

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.607 of 2019

Arising Out of PS. Case No.-163 Year-2017 Thana- MATIHANI District- Begusarai

Bibhash Mishra @ Bachchu Mishra Son of Late Rajesh Mishra Resident of Village- Ramdiri Loka Baba Tola, P.S.- Matihani, District- Begusarai.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with
CRIMINAL APPEAL (DB) No. 418 of 2019

Arising Out of PS. Case No.-163 Year-2017 Thana- MATIHANI District- Begusarai

Amlesh Kumar @ Bimlesh Kumar Singh @ Bimlesh Singh @ Bimlesh Kumar Son of Umesh Singh Resident of Village - Ward No. 7, Ramnagar, Naya Tola, Ramdiri, P.S.- Matihani, District - Begusarai

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with
CRIMINAL APPEAL (DB) No. 519 of 2019

Arising Out of PS. Case No.-163 Year-2017 Thana- MATIHANI District- Begusarai

Gulshan Kumar @ Keshav Kumar @ Gautam Kumar Son of Binod Singh Resident of Village - Ramdiri, P.S.- Matihani, Dist.- Begusarai.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :
(In CRIMINAL APPEAL (DB) No. 607 of 2019)
For the Appellant/s : Mr. Rajan Ghoshrave, Advocate
For the Respondent/s : Mr. Manish Kumar No.2, APP
(In CRIMINAL APPEAL (DB) No. 418 of 2019)
For the Appellant/s : Mr. S.K. Lal, Advocate
For the Respondent/s : Ms. Shashi Bala Verma, APP
(In CRIMINAL APPEAL (DB) No. 519 of 2019)
For the Appellant/s : Mr. S.K. Lal, Advocate
For the Respondent/s : Mr. Manish Kumar No.2, APP

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

Date : 31-07-2024

We have heard Mr. S.K. Lal, learned counsel for the appellants in Cr. Appeal (DB) No. 418 of 2019 and Cr. Appeal (DB) No. 519 of 2019, Mr. Rajan Ghosharve, learned counsel for the appellant in Cr. Appeal (DB) No. 607 of 2019 and Ms. Shashi Bala Verma as also Mr. Manish Kumar No. 2, learned APPs for the State.

2. These three appeals have been preferred for setting aside the judgment of conviction dated 15.03.2019 (hereinafter referred to as the 'impugned judgment') in Sessions Trial Nos. 74 of 2018 and 440 of 2018 arising out of Matihani P.S. Case No. 163 of 2017 and the order of sentence dated 19.03.2019 (hereinafter referred to as the 'impugned order') passed by learned District and Sessions Judge, Begusarai (in short 'the learned trial court').

3. By the impugned judgment of conviction, the appellants have been convicted for the offences under Sections 302/34 of the Indian Penal Code (in short 'IPC') and Section 27 of the Arms Act. By the impugned order, the appellants have been sentenced to undergo life imprisonment for the offence under Section 302/34 IPC with a fine of Rs.1,00,000/- each and in case of default of payment of

fine, they have to further undergo six months simple imprisonment. For the offence under Section 27 of the Arms Act, they have to undergo rigorous imprisonment for three years with a fine of Rs.10,000/- and in default of payment of fine, they have to further undergo simple imprisonment for one month. All the sentences are to run concurrently.

Prosecution Case

4. The prosecution case is based on the *fardbeyan* of Abhay Kumar (PW-4), son of the deceased (Munna Singh) in Sessions Trial No. 74 of 2018. In his *fardbeyan* made before Md. Nesar, Sub-Inspector of Police of Matihani Police Station, Begusarai, recorded on 08.10.2017 at 11:50 AM at Sadar Hospital, Begusarai, the informant (PW-4) has stated that on 08.10.2017 at 10:00 AM, his father Munna Singh had started for his '*Dera*' from his house by his motorcycle bearing no. BR09P-4749 and when he reached near the bungalow of Lukho Singh at about 10:10 AM, the informant together with one Sanjeev Kumar (PW-1) left his house by another motorcycle in connection with the work of the Panchayat. It is the case of the informant that as soon as his father reached near the house of Lukho Singh, (i) Chunchun Singh, (ii) Bibhash Mishra @ Bachchu Mishra, (iii) Bimlesh Kumar and (iv) Gulshan Kumar, all of village Ramdiri who were there with a pre-plan came out. Bibhash Mishra forcibly stopped the father of the informant and Bimlesh

