

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1261 of 2017

Arising Out of PS. Case No.-9 Year-2013 Thana- BARGAINIA District- Sitamarhi

Raj Kishore Singh, Son of Late Ramdev Kunwar, Resident of village-
Hasima, P.S.- Bairgania, District- Sitamarhi

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 1040 of 2017

Arising Out of PS. Case No.-9 Year-2013 Thana- BARGAINIA District- Sitamarhi

Jhunnu Singh, Son of Sri Lal Babu Singh, R/o Village- Hasima, P.S.-
Bairgania, Distt.- Sitramarhi.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 1066 of 2017

Arising Out of PS. Case No.-9 Year-2013 Thana- BARGAINIA District- Sitamarhi

Arun Singh, S/o Sri Lal Babu Singh, resident of village- Hasima, P.S.-
Bairgania, Distt.- Sitamarhi.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 1136 of 2017

Arising Out of PS. Case No.-9 Year-2013 Thana- BARGAINIA District- Sitamarhi

Sanjay Singh @ Sanjay Kumar, Son of Jamuna Singh, R/o Village- Hasima,
P.S.- Bairgania, District- Sitamarhi.

... .. Appellant/s

Versus

The State of Bihar



... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 1143 of 2017

Arising Out of PS. Case No.-9 Year-2013 Thana- BARGAINIA District- Sitamarhi

Shyam Kishore Singh, Son of Bikhari Singh, Resident of Village Hasima, P.S.
Bairgania, District- Sitamarhi.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 1261 of 2017)
For the Appellant/s : Mr. Jagjit Roshan, Advocate
Mr. Om Prakash Singh, Advocate
Mr. Rajeev Ranjan, Advocates
Mr. Apul, Advocate
For the Respondent/s : Mr. Ajay Mishra, APP
(In CRIMINAL APPEAL (DB) No. 1040 of 2017)
For the Appellant/s : Mr. Virendra Kuar, Advocate
For the Respondent/s : Mr. Ajay Mishra, APP
(In CRIMINAL APPEAL (DB) No. 1066 of 2017)
For the Appellant/s : Mr. Rajesh Kumar Singh, Sr. Advocate
Mr. Virendra Kuar, Advocate
For the Respondent/s : Mr. Ajay Mishra, APP
(In CRIMINAL APPEAL (DB) No. 1136 of 2017)
For the Appellant/s : Mr. Abhay Kumar, Advocate
For the Respondent/s : Mr. Ajay Mishra, APP
(In CRIMINAL APPEAL (DB) No. 1143 of 2017)
For the Appellant/s : Mr. Shailendra Kumar Singh, Advocate
For the Respondent/s : 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 : 04-07-2024

All the five appeals have been heard together
and are being disposed off by this common judgment.

2. We have heard Sri Rajesh Kumar Singh,



learned Senior Advocate, Mr. Shailendra Singh, Mr. Jagjit Roshan and Mr. Virendra Kuar, learned Advocates for the appellants. The State has been represented by Mr. Ajay Mishra, learned APP in all the appeals.

3. The appellants have been convicted under Sections 147, 148, 448/149 and 302/149 of the Indian Penal Code and in addition to that, appellant/ Raj Kishore Singh has been further convicted under Section 302 of the IPC *vide* judgment dated 25.07.2017 passed by learned Additional Sessions Judge-I, Sitamarhi in Sessions Trial No. 258 of 2013+ 185 of 2014/ 231 of 2013. By order dated 02.08.2017, they have been sentenced to undergo imprisonment for life, to pay a fine of Rs. 50,000/- and in default of payment of fine to further suffer SI for six months under Section 302/149 of the IPC; RI for one year each under Section 448/149; RI for two years each under Section 147 of the IPC; RI for two years each under Section 148 IPC. Appellant/ Raj Kishore Singh has further been sentenced to



undergo imprisonment for life, to pay a fine of 50,000/- and in default of payment of fine to further suffer SI for six months under Section 302 of the IPC.

