

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.879 of 2017

Arising Out of PS. Case No.-441 Year-2009 Thana- BHABHUA District- Kaimur (Bhabua)

Satish Singh @ Sintu Singh Son of Late Baban Singh, Resident of Village-
Damodarpur, P.S.- Bhabhua, District- Kaimur.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 884 of 2017

Arising Out of PS. Case No.-441 Year-2009 Thana- BHABHUA District- Kaimur (Bhabua)

Dadan Singh Son of Late Kapildeo Singh, resident of Village- Damodarpur,
P.S.- Bhabhua, District- Kaimur.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 956 of 2017

Arising Out of PS. Case No.-441 Year-2009 Thana- BHABHUA District- Kaimur (Bhabua)

Arun Singh @ Arun Kumar Singh Son of Late Kapildeo Singh, R/o Village-
Damodarpur, P.S.- Bhabhua, District- Kaimur.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 961 of 2017

Arising Out of PS. Case No.-441 Year-2009 Thana- BHABHUA District- Kaimur (Bhabua)

Abhai Singh @ Faizu Singh Son of Arun Singh @ Arun Kumar Singh,
Resident of Village- Damodarpur, P.S.- Bhabhua, District- Kaimur.

... .. Appellant/s

Versus

The State Of Bihar



... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 968 of 2017

Arising Out of PS. Case No.-441 Year-2009 Thana- BHABHUA District- Kaimur (Bhabua)

Guddu Singh Son of Late Lallan Singh Resident of Village - Damodarpur,
P.S. Bhabua, District Kaimur.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 879 of 2017)

For the Appellant : Mr. Ajay Kumar Thakur, Advocate
For the State : Mr. Sujit Kumar Singh, APP
For the Informant : Mr. Binod Kumar Singh, Advocate
Mr. Pankaj Kumar Singh, Advocate

(In CRIMINAL APPEAL (DB) No. 884 of 2017)

For the Appellant : Mr. Sanjay Singh, Senior Advocate
Mr. Rakesh Kumar Sinha, Advocate
For the State : Mr. Sujit Kumar Singh, APP
For the Informant : Mr. Binod Kumar Singh, Advocate
Mr. Pankaj Kumar Singh, Advocate

(In CRIMINAL APPEAL (DB) No. 956 of 2017)

For the Appellant : Mr. Rajesh Singh, Senior Advocate
Mr. Rakesh Kumar Samrendra, Advocate
Mr. Manish Kumar Singh, Advocate
Mr. Akrity Aishwarya, Advocate
For the State : Mr. Sujit Kumar Singh, APP
For the Informant : Mr. Binod Kumar Singh, Advocate
Mr. Pankaj Kumar Singh, Advocate

(In CRIMINAL APPEAL (DB) No. 961 of 2017)

For the Appellant : Mr. Rajesh Singh, Senior Advocate
Mr. Rakesh Kumar Samrendra, Advocate
Mr. Manish Kumar Singh, Advocate
Mr. Akrity Aishwarya, Advocate
For the State : Mr. Sujit Kumar Singh, APP
For the Informant : Mr. Binod Kumar Singh, Advocate
Mr. Pankaj Kumar Singh, Advocate

(In CRIMINAL APPEAL (DB) No. 968 of 2017)

For the Appellant : Mr. Ajay Kumar Thakur, Advocate
Mr. Sadanand Rai, Advocate
Mr. Shashi Shekhar Singh, Advocate
For the State : Mr. Satya Narayan Prasad, APP
For the Informant : Mr. Binod Kumar Singh, Advocate
Mr. Pankaj Kumar Singh, Advocate



CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 23-10-2024

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 13.06.2017 and order of sentence dated 19.06.2017, passed by learned Fast Tract Court-1st, Kaimur, Bhabua in Sessions Trial No.215/2010, arising out of Bhabua P.S. Case No.441/09, G.R. No.1630/09, T.R. No. 207/2017 whereby the court has convicted appellants Abhai Singh @ Faizu Singh and Satish Singh @ Sintu Singh for the offences punishable under Sections 302, 307/34 and 120B 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 to pay a fine of Rs.2,00,000/- (Rs. Two Lakhs only) each for the offence punishable under Section 302 of the Indian Penal Code and in default of payment of fine, both the appellants have to undergo S.I. for a period of one year each, they have also been sentenced to undergo R.I. for seven years and to pay a fine of Rs.25,000/- (Rs. Twenty Five Thousand only) each for the offence punishable under Sections 307/34 of the Indian Penal Code and in default of payment of fine, both



the appellants have to undergo S.I. for a period of three months each. Further they have also been sentenced to undergo R.I. for three years and to pay a fine of Rs.10,000/- (Rs. Ten Thousand only) each for the offence punishable under Section 27 of the Arms Act and in default of payment of fine, both the appellants have to undergo S.I. for a period of two months each. The court has convicted appellants Arun Kumar Singh and Guddu Singh for the offences punishable under Sections 302/34, 342, 307/34 and 120B of the Indian Penal Code and they have been sentenced to undergo imprisonment for life and to pay a fine of Rs.2,00,000/- (Rs. Two Lakhs only) each for the offence punishable under Sections 302/34 of the Indian Penal Code and in default of payment of fine, both the appellants have to undergo S.I. for a period of one year each, both the appellants have also been sentenced to undergo R.I. for seven years and to pay a fine of Rs.25,000/- (Rs. Twenty Five Thousand only) each for the offences punishable under Sections 307/34 of the Indian Penal Code and in default of payment of fine, both the appellants have to undergo S.I. for a period of three months each. Further, both the appellants have also been sentenced to undergo S.I. for three months for the offence punishable under Section 342 of the Indian Penal Code. The court has also