Kumar and Gulshan Kumar surrounded his father whereafter Chunchun Singh (absconder) who was armed with a pistol fired on the father of the informant, the shot fired by him hit on the left shoulder of the father of the informant, he fell down and became restless. At that very moment, the informant claimed to have reached there. According to him, Bibhash Mishra and Bimlesh Kumar said that now the work is done, therefore, they should flee away (*'Chalo Bhago Kaam tamam ho gya hai'*) and all these accused persons fled away on motorcycle. The informant with the help of his family members brought his father in injured condition to Sadar Hospital, Begusarai where the doctors declared him dead. The informant (PW-4) has stated that all the four persons are of criminal nature and they had spread a reign of terror in the village, father of the informant was a former Mukhiya, other family members of the informant are the representative of the Panchayat, therefore, the father of the informant was opposing them. According to the informant, this opposition is the reason behind the occurrence. He alleged that all the four accused persons conspired and killed his father.

5. After investigation of the case, as it appears from the records, the Investigating Officer (PW-6) submitted a chargesheet bearing No. 08 of 2018 dated 24.01.2018 against accused, namely, (i) Bibhash Mishra @ Bachchu Mishra and (ii) Gulshan Kumar @ Gautam Kumar under Sections 302 and 120B/34 IPC and Section

27 of the Arms Act. The investigation was kept pending against accused, namely, Chunchun Singh and Bimlesh Kumar. *Vide* order dated 23.01.2018, the learned Magistrate took cognizance of the offences and directed for splitting of the records in respect of the accused against whom the investigation was kept pending.

6. On 12.02.2018, police papers were supplied to the two accused persons and the records were committed to the court of Session for trial.

7. It further appears that the accused Amlesh Kumar @ Bimlesh Kumar Singh himself surrendered in court on 26.02.2018, he was taken into judicial custody. On 16.07.2018, the I.O. submitted a supplementary chargesheet bearing No. 108 of 2018 dated 27.06.2018 against accused Bimlesh Kumar Singh and Chunchun Singh (showing absconder) for the offences punishable under Sections 302, 120B/34 IPC and Section 27 of the Arms Act. On 20.07.2018, cognizance was taken in the supplementary chargesheet. On 30.07.2018, the learned Judicial Magistrate committed the records of Amlesh Kumar @ Bimlesh Kumar Singh to the court of Sessions.

8. From the materials on the record, it would appear that on receipt of the records of Bibhash Mishra @ Bachchu Singh and Gulshan Kumar @ Gautam Kumar, Sessions Trial No. 74 of 2018

was instituted in the court of learned Sessions Judge, Begusarai. The charges against them were explained to the two accused persons who denied the charges and claimed to be tried. Accordingly, charge was framed on 14.11.2018 against Bibhash Mishra and Gulshan @ Gautam and the trial commenced. Sanjeev Kumar (PW-1) was examined on 18.04.2018 but his cross-examination came to an end only on 03.11.2018. Dr. Nilkamal (PW-2) was examined on 9th May, 2018 and Tripurari Kumar (PW-3) was examined on 18th May, 2018. In the meantime, as stated above, the records of Amlesh Kumar @ Bimlesh Kumar Singh was received. On receipt of the records, Sessions Trial No. 440 of 2018 was registered. A charge was framed against Bimlesh Kumar Singh on 27.08.2018 after he denied the charges and claimed to be tried. Later on, both the trials were amalgamated. After amalgamation of trials, PW-1, namely, Sanjeev Kumar of Sessions Trial No. 74 of 2018 was again examined and cross-examined, Dr. Neel Kamal (PW-2) and Tripurari Kumar (PW-3) of Sessions Trial No. 74 of 2018 were again examined on 14.09.2018 and 18.09.2018 respectively.

