

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.590 of 2018

Arising Out of PS. Case No.-249 Year-2015 Thana- BHABHUA District- Kaimur (Bhabua)

Ajay Singh Son of Manu Singh @ Mannu Singh, Resident of Village-
Nawagaon, P.S.- Bhabhua, District- Kaimur.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Baxi S.R.P. Sinha, Sr. Advocate Mr. Raushan Abhishek, Advocate Mr. Saurav Kr. Suman, Advocate Mr. Braj Bhushan Mishra, Advocate Mr. Prem Ranjan Kumar, Advocate
For the State	:	Mr. Abhimanyu Sharma, A.P.P. Mr. Ram Nath Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
and
HONOURABLE MR. JUSTICE DR. ANSHUMAN
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)

Date : 12-12-2025

This Criminal Appeal has been filed by the appellant Ajay Singh challenging the judgment of conviction dated 16.04.2018 and the order of sentence dated 19.04.2018 passed by the learned Sessions Judge, Kaimur at Bhabhua in Sessions Trial No. 280 of 2015, arising out of Nawanagar Police Station Case No. 85 of 2015. By the impugned judgment, the appellant has been convicted under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life along with a fine of Rs. 20,000, and in default of payment of fine, to suffer



rigorous imprisonment for a further period of three months.

2. The prosecution case is based on the fardbayan of the informant Buchun Singh recorded on 05.05.2015 at about 8:00 PM at Bhagwanpur, District Kaimur. According to the informant, on the evening of the occurrence, he along with the deceased, who was a retired Army personnel, was sitting near the Hanuman Temple when the appellant Ajay Singh arrived and after a verbal altercation, allegedly caught hold of the deceased and inflicted multiple injuries with a sharp cutting weapon on his abdomen, back and chest. The deceased fell on the spot and was immediately taken for medical treatment but succumbed to the injuries.

3. On the basis of the said fardbayan, Nawanagar P.S. Case No. 85 of 2015 was instituted under Section 302 of the Indian Penal Code and investigation was taken up. After completion of investigation, charge-sheet was submitted against the appellant. The case was committed to the Court of Sessions, charge under Section 302 IPC was framed, and the appellant pleaded not guilty and claimed trial.

4. During trial, the prosecution examined ten witnesses including eyewitnesses and the doctor who conducted the post-mortem examination. The prosecution also exhibited the



fardbayan, inquest report, and post-mortem report. The appellant was examined under Section 313 of the Code of Criminal Procedure, in which he denied the allegations and stated that the prosecution witnesses had falsely deposed against him. No defence witness was examined on his behalf.

5. Upon consideration of the evidence on record, the learned Sessions Judge recorded a finding of guilt and convicted the appellant for the offence punishable under Section 302 IPC and awarded the aforesaid sentence. Assailing the conviction and sentence, the present Criminal Appeal has been preferred.

6. The prosecution examined ten witnesses in support of the charge against the appellant. Out of them, PW-1 to PW-4 were cited as eyewitnesses to the occurrence. However, all four turned hostile in the course of trial and did not support the prosecution version. PW-5 also did not support the prosecution case. Consequently, the conviction recorded by the trial court rests substantially on the testimony of PW-6, the informant, along with the corroborative value of medical and official evidence. The depositions are examined in detail as follows.

7. PW-1 Bhim Paswan, who was projected as an eyewitness to the incident, did not support the prosecution case when examined before the trial court. He denied having



witnessed the occurrence and stated that he could not identify the assailant. He was declared hostile at the request of the prosecution and cross-examined, but no material admission could be elicited to suggest that he had seen the appellant assaulting the deceased. His testimony therefore does not lend any support to the prosecution case and does not advance the charge alleged in the fardbayan. As an eyewitness turning hostile, his evidence weakens the prosecution narrative, and his hostility requires the court to scrutinize remaining evidence with caution.

8. PW-2, who was also projected as a direct eyewitness present near the temple at the relevant time, similarly did not support the prosecution case. He denied the prosecution's suggestion that he had seen the appellant assault the deceased. He was also subjected to cross-examination by the prosecution under Section 154 of the Indian Evidence Act, but no part of his former police statement was admitted, nor did he confirm the version contained in the fardbayan. His cross-examination yielded no material that could be used for corroboration. PW-2's hostility affects the reliability of the prosecution's claim that multiple persons had witnessed the assault.



