

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.232 of 2020

Arising Out of PS. Case No.-16 Year-2010 Thana- SAHIYARA District- Sitamarhi

Raj Kumar Das Son of Late Chandra Deo Das Resident of Village-Matiyar
Kala, P.S.-Sahiyara, District-Sitamarhi.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 20 of 2020

Arising Out of PS. Case No.-16 Year-2010 Thana- SAHIYARA District- Sitamarhi

ASHOK DAS Son of Late Chandra Deo Das Resident of Village-Matiyar
Kala, P.S.-Sahiyara, District-Sitamarhi.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 64 of 2020

Arising Out of PS. Case No.-16 Year-2010 Thana- SAHIYARA District- Sitamarhi

RAKESH GAMI Son of Ram Naresh Gami Resident of Village- Matiar
Kalan, P.S.- Sahiyara, Distt- Sitamarhi.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 197 of 2020

Arising Out of PS. Case No.-16 Year-2010 Thana- SAHIYARA District- Sitamarhi

KAMAL KUMAR DAS Son of Late Chandra Deo Das Resident of Village-
Matiyar Kala, P.S.-Sahiyara, District-Sitamarhi.

... .. Appellant/s

Versus

The State of Bihar



... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 223 of 2020

Arising Out of PS. Case No.-16 Year-2010 Thana- SAHIYARA District- Sitamarhi

SHAILENDRA MAHTO Son of Late Ram Kripal Mahto Resident of Village
- Matiyar Kala P.S. - Sahiyara, Distt - Sitamarhi.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 232 of 2020)

For the Appellant/s : Mr. Ajay Thakur, Advocate
Mr.Devendra Kumar, Advocate
For the Respondent/s : Mr. Binod Bihari Singh, APP
Mr. Abhimanyu Sharma, APP
For the Informant : Mr. Ashhar Mustafa, Advocate
Mr. Vikash Kumar Jha, Advocate

(In CRIMINAL APPEAL (DB) No. 20 of 2020)

For the Appellant/s : Mr. Ajay Thakur, Advocate
Mr.Devendra Kumar, Advocate
For the Respondent/s : Mr. Binod Bihari Singh, APP
Mr. Abhimanyu Sharma, APP
For the Informant : Mr. Ashhar Mustafa, Advocate
Mr. Vikash Kumar Jha, Advocate

(In CRIMINAL APPEAL (DB) No. 64 of 2020)

For the Appellant/s : Mr. Uday Kumar, Advocate
For the Respondent/s : Mr. Binod Bihari Singh, APP
Mr. Abhimanyu Sharma, APP
For the Informant : Mr. Ashhar Mustafa, Advocate
Mr. Vikash Kumar Jha, Advocate

(In CRIMINAL APPEAL (DB) No. 197 of 2020)

For the Appellant/s : Mr. Ajay Thakur, Advocate
Mr.Devendra Kumar, Advocate
For the Respondent/s : Mr. Binod Bihari Singh, APP
Mr. Abhimanyu Sharma, APP
For the Informant : Mr. Ashhar Mustafa, Advocate
Mr. Vikash Kumar Jha, Advocate

(In CRIMINAL APPEAL (DB) No. 223 of 2020)

For the Appellant/s : Ms. Madhubala Verma, Advocate
For the Respondent/s : Mr. Binod Bihari Singh, APP
Mr. Abhimanyu Sharma, APP
For the Informant : Mr. Ashhar Mustafa, Advocate
Mr. Vikash Kumar Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA



ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 28-10-2024

All the appeals have been taken up together for hearing.

2. We have heard Sri Ajay Kumar Thakur, learned Advocate for three of the appellants, whereas Mr. Uday Kumar and Ms. Madhubala Verma, learned Advocates for two of the other appellants.