4. One Lal Babu Singh is said to have been killed at the hands of the appellants. The occurrence took place on 04.02.2013 at about 8:00 AM when the appellants had come to the house of the informant (PW-4) and on the orders of appellant/ Shyam Kishore Singh, appellant/ Raj Kishore Singh is said to have given an iron rod blow on the head of the deceased leading to his death in a short while after the occurrence.

5. The FIR has been lodged by Shivji Singh (PW-4) who is the brother of the deceased. He has alleged that on the previous day i.e. on 03.02.2013, three of the appellants, viz. Raj Kishore Singh, Arun Singh and Sanjay Singh came to his kiosk situated outside his hut and ransacked it. Appellant/ Arun Singh tried to drag out his wife/ Prem Sundar Devi (PW-2) but in the meantime his sister-in-law, Sumitra Devi (PW-3)



also arrived. The matter ended there. The appellants thereafter are said to have come again to the house of PW-4 on 04.02.2013 at about 8:00 AM and started abusing the prosecution side. This was protested by Lal Babu Singh (deceased). He was then assaulted by appellant/ Raj Kishore Singh on his head, as a result of which he fell down on the ground. In the meantime, appellant/ Shyam Kishore Singh also reached the house of the informant and exhorted the other appellants to kill Lal Babu Singh. On his exhortation, the four appellants, viz., Raj Kishore Singh, Arun Singh, Sanjay Singh and he himself started assaulting his brother/ Lal Babu Singh as a result of which he was seriously injured. The hut of PW-4 was also damaged. A makeshift toilet in the house was also destroyed. Thereafter, on the arrival of the police party, Lal Babu Singh was taken to Primary Health Centre, Bairstania on the police jeep where at the time of lodging of the *fardbeyan* by PW-4, he was undergoing treatment in an unconscious state.



6. On the basis of the aforementioned *fardebayan* statement, Bairstania P.S. Case No. 9 of 2013 dated 04.02.2013 was initially registered for investigation for offences under Sections 448, 341, 323, 379, 307 and 34 of the IPC.

7. Lal Babu Singh died on 04.02.2013 only.

8. According to the records of this case, he was referred from Primary Health Centre, Bairstania to Sadar Hospital, Sitamarhi, but on the way, he died.

9. The postmortem examination on the dead body was conducted on 04.02.2013 by Dr. Shakil Anjoom (PW-9). The postmortem report reveals that the deceased had suffered three injuries on his person; out of which, one was a swelling on the right front parietal region of the skull. The other two were abrasions on forehead and on the back of left foot. The internal findings during the postmortem examination further revealed that the right part of the frontal bone and parietal bone were fractured. The cranial cavity was full



of blood. The brain matter was found to be lacerated. No other injury was found on the person of the deceased apart from what has been stated above. The cause of death was opined to be haemorrhage and shock leading to cardio-respiratory failure and death. The injuries were caused by hard and blunt substance. The time of death was fixed at 12 hours from the time of postmortem examination. The two abrasions on the forehead and the back of the left foot were found to be simple in nature. The impact of the assault on head was felt on the skull bone which was found to be fractured. The postmortem report and the evidence of PW-9 confirm that the death ensued because of the assault perpetrated upon the deceased.

10. What is relevant to state here is that only one injury proved to be fatal which was on the head and which specifically has been attributed to appellant/ Raj Kishore Singh.

11. During the course of trial, PW-4 talked



about the reason for the fracas. In his deposition, he has named five persons, viz., the appellants and one Jhunnu Singh, whose name did not find mention in the array of the accused persons in the FIR.

12. In this context, we must state that shortly after the lodging of the FIR and on PW-4 realising that the name of Jhunnu Singh did not find mention in the column of accused persons, even though he had named him, he preferred an application before the Senior Superintendent of Police for addition of his name. However, as the investigation progressed, charge-sheet was submitted against the four appellants only.

