

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.561 of 2018

Arising Out of PS. Case No.-109 Year-2008 Thana- BIBHUTIPUR District- Samastipur

Ajay Singh Son of Late Narayan Pd. Singh, resident of Village- Sakh Mohan,
Police Station- Bibhutipur, District- Samastipur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Rabindra Kumar Priyadarshi, Advocate
For the State	:	Mr. Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and

HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 21-03-2024

The present appeal has been filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as ‘Code’) challenging the judgment of conviction dated 28.03.2018 and order of sentence dated 28.03.2018 passed by learned Additional Sessions Judge, Rosera, District-Samastipur in Sessions Trial No. 1008A of 2008, arising out of Bibhutipur P.S. Case No. 109 of 2008, whereby the concerned Trial Court has convicted the present appellant for the offences punishable under Sections 302, 379/34 of the Indian Penal Code and Section 27(1) of Arms Act for which the appellant has been sentenced imprisonment for life and a fine of Rs. 10,000/- for offence under Section 302 of the Indian



Penal Code and in default of payment of fine, he is further directed to undergo R.I. of six months. The appellant was further sentenced R.I. of two years for offence under Section 379/34 of the Indian Penal Code and further R.I. for five years and a fine of Rs. 5,000/- for conviction under Section 27(1) of the Arms Act. In default of payment of fine, the appellant has to undergo R.I. of three months. All the sentences have been ordered to run concurrently.

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

2.1. On 16.05.2008, at about 05:00 pm, the brother of the informant had gone to attend the *shradh* ceremony of Late Mahendra Singh. The informant claimed that he along with co-villagers namely Bhushan Singh, Mithilesh Singh reached there to attend the *shradh* ceremony at about 08:00 pm and after attending the *shradh* ceremony, at about 10:30 pm, he along with his brother Birendra Prasad Singh (deceased), Bhushan Singh, Mithilesh Singh were returning on foot towards his house. It is alleged that as soon as they reached at a distance of about 500 yards towards west-north side from the house of Late Mahendra Singh and were near to the electric pole at about 10:45 pm, he saw in the torchlight and moonlight that from the southern side to the road from the bushes and maize field, the accused (1) Rajiv Singh lashed with country-made pistol in his hand, (2) Ajay Singh lashed with pistol



in his hand and a carbine hanging on his left shoulder, (3) Udai Jha, (4) Dablu Rajak, (5) Rajiv Kumar Singh, (6) Raushan Kumar, (7) Ram Sevak Singh, (8) Mithilesh Shah along with other 3-4 unknown criminals lashed with pistol surrounded the brother of the informant Birendra Pd. Singh and Ram Badan Singh. It is alleged that Ram Sevak Singh instigated them to kill on which Rajiv Kumar @ Rai Jee fired from the country-made pistol on Ram Badan Singh @ Hakim Singh which hit in the left side of the chest of Ram Badan Singh, it started bleeding and he fell down. It is further alleged that Ajay Singh fired from his pistol on Birendra Pd. Singh which hit the left side on the chest. Uday Jha fired from his pistol on the brother of the informant which went into the stomach of the informant's brother and he fell down on his stomach side, thereafter Dablu Rajak is said to have fired from his pistol on the back of the informant's brother and the other accused namely, Rajiv Kumar Singh, Raushan Kumar, Mithilesh Shah and 3-4 other unknown criminals also fired on the informant and others but they started fleeing away raising alarm. In the meantime, it is claimed that on hearing the sound, some people who were returning from the *shradh* ran towards the place of occurrence. Thereafter, all the accused persons fled away towards the southern maize field, south to the road.