convicted appellant Dadan Singh for the offence punishable under Sections 109/302, 307/34 and 120B of the Indian Penal Code and he has been sentenced to undergo imprisonment for life and to pay a fine of Rs.2,00,000/- (Rs. Two Lakhs only) for the offences punishable under Section 109 read with Section 302 of the Indian Penal Code and in default of payment of fine, the appellant has to undergo S.I. for a period of one year. Appellant Dadan Singh has also been sentenced to undergo R.I. for seven years and to pay a fine of Rs.25,000/- (Rs. Twenty Five Thousand only) for the offences punishable under Sections 307/34 of the Indian Penal Code and in default of payment of fine, the appellant has to undergo S.I. for a period of three months. All the sentences have been directed to run concurrently.

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

2.1 *Fardbeyan* of Pawan Kumar Singh came to be recorded on 28.10.2009 at 19:00 hours at Damodarpur wherein the informant has stated that on 28.10.2009, he along with his father Yamuna Singh and elder brother Anup Singh went to their field and they were just constructing the ridge when Arun Singh, Guddu Singh, Abhai Singh @ Faizu and Satish Singh @ Sintu



Singh came running and Arun Singh caught hold of his father and Guddu Singh caught hold of his brother Anup. In the meantime, Bachan Singh and Dadan Singh also came there and started instigating to kill. Upon instigation, Abhai Singh @ Faizu shot fire upon his father Yamuna Singh and Satish Singh @ Sintu shot fire on his elder brother. The father and the brother of the informant fell down after sustaining gunshot injury. It is further stated that his father sustained gunshot injury on the lower part of his right shoulder whereas his elder brother sustained gunshot injury in the chest. When the informant started fleeing away from the place, Bachan Singh and Dadan again instigated to kill him also on which Faizu @ Abhai, Sintu @ Satish, Arun Singh and Guddu Singh started chasing him and shot fire with intention to kill the informant but the bullet did not hit the informant. The informant went to his village and raised alarm. Then the villagers came but till then the father and elder brother of the informant died. The reason for the occurrence is old enmity.

2.2. 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.

2.3 As the case was exclusively triable by court of sessions, the learned Magistrate committed the same under Section 209 of the Code to the concerned sessions court where the same was registered as Sessions Trial No.215/2010.

2.4 During course of trial, the prosecution has examined 7 witnesses, namely, PW-1 Sanu Singh, PW-2 Vinod Singh, PW-3 Anil Singh, PW-4 Pawan Kumar Singh, PW-5 Usha Kunwar, PW-6 Jayshankar Mishra and PW-7 Rajesh Kumar Dube. The defence had also examined one witness, namely, DW-1 Richa Singh. 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, as stated hereinabove.

3. Heard Mr. Ajay Kumar Thakur, learned counsel appearing on behalf of the appellants in Criminal Appeal (DB) No.879 of 2017 and Criminal Appeal (DB) No.968 of 2017, Mr. Sanjay Singh, learned Senior Advocate assisted by Mr. Rakesh Kumar Sinha appearing on behalf of the appellant in Criminal Appeal (DB) No.884 of 2017, Mr. Rajesh Singh, learned Senior Advocate assisted by Mr. Rakesh Kumar Samrendra appearing



on behalf of the appellants in Criminal Appeal (DB) No.956 of 2017 and Criminal Appeal (DB) No.961 of 2017, Mr. Sujit Kumar Singh and Mr. Satya Narayan Prasad, learned Additional Public Prosecutors for the State as well as Mr. Binod Kumar Singh, learned counsel appearing on behalf of the informant in all the appeals.

4. Learned Advocates appearing for the respective appellants would mainly submit that the present is a case of false implication and because of the previous enmity between the parties, they have falsely been implicated by the informant. It is further submitted that, in fact, there is no eye-witness to the incident in question. However, the prosecution has projected PW-1 and PW-4 as eye-witnesses. Learned Advocates thereafter contended that there are major contradictions, improvement, inconsistencies and discrepancies in the deposition of the prosecution witnesses.

4.1. It is also contended that, in the *fardbeyan*, PW-4, informant has not stated about the injury sustained by him in the incident in question. However, for the first time, while giving deposition before the Court, the said witness improved his version and deposed that when he was trying to escape from the spot or place of incident, somebody gave him *lathi* blow



which hit him in little finger of left hand. It is pointed out by learned Advocates from the deposition of PW-1, PW-2 and PW-5 that such story was not narrated by the informant to the said witnesses. At this stage, it is also submitted that it is the specific case of PW-1 and PW-4, who are projected as eye-witnesses, that there was mud on the dead bodies and both the deceased smeared with blood and lying in mud water. However, PW-6, the Investigating Officer, has specifically admitted during cross-examination that he had not found any blood or blood stain in the field and he did not find any sign of dead bodies falling there or any foot-prints. It is also pointed out from the inquest report of both the deceased that there is no reference of mud on the clothes of the deceased or on the dead bodies. It is also pointed out from the deposition of PW-5, who is mother of the informant, that the informant came running to the house and informed the said witness that his father and brother have been shot at by 5-6 persons but did not disclose the names. It is, therefore, contended that the informant did not disclose the name of the assailants to his mother, i.e., PW-5. Learned Advocates, therefore, contended that, in fact, PW-4, the informant, is not an eye-witness.