3. The State is represented by Mr. Binod Bihari Singh and Mr. Abhimanyu Sharma, learned APPs.

4. All the appellants (five in number) have been convicted for the offences under Sections 302/34 of the IPC and Section 27 of the Arms Act *vide* judgment dated 06.12.2019 passed by the learned 3rd Additional Sessions Judge, Sitamarhi in connection with Sessions Trial No. 444 of 2011/Registration No. 175 of 2014, arising out of Sahiyara P.S. Case No. 16 of 2010. By order dated appellants have been sentenced to undergo rigorous imprisonment for life, to pay a fine of Rs. 10,000/- and in default of payment of fine to further suffer imprisonment



for six months for the offence under Section 302 of the IPC. Further the appellants have been sentenced to undergo R.I. for three years, to pay a fine of Rs. 1000/- and in default of payment of fine to further suffer imprisonment of one months for the offence under Section 27 of the Arms Act.

5. One Nannu Mahto was shot dead in the room in which he was imparting tuition classes to village students in the night of 11.03.2010.

6. The FIR was lodged by the father of the deceased viz. Sone Lal Mahto (P.W. 1), who had alleged in the FIR that at about 7.30 P.M. on 11.03.2010, while he was at his house, he saw and heard people coming from the northern direction that his son Nannu Mahto has been shot. On hearing this, he ran to the P.O. with a torch in his hand and saw the appellants/Raj Kumar Das, Ashok Das and Kamal Kumar Das firing from their respective weapons at the deceased. He also claimed to have seen the appellants/Rakesh Gami and Shailendra Mahto training



their weapons towards the villagers to scare them away. Shortly thereafter, appellant/Ashok Das declared that Nannu Mahto is dead. All this while, P.W. 1 had hid himself behind a wall but seeing this, he came out in open and chased the miscreants. After some time, he came back and saw his son dead with several gun-shot wounds on his body. A part of the bullet was also found lying on the floor near the dead body. At the time of the occurrence, the deceased, as usual, was taking tuition classes on the Dalan of one Ram Babu Mahto, who has been examined as one of the defence witnesses.

7. The cause of occurrence as stated in the FIR is that the deceased always protested against the wrong activities of the accused persons and because of that, they were annoyed at him. It was therefore, alleged that the aforementioned five appellants had killed the deceased.

8. On the basis of the aforementioned fardbeyan of P.W. 1, a case *vide* Sahiyara P.S. Case No. 16 of 2010 dated 11.03.2010 was registered for investigation for the



offences under Sections 302/34 of the IPC and Section 27 of the Arms Act.

9. The records reveal that later, P.W. 1 filed a protest petition stating that the names of two other accused persons were not entered in the fardbeyan viz. Rakesh Das and Sanjay Das (since dead). The police had not chargesheeted appellant/Shailendra Das also.

10. However, after a protracted investigation, the appellants were chargesheeted whereupon the cognizance was taken and the case was committed to the Courts of Sessions for Trial.

11. The learned Trial Court after having examined eight witnesses on behalf of the prosecution and ten on behalf of the defence, convicted and sentenced the appellants as aforesaid.

12. While assailing the judgment and order of conviction and sentence, the learned Advocates led by Shri Ajay Kumar Thakur argued that no doubt the deceased died because of three gun-shot wounds but the description



of the events by four so-called eye witnesses does not inspire confidence to the extent that from their own deposition, it becomes clear that they had not seen the occurrence.

13. The second limb of the argument on behalf of the appellants is that the deceased perhaps died in an internecine dispute, as the appellants as also the deceased were involved in some case or the other in which the appellants and the deceased represented different sides.

14. Lastly, it has been submitted that even otherwise, the records would reveal that the deceased was killed somewhere else, may be near the house of Ram Babu Mahto at the cross-roads. Precisely for this reason, most of the eye witnesses claimed to have rushed to the shop of one Naresh Das located at the cross-road junction, somewhere near the house of Ram Babu Mahto.

15. The sum and substance of the argument on behalf of the appellants is that taking advantage of the death of the deceased, all his detractors were named by



P.W. 1. If at all anybody would have seen the occurrence, it was Sri Bhagwan Sah, the nephew of the deceased, who too had been taking tuition with the deceased and in his presence, the occurrence had taken place. However, his deposition is also fraught with many inconsistencies; especially his not having made any statement immediately after the occurrence before the police officer even though the police officer had visited the site of occurrence in the night of the occurrence only.

