

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.512 of 2018

Arising Out of PS. Case No.-124 Year-2014 Thana- RIVILGANJ District- Saran

Ganga Sagar Giri S/o Late Hari Shankar Giri, R/o Vill.- Chain Chapra, Sitab
Diyara, P.S.- Revelganj, District- Saran at Chapra.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Dilip Kumar Tandon, Advocate Mr. Prateek Tandon, Advocate Mr. Rohit Ranjan, Advocate
For the State	:	Mr. Sujit Kumar Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 10-04-2025

The present appeal has been filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as 'Code'), wherein the appellant has challenged the judgment of conviction dated 08.02.2018 and order of sentence dated 12.02.2018 passed by learned IXth Additional Sessions Judge, Saran at Chapra in Sessions Trial 575 of 2015, arising out of Riwilganj P.S. Case No. 124 of 2014, whereby the concerned Trial Court has convicted the present appellant for commission of the offences punishable under Section 302 of Indian Penal Code and 27 of the Arms Act and has sentenced him to undergo rigorous



imprisonment for life and a fine of Rs. 10,000/- for the offence under Section 302 of Indian Penal Code and imprisonment for 3 years and fine of Rs. 5,000/- for offence punishable under Section 27 of the Arms Act. Both the sentences have been directed to run concurrently and, in default of payment of fine, to undergo further imprisonment for six months and two months respectively.

FACTUAL MATRIX:-

2. The prosecution story, in a nutshell, is as under:-

2.1. The informant Pankaj Kumar Singh gave his *fardbeyan* to S.I. Sahid Hussain, S.H.O. Riwilganj P.S. on 24.10.2014 at 05:00 a.m. at Gariba Tola Dhala stating therein that, on 23.10.2014, when his uncle Harendra Singh didn't return to his house till 11:00 p.m, he along with his father Shailendra Singh and grandfather Rameshwar Singh went in search of him and, in course of searching, when they reached near Aalekh Tola Bazar Bridge (Garib Tola Dhala) at about 11:30 p.m., they saw that his uncle and 6-7 persons were gambling on the bridge. Then, they told Harendra Singh to go home and he got ready to go home. In the meantime, Ganga Sagar Giri, who was also gambling there, restrained him and pressurized him to continue the gambling. At this, his uncle told him that he has to go to his home and that he shall not further gamble but Ganga Sagar Giri was restraining him.



On this issue, there was a scuffle between them. In the meantime, Ganga Sagar Giri took out country-made *katta* from his waist and opened fire on his uncle. The bullet hit the ribcage (*panjar*) of his uncle. He got injured and fell down on the earth. After that, Ganga Sagar Giri absconded from there. He further stated that when they were taking away his uncle to the Hospital and when they reached near Athgama Dhuri Tola, his uncle died. Then, they brought his uncle to the house and informed Chand Diyar Police Chowki (U.P. Police). Chand Diyar Police Chowki informed Riwilganj Police Station. When the Riwilganj Police reached at the place of occurrence at Gariba Tola, they brought the dead body of Harendra Singh at the place of occurrence where his statement was recorded.

2.2. After registration of the F.I.R., the Investigating Officer started the investigation and, during the course of the investigation, he had recorded the statement of the witnesses and thereafter filed the charge-sheet against the appellant/accused before the concerned Magistrate Court. As the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the same to the Sessions Court where the same was registered as Sessions Trial No. 575 of 2015.

2.3. Before the Trial Court, the prosecution had examined following 8 witnesses:-



PW-1	Anil Sharma
PW-2	Manoj Singh
PW-3	Rameshwar Singh
PW-4	Rama Shankar Singh
PW-5	Pankaj Kumar Singh
PW-6	Satish Kumar
PW-7	Dr. Vinod Kumar Sinha
PW-8	Ashwini Singh

3. We have heard Mr. Dilip Kumar Tandon, learned counsel for the appellant assisted by Mr. Prateek Tandon and Mr. Rohit Ranjan and Mr. Sujeet Kumar Singh, learned A.P.P. for the Respondent-State.