4.2. Learned Advocates for the appellants further



submit that PW-4, the informant, has also admitted during cross-examination that his father late Jamuna Singh won the election of Mukhiya in the year 2001. However in 2006, he lost the said election and before this incident once his father was fired at but he does not know who had fired. It is also admitted by the said witness that his father was known as powerful (दबंग) Mukhiya during 2001-2006. The learned Advocates, therefore, contended that the father of the informant was having number of enemies and there are all possibilities that because the deceased Jamuna Singh was a powerful Mukhiya, some other persons might have killed him.

4.3. It is further submitted that the prosecution has even failed to prove the place of occurrence and the manner in which the occurrence took place. Learned counsels referred the deposition of the so called eye-witnesses and thereafter referred the deposition given by PW-6, the doctor, who had conducted the *post mortem* on the dead bodies of the deceased and, more particularly, produced the *post mortem* report of deceased Anup Singh. It is submitted that medical evidence does not support the version of the prosecution witnesses. If one of the accused had caught hold of the deceased Anup Singh in the manner in which the eye-witnesses narrated, the injury sustained by the deceased



Anup Singh could not have been possible.

4.4. Mr. Sanjay Singh, learned Senior Advocate appearing on behalf of the appellant Dadan Singh, in Criminal Appeal (DB) No.884 of 2017, has further submitted that the only allegation against the said appellant is that he is the order giver and no specific role has been attributed to him that he shot fire on the deceased. Learned Senior Counsel has also referred the statement of the said appellant recorded under Section 313 of the Code and thereafter submitted that all the incriminating materials/circumstances/evidence against the said appellant were not put to him, as a result of which great prejudice has been caused.

4.5. Learned counsels for the appellants, therefore, contended that the prosecution has failed to prove the case against the appellants beyond reasonable doubt, despite which the Trial Court has passed the impugned judgment of conviction and order of sentence against the appellants. Learned counsels, therefore, urged that all these appeals be allowed and impugned judgment of conviction and order of sentence be quashed and set aside.

5. On the other hand, the learned Additional Public Prosecutors for the State as well as learned counsel appearing on



behalf of the informant have opposed the present appeals. It is mainly submitted that there are two eye-witnesses to the incident in question and, in fact, the informant/PW-4 sustained injury in the said incident. It is further submitted that the medical evidence also supports the version given by the injured eye-witness. It is also contended that merely because there are minor contradictions and improvement in the deposition of the prosecution witnesses, the entire story of the prosecution may not be discarded. It is also submitted that the prosecution has proved the case against the appellants beyond reasonable doubt and, therefore, no error has been committed by the Trial Court while passing the impugned judgment of conviction and order of sentence. Learned Additional Public Prosecutors as well as learned counsel for the informant, therefore, urged that all these appeals be dismissed.

6. We have considered the submissions canvassed by learned counsel appearing for the parties. We have also perused the materials placed on record and the evidence led by the prosecution before the Trial Court. From the materials placed on record, it transpires that the prosecution has examined seven witnesses. The defence has also examined one witness. At this stage, we would like to appreciate the entire relevant extract



of the depositions of the prosecution-witnesses.

7. PW-1, Sanu Singh has deposed in his examination-in-chief that the occurrence took place on 28.10.2009 at 04:45 p.m. At that time, he was present in Jhingua Siwan. Jamuna Singh, Anup Singh and Pawan Singh were standing after ridging their field. By then, Dadan Singh and Bachan Singh came from the south direction and started abusing. Jamuna Singh and Anup Singh forbade them from abusing. At this, Dadan Singh and Bachan Singh instigated to kill everyone. Arun Singh caught hold of Jamuna Singh and Abhai Singh shot fire upon Jamuna Singh. Guddu Singh caught hold of Anup Singh and Satish Singh shot fire upon Anup Singh. Anup Singh was shot at his right armpit and Jamuna Singh was shot on the right shoulder. After sustaining gun-shot injuries, they fell down there and died at the spot. When Pawan Singh went there, Dadan Singh and Bachan Singh instigated to kill him also. The police came at the place of occurrence after two hours and the statement of Pawan Singh was recorded there. The witness claims to identify Dadan Singh, Arun Singh, Bachan Singh, Guddu Singh, Satish Singh @ Sintu Singh and Abhai Singh @ Faizu Singh in court.