9. PW-3 and PW-4 were also examined as eyewitnesses. Both turned hostile. Both denied having seen the incident and did not support any part of the prosecution narrative. The prosecution cross-examined them, but nothing beneficial to the prosecution case emerged. PW-3 denied that he had told the police that the appellant was the assailant. PW-4 similarly denied the earlier statement attributed to him. Their collective hostility results in the collapse of the prosecution claim that the occurrence was witnessed by more than one person from close quarters.

10. PW-5, though present in the list of eyewitnesses, stated that she had not seen the assault and was unable to identify the assailant. She denied knowledge of the details of the incident. She did not support any aspect of the prosecution version relating to the assault by the appellant. Her testimony therefore does not form any basis for corroboration.

11. PW-6 Buchun Singh, the informant and the only witness who supported the prosecution version in material particulars, stated that on 05.05.2015 at about 8:00 PM, he, along with the deceased was sitting near the Hanuman Temple when the appellant arrived and an exchange of words took place. According to him, the appellant caught hold of the



deceased and assaulted him repeatedly with a sharp cutting weapon on his abdomen, chest and back, causing him to fall to the ground. PW-6 identified the appellant in court. He stated that the deceased was taken for medical help but succumbed to the injuries. In cross-examination, PW-6 admitted that the incident was sudden, following a verbal altercation. He denied the suggestion that he had not seen the occurrence. The defence sought to challenge his credibility by suggesting prior rivalry and by pointing out that the other eyewitnesses did not support his version. PW-6 denied allegations of tutoring. His evidence stands alone as the primary foundation of the prosecution case. However, it requires careful scrutiny, since the conviction based solely on a single witness, particularly when all other eyewitnesses have resiled, must be accepted only if his testimony is wholly reliable, consistent and natural.

12. PW-7 Subedar Rajesh Kumar Singh supported only formal aspects and proved procedural steps. He was not an eyewitness and his deposition remained limited to seizure and forwarding processes. Nothing material was elicited during cross-examination.

13. PW-8 Dr. Kameshwar Nath Tiwary conducted the post-mortem examination and found multiple incised wounds on



the abdomen, chest and back of the deceased. He opined that the injuries were ante-mortem, caused by a sharp-edged weapon, and were sufficient in the ordinary course of nature to cause death. The medical evidence corroborates PW-6's version regarding the nature of the weapon and the severity of attack. There was no challenge by the defence regarding the timing, nature or cause of death, nor was any alternative explanation offered. His evidence is consistent, reliable and independent.

14. PW-9 and PW-10 are the Investigating Officers. They narrated the steps undertaken during the investigation, including preparation of the inquest report, site inspection, collection of statements under Section 161 of the Code of Criminal Procedure, forwarding the body for post-mortem and filing of the charge-sheet. Their depositions remained unshaken during cross-examination. The defence did not demonstrate any material irregularity in investigation or any contradiction affecting the core of the case. However, their evidence serves only as corroborative support and cannot replace substantive eyewitness testimony.

15. The accused was examined under Section 313 of the Code of Criminal Procedure, where the incriminating circumstances were put to him. He denied the prosecution



version and stated that he had been falsely implicated. He did not provide any explanation regarding his presence at the place of occurrence or the circumstances leading to the death of the deceased. No defence witness was examined.

16. On a cumulative evaluation, the prosecution evidence indicates that the four eyewitnesses originally relied upon by the prosecution turned hostile, and PW-5 also did not support the prosecution story. The case therefore rests substantially on the sole testimony of PW-6. The law is well settled that a conviction can be sustained on the testimony of a single witness if the court finds it to be wholly reliable and trustworthy, but where all independent witnesses have turned hostile, the testimony of the sole witness must be scrutinized with utmost caution. The hostility of PW-1 to PW-4 materially weakens the prosecution claim of multiple eyewitness support. In such circumstances, the court must assess whether PW-6's testimony is free from exaggeration, consistent with the medical version and not contradicted by circumstances on record, and whether the occurrence was a result of sudden quarrel without premeditation so as to attract Exception 4 to Section 300 IPC.