13. Thereafter, supplementary charge-sheet was submitted against appellant/ Jhunnu Singh, which case was separately sent for Trial vide Sessions Trial No. 185 of 2014. The Trial of Jhunnu Singh was thereafter amalgamated with the original Trial No. 258 of 2013.

14. Getting back to the narrative of PW-4, we have further noticed that the narration before the Trial



Court was with respect to the occurrence which took place on 04.02.2013. He has stated before the Trial Court that his house was ransacked; the toilet was destroyed and appellant/ Raj Kishore Singh gave an iron rod blow on the head of the deceased. He has further alleged that appellant/ Arun Singh also assaulted the deceased by means of *lathi*. When appellant/ Shyam Kishore Singh ordered to kill the deceased, then the other appellants assaulted the deceased by means of *lathi*. Appellant/ Jhunnu Singh is said to have given a *lathi* blow on the leg of the deceased. It was at that time that PW-4 called the police. The police party arrived and the injured/ deceased was taken on the police vehicle to Bairgania Hospital, from where he was referred to Sitamarhi. From Sitamarhi, the deceased was referred to Muzaffarpur but before reaching Muzaffarpur, he died on way.

15. Though in the *fardbeyan*, PW-4 had not stated about the cause of occurrence but during Trial, he



disclosed that he and his two brothers were given *Basgit Parcha* (*parcha* for homestead land) over which PW-4 and his two brothers had constructed their houses. Appellant/ Raj Kishore Singh had actually purchased that plot of land, which was settled with PW-4 and his two brothers and since he could not take possession of the land in question, he had, by a conveyance deed, transferred the land in favour of appellants/ Arun Singh, Sanjay Singh and Shyam Kishore Singh. The entire episode had taken place for the purposes of gaining possession over the land on which the hut of PW-4 was situated. In the process, the deceased was killed. He has further informed the Trial Court that the appellants/ Jhunnu Singh and Arun Singh are own brothers who are known to PW-4 from before. However, he expressed his ignorance about the exact measurement of land which was settled by the Government with the three brothers. At the time of occurrence, along with him, there were five to eight persons also present. He too was assaulted



when he raised protest against the appellants coming to his house and abusing the family members. He had shown to the police the destroyed articles in his house. When the deceased died, Nawal Singh (not examined), Sumitra Devi (PW-3), Prem Sundar Devi (PW-2), Chandrika Singh (PW-8), Birendra Singh @ Binod Singh (PW-5), Nirmala Devi (PW-7) and Tara Devi (PW-1) arrived. In order to get himself treated for the injury suffered by him, he had also gone to Bairgania Hospital at about 9:30 in the day. Arun Singh was also getting treated in the same hospital but he never met him. He has disclosed the fact that when he did not find the name of Jhunnu Singh in the column of the accused persons in the FIR, he informed the Superintendent of Police and thereafter Jhunnu Singh also was made an accused in this case. He has denied the suggestion to him that no such occurrence as reported by him ever took place. He also disputed the suggestion that neither he nor his two brothers were in possession of the land in



question or that they had deliberately captured the land and had erected a kiosk over the same.

16. The further suggestion that when their taking of the land was protested by appellant/ Arun Singh then Arun Singh was assaulted by the informant and his two brothers, as a result of which he was injured. He, however, has stated that with respect to an occurrence of an earlier date, appellant/ Arun Singh had filed a case against him.

17. From his deposition, two facts emerge specifically. The FIR initially was registered against four persons. The 5th accused/ appellant Jhunnu was arraigned later and that the first assault on the deceased on his head was made by appellant/ Raj Kishore Singh by an iron rod. The deceased was assaulted by other appellants also later. Though in the *fardbeyan*, the cause for the occurrence was not stated, for reasons which are inexplicable, but the same was disclosed before the Trial Court.