7.1. The said witness has stated in his cross-



examination that he, Jamuna Singh, Anup Singh, Pawan Singh and Vinod Singh are descendants of the same lineage. They are witnesses of this case. A case relating to partition of land is going on between both the families. He has been living in Tamilnadu for three years. They are descendants of late Jaynandan Singh. He does not know how many brothers Jaynandan Singh had. It is further stated by this witness in his cross-examination that he was 15 yards away from the place of occurrence. When he arrived, scuffle took place. The people making ridge did not have spade or shovel. There was mud on the dead bodies. When police arrived at the place of incident, he was present there all along. His statement was not recorded before the police. His statement was recorded on the next day in the police station. It is also stated by this witness that accused Dadan Singh is his uncle. All the accused persons came together. It is not the case that on the date of occurrence, Dadan Singh was in Hazaribagh for treatment. He has denied the suggestion that no such occurrence took place and he has deposed falsely as he belongs to the same family. The said witness further stated in his cross-examination that he came 15-20 days before the occurrence and he went back one month after the occurrence. The said witness stated in para-27 of his cross-



examination that when he reached in the orchard, he heard the commotion and after that he heard the sound of firing. In para-29, the said witness has stated that when he was in the orchard, Guddu Singh was present at a distance of 20 feet in the west direction. Guddu Singh caught hold of Anup Singh from behind. Anup Singh tried to free himself from his clutches. After sustaining gun-shot injury, Anup Singh fell down behind. When Anup Singh fell down, Pawan Singh was standing there. After Anup Singh was shot, Pawan Singh was also fired upon and he ran away. He also ran away after 1/2-1 minute and went to his house. After 10-5 minutes, they again came at the place of incident. Police arrived at the place of incident after 1 ½ – 1 ¾ hours. The said witness denied the suggestion that he did not see the incident and deposed falsely. He has also denied the suggestion that no such occurrence took place at the said place of incident.

8. PW-2, Vinod Singh has deposed in his examination-in-chief that the occurrence took place on 28.10.2009 at 04:45 p.m. At that time, there was commotion at Damodarpur Ghat that Jamuna Singh and his son Anup Singh have been shot at. Thereafter, he saw the dead bodies of Jamuna Singh and Anup Singh at the place of occurrence. The deceased



sustained gun-shot injuries. Jamuna Singh sustained gun-shot injury in the lower part of right shoulder and Anup Singh sustained gun-shot injury in the lower part of the chest. Pawan Singh and villagers were present there. Pawan Singh told that six persons have killed his father and elder brother. Pawan Singh further told that when he, Jamuna Singh and Anup Singh were constructing ridge in their field, Dadan Singh, Bachan Singh, Arun Singh, Guddu Singh, Abhai Singh @ Faizu and Satish Singh Sintu started abusing them. When his father forbade them to abuse, Dadan Singh and Bachan Singh ordered to catch and Guddu Singh caught Anup Singh and Arun Singh caught Jamuna Singh. Satish Singh shot fire upon Anup and Abhai Singh @ Faizu shot fire upon Jamuna Singh by means of Katta. Pawan Singh was also shot but the bullet missed the target. The police arrived after about two hours and recorded his statement. The police also recorded the statement of Pawan Singh. The police prepared the paper on which he put his signature. His statement was recorded before the Judicial Magistrate under Section 164 Cr.P.C. The witness claims to identify Dadan Singh, Bachan Singh, Arun Singh and Guddu Singh in court.

8.1. The said witness has stated in his cross-



examination that name of his grandfather was Shividahin Singh. Shividahin Singh had two brothers, Satya Narayan Singh and Shyama Singh. Suraj Singh was the son of Satya Narayan Singh and Jamuna Singh (deceased) was the son of Suraj Singh. It is further stated by this witness in his cross-examination that at the place of incident, he firstly went near the dead bodies. The dead bodies were smeared with mud and water. There was hole in the clothe where the deceased sustained gunshot injury. A hole was also found in the red shirt of Anup Singh. The police recorded his statement at the place of incident on the date of incident. Statement of Anil Singh was recorded before him. He gave his statement in court on 12.11.2009. He was not called by anyone. He went to gave his statement on his own. The said witness has denied the suggestions that Pawan Singh did not disclose the name of any accused, he did not see the dead bodies in the field of Jamuna Singh and inquest report was not prepared before him.

9. PW-3, Anil Singh has deposed in his examination-in-chief that the occurrence took place on 28.10.2009 at about 04:45 p.m. He was present in the village at that time. After hearing *hulla*, he went to Jhiguiya Siwan. He saw the dead bodies of Jamuna Singh and Anup Singh lying in



the field of Jamuna Singh. He saw injuries on the right shoulder of Jamuna Singh and in the lower part of chest of Anup. Pawan Singh informed that when he, Anup Singh and Jamuna Singh were constructing the ridge, Dadan Singh, Bachan Singh, Arun Singh, Faizu Singh and Sintu Singh came abusing. When father of Pawan Singh forbade them, Dadan Singh and Bachan Singh instigated to kill. Thereafter Arun Singh caught Jamuna Singh and Guddu Singh caught Anup Singh. Faizu Singh shot fire upon Jamuna Singh and Sintu Singh shot fire upon Anup Singh. Pawan also informed that he was also shot but he escaped and saved his life. Police came after 02-2 ½ hours. The police recorded the statement of Pawan Singh, inspected the dead bodies and prepared *Panchnama* of both the dead bodies and he put his signature on the same (Ext.3).

9.1. In his cross-examination, he has stated that he used to reside at Hyderabad in course of his private vocation. He had returned from Hyderabad 15-20 days before the occurrence. In para-10, he has stated that he had not entered the field where he had seen the dead bodies. He had not seen anybody else. He was standing 4-5 feet away towards east from the said field and he had not talked with anybody present there. Police recorded his statement on 30th, i.e., after two days of the occurrence. In



para-13, he has stated that half of the bodies was wet with water due to water logging in the field. He has denied the suggestion that at the time of occurrence, he was in Hyderabad and on the request of the informant, he has deposed falsely. He has also denied that police had not prepared *Panchnama* in his presence nor the police prepared *Panchnama* at the place of occurrence rather it was prepared at the police station.