17. After registration of Nawanagar Police Station Case No. 85 of 2015 on the basis of the fardbayan lodged by



PW-6, investigation commenced and upon completion of investigation, the Investigating Officer submitted charge-sheet against the appellant under Section 302 of the Indian Penal Code. The learned Chief Judicial Magistrate took cognizance of the offence and after compliance of Section 207 of the Code of Criminal Procedure, committed the case to the Court of Sessions, Kaimur at Bhabhua for trial.

18. The case was registered as Sessions Trial No. 280 of 2015. The learned Sessions Judge framed charge under Section 302 IPC against the appellant, to which he pleaded not guilty and claimed trial. In support of the case, the prosecution examined ten witnesses, including PW-6, the informant and claimed eyewitness, PW-8, the doctor who proved the post-mortem report, and PW-9 and PW-10, the investigating officers. The accused was examined under Section 313 of the Code of Criminal Procedure, wherein he denied the allegations and claimed false implication. No evidence was adduced on behalf of the defence.

19. Upon consideration of the evidence, the learned Sessions Judge found that the prosecution had succeeded in establishing the guilt of the appellant beyond reasonable doubt. The trial court observed that the testimony of PW-6 was



consistent, natural and trustworthy. The trial court held that although PW-1 to PW-4 had turned hostile and PW-5 also did not support the prosecution, the testimony of PW-6 remained reliable and did not suffer from material infirmities. The trial court placed reliance on the corroboration provided by the medical evidence of PW-8, who confirmed that the injuries sustained by the deceased were caused by a sharp-edged weapon and were sufficient in the ordinary course of nature to cause death. The trial court held that the defence had failed to bring out any substantial contradictions during cross-examination that could render PW-6 unreliable. The trial court further noted that the appellant had offered no explanation when examined under Section 313 CrPC regarding the incriminating circumstances appearing against him.

20. The learned Sessions Judge therefore convicted the appellant for the offence punishable under Section 302 of the Indian Penal Code by judgment dated 16 April 2018 and sentenced him to undergo imprisonment for life with fine of Rs. 20,000 by order dated 19.04.2018.

21. Aggrieved by the judgment of conviction and the order of sentence, the present Criminal Appeal has been preferred before this Court.



22. From the record and the arguments advanced, the following points arise for determination:

- a Whether the findings recorded by the trial court suffer from misappreciation of evidence, perversity, or illegality, particularly in view of the fact that PW-1 to PW-4, all projected eyewitnesses, turned hostile and did not support the prosecution case.
- b Whether the conviction of the appellant based substantially upon the sole testimony of PW-6, in the absence of corroboration by other eyewitnesses, can be sustained in law, and whether his testimony is wholly reliable.
- c Whether the circumstances established on record indicate that the occurrence was a result of a sudden altercation without premeditation, so as to attract Exception 4 to Section 300 IPC and reduce the offence from Section 302 IPC to culpable homicide not amounting to murder.
- d Whether the sentence imposed by the learned trial court requires interference.

23. Learned counsel appearing on behalf of the appellant submitted that the judgment of conviction and the order of sentence passed by the learned Sessions Judge are unsustainable in law and on facts, and that the same have resulted in grave miscarriage of justice. It was contended that the entire prosecution case suffers from material infirmities, and that the trial court has failed to appreciate the evidence in its



correct perspective. Learned counsel submitted that PW-1, PW-2, PW-3 and PW-4, who were projected as eyewitnesses by the prosecution, have all turned hostile during trial and have categorically denied witnessing the occurrence, thereby demolishing the prosecution version that several persons had seen the incident. It was urged that PW-5 also did not support the prosecution case and denied having seen the assault. In such circumstances, the prosecution story is left solely dependent upon the testimony of PW-6, the informant, who is an interested witness.

