwari.

The learned counsel for the appellants have



vehemently argued that the investigation was defective as the bloodstained soil and clothes of the victims, which were found at the place of occurrence were not seized by the police. The firearms which were allegedly used by the appellants/ A4 and A1 were never recovered and the used cartridges were also not sent for forensic ballistic examination. It has further been argued that the I.O. did not produce the first information received by him regarding the commission of the offence. That was intentionally withheld by him and, therefore, the fardbeyan of the informant is hit by Section 162 of the Cr.P.C.

The ocular evidence given by Pws. 1 and 5 fully prove the case.

The Supreme Court in ***Arvind Kumar @ Nemichand & Ors. vs. State of Rajasthan, reported in 2021 SCC Online SC 1099*** has held that a Court of law is expected to sift the evidence available and find out the truth on the principle that every case involves a



journey towards truth. A defective investigation *per se* would not enure to the benefit of the accused unless it goes to the root of the very fundamentals of the case.

In the present case, the evidence of Pws. 1 and 5 are sufficient to prove the allegations of the prosecution and the defects and lacunae left by the investigating officer are not such which would render their evidence unreliable in any manner.

During the trial, the appellants have mainly taken the plea that they have been falsely roped in the case on account of enmity owing to sale of a piece of land by Gajendra Tiwary to the father of A1. In this regard, the appellants have produced one witness/Baban Singh (DW-1). He had asserted that the land in question was actually transferred and had identified the signature over the sale deed. But this does not help the appellants as the enmity has not been proved.

The appellants / A2 and A3 had taken the defence that they were not present at the place of



occurrence at the relevant time. This does not appear to be correct as there is no cogent material or evidence to support such defence.

In the light of the above-noted discussion, we are of the considered view that the fardbeyan of PW 5, which is the basis of the FIR, is a reliable document as the same was recorded within three hours of the commission of murder. The ocular evidence of Pws. 1 and 5, who are the eye-witnesses of the occurrence, sufficiently prove the allegations against the appellants of their common intention to kill the deceased and the specific roles of the appellants / A1, A2, and A4 in the crime.

Accordingly, we do not find any reason to interfere with the judgment and order of conviction and sentence passed by the Trial Court.

The appeals are dismissed.

Appellant /A4/Jhunna Singh @ Ranjeet Singh @ Munna Singh is on bail. His bail bond is cancelled



and is directed to serve the remaining part of his sentence. He shall surrender before the Trial Court within 10 days of the receipt of this judgment.

Let the records of these appeals be returned to the Trial Court forthwith.

Let a copy of the judgment be communicated to the Superintendent of the concerned jail for record and compliance.

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

(Shailendra Singh, J)

I agree.

(Ashutosh Kumar, J)

(Ashutosh Kumar, J)

Sanjay/-
Praveen/Sunil

AFR/NAFR	NAFR
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