16. As opposed to the aforementioned contentions, the learned APPs have argued that Sri Bhagwan Sah (P.W. 3), though a person of tender age knew each one of the appellants and therefore his statement that he saw the appellants firing at the deceased cannot be discounted only for the reason of his delayed statement before the police by a day or two.

17. The motive for the occurrence suggested in the fardbeyan and in the deposition of witnesses may not be correct in the ultimate analysis, but it has been argued



that in view of the consistent deposition of P.Ws. 1 to 4 and Dr. Phanindra Nath Verma (P.W. 5) having confirmed in the post-mortem examination that the deceased died of gun-shot wounds, the appellants would not be entitled to argue that nobody had seen the occurrence and that they had been named because of enmity.

18. We have examined the evidence in detail.

19. Sone Lal Mahto (P.W. 1) appears to have made a stark departure from his earlier statement and even claimed to have been assaulted by the appellants to prevent him from interfering in the act of killing. At the trial, he came up with an absolutely new story that he along with his other son/Anil Kumar (P.W. 2), Hriday Mahto, his brother but not examined at the Trial, and wife Tetari Devi (P.W. 4) had rushed to the P.O. on hearing the gun-shots and hearing from others that his son is being assaulted. He also claims to have been accompanied by Sri Bhagwan Sah. At the P.O., according to P.W. 1, an electric bulb was glowing with the generator back-up. In the light



of that bulb and the torch which he carried with him, he saw the appellants firing at the deceased. However, he never went in the line of vision of the appellants out of fear. Later, he made an attempt to chase the miscreants but returned mid-way and saw his son mortally wounded. At the time of the occurrence, according to P.W. 1, the deceased had been taking tuition classes of village students. He has repeated the same motive of the appellants viz. of the appellants being annoyed at the protest of the deceased against their wrongful activities.

20. At the Trial, another motive was introduced by P.W. 1 viz. the refusal of the deceased to eschew from deposing against the appellants in a case (Sahiyara P.S. Case No. 4 of 2009) lodged at the instance of one Pappu Raut. He had given his statement before the local police at the house of Ram Babu Mahto, which was also signed by his son/Anil Kumar (P.W. 2). The police officer had seized the blood stained earth and the empty cartridge, whereafter seizure list was prepared which was signed by



him and his son and brother, one of whom was not examined at the trial.

21. The inquest report was prepared in his presence which also he had signed. According to him, approximately 30 students were studying in the class of the deceased. The deceased had enmity with none in the neighbourhood. The tuition classes were taken by the deceased with the permission of Ram Babu Mahto. He has denied the suggestion about the deceased being in dispute with the other appellants because of different criminal cases. He had also learnt that two of the pupils of the deceased were also hurt in the incident, whose guardians had come to the P.O. However, none of them were examined by the police.

22. While he was at his residence, the commuters who were talking aloud about the deceased being killed, did not name anyone of the assailants before him. It took him only a minute to reach the P.O. According to his information, the generator which was being run in the



village was of Kishori Mahto, a person who has been examined on behalf of defence and who has categorically denied that he ran his generator in the night of the occurrence at Ram Babu Mahto's house. He also admitted of his son (deceased) being accused in other cases. However, in the same breath, he denied the suggestion that his other son had criminal dispensation and because of protest against him by appellant/Rakesh Gami, Rakesh Gami had been wrongly framed in this case. He claimed to have seen the appellants firing four shots at the deceased.

23. While commenting on his deposition before the trial Court, the learned Advocates have argued that he cannot be believed for the reason of his having made an absolutely different statement with respect to the manner of occurrence.