10. PW-4 Pawan Kumar Singh, who is the informant of the case, has deposed in his examination-in-chief that the incident took place on 28.10.2009 at 04:45 p.m. At that time, he alongwith his father late Jamuna Singh and brother Anup Kumar Singh were standing after making the ridge when Arun Singh, Bachan Singh, Dadan Singh, Guddu Singh, Sintu and Faizu came there. Sintu and Faizu were having *Kattas* (country made pistols) and others were having *lathies*. Arun Singh started abusing. His father forbade him from abusing at which Arun Singh caught hold of his father's hand. Guddu Singh caught hold of the hands of Anup Singh. Sintu fired at Anup and Faizu fired at his father with *Katta*. Bullet hit left side of the chest of Anup and his father received bullet injury just below the right shoulder. Both of them fell down. Others were standing with *lathies*. Dadan Singh and Bachan Singh were



instigating. Firing was made upon him also. Bachan Singh and Dadan Singh were instigating to ensure that all of them are killed. When he starting fleeing away, someone inflicted a *lathi* blow which hit his little finger of left hand. Accused chased him making firing. He raised alarm before the village people and disclosed about the incident to his mother. He again came to the place of occurrence near *Sati Mai* temple. When informed on telephone, police came to the place of occurrence at 07:00 p.m. Police recorded his statement and read over to him. Finding the same to be correct, he made his signature upon the same which was marked as Ext.4.

10.1. The said witness has deposed in his cross-examination that all the accused are relatives of one another. In 2011 Panchayat election, his mother was a candidate but he does not know who had campaigned against her. In 2001, his father late Jamuna Singh won the election of *Mukhiya*. In 2006, he lost. He has stated in para-13 that before this incident also, once his father was fired at but he does not know who had fired. His father was known as a powerful *Mukhiya* during 2001 to 2006. Dugaraith village is dominated by Harizan and Muslim communities. Some of the *Mushars* are even terrorists. His brother Anup was shot from a point blank range due to which he



fell down just after sustaining the bullet injury. He cannot say the time gap between the firing made upon his brother and his father. He did not see as to from what distance his father was shot at. He cannot say the distance at which his father fell down from his brother. He cannot either say the time gap of firing made upon him after his father fell down. Firing was made upon him from a distance of 5-6 steps. He did not try to make his brother and father stand up out of fear. He cannot say as to how many shots were fired upon him while he was fleeing away. He cannot say how many village people had gathered at the place of incident. Lathi blow was inflicted upon him by his side but he did not see who inflicted the blow. Upon receiving the blow, he fell down and again stood up and started to flee away. When he went to the place of incident second time, he saw that the bodies of his deceased father and brother smeared with blood and lying in the mud water. Blood had spilled over the field also. He had not seen blood on the ridge. He fled away to his house. In para-25, the said witness has stated that *Daroga Ji* came to the place of occurrence at 07:00 p.m. He had not seen his village *Chowkidar* with him. *Daroga Ji* stayed for two hours and he went with him taking the dead bodies to the police station. Around 50 persons had gone to the police station with the dead



bodies. Dead bodies were sent for *post mortem* in the night itself. He is not aware whether statement of anybody was recorded at the police station or not. He did not see whether any paper was prepared at the police station or not. He had not put his signature on any paper at the police station. He did not see whether *Daroga Ji* had recorded the statement of anyone at the place of incident or not. He had gone to the police station again after seven days at which time his statement was not recorded. He cannot say as to who had informed the police telephonically. It came to his knowledge from the village people that police was informed about killing of two persons in the village. In para-29, the witness has stated that he had not stated before *Daroga Ji* that Sintu Singh and Faizu Singh were having country made *Katta* and others were having *lathies*. He had only stated about Arun Singh abusing them. Further, he has supported his version given in the chief but he has denied to have stated before the police that when he started to flee away someone inflicted *lathi* blow upon him which hit his little finger of the left hand. He has denied the suggestion that on the instigation of Bachan Singh and Dadan Singh, Abhai Singh @ Faizu fired at his father. He has denied the suggestion that he had not seen the occurrence and no such incident had taken place in the manner as stated by



him. He has also denied the suggestion that as there were several enemies of his father, some unknown miscreants had committed the crime and they concocted a story by putting the dead bodies on the place of incident and implicated the accused persons.

11. PW-5 Usha Kunwar has stated in her examination-in-chief that the incident took place two years ago. At about 04:00 p.m., her husband Mukhiya Ji came from Mohania and after changing his dress went to Jhinguiya Siwana to ridge the field. After 45 minutes, she heard the sound of three rounds of firing. When she came down and went outside, she came to know that *Mukhiya Ji* and her son Anup had been fired at. In the meantime, her son Pawan came and informed that his father and brother have been shot at by 5-6 persons, but did not disclose the names. She rushed to the Jhinguiya Siwan, i.e., the place of incident and saw that her husband *Mukhiya Ji* and her son Anup had received bullet injuries. Her father had received the injury on his right shoulder whereas her son Anup just below his chest. Upon seeing that, she fainted and fell down. She was senseless for 24 hours. Upon regaining her sense when she asked Pawan, he explained the manner of occurrence. She claims to identify all the accused persons.