2.2. After the accused persons fled away, the informant along with other co-villagers went to the place of occurrence and found that his brother Birendra Pd. Singh and Ram Badan Singh @ Hakim Singh were lying in the pool of blood and the licensee pistol, BSNL mobile, SIM new set and the mobile of Ram Binod Singh were all taken away by the criminals. The informant further alleged that the occurrence had taken place because his brother was active in the matter of deposition of witnesses in the murder case of Bhuneshwar Singh and Ramnath Mahto. It is alleged that Tuntun Singh @ Sunil Singh and Madan Singh were in jail in connection with the said case. Therefore, the informant claimed that the dreaded criminal Tuntun Singh @ Sunil Singh and Madan Singh had conspired in the jail and with an intention to threaten the witnesses, they got the brother Birendra Prasad Singh and Ram Badan Singh killed through criminals.

3. After registration of the formal F.I.R., the Investigating Officer commenced the investigation and, during the course of the investigation, he had recorded the statement of the witnesses and collected the evidence against the accused and thereafter, filed the charge-sheet and supplementary charge-sheets against the concerned accused. It is relevant to note that the trial of the other accused were separated and, so far as the appellant is



concerned, he has faced the trial before the Trial Court in Sessions Trial No. 1008A of 2008.

4. During the course of the trial, the prosecution had examined nine witnesses and also produced the documentary evidence. Thereafter, statement of the accused under Section 313 of the Code came to be recorded. After conclusion of the trial, the Trial Court passed the impugned order against which the appellant/convict has preferred the present appeal.

5. Heard learned counsel Mr. Rabindra Kr. Priyadarshi for the appellant and Mr. Sujit Kumar Singh, learned A.P.P. for the Respondent-State.

6. Learned counsel for the appellant would submit that there is a delay in lodging the F.I.R. and there was a delay of two days in forwarding the F.I.R. to the concerned Magistrate Court. It is pointed out from the record that the F.I.R. came to be lodged on 17.05.2008 at 05:30 hrs. However, it was forwarded on 19.05.2008. It is submitted that, as per the case of the informant, the occurrence took place at a distance of 500 yards from the house of Mahendra Singh. However, the dead body was taken to Gangauli Chowk which is at about 2.5 kilometers away from the said place. It is further submitted that, as per the case of the prosecution, eleven rounds of firing had taken place. However,



only one empty cartridge was found from the place of occurrence. It is further submitted that no independent witnesses have been examined by the prosecution and the only interested witnesses who were family members of the deceased have been examined. Learned counsel, at this stage, submits that even the medical evidence does not support the version given by the eye-witnesses. It is a specific case of the prosecution that the eye-witnesses identified the accused in torchlight. However, the torch was not seized/recovered by the Investigating Officer. Even the Station Diary entry was not produced before the Court. It is also submitted that it is a specific case of the prosecution that license pistol of the deceased was also stolen. However, the Investigating Officer did not inquire about the said revolver. Learned counsel also submits that the deceased was having antecedents and because of the political enmity between the parties, the appellant herein has been falsely implicated. Lastly, learned counsel for the appellant would submit that, in a separate trial conducted against four other co-accused, the concerned Trial Court passed the judgment and order of conviction against the four other co-accused. However, when the said co-accused filed Criminal Appeal (DB) No. 596 of 2015 and allied matters, the Coordinate Bench of this Court allowed the three appeals filed by the four accused and thereby, the other four



accused have been acquitted. Learned counsel, therefore, urged that the present appeal be allowed and the impugned judgment and order of conviction passed by the learned Trial Court be set aside.

7. On the other hand, learned A.P.P. has opposed this appeal. It is contended that the informant and other eye-witnesses have supported the case of the prosecution and merely because there are minor contradictions in the deposition of the prosecution witnesses, benefit of the same may not be given to the appellant/accused. It is further submitted that the eye-witnesses have identified the appellant in the torchlight and even in the moonlight and, therefore, in the F.I.R., the informant has specifically named the present appellant and specific role has been attributed to him. It is further submitted that merely because there was some delay in sending the F.I.R., it cannot be said that the appellant has been falsely implicated. Learned A.P.P. would further submit that the Coordinate Bench has allowed the appeals filed by the other accused. However, the present appellant has faced the separate trial and, therefore, the benefit of the said order may not be given to the appellant herein. Learned A.P.P., therefore, urged that the present appeal be dismissed.

