

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.71 of 2016

Arising Out of PS. Case No.-72 Year-2002 Thana- OBRA District- Aurangabad

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1. Banarsi Singh (Abated Vide Honble courts order 17-03-2026) Son of Late Lakhu singh Resident of village- Sananpura, Ps- Obra, Dist- Aurangabad
 2. Badshah Singh sons of Late Lakhu Singh Residence of village - Sananpura, P.S. - Obra, Dist. - Aurangabad.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant : Mr. Anil Kumar, Advocate
For the State : Mr. Z. Hoda, APP

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

6 02-04-2026 Heard learned counsel appearing for the appellant and
learned Additional Public Prosecutors appearing for the State.

2. This appeal survives only with respect to Appellant
No. 2, above named.

3. This appeal has been filed challenging the
judgment of conviction and order of sentence 09.01.2016 passed
by the learned Additional Sessions Judge-III, Aurangabad in
Sessions Trial No. 122/04/145/14 in connection with Obra P.S.
Case No. 72 of 2002 whereby and whereunder Appellant No. 2
has been convicted for committing offence under Sections 324
and 34 of the Indian Penal Code and has been sentenced to
undergo rigorous imprisonment for three years for committing



offence under Sections 324 and 34 of the Indian Penal Code.

4. The prosecution story, as alleged in the *Fardbeyan* of the informant, namely Upendra Singh, in brief, is that on 07.06.2002, when the informant, along with one Satish Kumar Singh, was returning after attending the dinner at the house of one Ajay Kumar Singh and reached near the house of Jagdish Singh, in the meantime, on the order of Appellant No. 2, namely Badshah Singh, co-accused Banarsi Singh fired upon them from his licensed gun from the roof of their house as a result of which, informant and his associate Satish Kumar Singh both became injured and fell down and further, co-accused Banarsi Singh also threatened the informant.

5. In this case, on the basis of the *Fardbeyan* of the informant dated 08.06.2002, Obra P.S. Case No. 72 of 2002 was registered for the offence punishable under Sections 324, 326, 307 and 34 of the Indian Penal Code and Sections 27 of the Arms Act against two named accused persons, including this appellant and after completion of the investigating, charge-sheet was submitted on 31.07.2002 and accordingly, the learned trial court took cognizance on 09.08.2002 and case was committed to the learned Sessions Court. Accordingly, charges were framed under Sections 307 and 34 of the Indian Penal Code against



both the accused persons.

6. In this case, in order to bring home guilt of the accused persons, the prosecution has examined altogether seven witnesses. P.W. 1, namely Satish Kumar Singh, is injured witness. P.W. 2, namely Mahendra Singh, is hearsay witness. P.W. 3, namely Upendra Singh, is the informant. P.W. 4, namely Dr. Bhola Prasad Sinha, is the doctor who examined the injured. P.W. 5, namely Hitesh Singh, is again a hearsay witness. P.W. 6, namely Ramvijay Singh, has been declared hostile and P.W. 7, namely Umesh Tiwari, is a formal witness. The prosecution has also adduced documentary evidences, which are marked as:-

Exhibit 1	Letter issued by the S.H.O.
Exhibit 2	<i>Fardbeyan</i>
Exhibit 3	Injury report of injured Satish Kumar Singh
Exhibit 4 and 4/1	Injury report of Upendra Singh (informant)
Exhibit 5	Reference letter regarding patient to Sadar Hospital, Aurangabad
Exhibit-X	Referred receipt
Exhibit-X/1	Discharge slip
Exhibit-X/2	O.D. Slip

7. On the other hand, the defence has not produced any oral or documentary evidence.

8. After hearing the parties, the learned trial court convicted this appellant and sentenced him, as indicated in the opening paragraph of this order.

9. Learned counsel appearing for the appellant assails



the order of conviction and sentence on multiple grounds. He contends that from bare perusal of the F.I.R., it is apparent that this appellant, namely Badshah Singh, is only alleged to have instigated co-accused Banarsi Singh and it was co-accused Banarsi Singh who shot informant and his companion. There is absolutely no allegation of overt act against this appellant. He further contends that in this case, the Investigating Officer has not been examined and non-examination of the Investigating Officer has caused great prejudice to the defence of the appellant as he was not able to contradict the evidence of the witnesses and the place and manner of occurrence could not be proved. It is further contended that P.W. 4 is the doctor who treated the injured and deposed but in his deposition, he did not state about the nature and cause of injury. In his deposition, he categorically stated that he can not say about the cause and nature of injury of both the injured. He further stated that he did not find any foreign body from the injury of both the injured. He contends that the trial court has wrongfully convicted this appellant ignoring material contradictions and hence, the impugned order of sentence and conviction are fit to be quashed and set aside on the basis of facts and circumstances. Learned counsel for the appellant lastly contends that the incident took



place in the year 2002 and Appellant No. 2 has remained in custody for more than one and a half months. At present, the appellant is more than 87 years old and also suffering from various diseases.

10. On the other hand, learned Additional Public Prosecutor for the State has submitted that there is no need of any interference in this appeal since the prosecution witnesses have supported the corroborated the prosecution story and there is no reason to differ with the findings of the learned trial court and the judgement of conviction and order of sentence are justified and legal.

11. On going through the rival submissions, evidences and upon perusal of the records, this Court finds that in this case, during trial, the Investigating Officer has not been examined by the prosecution and no independent witness or the local chowkidar was examined by the prosecution either. Non-examination of the Investigating Officer has caused great prejudice to the defence as the defence could not explain the material discrepancy and contradict the witnesses. However, this Court finds that the evidences are completely trustworthy and there is no reason to disbelieve the evidence that it was co-accused Banarsi Singh who caused injury to the two injured. It



is also not in dispute that this appellant, namely Badshah Singh, is only the order giver and instructed co-accused Banarsi Singh to fire. This Court further finds that the incident took place in the year 2002 and at present, appellant is more than 87 years old and during the aforesaid period, there is no complaint against this appellant.

12. Keeping in view the age, the fact that the incident is of the year 2002 and appellant is 87 years old suffering from various diseases, coupled with the fact that there is no complaint against this appellant after institution of the present F.I.R., I feel that end of justice would be met if the sentence is reduced to the period already undergone. In this case, the appellant has already remained in custody for a period of one month and 18 days.

13. Accordingly, the impugned judgment of conviction is upheld and the order of sentence dated 09.01.2016 passed by the learned Additional Sessions Judge-III, Aurangabad in Sessions Trial No. 122/04/145/14 in connection with Obra P.S. Case No. 72 of 2002 is modified and the sentence awarded to Appellant No. 2, namely Badshah Singh, is reduced that to the period he has already undergone.

14. In that view of the matter, Appellant No. 2, above named, is discharged from the liability of the bail bonds



in connection with this case.

15. Accordingly, this appeal stands disposed of.

16. Interlocutory application/s, if any, also stands disposed off.

(Prabhat Kumar Singh, J)

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