SUBMISSIONS ON BEHALF OF THE APPELLANT:-

4. Learned counsel for the appellant would mainly submit that, out of 8 prosecution witnesses, 3 witnesses did not support the case of the prosecution and they have turned hostile. It is submitted that prosecution has projected PW-3, PW-4 & PW-5 as eye-witnesses. However, from the conduct of the said witnesses, who are near relatives of the deceased, it can be said that their conduct was not natural and their presence at the place of occurrence was doubtful. It is further submitted that, as per the case of the prosecution, when the deceased sustained bullet injury, the aforesaid 3 eye-witnesses took the injured for treatment.



However, he succumbed to the injuries on the way and, therefore, the dead body of the deceased was taken to their house. It is further submitted that the concerned Police Authority also reached at the house of the informant where the dead body of the deceased was kept. Thereafter, the dead body was taken to the place of occurrence in Bolero Car and near the place of occurrence in the Bolero Car itself, the Inquest Report was prepared. Learned counsel, therefore, urged that the story put forward by the so-called eye-witnesses is not believable and their conduct raises doubt with regard to the entire story of the prosecution.

5. Learned counsel further submits that, as per the case of the prosecution, the deceased was playing card with the appellant and other 6-7 persons and, during the said incident of gambling, altercation took place between the appellant and the deceased and, as per the allegation, the appellant opened fire and the bullet hit the right ribcage (*panjar*). However, from the deposition of the Investigating Officer (PW-6), it is revealed that he did not seize anything from the spot. It is also contended that, surprisingly, the Investigating Officer did not record the statement of the independent witnesses and even the statement of the wife of the deceased and his children was not recorded. Once again, it has been submitted that, as per the case of the prosecution, the dead



body was brought to the house and, thereafter, it was taken to the place of incident in a Bolero Car. Thus, when the Police came at the house of the informant and the deceased, where the family members of deceased were also present, the Investigating Officer thought it fit not to record their statement. Learned counsel, therefore, urged that the appellant has been falsely implicated in the incident in question.

SUBMISSIONS ON BEHALF OF THE STATE:-

6. On the other hand, learned A.P.P. opposed the appeal. He would mainly submit that there are 3 eye-witnesses to the incident in question and all the eye-witnesses have supported the case of the prosecution. It is further submitted that even the medical evidence supports the version of the eye-witnesses and, therefore, merely because the eye-witnesses are interested/related witnesses, their version cannot be discarded. Learned A.P.P., therefore, urged that the Trial Court has not committed any error while passing the impugned judgment and order of conviction and sentence. Learned A.P.P., therefore, urged that the present appeal be dismissed.

**DISCUSSION WITH REGARD TO THE
DEPOSITION OF THE PROSECUTION WITNESSES:-**



7. Evidence of PW-1 Anil Sharma, PW-2 Manoj Singh & PW-8 Ashwini Singh need not be gone into as they have not supported the case of the prosecution and they have been declared hostile.

8. PW-3 Rameshwar Singh has stated, in his examination-in-chief, that the incident occurred on 24.10.2014 at 11:30 p.m. At 11:30 p.m., his nephew Harendra Singh did not return home. Then, he alongwith Pankaj singh and Shailendra Singh came out from the house to search for him. When they reached Alekh Tola Bridge, they saw that 5-7 persons were gambling there. Harendra was also gambling there. He told Harendra Singh to go home. On this, Ganga Sagar Giri told that he had to gamble more. Harendra did not agree upon this. Thereafter, an altercation took place. Ganga Sagar Giri took out a *katta* from his waist and shot at Harendra. The bullet hit the right ribcage (panjar) of Harendra Singh. Ganga Sagar Giri escaped from there. They took Harendra Singh to Sadar Hospital, Chapra in a Bolero car. On the way, when they reached Bhuri Tola, Harendra Singh succumbed to his injury. In Para-2, he has stated that they took Harendra Singh to home. They informed Chand Diara Police Chowki (U.P.). The said Police Chowki informed Riwilganj P.S. and they arrived there. Then, they took the body to site of incident.



