

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (DB) No.71 of 2019**

Arising Out of PS. Case No.-141 Year-2017 Thana- BATHNAHA District- Sitamarhi

1. Kaushalendra Singh @ Chhotu Singh, Son of Late Maheshwari Singh, Resident of Village- Kishanpur, P.S.- Bathnaha, District- Sitamarhi.
2. Bhuneswari Nandan Singh, Son of Late Maheshwari Nandan Singh, Resident of Village- Kishanpur, P.S.- Bathnaha, District- Sitamarhi.
3. Rambali Ram, Son of Late Nathuni Ram, Resident of Village- Harandhiya, P.S.- Sahiyara, District- Sitamarhi.
4. Sanjay Singh, Son of Late Sitaram Singh, Resident of Village- Kishanpur, P.S.- Bathnaha, District- Sitamarhi.
5. Vijay Singh, Son of Late Sitaram Singh, Resident of Village- Kishanpur, P.S.- Bathnaha, District- Sitamarhi.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

**Appearance :**

|                     |   |                                                                                                                                  |
|---------------------|---|----------------------------------------------------------------------------------------------------------------------------------|
| For the Appellant/s | : | Mr. Ajay Kumar Thakur, Advocate<br>Mrs. Vaishnavi Singh, Advocate<br>Mr. Ritwik Thakur, Advocate<br>Mr. Birendra Kumar, Advocate |
| For the State       | : | Mr. Sujit Kumar Singh, APP                                                                                                       |
| For the Informant   | : | Mr. Surendra Kishore Thakur, Advocate<br>Mr. Alok Kumar Jha, Advocate                                                            |

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

**Date : 18-07-2024**

We have heard Mr. Ajay Kumar Thakur, the learned Advocate for the appellants and Mr. Surendra Kishore Thakur, the learned Advocate for the informant. The State is represented by Mr. Sujit Kumar Singh, the



learned APP.

2. The five appellants have been convicted under Sections 147, 148, 149, 307, 302, 120-B and 504 of the Indian Penal Code and Section 27(i) of the Arms Act *vide* judgment dated 29.11.2018 passed by learned 1<sup>st</sup> Additional Sessions Judge, Sitamarhi in Sessions Trial No. 511/17/ 511/17 + 37/18/ 37/18. By order dated 30.11.2018, they have been sentenced to undergo life imprisonment, to pay a fine of Rs. 5000/- each under Section 120-B of the IPC; RI for two years under Section 147 of the IPC; RI for three years under Section 148 of the IPC; life imprisonment, to pay a fine of Rs. 10,000/- each under Section 302 of the IPC; RI for ten years, to pay a fine of Rs. 5,000/- each under Section 307 of the IPC; RI for two years under Section 504 of the IPC and RI for five years, to pay a fine of Rs. 3,000/- each under Section 27(i) of the Arms Act. In default of payment of fine they were further sentenced to RI for one year.

3. All the sentences have been ordered to run



concurrently.

4. The FIR has been lodged by the son of the deceased, viz., Vishwambhar Prasad (PW-8). His father/ Ram Eqbal Sah is said to have been killed at the hands of the appellants whereas his brother Pawan Kumar (PW-3) was seriously injured. The informant has claimed to be an eye-witness to the occurrence. He was saved only because he hid behind a tree and that is how he had witnessed the entire occurrence. The informant (PW-8) had lodged the *fardbeyan* at Sadar Hospital, Sitamarhi at about 4:40 PM on 14.05.2017 alleging that his daughter was to be married on 26.05.2017, for which the family members were busy making preparations. However, on 14.05.2017, at about 10:00 AM, a person of the village came to his house and informed that some unauthorised persons are fishing in this pond. Hearing this, the brother of the informant, viz., Pawan Kumar (PW-3) proceeded towards the pond. His father (deceased) also left for the pond behind Pawan Kumar. The informant also followed



soon. No sooner had they reached near their own field, which fell on way to the pond, Pawan Kumar was hit by gun shot. Thereafter, when his father moved forward, he too was fired at by the appellants, all of whom have been named by the informant. The informant has also stated in his *fardbeyan* as to which part of the body of the deceased was hit by whose shot. He had named some other appellants as well who were exhorting the fellow accused persons to kill the deceased. The father of the informant succumbed to the injuries. Later, with the help of the villagers, the father and brother of the informant were taken to hospital where the father of the informant was declared dead and his brother (PW-3) was admitted for treatment.