24. It was further submitted that the conviction of the appellant based exclusively on the testimony of PW-6, in the absence of corroboration from any independent eyewitness, is unsafe and contrary to settled principles of law. Learned counsel argued that the testimony of PW-6 suffers from material contradictions and improvements, and that his presence at the place of occurrence is doubtful. It was submitted that PW-6 himself admitted that the incident arose suddenly after an exchange of words, without any prior enmity or motive, and therefore the case at best falls under Exception 4 to Section 300 IPC, attracting conviction under Section 304 Part I or II and not Section 302 IPC.



25. Learned counsel further submitted that the medical evidence does not conclusively establish intention to cause death and that the prosecution has failed to prove the chain of circumstances beyond reasonable doubt. It was also argued that in the absence of any recovery of weapon from the appellant and in view of the failure of independent witnesses to support the prosecution case, the benefit of doubt ought to be given to the appellant. It was therefore urged that the conviction recorded by the learned trial court deserves to be set aside and the appellant entitled to acquittal, or in the alternative, the offence be converted to culpable homicide not amounting to murder and the sentence accordingly modified.

26. On the other hand, learned counsel appearing on behalf of the State supported the judgment of conviction and submitted that the prosecution has succeeded in proving the charge against the appellant beyond reasonable doubt. It was contended that the testimony of PW-6 is natural, consistent and trustworthy, and stands corroborated by the medical evidence of PW-8 and the steps taken during investigation by PW-9 and PW-10. It was submitted that the defence has not been able to point out any material contradiction or inconsistency in the evidence of PW-6, and that merely because other eyewitnesses turned



hostile, the evidence of PW-6 cannot be discarded if it inspires confidence. Learned counsel argued that hostility of witnesses is a common circumstance in criminal trials, and that their evidence can be relied upon to the extent it supports the prosecution.

27. It was further submitted that the injuries inflicted on the deceased were on vital parts of the body, multiple in number, inflicted by a sharp-edged weapon, and were sufficient in the ordinary course of nature to cause death. Therefore, the act of the appellant falls squarely within the ambit of murder and does not attract Exception 4 to Section 300 IPC. It was argued that the sentence imposed by the learned trial court is justified and calls for no interference.

28. On perusal of the Lower Court Record, it appears that the learned Trial Judge framed charge against the appellant, namely, Ajay Singh along with one Manu Singh, Ramesh Kumar Singh, Sanjay Singh and Shivji Singh under Section 302/34 of the I.P.C. Again on the same day, separate charge was framed against the appellant under Section 302 of the I.P.C. Therefore, at the time of framing of charge, the learned Trial Judge was not prima-facie satisfied as to whether murder of Bigau Singh was committed by four accused persons in



furtherance of their common intention or if the alleged offence was a solitary act on the part of the appellant alone. The impugned judgment shows that except the appellant, all other accused persons were acquitted of the charge under Section 302/34 of the I.P.C. Therefore, it appears to the learned Trial Judge that the prosecution failed to establish common intention of the accused persons, who were acquitted upon trial alongwith the appellant and the offence was committed alone by the appellant.

29. We have already stated that P.W.-1, P.W.-2, P.W.-3, P.W.-4 & P.W.-5 were declared hostile by the prosecution. P.W.-6 Buchun Singh was the informant of this case.

30. From the evidence of the hostile witnesses as well as the informant, the alleged offence was committed on 05.05.2015 at about 08:00 P.M. in front of a Hanuman Temple of the village. As per the evidence of the informant as well as the statement made in the Fardbeyan, on the date and time of occurrence Bigau Singh came out of the temple performing 'Aarti' of the Deity. At the time of performance of Aarti, one Bhim Paswan and Kedar Paswan were present. There was a cot lying in front of temple, Bigau sat on the cot and the informant was standing by his side. At that point of time appellant and



accused Shivji Singh came there and started abusing Bigau Singh with filthy language. The informant rebutted them for abusing Bigau Singh. At this, Ajay Singh brandished a knife towards the informant and threatened to kill him. The informant fled toward the temple. Shivji Singh caught hold of Bigau Singh by one hand and pressed his mouth by another hand. He instructed Ajay to assault the deceased. Seeing this, the informant, Bhim Paswan, Kedar Paswan, Kheru Paswan, Sitaram Paswan and Prem Shila Devi raised hue and cry. Other villagers, namely, Manu Singh, Rakesh Singh, Sanjay Singh were also standing. On being instructed by Shivji, Ajay gave as many as eight blows with the help of knife all over his body then they fled away. The informant and other villagers immediately took Bigau to District Hospital at Bhabhua, the Medical Officer examined and declared him dead, then they brought the dead body of Bigau and had kept the body at the place of occurrence.

