

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.822 of 2017

Arising Out of PS. Case No.-369 Year-2016 Thana- BARAUNI District- Begusarai

Ajit Singh @ Shutarwa @ Ajeet Kumar, Son of Suresh Singh, R/o Village-
Bishanpur, P.S.- Barauni Chakia, District- Begusarai.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 824 of 2017

Arising Out of PS. Case No.-369 Year-2016 Thana- BARAUNI District- Begusarai

Bihari Mishra, S/o Chumman Mishra, R/o Village- Bishanpur, P.S. - Barauni
Chakia, Dist. - Begusarai.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 840 of 2017

Arising Out of PS. Case No.-369 Year-2016 Thana- BARAUNI District- Begusarai

- 1. Amit Kumar, S/o Umesh Singh,
 - 2. Pappu Singh @ Chhipia, S/o Pramod Singh,
 - 3. Rajesh @ Bhulla @ Rajesh Bhullu, S/o Mahendra Singh,
- All are R/o Village- Bishanpur, P.S.- Barauni Chakia, Dist- Begusarai.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :
(In CRIMINAL APPEAL (DB) No. 822 of 2017)

For the Appellant/s	:	Mr. Rama Kant Sharma, Sr. Advocate
		Mr. Rabindra Kumar, Advocate
		Mr. Rakesh Kumar Sharma, Advocate
For the Respondent/s	:	Mr. Dilip Kumar Sinha, APP
For the Informant	:	Mr. Rameshwar Thakur, Advocate



(In CRIMINAL APPEAL (DB) No. 824 of 2017)

For the Appellant/s : Mr. Ram Prakash Kumar, Advocate
For the Respondent/s : Mr. Dilip Kumar Sinha, APP
For the Informant : Mr. Rameshwar Thakur, Advocate

(In CRIMINAL APPEAL (DB) No. 840 of 2017)

For the Appellant/s : Mr. Rama Kant Sharma, Sr. Advocate
Mr. Rabindra Kumar, Advocate
Mr. Rakesh Kumar Sharma, Advocate
Mr. Subodh Kumar, Advocate
For the Respondent/s : Mr. Abhimanyu Sharma, APP
For the Informant : Mr. Rameshwar Thakur, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE NANI TAGIA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 03-01-2024

1. All the three appeals have been taken up together and are being disposed off by this common judgment.

2. We have heard Mr. Rama Kant Sharma, the learned Sr. Advocate assisted by Mr. Rabindra Kumar and Mr. Ram Prakash Kumar, the learned Advocates for the appellants in all the three appeals. The State has been represented by Mr. Dilip Kumar Sinha, the learned APP.

3. The appellants (five in number) have been convicted under Sections 302/34 of the Indian Penal



Code *vide* judgment dated 22.05.2017, passed by the learned Sessions Judge, Begusarai in connection with Sessions Case No. 191 of 2017 (CIS No. 199 of 2017), arising out of Barauni (FCI- O.P.) P.S. Case No. 369 of 2016. By order dated 24.05.2017, all the appellants have been sentenced to undergo imprisonment for life for the offence punishable under Sections 302/34 of the IPC.

4. It is an illustrative case where the police has chosen to adopt a shortcut in the investigation which becomes very apparent with the manner in which the prosecution case has unfolded before the Trial Court.

5. One Ram Charitra Thakur (P.W. 2) lodged the fardbeyan which was recorded by S.I. Sailesh Kumar (P.W. 5) in which he has alleged that his co-brother/Rajendra Thakur and his grandson/Nakul Thakur had come to meet him and his family on 16.10.016. After dinner, both the visitors retired to their rooms. Later, the daughter-in-law of Ram Charitra Thakur, *viz.*,



Shyama Bharti (P.W. 1) got up early in the morning only to find the doors of their rooms open ajar. They were not to be found in the house. A search was made for them but to no avail. Later, in the wee hours only, P.W. 2 was informed that two dead bodies are lying at a distance of about 500 metres from his house. P.W. 2 along with others went to the place and found that the dead bodies were of the visitors, *viz.*, Rajendra Thakur and his grandson/Nakul Thakur. Both of them appeared to have been shot dead.

6. So far as the cause of occurrence is concerned, P.W. 2 has categorically stated that earlier in the year 2014, he had filed a case against the appellant/Ajit Singh with a quirky alias name, in which case, he had to go to jail.

7. Recently, aforementioned appellant/Ajit Singh along with other appellants had been making a reconnaissance visit in and around the house of P.W. 2; perhaps for the purposes of threatening the family as



also for securing ransom amount. It, therefore, appeared to P.W. 2 that in order to instill fear in his mind, the aforementioned occurrence had taken place.

8. On the basis of the aforementioned fardbeyan statement, Barauni P.S. Case No. 369 of 2016, dated 16.10.2016 was registered for investigation.

9. The police after investigation submitted charge-sheet against the appellants; all of whom were then put on Trial.

10. The Trial Court after having examined five witnesses on behalf of the prosecution, convicted and sentenced the appellants as aforesaid.

11. Though a suspicion has been raised in the FIR against appellant/Ajit Singh and his associates, but it was only a guess-work when the FIR was lodged. Shorn of repetition, the daughter-in-law of P.W. 2 (who has been examined as P.W. 1 in the Trial) first spotted that the visitors/deceased were not there in their respective rooms where they had retired last night. She



came down the stairs and informed P.W. 2 (her father-in-law). Later, on information to the family about two unknown dead bodies lying near the house, the dead bodies were identified to be that of the deceased persons of this case.

