

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.797 of 2018

Arising Out of PS. Case No.-70 Year-1994 Thana- KHARHAGPUR District- Munger

Nageshwar Mandal @ Nago Mandal @ Nageena Mandal @ Nagey Mandal
S/o Mohan Mandal, of Village- Bangali Tola Kalyanpur, P.S.- Bariarpur,
District- Munger.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Chandra Bhushan Das, Advocate
For the State	:	Mr. Dilip Kumar Sinha , APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE KHATIM REZA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE KHATIM REZA)

Date : 22-04-2024

Heard Mr. Chandra Bhushan Das, the learned Advocate for the appellant and Mr. Dilip Kumar Sinha, the learned APP for the State.

2. The appellant has been convicted under Sections 302/149 and 201 of the Indian Penal Code and Section 27 of the Arms Act, 1959 *vide* judgment dated 23-05-2018, passed by the learned Ad hoc Fast Track Court-Ist, Munger in Sessions Trial No. 222 A of 1996 (Tr. No. 06 of 2017), arising out of Kharagpur PS Case No. 70 of 1994. By order dated 25-05-2018, he



has been sentenced to undergo imprisonment for life for the offence under Section 302/149 of the Indian Penal Code, further to undergo R.I. for two years for the offence under Section 201 of the Indian Penal Code and has also been awarded three years R.I. for the offence under Section 27 of the Arms Act, 1959.

3. The sentences have been ordered to run concurrently.

4. The First Information Report (Ext. 6) was lodged by Bijay Kumar Singh (PW-3) on 29-03-1994, before the SHO, Kharagpur P.S. alleging that on the same date, the informant was travelling along with his brother (deceased) in a Maxi bearing Registration No. BEH-9255 and was proceeding to Bariyarpur from his native village Gangania. No sooner the vehicle reached the Bengali Tola More, Kharagpur PS, Bajrangbali Asthan near Banyan tree (बट वृक्ष) then suddenly, Kedar Mandal, Rajesh Mandal, Bijay Mandal, Nago Mandal (appellant), Prakash Mandal, Bhato Mandal along with 7-8 unknown accused persons armed with country made pistols and muskets stopped the vehicle. Kedar Mandal, Bijay



Mandal, Nago Mandal, Prakash Mandal and Rajesh Mandal barged into the vehicle and pulled out the brother of the informant, namely, Binay Kumar Singh at gun point, abused and shouted that it was because of him that their leader of the gang, namely, Pradeep Yadav had been killed. They started indiscriminate firing whereupon the brother of the informant died. The witnesses/ Sobha Ranjan Singh, Sukhdeo Choudhary, Naresh Singh (PW-1), Pramod Kumar Singh (PW-2) and Subodh Kumar Singh, who had also boarded the vehicle witnessed the incident. The accused persons dragged the body of the brother of the informant towards northern side of Bangali tola. They were firing from the North-eastern side of the ditch of Siya Lal Mandal. In that very ditch, accused Bhato Mandal kept the head of Binay Kumar Singh (deceased) on a brick and decapitated the deceased by a spade and took away the severed head along with them.

5. On the basis of the '*Fardbeyan*' of informant (PW-3), Kharagpur PS Case No. 70 of 1994 was registered under Sections 147, 148, 149, 302



201 of the I.P.C. and Section 27 of the Arms Act against all the six accused persons. The police, on investigation, submitted charge sheet under Sections 147, 148, 149, 302 & 201 of the I.P.C. and Section 27 of the Arms Act against all the six accused persons. The learned A.C.J.M. took cognizance of the offence on 07-12-1994 and learned S.D.J.M. committed the case to the Court of sessions on 14-03-1996.

6. During the trial, the case of the appellant viz., Nago Mandal was separated on 15-06-1996 due to his abscondence. The trial of the other accused person was separated leading to conviction of all the other accused persons.

7. The prosecution examined altogether six witnesses including the three eye witnesses and the doctor, I.O. and the seizure list witness. The three eye witnesses are PW-1, PW-2 and PW-3.