9. The prosecution examined as many as six witnesses and got exhibited some documentary evidences which are being mentioned in tabular form.

List of prosecution witnesses:-

PW-1	Sanjeev Kumar
PW-2	Dr. Neel Kamal
PW-3	Tripurari Kumar
PW-4	Abhay Kumar
PW-5	Rajesh Kumar
PW-6	Shyam Sundar Singh

PW-1 and PW-2 were once again examined after amalgamation of trial.

List of Exhibits on behalf of prosecution:-

Ext 1	Signature of PW-1 Sanjeev Kumar on fardbeyan	18.04.18	Without objection
Ext 2	Postmortem report of Munna Singh	09.05.18	"
Ext 1/1	Signature of PW-4 Abhay Kumar on fardbeyan	26.09.18	"
Ext 3	Signature of PW-4 on carbon copy of inquest report	26.09.18	With objection
Ext 3/1	Signature of Jhumna Singh on carbon copy of inquest report identified by PW-4	26.09.18	"
Ext 1/2	Fardbeyan	05.10.18	Without objection
Ext 1/3	Endorsement of SHO	"	"
Ext 4	Formal FIR	"	"
Ext 5	Para 43 and 44 of case diary as criminal antecedent	"	"
Ext 3/2	Inquest report	05.10.18	"
Ext 6	Bullet presentation slip signature of Dr. Nilkamal on it	"	"
Ext.7	C.C. of Chargesheet Matihani PS 02/15	29.10.18	"

Ext. 7/1	C.C. of Chargesheet Matihani PS 89/14	"	"
Ext. 7/2	C.C. of Chargesheet Matihani PS 51/12	"	"
Ext. 7/3	C.C. of Chargesheet Matihani PS 464/14	"	"
Ext. 7/4	C.C. of Chargesheet Matihani PS 74/15	"	"
Ext. 7/5	C.C. of Chargesheet Matihani PS 24/15	"	"
Ext. 7/6	C.C. of Chargesheet Matihani PS 47/15	"	"
Ext. 7/7	C.C. of Chargesheet Matihani PS 39/14	"	"
Ext. 7/8	C.C. of Chargesheet Matihani PS 89/14	"	"
Ext. 7/9	C.C. of Chargesheet Matihani PS 107/08	"	"

10. After completion of the prosecution evidence, the statements of the accused persons were recorded under Section 313 CrPC. They claimed innocence. The defence neither brought any oral evidence nor documentary evidence.

Findings of the Learned Trial Court

11. The learned trial court analysed the evidences adduced on behalf of the prosecution and came to the conclusion that from the evidence on the record, it would appear that all the prosecution witnesses in this case are the eye witnesses to the occurrence and they have supported the facts of the alleged murder of the deceased by the named accused persons, on the alleged date

and time of the occurrence. The learned trial court held that the prosecution has put forward apparent and explicit evidence that the accused were waiting to ambush to facilitate the murder. PW-1, PW-3 and PW-5 are said to be the eye witnesses and have fully supported the prosecution case.

12. The learned trial court has recorded a finding that the medical evidence immensely supports the cause of death by sustaining firearm shot. The I.O. of the case has also fully supported and corroborated the factum of murder at the alleged place of occurrence on the alleged date and time. Despite thorough cross-examination, no markable contradiction could be extracted from the prosecution witnesses. The trial court has recorded that in this case, the prosecution witnesses have, without any doubt and suspicion fully and emphatically substantiated the charges against the named accused persons for causing the alleged murder with common intention as they together swung into action to execute it.

