

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.182 of 2016

Arising Out of PS. Case No.-26 Year-1997 Thana- DAWATH District- Rohtas

Shri Niwas Singh S/o Late Indrasan Singh, resident of Village- Tilkapur
Mohania, P.S.- Kargahar, District- Rohtas.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant	:	Mr. Navin Kumar Sinha, Advocate Mr. Vikalp, Advocate
For the State	:	Ms. Anita Kumari Singh, APP

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

8 17-03-2026 Heard learned counsel for the appellant and learned A.P.P.
for the State.

2. The present appeal has been directed against the judgment of conviction and order of sentence dated 29.02.2016 passed by the learned Additional Sessions Judge-II, Rohtas in Sessions Trial No. 36 of 1998 arising out of Dawath P.S. Case No. 26 of 1997, whereby the appellant was convicted for the offence punishable under Sections 307, 353 and 149 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for 5 years and a fine of Rs. 5,000/- for committing offence under Sections 307 and 149 of the Indian Penal Code and in default of payment of fine, to further undergo rigorous imprisonment for five months and further to go under



rigorous imprisonment for one year for committing offence under Section 353 of the Indian Penal Code.

3. At the outset, learned counsel appearing for the appellant submits that during pendency of this appeal, on 13.05.2025, the sole appellant, namely Shri Niwas Singh, died, leaving behind his wife, namely Sumitra Devi. After death of the appellant, his wife filed I.A. No. 01 of 2025, which was disposed of by a Co-ordinate Bench of this Hon'ble Court vide order dated 02.12.2025 as not being proper while giving liberty to the wife of the deceased appellant to file a fresh interlocutory application and thereafter, wife of the deceased appellant filed I.A. No. 02 of 2025 with a prayer to grant her leave to continue the present appeal and I.A. No. 03 of 2025 for condonation of delay in preferring I.A. No. 02 of 2025 and a Co-ordinate Bench of this Hon'ble Court, vide order dated 29.01.2026, condoned the limitation and both the aforesaid interlocutory applications were allowed.

4. The prosecution case, in brief, is that on 25.09.1997, on a secret information that hardened criminal Chalisa Nonia, Raja Ram Nonia and Mathura Nonia, with their gang members, will go in a Barat party, the police constituted a raid party and reached near Babhnaul More and while they were waiting, a



Barat party on three tractors was seen coming towards Maliyabagh and when the police indicated to stop the tractors, in the meantime, 5 to 6 culprits started firing from the tractor and started fleeing away, however, three persons were caught who disclosed their names as Mathura Chaudhary, Premchand Rama and Shri Niwas Singh (appellant). On search, one loaded country made pistol and live cartridges were seized from the possession of co-accused Mathura Chaudhary and empty cartridges were also seized from the place of occurrence.

5. During trial, the prosecution has examined as many as six witnesses and P.W. 1 to P.W. 5 are members of the police party. P.W. 1 is member of the raiding party and has supported the prosecution case. P.W. 2 is also an A.S.I. and has supported the prosecution case. P.W. 3, namely Firoz Hussain Ansari, who is also a police personnel was present at the place of occurrence, however, did not support the prosecution case entirely and the trial court has disbelieved his statement. P.W. 4, namely Ram Bali Yadav, who is a police personnel and claims to be eye-witness of the occurrence but could not identify the accused persons because his eye sight was very weak and thus, his statement has also been disbelieved by the trial court. P.W. 5 is also a police personnel and claims to be eye-witness of the



alleged occurrence. P.W. 6 is a village witness and has not supported the prosecution case and has been declared hostile.

6. It is admitted position, even as per prosecution case, that this appellant, late Shri Niwas Singh, had not fired any shots rather, he was arrested while fleeing away from the place of occurrence. Moreover, in this case, the Investigating Officer has not been examined by the prosecution and therefore, this Court is bereft of all objective evidence, which would have been required to prove the place of occurrence as well as the manner of occurrence. The Doctor has also not been examined as a result of which, the nature of injury and cause of injury could not be ascertained.

7. On going through the evidence of P.W. 1, P.W.2 and P.W.5, this Court finds material contradictions in their evidence with regard to the manner of occurrence and since there is no corroborative evidence in regard to the same, this Court finds it unsafe to rely on the evidence of the sole eye witnesses.

8. In the result, this appeal is allowed and the order of conviction dated 29.02.2016 and the sentence passed against the appellant, namely late Shri Niwas Singh, by the learned Additional Sessions Judge-II, Rohtas in Sessions Trial No. 36 of 1998 arising out of Dawath P.S. Case No. 26 of 1997 is hereby



set aside.

(Prabhat Kumar Singh, J)

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