8. PW-3, viz., Bijay Kumar Singh is the informant who is brother of the deceased Binay Kumar Singh. This witness in a very categorical terms stated that he along with his deceased brother, namely, Binay Kumar Singh, Naresh Singh



(PW-1), Pramod Singh (PW-2), Sobha Ranjan Singh, Sukhdeo Choudhary and other villagers were going to Bariyarpur from his village by Tata Maxi. On reaching near Bengali Tola, 14-15 miscreants armed with deadly weapons intercepted the vehicle. Nago Mandal (appellant), Kedar Mandal, Prakash Mandal, Rajesh Mandal, Bijay Mandal and Bhato Mandal barged into the vehicle of whom Nago Mandal was the first to enter into the Maxi and put pistol on the chest and temporal part of Binay Kumar Singh and dragged him out of the vehicle and fired indiscriminately at him who died instantaneously. PW-3 had also got down from the vehicle. Thereafter, Kedar Mandal asked Bhato Mandal to bring a spade and a bucket full of water and wash the place of occurrence. The rest four accused persons, namely, Nago Mandal (appellant), Kedar, Rajesh, Prakash and Bijay dragged the deceased to a ditch and placed the neck of the deceased on a brick and beheaded him with a spade. The accused persons escaped with head of the deceased. Thereafter, PW-3 (informant) brought the headless body of his brother near the



Maxi whereafter on arrival of the police, the '*Fardbeyan*' was recorded. The entire occurrence took place in his presence. He revealed about the incident to the police. The accused persons expressed their motive behind this ghastly murder viz., revenge of the murder of Pradeep Yadav.

9. PW-3 proved his '*Fardbeyan*'. He, in his cross- examination explicitly stated that the incident had occurred at two places. The accused fired at his brother just after bringing him down from the Maxi and after firing and murdering, the deceased was dragged to some distance away in a ditch and thereafter his head was severed.

10. PW-1 Naresh Singh is also an eye-witness who supported the evidence of PW-3. He has deposed that he was sitting in the vehicle (Maxi) in which the deceased was sitting. The deceased was sitting on the front seat of the vehicle while he was at the back. He further deposed that he did not know the deceased, but knows the accused persons. Further, he deposed that the accused persons, after intercepting vehicle, brought down the deceased and



fired at him indiscriminately leading to his instantaneous death in his presence. After the deceased was killed, his body was dragged further to about 400 to 500 yards to the northern side and in a ditch the deceased was brought where head was placed upon a brick and was beheaded with spade by Bhato Mandal and Nago Mandal. They escaped with the severed head of the deceased. In his cross-examination, PW-1 has revealed that he came to know the name of Nago Mandal when at the time of incident, Kedar Mandal called him by name. On question of the Court, PW-1 has deposed that he got out of the vehicle just after the deceased was brought down and the deceased was fired at in his presence. The other witnesses who were also with him are Bijay Singh, Pramod Singh and Subodh Singh.

11. PW-2 deposed that the police reached at the place of occurrence while he was present. PW-2, namely, Pramod Kumar Singh has also corroborated the evidence of PW-3. He has deposed that he was also travelling in the said Maxi and was coming to



Bariyarpur from Gangania along with Bijay Singh, Binay Singh, Subodh Singh, Sobha Ranjan Singh, Sukhdeo Choudhary and one another person. He further states that on reaching Bengali Tola, the accused persons, namely, Kedar Mandal, Bhato Mandal, Bijay Mandal, Rajesh Mandal, Prakash Mandal and Nago Mandal had stopped the vehicle and Bijay Mandal, Prakash Mandal, Nago Mandal and Rajesh Mandal entered the vehicle. They dragged out Binay Kumar Singh and told him that he had killed his leader and fired at him. The accused persons, after killing the deceased, dragged the body to the northern side, and on resistance by the witnesses, the accused fired at the resisting group. This firing stopped the witnesses from moving further and remained there and watched the incident. Nago Mandal beheaded the deceased and the severed head was taken by them. He further deposed that Bijay Kumar Singh has given his further statement.

12. PW-4 Rabindra Kumar Singh is a seizure list witness and is not an eye- witness and he proved the seizure list which is Ext.4.



13. PW-5 is Dr. Kameshwar Prasad Sinha, who conducted autopsy on the dead body of the deceased Binay Kumar Singh. He deposed in his evidence that Naeem Khan, *Havaldar* and *Chowkidar* No.2/2, Birbal Paswan and others had identified the deceased. The dead body did not bear the head. The doctor found the injury at the level of 6th cervical vertebrae absent. The margins were incised. There was no blood clot present and it was postmortem wound.

14. The name of the deceased Binay Kumar Singh had wrongly appeared in his evidence and postmortem examination report as Bijay Kumar Singh because of misreading of his name. The inquest report (Ext. 3) clearly shows that the police sent the dead body of deceased Binay Kumar Singh for its autopsy to the doctor.

15. In the circumstances, it is definite that he conducted autopsy on the dead body of the deceased Binay Kumar Singh. The doctor found the following ante-mortem injuries:-



(i) lacerated wound $\frac{1}{2}$ " circular into chest cavity deep in the left 5th intercostal space, just by the side of sternum that is wound of entry.