13. Learned trial court, however, held that so far as evidence under Section 120B IPC is concerned, there is no sufficient and valid as well as genuine evidence to corroborate it that the accused were a party to a criminal conspiracy committed the offence of murder and, therefore, according to the learned trial court, this charge was not substantiated.

**Submissions on behalf of the Appellants of Cr.
Appeal (DB) No. 418 of 2019 and Cr. Appeal (DB) No. 519 of
2019**

14. Mr. S.K. Lal, learned counsel leading the arguments on behalf of the appellants has submitted as under:-

(1) It is his submission that the informant (PW-4) has stated in his written report which is the basis of the FIR that he had left by another motorcycle in connection with the work of Panchayat, in course of his oral testimony in trial, the informant (PW-4) has stated in paragraph '19' of his deposition that he had left from his house in connection with the work of his office. He has also stated that the Panchayat Bhawan is situated towards North-East from his house. In paragraph '21', PW-4 has stated that the place where his father had been shot at is at a distance of five meters South to the bungalow of Lukho Singh. The contention on behalf of the appellants is that the office of Panchayat Bhawan being situated towards North-East from the house of the informant, there was no occasion for him to go towards bungalow of Lukho Singh near which the occurrence had taken place.

(2) Learned counsel further submits that PW-4 has stated in his *fardbeyan* that his father had fallen down after being injured and was restless, in the meantime, he immediately reached by his

motorcycle there and then heard Bibhash Mishra and Bimlesh Kumar saying that now the work is done so they should flee away. The contention is that from the *fardbeyan* itself, it would appear that the informant (PW-4) was not present at the place of occurrence when Munna Singh was shot at. It is submitted that PW-4 reached the place of occurrence only after Munna Singh has fallen down in injured condition, therefore, PW-4 is not an eye witness. According to learned counsel, since PW-1 claims his presence with PW-4 on the same motorcycle, he is also not an eye witness to the occurrence.

15. Referring to the deposition of PW-3 and PW-5, learned counsel submits that PW-3 has, though, claimed himself an eye witness to the occurrence but from his statements made in course of cross-examination, he has stated that on the day of occurrence, he was coming from his '*Dera*' which is situated at a distance of 3-4 kilometers from the bungalow of Lukho Singh. He had reached his house that day in between 01:00-02:00 pm. His statement was recorded by the I.O. one day after the occurrence.

16. PW-5 though claims himself an eye witness and has stated that he heard one sound of firing, in paragraph '35' in his cross-examination, he has stated that when he reached the place of occurrence, he had seen that Chunchun Singh (absconder) was

firing. This witness has stated that he was in his '*Dera*' during night hour and had left in the morning at about 08:30 am with the milk and had reached his house at 02:00 pm. He had not shouted on seeing the firing, had not informed anybody else about the occurrence and he could not say the name of the persons who had come to the place of occurrence. This witness denied the suggestion that he had informed the police in course of investigation that at the time of occurrence, he was in his house and had heard the sound of firing from his house whereafter he had gone to the place of occurrence and had seen the accused persons fleeing away by motorcycle.

17. Learned counsel submits that in paragraph '66' of his deposition, PW-3 has stated that his house is situated at a distance of one kilometer from the place of occurrence and it is three and half kilometers from his '*Dera*'. It is submitted that the attention of these witnesses were specifically drawn towards their previous statements made before the I.O. which these witnesses denied but in course of his evidence, the I.O. (PW-6) has contradicted the prosecution witnesses. In paragraphs '25', '26' and '27' of his deposition, the I.O. has contradicted the prosecution witness nos. 1, 3, 4 and 5 with reference to their previous statements.

18. Learned counsel has further submitted that the Doctor (PW-2) has though stated in his examination-in-chief that both the entry wounds are result of one shot, the submission would be that the Doctor is not correct in saying that both the entry wounds are result of one shot only.