24. It has also been urged that his conduct is especially an unacceptable reaction of a father, who saw the occurrence from behind a wall but never came out in open. This may not actually be the reason for doubting his



statement as everyone is fearful of his life especially when the marauders/assailants are armed with lethal weapons but if P.W. 1 is to be believed, his wife, his son, his brother and his nephew had also accompanied him to the P.O. and they were also present when the appellant was being shot at. None of them in their deposition have claimed to hide themselves. If P.W. 1 had the fear for his life, so was the reason for the other eye-witnesses not to come out in the open. They have also not claimed to have entertained any fear of any kind or their having hidden themselves behind any projection.

25. It may be noted here that the investigator/Shailendra Kumar (P.W. 6), on his visit to the P.O. did not find any generator backed electric lighting.

26. The appellants are all residents of the same locality. If that were so and they had been named also by P.W. 1, then it was expected that they would have been arrested on hot chase.



27. No weapon of assault has been recovered.

The investigator, of course, found evidence of a tuition class being held but had no idea whether anyone of the students/pupils had been hurt in the incident. This also causes severe dent in the prosecution version as three persons were continuously firing from their respective weapons but all the shots hit the deceased only.

28. We have no evidence on record to indicate that any pupil was hurt in the occurrence.

29. The investigator, very plainly conceded before the trial Court that he had made no efforts to know about the students. Some of those students have appeared before the trial Court as defence witnesses, who have confirmed that there was a shooting incident while they were being taught by the deceased but who were the assailants was not known to them.

30. In this context, we have examined the evidence of Sri Bhagwan Sah (P.W. 3), a person of 13 years, who perhaps was the first one to talk about the



shooting incident. At the Trial, he claims to have come out of the class, shouting that the deceased has been shot dead. That he named the appellants also cannot be a ground to disbelieve him but then his evidence has to be accepted with some circumspection.

31. The reason why we say so is that he was one of the students in the class room and therefore, his testimony was the most important piece of evidence.

32. According to the records, the investigator had reached the place of occurrence after about an hour of the occurrence and P.W. 3 had seen him at the P.O.

33. In that case, a delayed recording of statement of P.W. 3 assumes importance especially in view of the fact that any investigator would actually look for the real eye witness of the occurrence.

34. A situation therefore could be conceived of where immediately after the incident, P.W. 3 came out of the class and shouted. This was the source of information



to other witnesses, who then promptly named the appellants.

35. Even the story of the deceased taking tuition at the time of being killed appears to be doubtful for the reason that the investigator, within an hour of the occurrence, did not find any electrical lighting.

36. Is it then that P.W. 3 was only making up a story after it was learnt that the deceased has received gun shot wounds?

37. If he were in the class, so were the other pupils. Anyone of them could have been hit. Though the investigator found some trace of proof that class was being held there, but was it being held at the time when the occurrence took place remains uncertain. This could have been proved only by the investigator finding out the actual version of the pupils or their guardians.

38. That apart, we find it a bit difficult to accept the deposition of Anil Kumar (P.W. 2) and Tetari Devi (P.W. 4) as reliable narration of events.



39. Had they accompanied P.W. 1 to the P.O., then P.W. 1 could never have forgotten to take their names in the first instance. In fact, the way in which the narration has been made, it appears that some occurrence had taken place near the cross-road by the side of shop of Naresh Mahto.

40. But this proposition does not appear to be correct for the reason that the inquest report declares that the deceased was found inside the room of Ram Babu Mahto's house.

41. Assuming the story of the shooting having taken place inside the room where the class was being held, what strikes us is whether the house of Ram Babu Mahto was empty. Ram Babu Mahto as D.W. No. 3 has confirmed that the deceased died in his house but he was not present there. He has not stated anything about the other inmates in the house. Whether that house was the dwelling house of Ram Babu Mahto also could not be ascertained. If it were a dwelling house, then perhaps the



family members ought to have come out or would have been the best persons to depose or to state about the occurrence.

42. Is it therefore a case where the deceased was first confronted at the tri-junction and then chased up to the house where he was killed? Nobody knows.