The Police recorded the statement of Pankaj Singh. The statement was read out to him, and on finding it correct, Pankaj Singh put his signature. He had put his signature on *fardbeyan* which is marked as Exhibit-1.

8.1. In his cross-examination, he has stated that Pankaj Singh is the informant. They are the residents of Ballia. The accused is of Chapra District. The gambling was going on at Alekh Tola Bridge in the Chapra District. In Para-7, he has stated that he along with two other persons started from the village on foot. Gambling was being played on the floor of the bridge and all were sitting on the floor. He does not know the name of all the gamblers. He knows the name of only accused person. 5-6 persons were gambling. In Para-8, he has stated that the accused Giri told that he had to gamble more and then took out a *katta* from his waist and shot at Harendra. He does not know who others were playing with Harendra. The bullet was fired from a distance of 3 feet. Some blood was also spilled at the site of incident. In Para-10, he has stated that Police was informed about the incident at night. Police came at the spot at night and they were shown the spot of incident. He has further stated, in Para-11, that the deceased was his nephew. They first took the body to the home. After some time, Riwilganj P.S. arrived. At about 04:00-05:00



a.m., they took the body again to the spot. Further, he has denied the fact that no such incident had occurred and that his nephew was a gambler and that no such thing had happened.

9. PW-4 Rama Shankar Singh has stated, in his examination-in-chief, that the incident occurred on 23rd October, 2014 at 11:30 p.m. Harendra Singh did not return home. Then, he along with Pankaj, Rameshwar and Shailendra went to Alekh Tola to find Harendra Singh. There, they saw that 5-7 persons were gambling there. He told Harendra Singh to go home on which he agreed. Upon this, Ganga Sagar Giri stopped him and wanted him to gamble more. On this, a scuffle took place between Harendra and Ganga Sagar Giri. On this, Ganga Sagar Giri took out a *katta* from his waist and shot at Harendra which hit his right ribcage (panjar). Harendra fell down there itself. Ganga Sagar Giri escaped from there. They took Harendra Singh for treatment to the Hospital. On the way, nearby Dhuri Tola, Harendra Singh succumbed to his injuries. They brought the dead body of Harendra Singh to home and informed Chand Diyara Police Chowki (U.P.). The said Police Chowki informed Riwilganj Police Station. The Police of Riwilganj P.S. arrived. They brought the body to Alekh Tola bridge with the Police. The Police prepared a



panchnama of the dead body of the deceased and he put his signature on it.

9.1. In his cross-examination, he has stated that Pankaj is his distant grandson. In Para-9, he has stated that the distance between Gariba Tola and Bhawan Tola is 2 ^{1/2} kms. Further, he has stated that 6-7 persons were present at the time of incident and he does not know any of them. In Para-11, he has stated that after the incident, they started crying. They went to search on foot. They did not talk to anyone on the way. In Para-12, he has stated that some blood was spilled at the site of incident. Gambling was being done with playing cards. He had also gone to the spot of incident with *Darogaji* and showed him the blood but the playing cards were not there. In Para-14, he has stated that Chand Diyara Police Chowki came at him at 01:00-01:30 hrs. after visiting the site. The Chowki Police informed Riwilganj P.S. at around 02:00 hrs. He has further stated that Riwilganj P.S. is almost 22 kms. away from his home. He has further stated that the Police remained at the door of Harendra for about half an hour. No action was taken there. The body was taken to the bridge. *Panchnama* was prepared at the place of incident. The body was taken to the place of incident on a Bolero car. He cannot say as to whom the Bolero car belonged. He has further stated that one bullet was fired. In Para-



20, he has stated that the bullet was fired from a distance of 2 ½ – 3 feet. The bullet remained in the body of Harendra. No one turned up on hearing the gunshot. There was no enmity between the families of Harendra and the accused. Further, he has denied the fact that Harendra was a drunkard and a gambler. That night was a Diwali night and he was an occasional gambler. He has denied the fact that he had told the Police that Harendra died in Bhuri Tola. He has also denied the fact that he is giving a false statement because he is a relative of Harendra.