18. There is force in the submission of learned Advocates appearing for the appellants that major part of the accusation made by PW-4 could not be proved by the prosecution. They have said so on the strength of the postmortem report and the fact that no other person was injured or for that matter, there was no other injury report regarding any other person from the side of the prosecution. The postmortem report clearly spells out that the assault on head proved fatal. The other two injuries on the person of the deceased were only in the nature of abrasion, which were opined to be simple in nature.

19. Thus, the assertion of PW-4 that all the five appellants brutally assaulted the deceased stands belied.

20. There is yet another aspect of the matter which ought not to be lost sight of. According to PW-4, after the assault and the consequent death of the deceased, Tara Devi, Prem Sundar Devi, Sumitra Devi, Birendra Singh @ Binod Singh, Nirmala Devi and



Chandrika Singh had arrived. If PW-4 is to be believed then perhaps the aforementioned persons, who have been examined as PWs. 1, 2, 3 5, 7 and 8, had not seen the actual part of the assault. However, we have found from the deposition of the aforementioned witnesses that all of them have claimed to be the eye-witnesses to the assault on the deceased by Raj Kishore first and then by all other accused persons/ appellants.

21. Amarendra Kumar Jha, the Investigator (PW-10) had registered the FIR on the basis of the *fardbeyan* made by PW-4 (Exhibit-1/2). After taking over the investigation, he had visited the place of occurrence which fell in village Hasima under the territorial jurisdiction of Bairania Police Station. The actual assault had taken place in front of the house of PW-4 near which the potato field of PW-4 was situated. While the Investigator was still at the PO, the ASI of the police station informed him that the injured, who was taken to Bairania PHC and was referred to SKMCH, had



died on way and that his dead body has been brought to Sadar Hospital, Sitamarhi for postmortem examination. The inquest was prepared by some other police officer who has not been examined at the trial. Thereafter, the Investigator recorded the further statement of the informant and other witnesses, most of whom are the family members of PW-4 and have been examined at the Trial.

22. During his cross-examination, he has further told the Trial Court that he did not seize anything from the place of occurrence, perhaps because there was nothing available at the PO for him to seize. He did not even find trampling marks in the potato field which was situated contiguous to the exact place where the assault was reported to have taken place. Though he had examined other persons of the village also but he never entered their statements in the case diary. On being specifically asked, he has denied that Tara Devi (PW-1) had spoken about the manner of assault.



23. Similarly, Prem Sundar Devi (PW-2) and Sumitra Devi (PW-3) also had not spoken about the manner of occurrence. He, on looking at the police papers, had realized that he had not made any entry in the case diary regarding the ransacking of the hut or of the makeshift toilet. In fact, he even asserted before the Trial Court that PW- 4 (informant) had also not shown any broken articles or damaged things in his house. With respect to the identity of Birendra Singh @ Binod Singh (PW-5), the Investigator denied that he had told him that he has an alias name and that on *hulla* at the house of the deceased, he had gone there and had seen the assault.

24. Manju Devi (PW- 6), who is the daughter of the deceased though has supported the prosecution case in totality, but from the manner of her deposition, it appears that she would not have been a witness to the occurrence.

25. From the nature of her deposition, it



appears that she knew about the background facts, viz., Raj Kishore Singh having purchased the land in question and when he could not get the possession of the same, he re-conveyed it to the other appellants.

26. It further appears from the records and from the deposition of other witnesses that earlier the son of the deceased was killed. However, Manju Devi (PW-6) has categorically stated that no case with respect to the murder of her brother was lodged. She had told the Investigator that she had come to the house of her relative five days ago and, thereafter, she visited her father's house as it was situated close by. She had come in the morning of 04.02.2013 after hearing about the incident which had taken place in the evening of 03.02.2013. She was suggested that she had come to the house of the deceased later, but she denied and asserted that she had seen the assault.