11.1. The said witness has stated in her cross-examination that her statement was recorded by the police 4-5 days after the incident. She has stated that she had not stated before the police that her husband was instructing both of his sons to accompany him to the field for ridging the same. She had not stated before the police about hearing the sound of firing after 45 minutes from departure of her husband. She has denied to have stated before the police that people stated her at the place of incident that Anup has been taken for treatment. She has also denied that she had not gone to the place of incident on the date of incident and on the request of her son, she has deposited falsely.

12. PW-6 Jayshankar Mishra is the doctor who has deposed in his examination-in-chief that on 29.10.2009, he received the dead body of Jamuna Singh at 01:00 a.m. from *Chowkidar* Sardar Yadav and the relatives of the deceased Vinod Singh and Anil Singh. He conducted the *post mortem* of the dead body of Jamuna Singh at 01:00 a.m. on the order of the District Magistrate, Kaimur and found the following injuries on the person of the deceased:

External injuries- 1. One lacerated wound 1/2” diameter with margin inverted and tatooed over front surface of



right chest near shoulder (Rt) joint and cavity deep. Injury No.1 is the wound of entrance and caused by firearm.

2. One abrasion 1/2" x 1/4" over anterior surface of Lt Pinna.

3. One swelling 2" x 1" x 1/2" above (3") left Pinna.

On Dissection- On opening the left side of chest cavity, left pleural cavity was full of blood and mid and lower portion of left lung was lacerated. 6th and 7th ribs were fractured laterally on left side of chest and one metallic bullet was recovered in 6th intercostal space in posterior axillary line.

Note- Bullet recovered during dissection is being kept in properly sealed and labelled glass vial and is being sent with P.M. report.

Opinion- 1. Injury Nos.1, 2 and 3 are ante mortem. Injury Nos. 2 and 3 are simple wounds and caused by hard and blunt substance. Injury No.1 is grievous and fatal wound and is caused by firearm.

3. Time elapsed since death at the time of P.M. examination approximately within 6 to 12 hours.

He has further stated that on the same date at 02:00 a.m. he conducted the post mortem examination of Anup Singh



and found the following injuries on his person:

External injuries- 1. One lacerated wound 1/2" x 1/2" with margins inverted and tattooed over left front chest 2" below and 2" medial to left nipple with fracture of 5th and 6th ribs on left side. Injury No.(1) is the wound of entrance.

Injury No.(2) One lacerated wound 3/4" x 1/2" with margins everted over back portion of right chest in posterior axillary line at the level of inferior angle of right scapula with fracture of 6th and 7th ribs on right side. Injury No.(2) is the wound of exit. Injury No.(1) &(2) are communicating with each and caused by firearm.

On Dissection- On opening the skull, skull bones were intact with brain substances were pale and intact. Neck NAD. On opening the chest, left lung was lacerated in mid and lower portion and left pleural cavity was full of blood. On opening the pericardium, pericardial cavity was full of blood and right and left ventricles were lacerated and perforated. On opening the left pleural cavity was full of blood and left lung was lacerated in mid and lower portion, 5th & 6th ribs on left and 6th & 7th ribs on right side were fractured. On opening the abdomen, stomach was pale and empty. Intestines were pale, intact and contained liquid faecal matter and gas. Liver, spleen,



pancreas, both kidneys with suprarenal glands were pale and intact. Urinary bladder was pale and contained 60 ml. of urine.

Opinion:- (1) Injury No.(1) & (2) are ante mortem wounds, grievous and fatal wounds and caused by firearm.

Time elapsed since death at the time of P.M. examination:- Approximately with 6 to 12 (six to twelve) hours.

The doctor further deposed that on 28.10.2009, he examined Pawan Kumar Singh vide E.R.O.P.D. No.3073/28.10.09 and found the following injuries on his person:

1. One abrasion 1/2" x 1/4" over interior aspect of left little finger over terminal phalanx and reddish in colour.
2. One abrasion 1/2" x 1/4" over interior surface of left wrist and reddish in colour.

Nature of injuries- Injuries No.1 and 2 are simple in nature and caused by hard and blunt substance.

Age of injury at the time of examination approximately within 24 hours.

Injuries No.1 and 2 of Pawan Singh may be possible by one blow. Abrasion is known as superficial injury. If any portion of body may rub in hard surface, it may cause abrasion. These injuries may be caused by fall.

ये चोटें 23 घण्टे पूर्व की भी हो सकती हैं।



13. PW-7, Rajesh Kumar Dube is the Investigating Officer of the case, who has deposed in his examination-in-chief that on 28.10.2009, he was posted as S.H.O. at Bhabua police station. On that date at 06:30 p.m. an information was received on telephone about the incident of firing in village Damodarpur. He rushed to Damodarpur after registering *Sanha* alongwith police party and Chowkidar. He saw two dead bodies lying on the northern side of Sati Mai temple, Jhinguiya Siwan. The dead bodies were of deceased Jamuna Singh and Anup Singh. He recorded the *fardbeyan* of Pawan Singh present there. The witness identified his signature and writing on the *fardbeyan* which was marked as Ext.5. He forwarded the same for registration of the FIR which is in his pen and signature (Ext.5/a). He prepared the inquest report of the dead bodies of both the deceased by carbon process which he identifies to be in his pen and signature. Both the inquest reports were marked as Exts.6 and 6/a. He had prepared the inquest report after making proper arrangement of light and sent the dead bodies for *post mortem*. He visited the place of occurrence at 05:00 a.m. The place of occurrence is a field located in the south-western side of Sati Mai temple, Jhinguiya Siwan in village Damodarpur. He recorded the statement of Smt. Usha Kunwar on 01.11.2009 and



that of Anil Singh on 20.10.2009. He procured the *post mortem* report and received the injury report of Pawan Singh. He got the statements of Sonu Singh and Vinod Singh under Section 164 of the Code recorded on 12.11.2009.