8. We have considered the submissions canvassed by the learned counsels appearing for the parties. We have also perused



the deposition given by the witnesses and the documentary evidence produced before the Trial Court.

9. At this stage, we would like to examine the deposition given by PW-1 Dr. Rakesh Chandra Sahai Verma. In his examination-in-chief, he has stated that he was posted as M.O. at Sadar Hospital, Samastipur and had conducted the *post mortem* of the deceased Birendra Pd. Singh. He had found following injuries:-

“Externally-

1. Rigor Mortis present with bleeding from Rt. Nostril.

2. Bleeding wounds with lacerated margin as follows:-

I. Entry wound with inverted margin over left side of chest about 3” above left nipple with bleeding, 1/2” diameter, sober and round.

II. Entry wound over anterior aspect of left upper arm, about 3/4” x 1/4” with bleeding.

III. Entry wound over abdomen with tattooing on 2” area situated 3” from umbilicus on left side (margin inverted) size 1/2” diameter.

Exit wound of Injury No. I- Bleeding wound 1” in diameter with inverted margin on back in mid-line at dorsal vertebral 6th - 7th level.

Exit wound of Injury No. II- Bleeding wound with inverted margin over left upper arm posteriorly about 1”x 1/2” in size.

Exit wound of Injury No. III- Bleeding wound about 1” diameter over Rt. loin (vest) with inverted margin.

Externally-

A. Profuse intra-thoracic bleeding with laceration, both lungs.



B. Profuse intra-abdominal bleeding with tearing of Gastric wall and left lobe of liver inferior surface.

C. Internal Viscera- pale.

Hence, the medical arrived at the opinion that the death has been caused due to profuse external and internal haemorrhage and consequent shock.

Nature of weapon used is fire-arm weapon”

9.1. On the very same day, the Medical Board conducted the *post mortem* of the deceased Sri Ram Badan Singh and found following injuries:-

“Externally:-

I. Rigor Mortis present with bleeding lacerated wound over chest on left side over antero lateral area 2” above the left costal margin about 2^{1/2}” x 2^{1/2}” in size, with inverted margins as entry wound.

II. Exit wound over back 1^{1/2}” right to mid-line posteriorly, about 2” x 1/2” with inverted margins at D9 vertebral level.

Internal findings:-

A. All viscera are pale.

B. Left Pleura and both pulmonary parivehyna lacerated and torn.

C. Profuse intra thoracis bleeding.

D. Big perforation and laceration over anterior wall of stomach with gross intra abdominal hemorrhage. Hence, the board is of the opinion that the death of the concerned has been caused due to gross intra peritoneal and external as well as intra thoracic hemorrhage and consequent shock.”

9.2. In his cross examination, the Doctor has stated that he can't say regarding the accurate distance of firing in both the



cases and also he can't accurately time the viscera becoming pale. Further, it is stated that he cannot say definitely whether it was a contact injury or an injury from a long distance. It is also stated that the supplementary report is the carbon copy of the original but the signature of the Doctor was genuine.

10. PW-2 Mithilesh Kumar @ Mithilesh Singh in his examination-in-chief has stated that, on 16.05.2008 at 10:30 pm, he along with Devendra Singh and Bhushan Singh were in *shradh* ceremony of Late Mahendra Singh. After the feast, at about 10:30 pm, he along with Birendra Singh, Ram Badan Singh, Bhushan Singh, Devendra Singh were returning from the *shradh* ceremony and reached about 500 yards towards north and west near electric pole, then in the moonlight and torchlight, he saw that Ajay Kumar Singh armed with carbine and pistol, Rajeev Kumar @ Rai Ji armed with pistol, Uday Jha armed with pistol, Dablu Rajak armed with pistol, Raushan Kumar, Ram Sevak Singh, Mithilesh Sah armed with pistol, Rajeev Kumar armed with pistol came towards the maize field and surrounded Birendra and Hakim. Later on, Ram Sevak Singh ordered to kill him then Rajeev Singh @ Rai Ji fired upon Ram Badan which hit his chest and he fell down. Ajay Singh fired upon Birendra Singh on his chest by pistol. Uday Jha fired upon Birendra on stomach and he fell down towards stomach