27. With the evidence of PW-4 and his clear assertion that Tara Devi, Prem Sundar Devi Sumitra,



Devi, Birendra Singh, Nirmala Devi and Chandrika Singh had come to the PO after the occurrence, there is no difficulty for this Court to conclude that they had not seen the actual part of the assault. However, during the trial, all of them have in a consistent way spoken about the manner of occurrence which *prima facie* appears to be consistent with the prosecution case. All of them but have attributed the main role of assaulting the deceased on his head by an iron rod to appellant/Raj Kishore Singh. They have also repeated that the other appellants also had assaulted the deceased. All of them were in the know of the background enmity and the attempt of the appellants to take possession of the land in question.

28. Rita Kumari (PW-11) had submitted charge-sheet against appellant/Jhunnu Singh.

29. From a perusal of the evidence on record, it clearly comes to the fore that the appellants were not happy with the possession of PW-4 and his brothers of the land which originally was purchased by appellant/Raj



Kishore Singh and later was re-conveyed to the other appellants.

30. This fact, though the details have not been provided, appears to be correct for the reason that some of the appellants had come to the hut of PW-4 a night before the occurrence and had ransacked it. There could have been no other purpose of such visit to the house of PW- 4 except for either threatening PW-4 and his family members and coercing them to vacate the land or for forcibly taking possession of the land. No assault had taken place in the night of 03.02.2013.

31. How the appellants were pacified in the night, remains unknown.

32. If some of the appellants had come armed with *lathi* etc. and damaged the house and also took away valuables from the kiosk, the purpose obviously would have been either to threaten PW-4 or to take possession of the land. Precisely for this reason, the dispute continued and next day in the morning at about



8:00 AM, all of them again raided the house of PW-4.

33. We have taken note of these sequence of events only to assess whether the appellants had the common object of committing the murder of Lal Babu Singh.

34. We have not been able to find any element of this common object. None of the appellants were armed with any lethal weapons. No other member of the family of PW-4/informant was assaulted, which fact is self-evident as there is no injury report on record with respect to anyone of the persons of the prosecution side. There was only one fatal injury on the person of the deceased. Two other injuries were in the nature of abrasion. The IO never found any damaged articles in the house. He did not notice any evidence which could support the accusation of ransacking of the house and the destruction of the toilet.

35. All these suggest that perhaps the appellants had come to tell PW-4 that the land in



question is the land which has been purchased by Raj Kishore Singh and then later sold to the other appellants and that PW- 4 and his two brothers ought to vacate it.

36. Even though there is no documentary proof of the initial purchase and later re-conveyance of the land in question but from the evidence on record these facts cannot be disputed. The assault on Lal Babu Singh specifically may not have been intended. Anybody who would have made a loud protest, would have been assaulted. Lal Babu Singh (deceased) could not have been the sole target only for the reason that he was elder to PW- 4. PW-4 equally could have been a target. He too was in the line of vision of the appellants. Had there been any common object of causing such bodily harm to PW-4 or his two brothers or other family members, it was PW-4 who first met the appellants and he could be the target.

37. The nature of evidence collected through the mouth of witnesses do not clearly suggest that there



was a common object of killing the deceased. There could have been the common object of intimidating PW-4 and his family members.

38. For the aforesaid reason, we are of the view that, perhaps the common object was existed with respect to offences under Sections 448 and 148 of the IPC. When the appellants came to the house of PW-4, it was not for any negotiation. There could be only two purposes, *viz.*, to either secure possession of the land by dispossessing PW-4 and his family members or of intimidating the prosecution side to vacate the land voluntarily.

39. Under such circumstances, it would be reading more into the evidence to conclude that all the appellants had the common object of killing anyone of the family members of PW-4 who would protest against the dispossession or taking over of the land. The story of all the appellants having assaulted the deceased brutally, as we have already noted, is not borne out by the



records of this case.