**Submissions on behalf of the Appellant of Cr. Appeal
(DB) No. 607 of 2019**

19. Mr. Rajan Ghosharve, learned counsel for the appellant in Criminal Appeal (DB) No. 607 of 2019 has, in fact, endorsed the submissions of Mr. S.K. Lal, learned Advocate. Learned counsel submits that there being no eye witness to the occurrence and the chances being that of false implication of the appellants, the appellants would deserve benefit of doubt.

Submissions on behalf of the State

20. Ms. Shashi Bala Verma, learned Additional Public Prosecutor and Mr. Manish Kumar No. 2, learned Additional Public Prosecutor for the State have opposed the submissions of Mr. S.K. Lal and Mr. Rajan Ghosharve, learned Advocates for the appellants. Learned APPs submit that in this case both the parties are the co-villagers. The prosecution witnesses have given the description of the place of occurrence, the time of occurrence and the manner of occurrence, they are consistent in their evidence and

the medical evidence proved by the Doctor (PW-2) corroborates the ocular evidence.

21. It is submitted that in this case, the occurrence has taken place during day time at about 10:15 am. The informant (PW-4) has never claimed that he was going to attend his office in the Panchayat Bhawan. He has consistently stated that he had left his house at 10:10 am with PW-1 in connection with the work of the Panchayat, therefore, the submission of learned counsel for the appellants that the Panchayat Office was situated towards north-east from the house of the informant, therefore, he had no occasion to go towards the house of Lukho Singh is based on misreading of the evidence of PW-4.

22. Learned APPs further submit that in his *fardebyan* as well as in his deposition in course of trial, PW-4 is consistent in saying that he had left his house by another motorcycle with PW-1 and the moment his father fell down in injured condition after receiving a shot on his left shoulder, he reached there immediately and at that very moment, PW-4 has stated that Bibhash Mishra and Bimlesh Kumar said that they should flee away as the work was done. It is submitted that the fact that PW-4 had reached there and then he had seen his father in injured condition and restless and the evidence of PW-4 that the accused persons Bibhash and Bimlesh

said that they should flee away as the work was done and then they fled away, are the facts forming part of the same transaction, therefore, these facts would be relevant in view of Section '6' of the Indian Evidence Act, 1872.

23. Learned APPs further submit that the deceased was former Mukhiya of the Panchayat, his son (PW-4) was sitting Mukhiya and other family members were the member of the Panchayat. The defence has cross-examined PW-4 on the point that the deceased had some criminal antecedents, that would not come to the rescue of the defence because it would appear from the pattern of the cross-examination of PW-3 that in fact it was the defence who suggested to the prosecution witnesses that there was a dispute between the deceased and accused Bibhash @ Bachchu Mishra with regard to fishing in the 'Dhap' which is adjacent to the place of occurrence. In this connection, attention of this Court has been drawn towards the cross-examination of PW-3 wherein the defence suggested PW-3 that accused Bibhash Mishra @ Bachchu Mishra had purchased the 'Dhap' for purpose of fishing but the deceased Munna Singh wanted to forcibly possess the 'Dhap' from Bachchu Mishra @ Bibhash Mishra. Learned APPs submit that the pattern of cross-examination of PW-3, in fact, clearly provides the motive behind the occurrence.

24. Learned APPs further submit with reference to the Medical Jurisprudence and Toxicology written by Jaising P Modi and Edited by K Kannan published by LexisNexis that one shot may cause two entry wounds and one exit wound. It is submitted that when the Doctor (PW-2) was being cross-examined, the defence did not muster enough courage to question the statement of PW-2 that both the entry wounds are result of one shot. In fact, in his cross-examination, PW-2 has stated that he found two entry wounds and one exit wound. Injury Nos. 1, 2 and 3 are connected with each other. It is submitted that such expert's opinion cannot be questioned by way of submissions in appeal if the defence had not cross-examined PW-2 on these aspects of the matter.