side and later on Dablu Rajak fired upon Birendra which hit on his hand and Raushan Kumar, Rajeev Kumar, Mithilesh Sah and other also fired towards them and then they made *hulla* and the people who participated in *shradh* ceremony reached there. He has further stated that Birendra Singh was the leader of C.P.M. Ajay Singh fled away from custody due to which, the trial could not be completed.

10.1. In his cross-examination, it is stated that the prosecution witness has no idea regarding which party was Ajay Singh a member of. It is also stated that he had no idea that the deceased Birendra Singh was an accused in any case or not. He had no idea that the deceased Birendra Singh was accused in Ramdev Verma MLA murder case or not. Further, it is stated that the looted pistol of the deceased Birendra Singh was recovered in Patna, the information of which was received from the newspaper. It is also stated that he had not seen the accused persons at the *shradh* ceremony but at the place of incident which was about 500 yards away from the *shradh* ceremony and there were 100-150 houses between the places and that there are houses near the place of incident. It is also stated that Birendra Singh used to go by motorcycle but on the day of incident, he was going on foot. It is also stated that they had not been surrounded by the accused



persons but Birendra and Ram Badan had been surrounded by the accused persons. Further, it is stated that Ajay Singh had not fired upon him. It is also stated that at the place of incident, they do not had mobile phones but only the deceased was having mobile phone. He had no idea that the licensed pistol of Birendra Singh was working or not. Ram Badan Singh had no weapon. He had no idea whether Birendra Singh had fired in self-defence or not. Birendra Singh had been shot at by Ajay Singh, Dablu Rajak and Uday Jha whereas Ram Badan Singh was shot by Rajeev Kumar @ Rai Ji. All of them had shot in front of them. He was 2-3 feet behind those who had made firing. His testimony had also been recorded earlier in Sessions Trial No. 1008/08. Birendra Singh's house and Ram Badan Singh's house were situated nearby. There was a distance of about 1^{1/4} kms between the houses of the two deceased. Birendra Singh's brother was with them. Meanwhile, the three of them did not inform the family members of the deceased. It is also stated that *Darogaji* did not seize his torch. He could not tell whether the other people were carrying torches or not.

11. PW-3 Devendra Pd. Singh in his examination-in-chief has stated that it was a moonlit night and he had a torch in his hand and he saw the occurrence in the torchlight. The accused



persons took away licensed pistol of Birendra Singh and fled away along with Hakim Singh's mobile phone.

11.1. In his cross-examination, he has stated that his statement was recorded before the Magistrate by the S.I. and he is the informant in the current case. In the murder case of Uday Singh, deceased Birendra Singh and Bhuneshwar Singh were also accused. His house is about 1.5 km away from the place of incident. Further, it is stated that the house of Ram Badan Singh is about 500 yards away from the incident site. The gun shots were fired from a distance of about 7-8 feet. A total of 10-11 rounds firing took place. The person who had shot my brother and Ram Badan did not fire upon them as he had to reload the gun. His brother had a licensed pistol. He had not seen anybody taking the pistol or mobile away. Further, it is stated that the house of Ram Badan Singh was not at Gangauli Chowk. The families of Ram Badan Singh and Birendra were not informed even after their dead bodies were lifted. He did not know whether anyone else informed them or not. It is also stated that the torch used at the time of incident was lost. He did not know whether the witnesses have their torch or not. The torch was not given to the S.I. as he did not take it. He saw carbine hanging on the shoulders of Ajay Singh. He had fired from the carbine in the military in which 32 bullets are



loaded at a time. The firing upto a distance of 30 yards can be done by a functional carbine. He had no idea whether the constable or any other officer recovered the bullets. He did not have his mobile phone with him at the time of incident.