40. It is really surprising that nobody except Lal Babu was injured. Unfortunately, Lal Babu died. The medical evidence clearly suggests that there was one blow on his head which proved fatal. There is almost total consistency of the witnesses in attributing the first attack on head of the deceased by appellant/Raj Kishore Singh.

41. Did Raj Kishore intend to kill Lal Babu?

42. It does not appear to do so.

43. There was no repetition of blows. There was no extreme depravity reflected in the act of the accused persons/appellants.

44. The allegation of exhortation by appellant/Shyam Kishore Singh clearly appears to be an exaggeration. Had the other appellants abided by such exhortation of appellant/Shyam Kishore Singh, they would not have stopped short of giving only one *lathi* blow on the deceased. The other injuries on his person,



viz., abrasion on forehead and back of the left foot could have been caused either out of fall or of the deceased having been caught in the melee where many persons had adopted an aggressive posture.

45. With the absence of any evidence of anyone of the appellants wielding any firearm, we are conclusively of the view that the common object was definitely not of causing any harm to the extent of killing anyone of the members of the prosecution party.

46. It is quite fortuitous that one iron rod blow on the head of the deceased proved fatal. The impact of the assault actually had damaged the skull. However, there was no external manifestation of the same. We say so, precisely for the reasons that only one swelling was detected in the external findings in the postmortem examination. There was no bleeding or laceration on head.

47. The death, therefore, appears to be because of the impact of the iron rod blow which caused



internal injuries because of the skull bone being fractured.

48. There is no gainsaying that the appellants had come to the house of PW-4. Whether they had come for the purposes of evicting PW-4 and his family members or for taking possession of the land in question, remains under cover. The more likelihood is of the appellants having come to the house of PW-4 to let him know that the land in question has already been purchased by the appellants and, therefore, it should be vacated. In the process and because of the loud protest by the deceased, he was assaulted and he ultimately lost his life.

49. In this fact scenario, it would only be appropriate for us to see the accusation against the appellants individually and not as members of mob with common object of killing the deceased. All the appellants are alleged to have assaulted the deceased though there is no reflection of it in the medical evidence. That the



deceased would have been assaulted by more than one person, is beyond doubt. The assault by others but did not cause any major injury on the deceased.

50. We, thus, conclude that all the appellants, except appellant/Raj Kishore Singh, are guilty of the offences under Sections 323, 148 and 448 read with Section 149 of the IPC.

51. Appellant/Raj Kishore Singh may or may not have intended to cause the death of the deceased but he certainly had the knowledge that an attack by an iron rod on the head of the deceased might cause his death. This, therefore, brings him within the mischief of Section 304 Part II.

52. We, thus, alter the conviction of the appellants/ Jhunnu Singh, Arun Singh, Sanjay Singh and Shyam Kishore Singh into one under Sections 148, 323 and 448 read with Section 149 of the IPC.

53. The conviction of appellant/Raj Kishore Singh is converted into one under Sections 148, 323,



448/149 and 304 Part II of the IPC.

54. The records reveal that all the appellants except appellant/Raj Kishore Singh are on bail, but they had remained for sometime in jail. Their sentences for all the offences, viz., 148, 323 and 448 read with 149 of the IPC is reduced to the period of custody which they have already undergone during the period of investigation and Trial.

55. Appellant/Raj Kishore Singh is in custody since 05.04.2013 and thereby has spent for more than eleven years. This period of custody is sufficient to meet the ends of justice against the offences under Sections 148, 323, 448 and 304 Part II of the IPC.

56. Appellant/Raj Kishore Singh is directed to be released from jail forthwith if not wanted or detained in any other case.

57. The rest of the appellants, viz., Jhunnu Singh, Arun Singh, Sanjay Singh and Shyam Kishore Singh are discharged of their liabilities under their bail



bonds.

58. The appeals stand partially allowed.

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

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

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

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

Rajesh/Manoj

AFR/NAFR	NAFR
CAV DATE	NA
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