10. PW-5 Pankaj Kumar Singh is the informant of this case. The incident took place on the night of Diwali on 23.10.2014 at 11:30 p.m. He has stated that Ganga Sagar Giri took out a *katta* from his waist and aimed at his uncle and fired at him which hit the right ribcage (panjar) of Harendra Singh. His uncle fell down there itself. Ganga Sagar Giri fled from there. They had brought his uncle to Sadar Hospital, Chapra for treatment and, in Bhuri Tola, he died.

10.1. In his cross-examination, he has stated that the deposition of his grandfather Rameshwar Singh has been recorded. The deposition of Ramashankar Singh, who is also his grandfather, has been recorded. He cannot say as to what time, his uncle Harendra Singh left home. He had one son and four daughters. He



has further stated that, when they started searching for Harendra Singh, they did not inform his children. He had seen Harendra Singh on the day of incident and and talked to him. He had not seen Harendra Singh with Ganga Sagar Giri before that day. He had never talked with Ganga Sagar Giri and he had never come to his home. Further, in Para-8, he has stated that other than his father and two grandfathers, no one else had gone to search him. He had got nervous at that time. He had not seen Ganga Sagar Giri before that day. He had no knowledge as to who had informed the Chand Diara Police. He has further stated that the blood was spilled on the incident site. The shooter was 6 feet away from him in the north. Harendra Singh was at a distance of 8 feet away in the north direction. He has further stated that Riwilganj Police did not come at his door but had come to the site of incident. When the Riwilganj Police came at the place of incident, Chand Diara Police personnels were present there. He has denied the fact that Harendra Singh was a drunkard and a gambler. He has also denied the fact that, in order to get the properties of Ganga Sagar, he is giving false deposition and has implicated him.

11. PW-6 Satish Kumar is the Investigating Officer of this case. He has stated, in his examination-in-chief, that on 24.10.2014, he was posted at Riwilganj P.S. On 24.10.2014, at



08:30 p.m, he took over the charge of this case and, at 09:00 a.m., he departed for the site of incident. He took the re-statement of the informant Pankaj Singh on the site. He inspected the site. The place of occurrence is the cement bridge near Aalekh Tola Dhala at Silaw Diara Garib Tola.

11.1. In his cross-examination, he has stated that he was handed over the charge of investigation at Riwilganj P.s. *Fardbeyan* was recorded at Gariba Tola Dhala at 05:00 a.m. by S.H.O. It is not mentioned in the diary as to how Riwilganj P.S. came to know about the incident and how it had arrived at the spot. He has not signed on the *fardbeyan* and the Inquest Report. He had started the investigation on 24.10.2014 at 08:30 a.m. He then reiterated and said that he began his investigation at 09:00 a.m. On 24.10.2014, he recorded the statement of every witnesses. He recorded the statement of independent witnesses on 20.02.2015. In Para-11, he has stated that he has not written in diary that at what time, he arrived at the site. He did not seize anything from the spot. Further, he has stated that, he did not record the statement of the deceased's wife or his children. He has not investigated on the subject as to whether the deceased was a drunkard or a gambler. In Para-18, he has stated that he had never gone to Chand Diara. He was not informed by Chand Diara Chowki. The S.H.O. himself



had informed him. He has further stated that Rama Shankar Singh had not told before him that Harendra succumbed to the injuries in the same Tola while they were taking him for treatment. He had recorded the statement of Rama Shankar Singh on 24.10.2014, but he has not mentioned the time.