12. PW-4 Upendra Paswan is a hearsay witness who has stated that there was no one from the family of Ram Badan Singh. Further, he has stated that he did not inform the Birendra's family about the murder.

13. PW-5 Pavan Kumar Singh is also a hearsay witness who has stated in his cross-examination that he had gone to the place of occurrence after getting information about the same. He has also stated that he was informed by Devendra Singh about the incident of killing.

14. PW-6 Ravi Ranjan Kumar is a witness to the Inquest Report. He has admitted to have signed the Inquest Report prepared by *Darogaji* of Bibhutipur P.S.

15. PW-7 Bhartendu Prasad Dev is the Investigating Officer of the present case. He has stated that he got information on telephone that there has been an incident of firing in village-Sakhmohan in which certain persons have been injured. On such information, he registered a *sanha* and along with a few officers and SAP personnel reached Gangauli Chowk in a government jeep



where dead bodies of Birendra Pd. Singh and Ram Badan Singh @ Hakim Singh were kept. He recorded the *fardbeyan* of the informant Devendra Pd. Singh. An Inquest Report was prepared in the light of a petromax. The place of occurrence is the nearby place of an electric pole. In the midst of that road, at a distance of 5 feet to the east, empty cartridges were recovered from the bush. The blood was not worth taking away because of trampling by ongoing persons. The empty cartridges, spectacles and slippers have been seized and marked as Exhibits which bear his signature. Thereafter, he recorded the statements of the witnesses Mithilesh Singh, Lakshman Prasad Sah, Upendra Singh, Pawan Kr. Singh and Gopal Poddar.

15.1. In his cross-examination, he has stated that it is he who had prepared the *sanha* on telephonic information. However, he does not remember the name of the caller. Firstly, he had recorded the *fardbeyan* then prepared the Inquest Report and thereafter he sent the dead bodies for the *post mortem*. He had inspected the place of occurrence at about 04:30 am. However, he cannot say whether any family member of the deceased was there or not. He had not tracked the location of the stolen mobile phone. He had not even verified the ownership of the said mobile phone. Empty cartridges, spectacles and slippers were seized. He does not



remember whether slippers and spectacles bore blood-stains or not. The date of occurrence is 16.05.2008. F.I.R. was handed over to the Court on 19.05.2008. He cannot state the reason for the delay in sending the F.I.R. belatedly.

16. PW-8 Jai Chandra Ram is another Investigating Officer who took over the charge of investigation of the present case on 04.06.2008. In his cross-examination, he has denied the suggestion of having conducted a faulty investigation.

17. PW-9 Budh Dev Ram is also an Investigating Officer who took over the charge of further investigation of the present case on 09.02.2009. He submitted the supplementary charge-sheet on 27.02.2009. In his cross-examination, he has stated that he had not collected any evidence against the accused persons.

18. From the aforesaid evidence laid by the prosecution before the Trial Court, it would emerge that there is a delay of two days in the receipt of the F.I.R. in the Court. The aforesaid aspect has not been denied by the learned A.P.P. It is a specific case of the appellant that, because of the political enmity, he has been falsely implicated in the alleged occurrence. It would further reveal from the record that, according to the informant, the occurrence took place when he along with the deceased and the witnesses were returning to his house on foot after taking meal in *shradh*



ceremony near the house of Mahendra Singh at a distance of 500 yards. However, it has emerged from the record that the dead bodies of the deceased were not brought to the house of the deceased. The house of the informant was at a distance of 1-1.25 kms. only from the place of occurrence. Still, the dead bodies were taken to Gangauli Chowk at a distance of 2.5-3 kms. in the night hours. Further, it is also revealed from the record that the occurrence in question had taken place at about 10:45 pm, the Police arrived at the place of occurrence after 1.5 hours and the informant was carrying a mobile, but surprisingly, he did not make a call to his family members and no information was given to the family members of Ram Badan Singh (deceased) about the alleged occurrence. It is difficult to understand as to how such an unfortunate happening could not be brought to the notice of the family of the deceased even though the informant was carrying a mobile phone.