43. The fact that none of the pupils were injured in the occurrence and the investigator had found chairs and tables, books and school bags strewn all over, only confirms the fact that ultimately the deceased died in that room.

44. Did the occurrence take place after the tuition classes were over or before the tuitions started?

45. Though P.W. 2 and P.W. 4 have also claimed to have seen the appellants firing at the deceased but in these background facts, their depositions do not appear to be trustworthy.

46. The post-mortem examination was conducted by Dr. Phanindra Nath Verma (P.W. 5) on 12.03.2010. He



had found six injuries; three out of which were wound of entry and three the wounds of exit. The entire meninges were lacerated. The occipital region was found to be fractured. Since the size of the exit wounds were not marked by P.W. 5, it could not be ascertained whether the assault was made by gun or by a rifle. It also could not be ascertained whether all the appellants were carrying the same kind weapon. In fact, his observations were very tentative which do not establish whether the deceased was shot at from a distance or from a close range. It could be possible that the deceased was killed from very close quarters.

47. The prosecution line would have been established only if it were found that the deceased was hit from a close range, which would have at least given credence to the story that all the appellants came inside the classroom and fired at the deceased.

48. As we have already noted, none of the family members of Ram Babu Mahto having come up to the



witness-stand has made the prosecution version highly doubtful.

49. Merely because the deceased was found dead in a room, mortally injured, would not prove as to how he was murdered.

50. The time span suggested by P.W. 5 is too big to assess as to the actual time of the occurrence and the time available to P.W. 1 to have conjured up the detractors of the deceased and then named him.

51. Be that as it may, we hold his deposition in doubt for the reasons which have been ascribed in the earlier paragraphs.

52. The attention of P.Ws. 1 to 4 was drawn to their earlier statements. The investigator has categorically affirmed that P.W. 1 had not named Rakesh Gami. P.W. 1 had also not told the investigator that his family members were present along with him at the time of the occurrence. According to the investigator, the brother of the deceased (P.W. 2) had not told him that he had accompanied his



father (P.W. 1) to the P.O. on hearing the gun shots. Even the story of the deceased taking tuition classes was not told by anyone of the witnesses to the investigator.

53. This sends us doubting whether the occurrence took place when classes were being held.

54. We have already noted that no student having been injured in the occurrence clearly proves that the incident had taken place when the students had not congregated there.

55. We have also not missed out on the statement of the investigator that the mother of the deceased (P.W. 4) had clearly told him that Sri Bhagwan Das (P.W. 3) had come out weeping and had told everybody in the family that three of the appellants viz., Kamal Kumar Das, Ashok Das and Raj Kumar Das had killed the deceased.

56. On the contrary, Sri Bhagwan Das after two days of the occurrence told the investigator that he had



gone to his Nana's house *i.e.* P.W. 1 and had spoken about the occurrence to the family.

57. All these suggest that because of the earlier dispute of the deceased with the appellants, they had been named.

58. None of the so-called eye witnesses appear to have witnessed the occurrence.

59. For these reasons, we find it difficult to put our imprimatur to the judgment of the Trial Court.

60. The appellants need be given the benefit of doubt.

61. Thus, they are acquitted of all the charges.

62. All the appeals succeed.

63. All the appellants except appellant/Shailendra Mahto [Cr. App (DB) No. 223 of 2020] are in jail.

64. They [Raj Kumar Das/Cr. APP (DB) No. 232 of 2020, Ashok Das/Cr. APP (DB) No. 20 of 2020, Rakesh Gami/Cr. APP (DB) No. 64 of 2020 and Kamal Kumar Das/Cr. APP (DB) No. 197 of 2020] are directed to be



released forthwith, if not required or detained in any other case.

65. Since appellant/Shailendra Mahto [Cr. App (DB) No. 223 of 2020] is on bail, he is discharged of his liabilities under the bail bonds.

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

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

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

(Ashutosh Kumar, J)

(Rajesh Kumar Verma, J)

krishna/ibrar

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.10.2024
Transmission Date	29.10.2024

