

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1192 of 2017

Arising Out of PS. Case No.-149 Year-2016 Thana- NAUGACHIA District- Bhagalpur

Mukesh Kumar @ Tuntun @ Rajvir @ Tuntun Yadav S/o Veda Nand Yadav,
resident of Village- Latara @ Latra, P.S.- Gopalpur, District- Bhagalpur.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 1242 of 2017

Arising Out of PS. Case No.-149 Year-2016 Thana- NAUGACHIA District- Bhagalpur

Arvind @ Arbind Yadav S/o-Jyotish Yadav R/o-Village-Sadhapur, P.S.-
Rangra, District-Bhagalpur

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 1277 of 2017

Arising Out of PS. Case No.-149 Year-2016 Thana- NAUGACHIA District- Bhagalpur

Nand Kishor Mandal Son of Upendra Mandal, R/o Vill.- Sadhawa, P.S.-
Rangra, present Lodipur, P.S.- Kharik, District- Bhagalpur.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 1328 of 2017

Arising Out of PS. Case No.-149 Year-2016 Thana- NAUGACHIA District- Bhagalpur

Pintu Singh Son of Prakash Singh, Resident of Village- Mill Tola Naugachia,
P.S.- Naugachia, District- Bhagalpur.

... .. Appellant/s

Versus

The State Of Bihar



... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 1360 of 2017

Arising Out of PS. Case No.-149 Year-2016 Thana- NAUGACHIA District- Bhagalpur

Dhananjay Kumar Son of Daya Nand Singh, R/o Village- Mill Tola
Naugachia, P.S.- Naugachia, District- Bhagalpur.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 1416 of 2017

Arising Out of PS. Case No.-149 Year-2016 Thana- NAUGACHIA District- Bhagalpur

Sachin @ Sachcho Yadav S/o Haro @ Hari Lal Yadav, R/o Village- Rasalpur
P.S.- Naugachia, District- Bhagalpur.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :	
(In CRIMINAL APPEAL (DB) No. 1192 of 2017)	
For the Appellant	: Mr. Saket Kumar Singh, Advocate
For the State	: Mr. Sujit Kumar Singh, APP
(In CRIMINAL APPEAL (DB) No. 1242 of 2017)	
For the Appellant	: Mr. Surendra Singh, Senior Advocate
	Mr. Rajiv Kumar Singh, Advocate
For the State	: Mr. Sujit Kumar Singh, APP
(In CRIMINAL APPEAL (DB) No. 1277 of 2017)	
For the Appellant	: Mr. Dinesh Choudhary, Advocate
For the State	: Mr. Sujit Kumar Singh, APP
(In CRIMINAL APPEAL (DB) No. 1328 of 2017)	
For the Appellant	: Mr. R.P. Sharma, Advocate
	Mr. Mritunjay Kumar, Advocate
For the State	: Mr. Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 21-08-2024

These appeals are filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') against the judgment of conviction dated 19.08.2017 and order of sentence dated 21.08.2017, passed by learned 1st Additional District & Sessions Judge, Naugachia in S.T. No.5/17 (Trial No.815/17), arising out of Naugachia P.S. Case No.149/16 dated 20.08.2016 whereby the court has convicted all the appellants for the offences punishable under Sections 147, 148, 149, 302 and 120(B) of the Indian Penal Code as well as under Section 27 of the Arms Act and they have been sentenced to undergo imprisonment for life and also to pay fine of Rs.25,000/- each for the offences punishable under Sections 302/149 read with Section 120(B) of the Indian Penal Code. The appellants have further been sentenced to undergo R.I. for a period of three years for the offence punishable under Section 148 of the Indian Penal Code. The appellants have again been sentenced to undergo R.I. for a period of five years and also to pay fine of Rs.5000/- for the offence punishable under Section 27 of the Arms Act. In case of default of payment of fine,



awarded as above, the appellants have \been sentenced to undergo Simple Imprisonment for a period of three years which will be in addition to the punishment awarded to them. The sentences have been directed to run concurrently.

2. Learned counsel appearing on behalf of the appellant in Criminal Appeal (DB) No.1277 of 2017, at the outset, submits that appellant, namely, Nand Kishor Mandal has died. Therefore, in view of the aforesaid statement, Criminal Appeal (DB) No.1277 of 2017 stands abated.

3. The factual matrix of the present case is as under:-

3.1 *Fardbeyan* of Sunita Devi came to be recorded on 20.08.2016 at 09:00 hours in Sub-divisional Hospital, Naugachia wherein the informant has stated that on 20.08.2016 at about 07:15 a.m., the informant along with her brothers-in-law, namely, Vinod Yadav and Jai Krishna Kumar as also Vijay Yadav were going towards her *Basa*. It is stated in the *fardbeyan* that Vinod Yadav was walking ahead at about 50-60 ft. As soon as Vinod Yadav reached near the house of Shankar Yadav at 07:30 a.m., suddenly three motorcycles from front side and two motorcycles from back side came there and three persons were riding on each motorcycles. They surrounded Vinod Yadav and



started indiscriminate firing. When the informant and others tried to save him, the accused persons pointed their guns towards them and threatened them not to move any more. The informant claims to have identified the accused persons as Ajit Kumar, Sumit Kumar @ Rupesh Kumar, Rajeev Kumar, Sachin @ Sachcho Yadav, Pintu Singh, Saurabh Kumar Singh, Mankeshwar Singh @ Mantu Singh, Kamando Rai, Chhotu Yadav, Kumodi Yadav, Arvind Yadav and Balkeshwar Singh @ Balo Singh. The informant further stated in her *fardbeyan* that she can also identify the three other accused persons. It is further alleged that the accused persons after surrounding her brother-in-law, namely, Vinod Yadav started firing indiscriminately and killed him at the spot. The informant alleged that the reason behind the occurrence is *Panchayat* election and previous enmity.