5. On the basis of the aforementioned *fardbeyan* statement of PW-8, a case vide Bathnaha P.S. Case No. 141 of 2017 dated 14.05.2017 was instituted for investigation under Sections 147, 148, 149, 341, 323, 307, 302, 379, 504, 506 of the IPC and Section 27 of



the Arms Act.

6. The aforementioned *fardbeyan* was endorsed by one Santosh Kumar. It appears that two Santosh Kumars have been examined as prosecution witnesses but they do not appear to be the same Santosh Kumar who had put his signature on the *fardbeyan* of PW-8.

7. The police after investigation submitted charge-sheet against the appellants. Cognizance was taken against them and they were put on Trial.

8. The Trial Court, after having examined 28 witnesses on behalf of the prosecution, convicted and sentenced the appellants as aforesaid.

9. Mr. Thakur, the learned Advocate for the appellants, while assailing the judgment, has submitted that PW-8 was not a witness to the occurrence and that the death had taken place in some other transaction, which was taken advantage of by PW-8 to lodge this false case against the appellants with whom the informant and the deceased had enmity from before. He has further



argued that PW-3, the injured witness, must have received the injuries some where else but a collusive medical report was obtained, which was relied upon by the prosecution and the Trial Court. Lastly, it has been submitted that the accusation against the appellants could not be proved beyond all reasonable doubts.

10. The countervailing arguments of the informant is that in view of the consistent evidence of the eye-witnesses, especially PW-8 and PW-3, who too was injured in the occurrence, minor discrepancies in the deposition of witnesses ought not to be given any importance. The deceased died of gun shots. There was a dispute over fishing rights in the pond in question. The accused persons were trying to take out fish from the pond and when the deceased and PW-3 as also the informant (PW-8) proceeded towards the PO, they were met with armed resistance and indiscriminate firing. This had led to the death of the deceased and injuries to PW-3. The informant could escape unhurt because he was



walking behind the deceased and PW-3 and had hid himself behind a tree. He has further submitted that for no reason, the defence has tried to discredit the doctor who had conducted the postmortem examination and had also examined PW-3 on the day of the occurrence. There is nothing on record, it has been vehemently argued, which would impeach their evidence before the Trial Court. A professional government servant is not expected to be in collusion with the accused persons and unless confidence is reposed on such witnesses, the entire system would crumble. He has further submitted that the medical evidence is absolutely in consonance with what has been alleged in the *fardebayan* and what has been deposed by almost all the witnesses, some of whom had only learnt about the occurrence but had arrived at the PO immediately after the occurrence. Their statements also would be admissible in evidence.

11. It would only be appropriate to first discuss the evidence of the informant (PW-8), the injured (PW-



3), the Investigating Officer (PW-16) and the doctor who had conducted the postmortem examination and had examined PW-3, viz., Dr. Arun Kumar Singh (PW-9).

12. PW-8 though has made very specific statement with respect to the overt acts of the appellants in his examination-in-chief, but if his entire evidence is analysed, it would appear that he had made false assertions. According to him, while he along with the deceased and PW-3 was sitting at his *darwaja*, one person, whom he never named, arrived and spoke about unauthorised fishing in his pond. PW-3 immediately proceeded towards the pond, followed by the deceased and he himself. As alleged in the *fardbeyan*, PW-8 has asserted that before reaching the PO, while PW-3 and the deceased were near their own field, PW-3 was hit by a gun shot which perhaps was a grape-shot and hit him in his waist, thigh and hand. When the deceased came forward, appellant/ Rambali Ram fired from his rifle which hit the deceased on his head. When the deceased fell



down on the ground, appellants/ Kaushalendra Singh, Sanjay Singh, Vijay Singh and Bhuneshwari Nandan Singh started firing indiscriminately from their weapons. Satya Prakash Singh, Ajay Singh, Lalu Paswan and Basudeo Paswan, who were armed with *bhala* and *farsa*, were shouting and exhorting the appellants to kill the members of the prosecution party. PW-8 claims to have seen all this from behind a tree. Later, many persons of the village arrived; brought a three-wheeler with which the deceased and PW-3 were taken to Sitamarhi Sadar Hospital. The father of PW-8 was declared dead whereas treatment of PW-3 started. It was in the hospital that the I.O. (PW-16) arrived who recorded his *fardbeyan* statement (Exhibit-1).