(ii) lacerated oval wound 1" x $\frac{1}{2}$ " x communicating to the wound of entrance that is wound of exit on the left mid auxiliary 5th intercostal space. On dissection, left pleural cavity was found filled with blood and clot. Heart pericardium found ruptured. Left lung lacerated.

(iii) wound of entry $\frac{1}{2}$ " circular on the wrist joint inner side leading to wound of exit. On the outer side with lacerated oval wound 1" x $\frac{1}{2}$ " x communicating to entrance in right hand with fracture of adjoining bone of wrist joint.

(iv) wound of entry $\frac{1}{2}$ " circular on the right upper leg mid portion anteriorly leading to wound of exit lacerated oval 1" x $\frac{1}{2}$ " at the same level.

16. The description of the 5th injuries of wound is torn in postmortem report. The doctor has opined the death was due to shock and hemorrhage as a result of above injuries, especially, to the hurt caused by firearm.



17. PW-6 Upendra Singh is the I.O. of this case. His evidence is to the effect that while he was posted at Haveli Kharagpur Police Station as S.I., he learnt on information by Officer-in-Charge that an untoward incident in village Bengali Tola has occurred. On this information, PW-6 along with the police personnel went near the house of Satan Mandal situated at Bengali Tola, Bajrangbali Sthan. He found a dead body on Bariyarpur- Sultanganj Road and recorded the '*Fardbeyan*' of Bijay Kumar Singh in his pen and signature and on that '*Fardbeyan*' the witness Sobha Ranjan Singh, Pramod Singh, Sukhdeo Singh and Naresh Singh put their signature and he endorsed the '*Fardbeyan*' in para-4 of the case diary. He has identified the carbon copy of inquest report which was prepared by Officer-in-Charge Shamsheer Alam. He had seized four empty cartridges of rifle, one brick and one half brick with blood stained and blood stained soil and prepared the seizure list. He has also identified his writing and signature on seizure list (Ext. 4). He further deposed that he sent the dead body with the *Havaldar* Naeem



Khan and *Chowkidar* Birbal Paswan. He also mentioned about the '*Fardbeyan*' of Bijay Kumar Singh which has been sent with endorsement to the Officer-in-Charge Kharagpur, for institution of case. He further deposed that the place of occurrence is Bengali Tola, P.S. Kharagpur at pitch road running from west to east known as Bariyarpur- Sultanganj Road. He has further stated that the informant Bijay Kumar Singh disclosed before him that he (PW-3) along with his deceased brother Binay Kumar Singh, Sobha Ranjan Singh, Pramod Kumar Singh (PW-2), Sudhir Kumar Singh, Sukhdeo Choudhary and Naresh Singh (PW-1) were travelling on Maxi and the accused Rajesh Mandal, Bijay Mandal, Prakash Mandal, Nago Mandal (appellant) and Bhato Mandal intercepted the vehicle No. BEH -9255 and barged into the vehicle and placed the pistol on the chest of Binay Kumar Singh and dragged him out on road and fired indiscriminately at him and committed murder. According to him, the first place of occurrence is the road from west to east Bariyarpur- Sultanganj road. It is bounded in north by hut of Satan Mandal and



Bajrangbali Mandir and in south by shanty of Nand Kishore Mandal. This place of occurrence is in left side of the road and lot of water had fallen on the road. The second place of occurrence is at a distance of 500 yards north east from the first place of occurrence. It is the ditch of Siya Lal Mandal. He seized the blood stained soil and empty cartridges from the place of occurrence. The I.O. also found headless dead body of the deceased Binay Kumar Singh on the *pucca* road, the first place of occurrence.

18. It has been argued on behalf of the appellant that there were several contradictions in the statement of the witnesses examined during the course of evidence with regard to the place of occurrence and manner of occurrence as well as the time of occurrence. The learned Advocate for the appellant submitted that the place of occurrence was not proved either by the prosecution witness or by Investigating Officer in their deposition. It is further submitted that the prosecution has failed to identify the dead body of the deceased. It is also submitted



that the informant had not stated in his '*Fardbeyan*' that the dead body was brought on the road from the ditch. He had also not stated in his '*Fardbeyan*' that the accused persons had fired firearms at Binay Kumar Singh in the Maxi and dragged his dead body by catching his legs.