3.2 After registration of the formal FIR on the basis of the aforesaid *fardbeyan*, the Investigating Agency started investigation. During course of investigation, the Investigating Officer recorded the statement of the witnesses, collected the documentary evidence and thereafter filed charge-sheet against the appellants.

3.3 The case was exclusively triable by court of



sessions and, therefore, the learned Magistrate committed the same to the concerned sessions court where the same was registered as Sessions Trial No.5/17.

3.4 During course of trial, the prosecution had examined 7 witnesses, namely, PW-1 Prabhat Kumar @ Pappu Yadav, PW-2 Vijay Yadav, PW-3 Prem Sagar @ Dabloo Yadav, PW-4 Jai Krishna Yadav, PW-5 Sunita Devi, PW-6 Sanjay Kumar Sudhansu and PW-7 Dr. Vijay Prakash Rai. Thereafter further statement of the accused under Section 313 of the Code came to be recorded. After conclusion of the trial, the Trial Court convicted the appellants for the aforesaid offences as stated hereinabove.

3.5 Against the judgment of conviction and order of sentence passed by the learned Trial Court, the appellants have filed the instant appeals.

4. Heard Mr. Surendra Singh, learned Senior Counsel assisted by Mr. Rajiv Kumar Singh for the appellant, namely, Arvind @ Arbind Yadav, Mr. Saket Kumar Singh, Mr. Dinesh Choudhary, Mr. R.P. Sharma and Mr. K.N. Sahay, learned counsels for the appellants in analogous appeals as well as Mr. Sujit Kumar Singh, the learned APP for the State.

5. Mr. Surendra Singh, learned Senior Counsel



appearing on behalf of appellant Arvind @ Arbind Yadav would submit that as per the case of the prosecution, there are three eye witnesses to the incident in question, i.e., PW-2, PW-4 and PW-5 (informant). However, all these three witnesses are near relatives of the deceased and though independent witnesses were available, they have not been examined by the prosecution. It is submitted that from the evidence led by the prosecution, it would reveal that driver of the deceased was also present with him at the time of incident and he was an independent witness and would be the best eye witness as he was present with the deceased despite which the prosecution has failed to examine the independent witness. Learned Senior Counsel would thereafter submit that no specific role has been attributed by the so called eye witnesses to any of the accused. General allegations are levelled against all the accused that all the accused, total 15 in numbers, came on motorcycles, surrounded the deceased and made indiscriminate firing. It is further submitted that from the deposition given by doctor (PW-7), it is revealed that seven firearm injuries were found on the dead body of the deceased. Learned Senior Counsel submits that medical evidence does not support the theory put forward by the so called eye witnesses. It is also contended that in fact three



unknown miscreants killed the deceased which was reported in the newspaper and the said newspaper is exhibited. Learned Senior Counsel would further submit that even otherwise there are major contradictions, inconsistencies and discrepancies in the deposition given by the so called eye witnesses and, therefore, the said witnesses are not trustworthy despite which the Trial Court has placed reliance upon the deposition given by them.

5.1. Learned Senior Advocate would thereafter contend that from the deposition given by the Investigating Officer (PW-6) as well as from the seizure list, it is revealed that four empty cartridges of 315 country made pistol were seized from the place of incident. One country made pistol with one cartridge were found near the place of occurrence. However, though the team of FSL visited the place of incident and aforesaid articles were seized, the same were not sent for necessary opinion of the ballistic experts. Further, blood stained soil/earth was also collected from the place of incident however, the FSL report has not been produced before the Court. It is also contended that as per the case of the prosecution, all the accused used fire arms however, none of the weapons has been recovered or discovered at the instance of the accused. Learned



Senior Advocate, therefore, urged that the prosecution has failed to prove the case against the accused beyond reasonable doubt and, therefore, merely because the FIR was promptly registered wherein the names of the appellants are disclosed, it cannot be said that the appellants have committed the alleged offences. It is also pointed out from the deposition of PW-2 that because of the election of the Panchayat, the incident took place. Learned Senior Counsel, therefore, urged that because of the enmity, the appellants-accused have wrongly been implicated in the incident in question. It is also pointed out from the record that number of FIRs. were registered against the deceased Vinod Yadav and, therefore, there are all chances that there are enemies of the deceased who must have killed him.

5.2. Mr. Singh, the learned Senior Counsel has placed reliance upon the following decisions in support of his case:

- (i) AIR 1956 SC 526 (Santa Singh v. State of Punjab)
- (ii) AIR 1971 SC 1891 (Tara Chand v. State of Haryana)
- (iii) AIR 1991 SC 4 (Budhwa v. State of M.P.)
- (iv) AIR 2007 SC 3234 (Dilawar Singh v. State of