13.1. The said witness has stated in his cross-examination that witness Anil Singh had stated before him that he was present in the village at the time of the incident when there was a commotion about firing made and Pawan Singh and Sonu Singh were crying and running for help at which he also went to Jhinguiya Siwan. By that time, so many persons had gathered there. Witness Pawan Singh had indicated the time of occurrence as 04:45 p.m. He has stated that witness Pawan Singh had not stated that he was standing after ridging the field with deceased Yamuna Singh and Anup Singh rather he had stated that he was ridging the field with the deceased. He had not stated either in his fardbeyan or in his re-statement that Sintu and Faizu were having country made *Katta* and others were armed with *lathies*. He had also not stated about abuses being given by Arun Singh. He had stated that Faizu Singh fired at his father. He had not stated that he (Faizu) fired from a *Katta*. He had also stated about firing made upon him. Witness Usha Kunwar had not stated before him that Pawan informed



her that 5-6 persons had shot at his father and brother. She had not stated before him that she had seen Anup injured with the gunshot at the place of occurrence rather she had stated that at the place of occurrence, people informed her that Anup had been taken to hospital for treatment. He had not found any blood or blood stain in the field. He did not find any sign of dead body falling there or any foot-prints. He did not see even any ridge made by the side of the field. He has not given any finding that the clothes were soaked in mud or in water. He has not mentioned about any holes made in the clothes of the deceased. The said witness has denied the suggestion that he did not investigate the case properly.

14. DW-1 Richa Singh is the daughter of accused Dadan Singh and has deposed in her examination-in-chief that her father was under treatment of Dr. A.K. Singh from 27.10.2009 to 07.11.2009 at Hazaribagh. She has identified the O.P.D. Discharge Slip and pathological reports (Ext.A/1 & X). In her cross-examination, the witness has denied the suggestion that her father was not ill nor she had got her father treated and, in order to save her father, she has produced the fake papers.

15. We have re-appreciated the entire relevant evidence led by the prosecution before the Trial Court. We have



also considered the submissions canvassed by learned counsel appearing for the parties. From the *fardbeyan* given by Pawan Kumar Singh (PW-4), it transpires that, as per the case of the prosecution, the incident took place at about 04:45 p.m. on 28.10.2009 for which somebody gave information to the police and, therefore, police reached to the place of incident and recorded the *fardbeyan* of the informant at 07:00 p.m. If the *fardbeyan* is carefully seen, it is revealed that the informant did not state about the *lathi* blow given by the accused to him as a result of which he sustained injury. However, from the deposition given by PW-4 before the court, it is revealed that, for the first time, he deposed before the court that when he started fleeing away, someone inflicted *lathi* blow which hit his little finger of left hand. Thus, it appears that, for the first time, the said witness has deposed before the court about the injury sustained by him on his left hand. However, if the deposition given by PW-1 is carefully seen, it is revealed that though the said witness is projected as eye-witness, he has not deposed about the injury sustained by the informant. Similarly, PW-2 and PW-3, who are the witnesses of the inquest report and who reached at the place of incident after the incident, have also not deposed about the injury sustained by the informant on his left



hand. Further, PW-4 has also not deposed before the court that for the injury sustained by him on his little finger of left hand, he had taken treatment in the hospital. Thus, keeping in view the aforesaid aspect, if the deposition given by PW-6, the doctor, is examined, it can be said that the said witness, though stated that he gave treatment to the informant and nature of injury sustained by the informant was simple in nature, the said witness has specifically stated that age of injury at the time of examination was approximately 24 hours. However, so far as PW-6, the doctor, who has conducted the *post mortem* on the dead bodies of the deceased, is concerned, the said witness specifically stated that time elapsed since death at the time of P.M. examination is approximately within 6 to 12 hours. Further, the said doctor has specifically stated about the injury of PW-4 that such injury may be possible if any portion of body may rub in hard surface or may be caused by fall. Thus, from the aforesaid evidence led by the prosecution, it can be said that the story of sustaining injury by the informant is nothing but an after thought and the same was projected by the prosecution with a view to show that PW-4 is an injured eye-witness.

15.1. It is further revealed from the deposition of PW-1 that the said witness has also projected himself as an eye-



witness while deposing before the court and has stated that he had seen the entire incident. However, from his cross-examination, it is revealed that the said witness has admitted that the people making ridge did not have spade or shovel. The said witness has specifically stated that there was mud on the dead bodies. Further, he was present at the place of occurrence when the police arrived at the said place. However, surprisingly, though the said witness was present at the place of occurrence and thereafter had gone to the police station, his statement was not recorded by the police on the same day. Further, there is no reference in the *fardbeyan* given by PW-4 with regard to presence of PW-1 at the place of incident. It is pertinent to note that PW-1, PW-2, PW-3 and PW-5 are relatives of PW-4 and the prosecution has failed to examine the independent witnesses, though the statements of the independent witnesses were recorded by the investigating agency during the course of investigation. Even charge-sheet witnesses have not been examined by the prosecution for the reasons best known to them.