19. From the evidence of the eye witnesses and materials on record, the place of occurrence of the offence has been well established. The eye witnesses have given categorical account of the heinous crime by deposing that at first Binay Kumar Singh was brought down from the Maxi and was fired at indiscriminately which is corroborated by the injuries in postmortem report. According to the deposition of the eye witnesses PW-1, PW-2, PW-3 (informant), the deceased Binay Kumar Singh was first fired after bringing him down from the Maxi where he died instantaneously whereafter the accused persons took the dead body towards northern side and in the ditch they severed the head of the deceased by putting his head above a brick and gave spade blow at the neck leading to



sundering of the head. PW-1 in his deposition has clearly deposed that Bhato Mandal and Nago Mandal (appellant) beheaded the deceased. PW-2 also deposed that the body of the deceased was taken to a ditch where the head of the deceased was put over a brick and was beheaded by Nago Mandal. PW-3 in his deposition stated that all the accused persons indiscriminately fired at the deceased (Binay Kumar Singh) and the dead body was dragged to a ditch by Nago Mandal, Kedar Mandal, Rajesh Mandal, Prakash, Bijay Mandal by holding legs of the deceased and the deceased was beheaded and his severed head was taken along with the accused persons towards northern side of *Diara*.

20. The eye witnesses in their evidence have stated that the blood splashed after the firing and oozed blood were washed by the accused persons from the first place of occurrence which is metalled road.

21. The doctor (PW-5) found the injury at the level of 6th cervical vertebrae absent, margins around



the wound incised, no blood clot was present and it was postmortem wound.

22. The doctor categorically deposed that he conducted autopsy on the beheaded dead body of Binay Kumar Singh on 29.03.1994 at 3:30 hrs but he clearly stated that it was because of slip of pen and that the name of father is same (Shri Narayan Singh of village Gangania) as mentioned in inquest report whereafter it was proved that the doctor conducted the autopsy on the dead body of Binay Kumar Singh son of Narayan Singh, Village-Gangania, P.S.-Sultanganj, Bhagalpur.

23. PW-6 the I.O. of the case in his evidence has deposed that he reached the place of occurrence on hearing about the incident on 29.03.1994. On reaching the spot i.e. near Bajrangbali Asthan near the house of Sattan Mandal he found one body, adjacent to the South road of Bariyarpur, Sultanganj and recorded the *fardebayan* of Bijay Kumar Singh. PW-6 found the dead body *challan* prepared by Shamsheer Alam (Officer-in-Charge) and sent the dead body for postmortem. He forwarded the



fardbeyan of Bijay Kumar Singh to the Officer-in-Charge of Kharagpur police station. He recorded the re-statement of Bijay Kumar Singh and collected four empty cartridges of rifle, one brick and one half brick blood stained soil and he also sent the body with the *Havaldar* Naeem Khan and *Chowkidar* Birbal Paswan for postmortem.

24. The witnesses have proved the incident by stating the first place of occurrence being the metalled road where the deceased after being pulled down from the Maxi was fired indiscriminately which is established by the injuries found during autopsy and that the dead body of the deceased was dragged by holding his feet near to the ditch about 400-500 yards from the first place of occurrence and the same was beheaded by putting the head of the deceased above a brick and giving blow by the spade. The doctor has proved the autopsy having been done on the deceased Binay Kumar Singh and has proved the discrepancy having been caused because of slip of pen. The I.O. has gone to the place of occurrence and collected the materials proving the



occurrence and the eye witnesses have given the account with precision leaving no iota of doubt with regard to the murder of Binay Kumar Singh son of Shri Narayan Singh, Village-Gangania, P.S.-Sultanganj, Dist.-Bhagalpur. All the three eye witnesses have proved the factum of firing at Binay Kumar Singh at the first place of occurrence and on his instantaneous death dragging the deceased to a ditch where the accused persons put the head of the deceased on a brick and gave a spade blow at the neck and severed the head of the deceased from the body and they escaped with the severed head along with them to *Diara*. Moreover, the occurrence took place in presence of three eye witnesses including the informant (PW-3), who have deposed in their evidences that the body of Binay Kumar Singh (deceased) was beheaded and the severed head was taken by the accused persons. It is further clear that it was the body of the deceased Binay Kumar Singh which was sent for autopsy and the doctor conducted postmortem on the said body of Binay Kumar Singh.



25. Taking the entire evidence into account, we are in absolute agreement with the opinion of the trial court regarding the guilt of the appellant and the order of conviction and sentence passed by the trial court against the appellant requires no interference by this Court.

26. Accordingly, the appeal is dismissed.

(Khatim Reza, J)

(Ashutosh Kumar, J)

Shyambihari/
prabhat/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	03-05-2024
Transmission Date	03-05-2024