13. In his cross-examination, however, he has stated that he had left for Sitamarhi Sadar Hospital at about 11:00 to 11:30 PM. He had not informed PW-16, the Officer-in-Charge of Bathnaha Police Station (IO) about this occurrence. He reached the hospital by around



1:00 PM. When specifically questioned, he admitted that his father (deceased) had contested 4 to 5 criminal cases in which he was made an accused. He has also admitted before the Trial Court that he had got an application filed before the Trial Court for dispensing with the examination of Tulsi Bihari and Sumitra Devi (wife of the deceased) as prosecution witnesses. He had not offered any documents with respect to the ownership of the pond in question. He could not remember the name of the person who had first informed about the appellants fishing in his pond. After the occurrence, he has stated that around 15 to 20 persons had arrived which included the appellants as well.

14. At this juncture, Mr. Thakur has argued, that this very statement makes the deposition of PW-8 absolutely doubtful. According to his initial version, after the deceased fell down and died and PW-3 was injured, the appellants ran away. If this is true, then they would not have again come back in the middle of the village after the occurrence to face the other villagers.



15. It appears from his deposition that Santosh Kumar, who had endorsed the *fardbeyan*, was not examined at the Trial as he is the son-in-law of PW-8. Precisely for this reason, PW-8 did not even allow Santosh Kumar to give his statement before the police during the course of investigation. He had shown to the IO the tree behind which he had saved his life. He had reached his home from the hospital by around 9:00 PM and thereafter he remained stay put there. He has denied the suggestion that while committing loot, his father and brother were injured and that he has brought into existence a collusive medical report. He also denied the suggestion that the pond in question actually belonged to appellants/ Sanjay Singh and Vijay Singh and that they had given the fishing rights to fishermen and the prosecution side had fought with those fishermen who were claiming to have obtained the fishing rights in the pond over which PW-8 claimed his proprietary rights.

16. What has made his statement doubtful is his



claim of having followed his father and brother towards the PO.

17. None of the witnesses including PW-3 have stated before the Trial Court that when it was informed that some people were fishing in the pond, PW-3 and the deceased along with the informant proceeded to the PO. All the witnesses only spoke of PW-3 and the deceased having proceeded for the PO.

18. This doubt further gets strengthened as PW-8 claims to have saved himself by hiding behind a tree. This story does not appear to be probable, as according to PW-8, there was indiscriminate firing and he was following the deceased and PW-3 close to their heels. He never ran away from the place where his father and brother were hit. It would have been a near miss-hit or a miraculous escape of PW-8, if his version is to be believed.

19. That apart, we have noticed that he reached Sadar Hospital along with the deceased and the injured at



about 1:00 PM. The IO had visited the hospital in the afternoon only but his *fardbeyan* was recorded at 4:30 PM. Evidence has also come during Trial that on receipt of an information in Bathnaha Police Station about a shooting incident, one ASI, viz., Vijay Kumar Singh was sent who also had to enquire about a death having been caused by lightening. If IO had made correct statement, then ASI Vijay Kumar Singh, who has not been examined at the Trial, would have been in the village immediately after the occurrence and before the deceased and PW-3 were taken to hospital by PW-8 and others.

20. In this context, it would be profitable to first analyze the evidence of the Investigator (PW-16). PW-16 in his examination-in-chief has described the P.O. as the western embankment of the pond in village Kishanpur, for the possession of which there was dispute between appellant/Sanjay and the deceased. It was at that place that the occurrence of shooting had taken place. According to PW- 8, neither the deceased nor PW-3 or he



himself had reached near the embankment of the pond. In fact, while they were on their way and still at their field, Pawan was shot at and the deceased also received fatal shots.