31. Subsequently, the police officer came to the place of occurrence and recorded his statement. The said statement was treated as the F.I.R. and marked Exhibit-1 during Trial. Police prepared inquest report over the dead body of the deceased. The informant and one Sita Ram Sinha put their



signature on the inquest report. His signature on the inquest report is marked as Exhibit-1/1.

32. It is contended by the learned Advocate on behalf of the appellant that as per the statement of the informant, the deceased was alive when he was taken to Bhabhua district hospital. It appears from the evidence of other witnesses that Bhabhua Police Station is situated adjacent to the hospital on common boundary wall. He raised a question, as to why no report was lodged immediately after the victim was declared dead by the Medical Officer.

33. The learned Advocate for the appellant has raised a doubt over the prosecution case containing, inter-alia, that when an injured is brought to the hospital and is found dead otherwise than in normal circumstances, dead body is not released by the hospital authority before the postmortem examination. It is the duty of the medical officer, who found him dead after medical examination to inform the police authorities immediate as to the death of the the patient so that police can take up appropriate action by commencing investigation.

34. In the instant case, prosecution failed to give any explanation as to how the dead body of Bigau Singh was handed



over to the informant and others after the Medical Officer declared him dead.

35. Consequently, the learned Advocate for the appellant has raised a pertinent question that there was chance of the witnesses on behalf of the prosecution to inflict postmortem injuries on the dead body of Bigau Singh.

36. The learned Advocate for the appellant submits that the prosecution case suffers from a number of infirmities. According to the prosecution, the incident was firstly informed at the nearest outpost and the police officer attached to the outpost recorded the fact in the diary. The said General Diary Entry (सन्हा) was not produced during trial.

37. The name of Shivji Singh under whose instruction, the deceased was reportedly assaulted was not named in the F.I.R.. Therefore, it is contended on behalf of the appellant that the informant manufactured and concocted a false story and tried to implicate the accused Shivji Singh in the instant case. He also draws our attention to the F.I.R. where he stated that Ajay Singh, Manu Singh, Ramesh Singh and Sanjay Singh committed murder of Bigau Singh assaulting him with the help of his niece. Admittedly, involvement of Manu Singh, Ramesh Singh and Sanjay Singh was not proved during trial and



they were acquitted. No appeal was preferred by the State against the impugned judgment.

38. Under such circumstances, the present appellant ought to have been acquitted by the Trial Court.

39. In support of his contention, the learned Advocate for the appellant refers to a decision of the Hon'ble Supreme Court in the case of *Javed Shaukat Ali Qureshi Vs. State of Gujarat*, reported in **2023INSC 829**.

40. After appreciation of evidence, the Hon'ble Supreme Court held in the above-mentioned decision in paragraph No.15 :-

“15. When there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role, the Court cannot convict one accused and acquit the other. In such a case, the cases of both the accused will be governed by the principle of parity. This principle means that the Criminal Court should decide like cases alike, and in such cases, the Court cannot make a distinction between the two accused, which will amount to discrimination.”

41. When the appellant and other four accused persons were charged under Section 302/34 of the I.P.C., and other four accused persons were acquitted by the Trial Court



based on the same evidence, the appellant cannot be held guilty.

42. Accordingly, the appeal succeeds and the judgment of conviction dated 16.04.2018 and the order of sentence dated 19.04.2018 passed by the learned Sessions Judge, Kaimur at Bhabhua in Sessions Trial No. 280 of 2015, arising out of Nawanagar Police Station Case No. 85 of 2015, is set aside.

43. The appellant, accused No.1-Ajay Singh is acquitted of the offences alleged against him, under Section 302 of the I.P.C. Accordingly, the accused be released at once.

(Bibek Chaudhuri, J)

Dr. Anshuman, J : I agree.

(Dr. Anshuman, J)

mdrashid/-

AFR/NAFR	NAFR
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