12. PW-7 Dr. Binod Kumar Sinha has stated in his deposition that, on 24.10.2014, he was posted at Sadar Hospital, Chapra as M.O. On that day, at 09:30 p.m., he conducted the *post mortem* examination of the dead body of Harendra Singh and noted the following findings:-

“1. External Examination

(i) Rigor Mortis present.

(ii) Single Lacerated, perforated wound over right side of lower chest about 5” below and lateral to nipple of size 01” x ½” x cavity deep with inverted margin and blackening of surrounding skin.

2. Internal Examination of Chest and Abdomen

(i) Chest Cavity and Abdomen full of clotted blood.

(ii) All vertebrae were intact and pale.

(iii) Heart both chamber empty.

(iv) Multiple laceration with perforation of stomach & left kidney.

(v) Single bullet extracted size (¾”) from postural surface of lower part of left back of chest where it was embedded.

It was preserved and handed over to police.



In my opinion, cause of death has been due to shock and Haemorrhage, resulting from injury no. 02 cause by fire arm.

Time elapsed since death to P.M. - 24 hours approx.

This P.M. report is written and signed by my. It is marked Ext. 4.

3. On detection foreign body such as single bullet was found. Bullet was preserved and handed over to police.

4. In the month October, of his death 3 to 6 hours, blood is clotted. There is no variation in any month regarding blood clotting. Charring wound is not written by my, but blackening is written.”

OBSERVATION AND REASONING:-

13. We have considered the submissions canvassed by the learned counsels for the parties. We have also perused the evidence of prosecution witnesses and also perused the documentary evidence exhibited.

14. From the evidence led by the prosecution, it would reveal that, as per the *fardbeyan* given by the informant, when his uncle Harendra Singh did not return to his house till 11:00 p.m., he along with his father Shailendra Singh and grandfather Rameshwar Singh went in search of him and, in course of searching, when they reached near Aalekh Tola Bazar Bridge (Garib Tola Dhala) at about 11:30 p.m., they saw that his uncle and 6-7 persons were gambling on the bridge. Then, they told Harendra Singh to go



home and he got ready to go home. However, in the meantime, the appellant, who was also gambling there, restrained him and pressurized him to continue gambling. At that time, some scuffle took place between them and, in the meantime, the appellant took out a country-made pistol (*katta*) from his waist and opened fire on his uncle. It is his specific case, in the *fardbeyan*, that initially they were taking his uncle to the hospital. However, on the way, his uncle died and, therefore, they brought his uncle to the house and informed the concerned Police Chowki and, in turn, the concerned Police Chowki informed Riwilganj Police Station and thereafter, when the Riwilganj Police reached at the place of occurrence, they brought the dead body of the deceased at the place of occurrence and at that place, his *fardbeyan* was recorded. However, at this stage, it is pertinent to note that the prosecution had examined 8 witnesses out of which PW-1, PW-2 & PW-8 have not supported the case of the prosecution and they have turned hostile. Thus, the prosecution has mainly placed reliance upon deposition of the so-called 3 eye-witnesses i.e. PW-3 to PW-5. PW-3 has admitted, in Para-7 of his cross-examination, that he along with two other persons started from village on foot and, during the search at 11:30 p.m., they found his uncle playing cards with the appellant and others. Thus, it can be said that there was no vehicle with the so-



called eye-witnesses in which they have tried to initially carry the injured to the hospital. Further, as per the version given by the said witness, they first took the body to the home and Riwilganj Police arrived at their home and thereafter, dead body of the deceased was taken again to the spot.

14.1. Similarly, PW-4 has also admitted, in Para-11 of his cross-examination, that they went in search of Harendra Singh on foot and he has also admitted, in Para-12, that playing cards were not there when the place was shown to *Darogaji*. Further, the said witness has admitted, in Para-14, that the Police of the concerned Police Chowki visited their house at 01:00-01:30 a.m. and thereafter Police of Riwilganj Police Station came to the house at 02:00 a.m.. Further, in Para-17, the said witness has admitted that *Darogaji* stayed for half an hour at the house of the deceased. However, at that place, no paper-work was done. He has also stated that thereafter dead body was taken in Bolero Car to the place of occurrence. However, he was not aware about the name of the owner of the Bolero Car and the said Bolero Car was not of his family members.