25. Learned APPs submit that, in fact, the evidence of PW-6 would no way contradict the evidence of PW-1, PW-3 and PW-5. In paragraph '25', the I.O. has stated that the informant has stated in his *fardbeyan* that accused persons had surrounded his father and Chunchun Singh had shot at him which hit the father of the informant on his left shoulder and his father fell down, he became restless and at that very moment, the informant reached there by motorcycle. He had made the same statement before the I.O. in his restatement. In paragraph '26' also, the I.O. has deposed in the same manner with regard to the statement of Sanjeev Kumar

(PW-1). As regards the evidence of PW-3 and PW-5, the I.O. has stated that they had not said in their statements that they had seen the accused persons surrounding and Chunchun Singh firing rather they had stated that they had seen the accused persons fleeing away. It is thus submitted that the prosecution witnesses are quite consistent and they would fall in the category of wholly reliable witness.

Consideration

26. We have heard learned counsel for the appellants, learned APPs for the State and perused the trial court's records. We find from the *fardbeyan* (Exhibit '1/2') that PW-4 has stated about his reaching to the place of occurrence on his motorcycle as soon as his father was surrounded, fired at and after suffering injury he had fallen down on the earth and had become restless. PW-4 has stated that at that very moment he had reached there with PW-3. He has also stated that Bibhash Mishra and Bimlesh Kumar said that they should now flee away because the work was done. He had brought his father in injured condition with the help of his family members to Sadar Hospital, Begusarai where his father was declared dead. The occurrence took place at about 10:15 AM near the bungalow of a co-villager namely Lukho Sing. The *fardbeyan* of PW-4 was recorded by SI in the Sadar Hospital on the same day

at 11:50 AM, therefore, we find that the *fardbeyan* of the informant has been recorded within one and half hour from the time of occurrence. The place of occurrence is said to be in front of the bungalow of Lukho Singh. From the pattern of cross-examination of the prosecution witnesses it would appear that the defence had not questioned them as regards the place of occurrence. The I.O. (PW-6) had visited the place of occurrence and has given the description of the place of occurrence in paragraph '4' of his examination-in-chief. Towards east from the place of occurrence it is the 'dera' of Lukho Singh, towards west and south is the pakki road and in north there is a road passing from south Bind Toli to north Paspura Dhala *via* Ramdiri Ram Nagar towards north. We find that at one place the defence has attempted to distinguish with regard to the house, bungalow and dera but on complete reading of the evidence we find that so far as the place of occurrence is concerned, the witnesses are consistent that it is near the house of Lukho Singh.

27. We further find that PW-4 has remained consistent in course of investigation, he made the same statement before the I.O. (PW-6) and in his deposition also he has remained consistent. If we judge the totality of the prosecution case keeping in view the evidence of other prosecution witnesses together with the evidence

of PW-4, we find that the totality of the circumstances and the broad probabilities of the case supports the prosecution's version. PW-3 had deposed in course of trial consistently. The submission of learned counsel for the defence that his statement was recorded on the next day of the occurrence, in the opinion of this Court would not diminish the evidentiary value of his statement inasmuch as it would appear from the pattern of his cross-examination that his presence at the place of occurrence with PW-4 has not been questioned. The only suggestion which was given to PW-1 was that he had given wrong statement and the kind of occurrence which he had stated had not occurred and he had deposed at the instance of the informant.

28. The learned trial court has upon analysis of the evidences of PW-1, PW-3 and PW-5 concluded that in their testimony they are specific that all the three accused had their specific role in execution of the murder of the deceased during the occurrence and they had common intention to murder the deceased for which they were prepared.

29. We further find from the evidence of the Doctor (PW-2) that he had conducted the postmortem on the dead body of the deceased Munna Singh and had found the following ante-mortem injuries on his body:-

“(i) Firearm projectile wound of entry :- 0.5” in diameter with margins lacerated, and inverted, over left upper arm antero medial aspect, and soiled with blood and blood clots, over.

(ii) Firearm projectile wound of exit :- 0.5”x1” communicating with injury no.(i), with margins lacerated and everted over left upper arm, postero medially and soiled with blood and blood clots.