12. A complete summer-sault was then taken by Shyama Bharti (P.W. 1) that in fact, she had seen two of the appellants, viz., Bihari Mishra and Ajit Singh having pointed fire-arm weapons against the two deceased. She pleaded with them but was threatened of dire consequences. She and her husband/Santosh Kumar Thakur (P.W. 4) became very afraid and, therefore, did not take the name of the aforementioned two appellants before Ram Charitra Thakur (P.W. 2) who had lodged the FIR. Ram Charitra Thakur himself has stated before the Trial Court that after many days of lodging of the FIR, his daughter-in-law (P.W. 1) had made such a disclosure.

13. This appears to be rather curious.



14. It appears that even though suspicion was raised on the two appellants named above and their cohorts, but that was only on the basis of a rough guess of P.W. 2 and nothing more.

15. It appears that the names of the appellants had transpired only when two of them, viz., Bihari Mishra and Ajit Singh were arrested by the police on 25.10.2016 in connection with a secret information regarding their being in possession of fire-arms.

16. We have examined the arrest memo of the aforementioned two appellants, which clearly discloses that they were arrested on suspicion and from their possession, fire-arms were recovered. It was only after their arrest that P.W. 1 claims to have made a statement, hitherto never made before the police, that she had seen the two aforementioned appellants in her house who had pointed their respective weapons at the two deceased.

17. The story, therefore, is completely



unbelievable. This appears to be the handiwork of the police for closing the investigation.

18. It further appears from the records as also from the deposition of the witnesses that the aforementioned two appellants, after their arrest, made certain disclosures/confession, on the basis of which the police had proceeded in the matter.

19. We say so for the reason that Shyama Bharti (P.W. 1) has categorically stated that she never spoke before the police about her having identified the appellants (Bihari and Ajit) having scaled over the house and taken away the two deceased persons in the dead of the night. This story was woven only after two of the aforementioned appellants were arrested by the police in connection with some other case.

20. What could be a more brazen attempt of the police to subvert the investigation and that also in such an unprofessional manner?

21. To test the veracity of the case further,



we have examined in detail the deposition of the Investigating Officer of this case, viz., Shailesh Kumar (P.W. 5). He admits of two of the persons (Bihari and Ajit) having been arrested in connection with some suspicion whereafter those persons had confessed about their participation in the killing of the deceased. The investigating agency did not at all consider it necessary to inquire about the relationship of the deceased with the family of the informant (P.W. 2), which was extremely necessary.

22. If suspicion against Bihari and Ajit was raised at the time of lodging of the FIR for P.W. 2 having earlier lodged a case against Ajit, the enmity stood between Ajit, his brigand and P.W. 2 only.

23. Admittedly, both the deceased persons are not residents of the State of Bihar. They perhaps are residents of West Bengal. They do not also appear to have been ransacked. Whether they were taken away from the house of P.W. 2 and then killed on the road is



also very doubtful. Our reason for saying so is that the I.O. (P.W. 5) did not find any blood mark at the place where the dead bodies were found. Both the persons had been shot in their head. Even the inquest report refers to copious bleeding. That the I.O. did not find any blood at the place where the dead bodies were found is a clear indication of the fact that the deceased had been killed somewhere else.

24. The house of P.W. 1 was also inspected during the course of investigation. There were no signs of forcible entry as claimed later by P.Ws. 1 and 2, both, that the back door was broken open by the miscreants.

25. It appears that perhaps the appellants did not enjoy good reputation in the locality and, therefore, an attempt was made to solve the mystery of these two murders by putting words in the mouth of the witnesses. Holding back such necessary information about the case by the father-in-law-daughter-in-law dyad on the ground of their being petrified, is highly



unacceptable. The fear curiously appears to have been quelled only after the arrest of the two of the appellants. This appears to be paranormal, suggesting very strange coincidence.

26. The prosecution, therefore, has not been able to prove the case on any score: be it accusation or circumstances from where the guilt of the appellants could have been driven home.

27. We have no hesitation in holding that the prosecution has miserably failed to prove the case. The conviction of the appellants is based solely on the guess-work of P.W. 2, aided by the unprofessional approach of the police. That the location of one of the appellants was found near the dead body, as was analyzed from the C.D.R., is not admissible in evidence for the requirements under Section 65B of the Indian Evidence Act, 1872 have not been complied with.

28. Even otherwise, that would not improve the prosecution case even a tad more.



29. We have, thus, no hesitation in setting aside the judgment and order of conviction and acquitting all the appellants of the charge of murder.

30. We order accordingly.

31. The appeals stand allowed.

32. The appellants, viz., Bihari Mishra, Amit Kumar, Pappu Singh @ Chhipia and Rajesh @ Bhulla @ Rajesh Bhullu in Cr. Appeal (DB) Nos. 824 of 2017 and 840 of 2017 respectively, are on bail. Their liabilities under the bail bonds are cancelled.

33. It is informed by the learned Advocate that the appellant/Ajit Singh @ Shutarwa @ Ajeet Kumar in Cr. Appeal (DB) No. 822 of 2017 is in jail.

34. He is directed to be released forthwith from jail, if not detained or wanted in any other case.

35. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

36. The records of this case be returned to



the Trial Court forthwith.

37. Interlocutory application/s, if any, also stand disposed off accordingly.

(Ashutosh Kumar, J)

(Nani Tagia, J)

Sauravkrsinha/
Sunil-

AFR/NAFR	NAFR
CAV DATE	NA
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