21. In his cross-examination, the I.O. has admitted that he received the news about shooting in village Kishanpur at the police station at about 10:45 A.M. on 14.05.2017. The aforementioned information was entered in the station diary. He had visited the P.O. on the same day, but had not found any blood or any sign of trampling or any other incriminating evidence at the P.O. He has also informed the Trial Court that A.S.I./ Vijay Shankar Singh of Bathnaha police station had gone to Kishanpur village for inquiring about the death of somebody in the village because of the atmospheric lightening. He was present in the village at about 10:30 A.M. One U.D. Case No. 3 of 2017 was also registered by him. A seizure-list also was prepared on 14.05.2017 at about 1 O'clock, but the same was never entered in the



station diary. He had received the injury report of PW-3 on 16.06.2017. He had corresponded with the Doctor for such late sending of the injury report of PW-3. He has denied that anyone of the witnesses had specifically stated about the individual acts of assault by the appellants. In fact, many of them had not even claimed that they had seen the occurrence.

22. We are not referring to such contradictions for the reason that we are, for the present, only analyzing the evidence of PW-8, juxtaposed with the evidence of PW-3 and the Doctor.

23. From his deposition, what comes out clearly is that information was received in Bathnaha police station about an occurrence in village Kishanpur. A police officer of the same police station was present in the village from 1 O'clock. If that were so, the FIR would normally have been registered at the P.O. The occurrence took place sometimes after 10:00 A.M. By about 11:00 to 11:30, PW-8 along with the injured and the deceased



proceeded for Sitamarhi Sadar Hospital where the deceased was declared dead, whereas PW-3 was admitted for treatment. The I.O. claims to have first come to village and on learning that the injured persons have been admitted in the hospital; went to hospital where the statement of PW-8 was recorded only at 04:30.

24. All this only points towards the timings given by the witnesses to be incorrect. This also raises quite a doubt about the *fardbeyan* being voluntary, without any intention of framing of the accused persons falsely.

25. The evidence of Dr. Arun Kumar Singh (PW-9) is even more damaging to the case of the prosecution, especially with respect to the occurrence having taken place at around 10:30 to 11:00 A.M. on 14.05.2017 in which PW-3 was injured. The postmortem of the deceased was conducted at 05:15 P.M. The Doctor had found one lacerated wound, oval shaped, over the forehead with charred margins of the size of  $\frac{1}{4}$  inches



into cavity deep which was wound of entry. There was another oval shaped lacerated wound with everted margin over the right temporal region which was also bone-cavity deep. This was the wound of exit. Apart from these two wounds, PW- 9 had found a black spot over the left elbow and right thigh which was only skin deep, but there was a blackish burn injury. The first of the injuries referred to above was opined to have been caused by a fire-arm like rifle, whereas the rest of the injuries, which was only one, was opined to be of pellets.

26. On the same day, but at about 04:00 P.M., he had examined PW-3 and had found four injuries on his person. Those injuries were caused by pellets and some of those injuries had charred margins as well. The age of the injury was stated to be six hours old.

27. However, when cross-examined, PW-9 stated that though he had prepared the injury report of PW-3, but it was done on 15.06.2017. He had prepared that injury report on the basis of the X-ray reports. There



is nothing on record to indicate that PW-3 was sent for X-ray examination. He never mentioned in his report as to who and from where the X-ray plates produced before him. He was not aware of the date when the X-ray was taken. For this reason, he had not mentioned the X-ray plate number in the injury report. He has confirmed that the X-ray was not done by him.

28. Another very contradictory statement was made by PW-9 that on the external examination of PW-3, he had found no injury on his person. He, therefore, conceded that since no external injury was found on the body of PW-3, therefore, he could not have assessed, under any circumstance, the age of the injury.

29. What does this signify?

30. PW-3, perhaps, had offered few X-ray plates before PW-9, on the basis of which the report was prepared. There were no other injuries on the person of PW-3 and the report regarding the injuries were based only on the X-ray films.



