

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.533 of 2018

Arising Out of PS. Case No.-68 Year-2017 Thana- PARASBIGHA District- Jehanabad

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1. Manoj Bind @ Manoj Kumar, Son of Late Hira Bind;
 2. Rameshwar Bind @ Ram Ishwar Bind, Son of Late Kuldeep Bind;
- Both resident of village - Beldari Bigha, Police Station - Paras Bigha,
District - Jehanabad.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ajay Mukherjee, Advocate
For the State : Mr. Ajay Mishra, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE JITENDRA KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 20-08-2024

We have heard Mr. Ajay Mukherjee, the
learned Advocate for the appellants and Mr. Ajay Mishra,
the learned APP for the State.

2. Both the appellants, viz., Manoj Bind @
Manoj Kumar and Rameshwar Bind @ Ram Ishwar Bind,



have been convicted for the offences under Sections 302/120(B) read with Section 34 of the Indian Penal Code (*in short the IPC*) and Section 27 of the Arms Act by the learned 1st Additional Sessions Judge-Cum-Special Judge, Jehanabad in Sessions Trial No. 413 of 2017/Trial No. 103 of 2017, arising out of Paras Bigha P.S. Case No. 68 of 2017 *vide* judgment dated 27.03.2018. By order dated 28.03.2018, they have been sentenced to undergo R.I. for life and to pay a fine of Rs. 25,000/- each for the offence under Sections 302/120(B) read with Section 34 of the IPC and to undergo R.I. for three years and to pay a fine of Rs. 10,000/- each for the offence under Section 27 of the Arms Act. The sentences have been ordered to run concurrently. In case of default in payment of fine, the appellants have been directed to suffer S.I. for one year.

3. Two persons, namely, Nirmal Bind and Sintu Bind are said to have been strangled to death. Nirmal Bind has also been alleged to have been hit by



gun-shot in his testicles.

4. The F.I.R. has been lodged by Lal Bahadur Bind (informant/P.W. 1), who is the cousin of one of the deceased (Nirmal Bind). He lodged the written report on 30.05.2017 alleging that on 28.05.2017, while he was having the soil removed by JCB on his land, co-accused/Ramesh Bind, a relative and a neighbour, came and stopped him from doing so. He had threatened that in case the soil would be excavated, the informant would face dire consequences. Thereafter, it has been alleged that many persons came to the house of afore-noted Ramesh Bind and the wife of Ramesh Bind was making those visitors identify the members of the family of the informant. On the same day, some guests had arrived at the house of the informant (P.W. 1) and for them, both the deceased, namely, Nirmal and Sintu had gone to the market for purchasing goodies. No sooner had they left the home in the evening, the visitors at the house of Ramesh Bind also started coming out of his



house. Later, when P.W. 1 along with his uncle/Ram Pukar Bind (P.W. 2) was going to his field, they heard sound of cries of somebody. When he and P.W. 2 proceeded towards that direction, he found several persons including the appellants and on spotting P.W. 2, started firing from their respective weapons. When P.W. 1 came to the spot, he found both the deceased lying on the ground and struggling for life. He and P.W. 2, thereafter, raised cries when many people arrived. Both the injured persons were taken to Sadar Hospital, Jehanabad, where they were declared dead.

5. On the basis of the afore-noted written report dated 30.05.2017, a case *vide* Paras Bigha P.S. Case No. 68 of 2017, dated 30.05.2017, was registered for investigation under Sections 302/120(B) of the IPC and Section 27 of the Arms Act.

6. The police, after investigation, submitted *charge-sheet* against the appellants, whereupon cognizance was taken and they were tried.



7. This Court has been informed that with respect to others, the investigation is still pending.

8. At the Trial, nine witnesses including the Doctor and the Investigating Officer were examined on behalf of the prosecution.

9. Though in the written report lodged after two days of the occurrence, P.W. 1/Lal Bahadur Bind does not claim to have seen the appellants and others assaulting the deceased, but only saw them firing at P.W. 2 and thereafter fleeing away; but at the Trial, he has given another version. He has deposed before the Trial Court that when the deceased persons were being strangled, he and P.W. 2 reached at the spot and then the accused persons started firing. The occurrence, according to him, had taken place on a bridge and he was at a distance of about thirty meters from the actual place of assault. He had reached the hospital at around 07:30 P.M. on 28.05.2017. The *post-mortem* examination was conducted at 12:30 P.M. However, in



his cross-examination, he has frankly admitted that at the time of the occurrence, only he and P.W. 2 were present there, whereas the other family members were at home. He and P.W. 2 had gone there on a red-coloured motorcycle.

10. Ram Pukar Bind (P.W. 2) had but a different story to narrate. He is the uncle of P.W. 1 who has deposed that in his presence, co-accused/Ramesh Bind had fired from his weapon, which had hit Nirmal in his testicles. Sintu was strangled to death.