19. It is also required to be observed that the occurrence took place at about 10:45 pm during night hours and it is the case of the informant and the eye-witnesses that they have identified as many as eight accused persons in the torchlight and moonlight but the torch was never produced before the Investigating Officer and no seizure list of the torch was prepared. One of the eye-witness



has also stated that it was a dark night. The means of identification i.e. the torch is not proved. Moreover, it is not believable that surrounded by eight accused persons who were lashed with pistol and carbine, the informant would continue to see the alleged occurrence in the torchlight and even if it is believed that it is the moonlight, it is not possible to believe that the informant and other witnesses, if present on the place of occurrence, could have escaped injury of firearms. Because it is a specific case of the informant that 3-4 unknown criminals have fired on him and the witnesses also but they had fled away.

20. It further transpires from the evidence that the Investigating Officer had seized one empty cartridge from the place of occurrence. However, according to the prosecution case, 10-12 rounds of firing had taken place and, therefore, there should have been at least 10-12 empty cartridges at the place of occurrence. Further, the Investigating Officer did not seize any blood-stained soil from the place of occurrence and even the blood-stained clothes of the deceased were also not seized. Further, the Investigating Officer was also not informed as to how the dead bodies of both the deceased were brought to the Gangauli Chowk which was at a distance of about 2.5–3 kms. from the place of occurrence.



21. From the evidence of the Doctor, who had conducted the *post mortem* of the dead body of the deceased, it is revealed in the *post mortem* report that the concerned Doctor did not mention about the presence of food in the stomach of the deceased persons. At this stage, it is required to be noted that, according to the case of the prosecution, the deceased were returning after attending *shradh* ceremony and they took the meal at the said place. We have examined the *post mortem* report and the evidence given by PW-1 (Doctor) and we are of the view that the medical evidence also does not support the version given by the so-called eye-witnesses.

22. The prosecution did not examine any independent witnesses but only examined the interested and related witnesses.

23. From the deposition of the prosecution witnesses, it can be said that there are major contradictions and discrepancies in their deposition. Even the Investigating Officer has deposed that he got the information of the occurrence on telephone and, therefore, he had made necessary entry in the Station Diary. However, he did not remember the name of the person who called him nor he had produced the Station Diary entry before the Court.

24. At this stage, it is also required to be noted that, on the basis of the deposition given by the informant and the so-called



eye-witnesses and, on the basis of the same F.I.R. and similar set of evidence produced by the prosecution, the concerned Trial Court convicted four other co-accused against the said judgment of conviction and order of sentence. The other four co-accused preferred three separate Criminal Appeals bearing Criminal Appeal (DB) No. 596 of 2015 and allied matters. A Coordinate Bench of this Court vide order dated 19.04.2018 allowed the appellants and thereby quashed and set aside the judgment of conviction and order of sentence passed against the other four co-accused. We have also gone through the said oral judgment passed by the Coordinate Bench of this Court. It is informed by the learned counsel for parties that the said oral judgment dated 19.04.2018 has attained finality. We are of the view that the facts of the present case are similar and the set of evidence in the present case are almost similar.

25. In view of the aforesaid fact and circumstances, the present appeal is allowed.

26. The impugned judgment of conviction dated 28.03.2018 and order of sentence dated 28.03.2018 passed by learned Additional Sessions Judge, Rosera, District-Samastipur in Sessions Trial No. 1008A of 2008, arising out of Bibhutipur P.S. Case No. 109 of 2008 is quashed and set aside. The appellant,



namely Ajay Singh, is acquitted of the charges levelled against him
by the learned Trial Court. He is directed to be released forthwith,
if not required in any other case.

(Vipul M. Pancholi, J)

(Sunil Dutta Mishra, J)

Sachin/-

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