31. Whose X-ray was it?

32. Where was it done?

33. Who had referred PW-3 for X-ray?

34. All these basic facts have remained unknown. What then would be the veracity of such a medical opinion?

35. We have no evidence on record to indicate that PW-9 had gone in collusion with the prosecution side, but the manner in which PW-9 has conducted himself, makes his report absolutely untrustworthy.

36. Perhaps, for this reason, it has been argued on behalf of the appellants that even if PW-3 was injured by a gun-shot, such injury was not in the same transaction in which the deceased was killed and the case was lodged. This also proves that PW-3 was not hurt in the occurrence, otherwise there was no reason for PW-3 not to have made any statement before the I.O. while he was in the hospital when the I.O. had arrived there.

37. This gives a death-knell to the prosecution



case.

38. It would only be necessary now to refer to the deposition of PW- 3. As noted above, PW- 3 does not say that PW-8 also followed him and the deceased to the P.O. In his cross-examination, he has said that when he and the deceased protested against fishing, they were fired at.

39. This is not the kernel of the prosecution case. According to the prosecution version, we may repeat, while the deceased and PW-3 were on way to the P.O., they were hit by bullets. According to PW-3, he and the deceased had already arrived at the P.O. and had also protested against fishing.

40. Who then were fishing in the pond?

41. Were they the persons who were given the fishing rights by appellants/Sanjay and Vijay?

42. Did they have a fight with those persons who had obtained fishing rights, whom neither of the witnesses knew by name?



43. The death and the injury on PW-3 provided the best opportunity for avenging the enmity with the appellants with whom litigation, criminal and civil, has been continuing for several years. This long enmity between the prosecution and the appellants has been confirmed by all other witnesses.

44. PW-3 also did not have any specific reply on the ownership of the pond.

45. What is even more surprising in his deposition is that he has admitted that on the day of the occurrence, he was at his house still about 10 O'clock in the morning. He left for hospital, which was eight kilometers away from his house, at about 11 O'clock. He had come on a three-wheeler. He had reached the hospital by around 01:00 P.M. By that time, PW-16 (I.O.) was present in the hospital, but he did not make any statement before him. We could have understood this, if there was evidence strong enough to indicate that PW-3 was seriously injured and was not in a position to speak.



46. To our surprise and dismay, he claims to have come back to his home on the same day by around 07:00 P.M. and stayed in his house for the whole night.

47. How do we then believe that the deceased was hit by a gun-shot for which he was treated in Sadar Hospital. If he was conscious in the hospital, which appears to be so, he would not have come back home at 07:00 P.M. from the hospital. He was the best person to provide information about the occurrence to the I.O. (PW-16) in the hospital only.

48. This further makes the presence of PW-3 at the P.O. and at the hospital when I.O. had recorded the *fardbeyan* of PW-8 doubtful. He has also disclosed before the Trial Court that he is a regular visitor to the Courts for contesting cases on behalf of PW-8 and the deceased.

49. It is also surprising that according to PW- 3, the Investigator had come to his village home in the night but none of the family members, *viz.*, his mother, *bhabhi* and his wife made any statement before the police.



50. This does not appear to be a normal circumstance.

51. All this indicates that perhaps there were some other assailants whom neither PW-8 nor PW-3 knew and the death of his father as well as the injury on him was best utilized for framing those persons with whom the family had enmity.

52. We are not referring to the statements of other witnesses, who have either deposed before the Trial Court for the first time or have discredited themselves by making contradictory statements which have made their presence at the time of the occurrence or their having witnessed it, very doubtful.

53. For the abovenoted reasons, we find the accusation against the appellants to be palpably untrustworthy.

54. Giving benefit of doubt to the appellants, we set aside the judgment and order of conviction and set them free.



55. All the appellants, except appellant/Rambali Ram are on bail. They are discharged of their liabilities under their bail bonds.

56. Appellant/ Rambali Ram is in jail. He is directed to be released forthwith from jail, if not required or detained in any other case.

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

58. The records of this case be returned to the Trial Court forthwith.

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

**(Ashutosh Kumar, J)**

**(Jitendra Kumar, J)**

Rajesh/Manoj

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| AFR/NAFR          | NAFR       |
| CAV DATE          | NA         |
| Uploading Date    | 22.07.2024 |
| Transmission Date | 22.07.2024 |