11. Baleshwar Bind, the father of deceased/Nirmal Bind, does not claim to have seen the occurrence. He reached the P.O. only after hearing *hulla* and by the time he reached there, the death had already taken place. He denied of any relationship between him and the accused persons.

12. Ajita Devi (P.W. 4) is the mother of deceased/Sintu, who has claimed to be an eye-witness to the occurrence. According to her, Ramesh Bind fired



from his weapon, which hit Nirmal Bind and she has named others including the appellants as having killed Sintu.

13. Savita Kumari (P.W. 5) is the wife of Nirmal Bind, who had not seen the occurrence. She had come to know about it only after an hour later. In her cross-examination, she has, however, stated that she saw the dead-body of her husband in Jehanabad hospital. She has also admitted that the witnesses as also the accused persons hail from the same stock of the family.

14. Likewise, Champa Devi (P.W. 6), the wife of deceased/Sintu, claims to have learnt about the occurrence only from P.W. 2.

15. The grandfather of Nirmal has also supported the prosecution case, but not as an eye-witness to the occurrence.

16. Ritu Raj (P.W. 8), who is the Investigator of this case, had nothing specific to offer to the Trial



Court except that he had not found any blood at the P.O. or the red-motorcycle. He had not collected any incriminating material from the P.O. His reading of the *post-mortem* report was that the death was because of strangulation. However, who strangled the deceased was not investigated by him.

17. Curiously, the Doctor, who had conducted the *post-mortem* examination on both the dead-bodies, namely, Dr. Krishna Mohan Paswan (P.W. 9) had found clear signs of strangulation on the dead-body of Sintu, but had also found a gun-shot wound in the testicles of Nirmal. No pellets were found stuck in the body.

18. From the reading of the *post-mortem* report as also the deposition of the Doctor (P.W. 9), it is difficult to ascertain whether Nirmal was hit by a gun-shot in his testicles. Both the deceased were reported to have died of strangulation. However, P.W. 9 has denied the suggestion that such deaths could have occurred because of lightning.



19. From the conspectus of the materials available on the record, one proposition appears to be clearly established that none of the witnesses had seen the occurrence.

20. Had P.Ws. 1 and 2 seen the act of assault, that would have been stated in the written report which was filed after two days of the occurrence by P.W. 1 and countersigned by P.W. 2.

21. Both the deceased were strangled to death. Because of the burn injuries on the testicles of one of the deceased/Nirmal, it was presumed that he had received the gun-shot. The medical opinion is not at all certain about the gun-shot. Even otherwise, if the evidence of P.W. 2 is to be believed, then perhaps, P.Ws. 1 and 2 both were present when the deceased persons were being strangled. According to P.W. 2, he had tried to mediate between the warring parties, but, then, the accused persons started firing at him.

22. This sequence of events does not appear



to be probable. If P.Ws. 1 and 2 were at such a close distance, almost eyeball to eyeball, they too have been hit. The allegation is that all the accused persons, several in number, had started firing at P.W. 2.

23. We have also noted that according to P.W. 1, except for him and P.W. 2, no other person was available at the P.O.

24. This completely belies the statement of other witnesses who claimed to have reached the P.O. at the time of the occurrence.

25. The other aspect which comes out very clearly is that the main accused, who is said to have fired at Nirmal is Ramesh Bind, who is related to the deceased as also to P.Ws. 1 and 2. There were some dispute over filling of earth or excavating the earth over the land, said to be in possession of P.W. 1. The dispute, thus, was between P.W. 1 and Ramesh Bind. There was no reason for the accused persons to have intercepted Nirmal and Sintu, who though are related to



P.W. 1, but only distantly.

26. The enmity between the parties; the delay in lodging the written report; the *post-mortem* reports being contradictory in nature; the Doctor not being sure whether Nirmal Bind/one of the deceased was hit by a gun-shot; and nobody having seen the occurrence, makes the prosecution story very doubtful.

27. It appears that because of an earlier incident of Ramesh having stopped P.W. 1 from continuing with his earth filling on his land, the family members and other acquaintances of Ramesh Bind were made accused in this case. If at all there was any intention to avenge the enmity, both P.Ws. 1 and 2 were present in the house. We have already noted that Ramesh Bind, the main architect of the so-called offence, is a neighbour of P.Ws. 1 and 2.

28. The prosecution, thus, has failed to prove the case beyond all reasonable doubts.

29. That apart, we have also found that the



inquest and the *post-mortem* examination were conducted before the FIR was lodged. P.W. 1, thus, had ample time to fabricate the case and name the appellants and others for the offence.

30. Thus, giving benefit of doubt to the appellants, we set aside their conviction and sentence, referred to above, and acquit them of all the charges levelled against them.

31. The appeal stands allowed.

32. Since both the appellants, viz., Manoj Bind @ Manoj Kumar and Rameshwar Bind @ Ram Ishwar Bind are in jail, they are directed to be released forthwith, if they are not detained or wanted in any other case.

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

34. The records of the case be returned to the Trial Court forthwith.



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

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
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