(iii) Firearm projectile wound of entry :- ¾” x 1” and going inside, with margins lacerated, and inverted, soiled with blood and blood clots, in 2nd intercostal space in medial aspect of left axilla.”

30. PW-2 was though cross-examined by and on behalf of the accused persons in course of trial, nothing contradictory could be extracted from the deposition of PW-2. In his examination-in-chief, PW-2 has stated that both entry wounds were result of one shot. In course of cross-examination on behalf of Bibhash Mishra @ Bachchu Mishra and Gulshan Kumar, this witness has not been questioned against the correctness of his statement that both entry wounds are result of one shot. In course of his cross-examination on behalf of the Bimlesh Kumar @ Amlesh Kumar once again this witness has stated that there is a possibility that there may be two entry wounds by one shot and equally two entry wounds may be caused by two shots. According to him, this may be distinguished that the two entry wounds were caused by one shot and both were caused by two shots. PW-2 has stated that he has mentioned in the postmortem report that one

bullet is removed from the body of the deceased. We find from the evidence of PW-2 that he has withstood the test of cross-examination and his evidence corroborates the manner of occurrence as narrated by PW-4.

31. What is important to take note of while appreciating the evidences on the record is the cross-examination of the witness Tripurari Kumar (PW-3). This witness was suggested on behalf of the defence that there is a 'dhap' of Ganga river adjacent to the place of occurrence in which water is available and fishing is done. PW-3 was asked as to whether the 'dhap' is purchased by the people for purpose of fishing or not? To which this witness stated that he was not aware about it. Then this witness was suggested that fishing is done in the 'dhap' and the accused Bibhash Mishra @ Bachchu Mishra has purchased the said 'dhap' for fishing. This witness denied the suggestion. Then again this witness was suggested by the defence that deceased Munna Singh wanted to take forcible possession of the 'dhap' from Bibhash Mishra @ Bachchu Mishra which this witness denied. This witness was further suggested that Munna Singh had dispute with Bibhash Mishra @ Bachchu Mishra on sharing of water, therefore, he has been falsely implicated in this case. From this pattern of cross-examination of PW-3 it transpires that the defence itself suggested

enmity between accused Bibhash Mishra @ Bachchu Mishra and the deceased Munna Singh as according to the defence Munna Singh wanted to take forcible possession of the 'dhap' which Bibhash Mishra had purchased. This Court finds that the motive behind the occurrence is this dispute over the possession of 'dhap', therefore the motive behind the occurrence is also established in this case.

32. We have found from the evidence of the I.O. (PW-6) that he had not seized the motorcycle of the deceased and had not conducted any investigation on that point. In the opinion of this Court, if the I.O. has not conducted investigation on certain points which are not relevant to establish the facts in issue, they would not result in giving benefit of doubt to the accused-appellants.

33. In the light of the aforementioned discussions, we are of the considered opinion that the prosecution has established the guilt of the accused-appellants beyond all reasonable doubts and the learned trial court has not committed any error in passing of the impugned judgment and order. We find no reason to interfere with the same. In result, the appeals are accordingly dismissed.

34. The Appellant namely Bibhash Mishra @ Bachchu Mishra in Cr. Appeal (DB) No. 607 of 2019 is already in jail, therefore he would serve the sentence.

35. The appellant namely Amlesh Kumar @ Bimlesh Kumar Singh @ Bimlesh Singh @ Bimlesh Kumar in Cr. Appeal (DB) No. 418 of 2019 and the appellant Gulshan Kumar @ Keshav Kumar @ Gautam Kumar in Cr. Appeal (DB) No. 519 of 2019 are on bail, they are directed to surrender in the learned court below within two weeks from today failing which the learned court below shall take coercive steps to procure their appearance and the Superintendent of Police, Begusarai shall execute the order of the learned trial court without any delay.

36. Let a copy of the judgment be communicated to the learned trial court and the records of the trial court be sent back.

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

Rishi/Sushma-

AFR/NAFR	
CAV DATE	
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