15.2. Further, from the deposition given by PW-5, Usha Kunwar, who is mother of the informant, it is revealed that in examination-in-chief itself, the said witness has stated that



her son Pawan came to the house and informed that his father and brother have been shot at by 5-6 persons but did not disclose the names of the assailants. Thus, it can be said that the said witness was not aware as to who were the assailants. At this stage, it is relevant to note that all the appellants are near relatives of the side of the informant and the deceased and, thus, aware about the names of the assailants, i.e., the present appellants, who are near relatives, and there cannot be any reason not to have disclosed the names of those appellants to his mother. Thus, the defence taken by the appellants with regard to their false implication because of enmity cannot be ruled out.

15.3. It is the case of the prosecution that the informant, his father and his brother had gone to the agriculture field to ridge the field and they had, in fact, ridged the field. It is further case of the prosecution that after the incident took place, the bodies of his deceased father and brother were smeared with blood and lying in the mud water. However, it is relevant to note that the Investigating Officer, PW-7, specifically admitted during cross-examination that he did not see even any ridge made by the side of the field; he had not found any blood or blood stain in the field nor there was any sign of dead bodies falling there or any foot-prints. Further, the said witness has



admitted that he has not given any finding that the clothes were soaked in mud or in water. At this stage, we would like to refer the inquest report of dead bodies of both the deceased. There is no reference with regard to mud on the clothes of the dead bodies of the deceased in the inquest report. Thus, from the aforesaid evidence led by the prosecution, it can be said that the prosecution has failed to prove the manner in which the occurrence took place as well as the place on which the occurrence took place.

15.4. From the deposition given by PW-7, the Investigating Officer, and more particularly from cross-examination, it is revealed that there are major contradictions/improvement in the deposition of the prosecution witnesses, i.e., PW-1 to PW-5. At this stage, it is also pertinent to note that PW-4, the informant, has admitted during cross-examination that his deceased father was *Mukhiya* in the year 2001. However, he lost the election in the year 2006. He has also admitted that his father was a powerful (दबंग) *Mukhiya* and in past once his father was fired at but the said witness does not know who had fired. It is relevant to note that the incident in question is of the year 2009. It is the specific defence of the appellants that because of the enmity with other persons,



somebody else might have killed the father and brother of the informant. However, because of the enmity with the present appellants, who are relatives of the informant, they have falsely been implicated. Such theory of the defence also cannot be ruled out. It is also pertinent to note that one of the accused had caught hold of the deceased Anup Singh, as narrated by the witnesses in their deposition, the injury sustained by the deceased Anup Singh could not have been possible.

15.5. It is the specific contention raised by learned Senior Counsel appearing on behalf of appellant Dadan Singh that the statement of the said appellant was recorded under Section 313 of the Code, but all the incriminating materials/circumstances/evidence against the said appellant were not put to him, as a result of which great prejudice has been caused to the appellants. In the present case, even so called murder weapons have not been recovered or discovered by the investigating agency.

15.6. Thus, looking to the aforesaid evidence led by the prosecution, we are of the view that though PW-1 and PW-4 are not the eye-witnesses to the incident in question, they are projected as eye-witnesses. They are near relatives of the deceased and, though statements of the independent witnesses



were recorded by the investigating agency, prosecution has failed to examine the independent witnesses. We are, thus, of the view that the version given by the so called witnesses cannot be believed and the said witnesses cannot be termed as sterling witnesses.

15.7. Looking to the over all facts and circumstances of the present case and the evidence led by the prosecution, we are of the view that the prosecution has failed to prove the case against the appellants beyond reasonable doubt.

16. Accordingly, all the appeals stand allowed. The impugned common judgment of conviction dated 13.06.2017 and order of sentence dated 19.06.2017, passed by learned Fast Tract Court-1st, Kaimur, Bhabua in Sessions Trial No.215/2010, arising out of Bhabua P.S. Case No.441/09, G.R. No.1630/09, T.R. No. 207/2017, are hereby quashed and set aside. The appellants are acquitted of the charges levelled against them by the learned Trial Court.

16.1. Since appellant Dadan Singh (in Cr. Appeal (D.B.) No. 884 of 2017) and appellant Guddu Singh (in Cr. Appeal (D.B.) No. 968 of 2017) are on bail. They are discharged from the liabilities of their respective bail-bonds.

16.2. Appellants, namely Satish Singh @ Sintu



Singh (in Cr. Appeal (D.B.) No. 879 of 2017), Arun Singh @ Arun Kumar Singh (in Cr. Appeal (D.B.) No. 956 of 2017) and Abhai Singh @ Faizu Singh (in Cr. Appeal (D.B.) No. 961 of 2017) are in jail. They are directed to be released from jail custody forthwith, if their presence is not required in any other case.

(Vipul M. Pancholi, J.)

(Dr. Anshuman, J.)

Sanjay/-

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