14.2. PW-5 is the informant, who has admitted that his uncle Harendra Singh, his wife Urmila Devi and four children were residing in the same house. He has also stated that when they



went in search of Harendra Singh, he did not have conversation with the children of Harendra Singh.

15. PW-6 (Investigating Officer) has stated, during cross-examination, that he did not seize anything from the place of occurrence. He has also stated that he did not record the statement of the wife as well as the children of the deceased.

16. From the inquest *panchnama* prepared by the Investigating Officer, it would further reveal that the said Inquest Report was prepared at 05:30 a.m. in the morning. However, at that time, the dead body was lying in the Bolero Car which was parked near the place of occurrence.

17. From the aforesaid evidence led by the prosecution, it can be said that, as per the version of the prosecution, the so-called eye-witnesses went in search of the deceased on foot and the incident took place at 11:30 p.m. From the evidence, it would further reveal that there were some houses and kiosk shops near the place of incident. It is surprising that even after hearing the sound of firing at the place of occurrence, nobody gathered at the place of occurrence. Further, when the dead body was taken on foot by the so-called eye-witnesses to their house, in between also, nobody met the said witnesses and inquired about the incident. Further, wife of the children of the deceased were also present in



the house when the Police came during night hours at the house despite which, their statements were not recorded by the Investigating Officer. Further, though the Police came at the house of the informant and stayed there for half an hour, his *fardbeyan* was not recorded at his house and the dead body was now taken in the Bolero Car to the place of occurrence and at that place, the *fardbeyan* was recorded as well as the Inquest Report was prepared. It further transpires from the evidence that the Investigating Officer did not seize anything from the place of occurrence that means there was no blood found at the said place nor playing cards were seized by the Investigating Officer. At this stage, it is required to be recalled that, as per the case of the prosecution, the deceased was playing cards with the appellant and six others and, when the deceased refused to play the card further with the appellant, scuffle took place in which the incident in question took place. Thus, when the playing cards were not found at the place of occurrence, the entire genesis of the incident itself raises doubt with regard to the said place of occurrence and, more particularly, in absence of any blood seized/collected by the Investigating Officer from the said place, doubt is raised with regard to the manner of occurrence and the place of occurrence. At this stage, it is also required to be observed that who were 6-7



other persons who were also present at the place of occurrence when the incident took place and playing cards with the appellant and the deceased. The Investigating Officer did not inquire with regard to the details of the said persons who are independent persons.

18. Thus, looking to the the aforesaid facts and circumstances of the present case, when the prosecution has simply placed reliance upon three so called eye-witnesses, who are near relatives of the deceased and interested and related witnesses, their version is required to be scrutinized closely. As discussed hereinabove, we have scrutinized the deposition of the aforesaid witnesses closely and we are of the view that their presence at the place of occurrence and their version with regard to the manner of occurrence as well as the place of occurrence raises doubt.

19. In view of the aforesaid discussion, we are of the view that the prosecution has failed to prove the case against appellant beyond reasonable doubt. Hence, Trial Court has committed grave error in passing the impugned judgment and order. Accordingly, the same is required to be quashed and set aside.

CONCLUSION:-



20. Accordingly, the impugned judgment of conviction dated 08.02.2018 and order of sentence dated 12.02.2018 passed by learned IXth Additional Sessions Judge, Saran at Chapra in Sessions Trial No. 575 of 2015, arising out of Riwilganj P.S. Case No. 124 of 2014 are quashed and set aside. The appellant is acquitted of the charges levelled against him by the learned Trial Court.

21. The appellant is in custody. He is directed to be released from jail custody forthwith, if his custody is not required in any other case.

22. The appeal stands allowed.

(Vipul M. Pancholi, J)

(Sunil Dutta Mishra, J)

Sachin/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	18.04.2025
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