

IN THE HIGH COURT OF JUDICATURE AT PATNA

Abhay Kumar & Ors.

Vs.

The State of Bihar

CRIMINAL APPEAL (DB) No.411 of 2021

18 November, 2021

(Honourable Mr. Justice Ashutosh Kumar And Honourable Mr.

Justice Rajesh Kumar Verma)

**Issue for Consideration**

Whether the conviction of Appellants for the offence of murder is sustainable or not?

**Headnotes**

Indian Penal Code---section 302---- Effect of Delay in Recording the FIR and Statements of Prosecution Witnesses----Evidentiary value of Testimony of Chance Witnesses and Related/Interested Witness---- Appeal against conviction for the offence of murder---allegation against Appellants is of murdering deceased by firing at him.

**Held:** in the present matter, there was long standing political rivalry between the parties----although the place of occurrence is only 100 yards away from the Police station and the police had reached the Hospital where the post-mortem was done, a delay of 1 day in recording of FIR gives a jolt to prosecution case as it creates a doubt whether the written report lodged a day after was only after consultations and several thoughts regarding the implication of the appellants on account of political rivalry----all the eyewitnesses to the occurrence appear to be chance-witness of this case--- law is very clear that merely because a witness happens to see the occurrence by chance, his testimony cannot be discarded, though it is required to be scrutinized with greater circumspection at times---in the instant case, all the chance witnesses have made their statements before the police after several days of the occurrence and their depositions also vary from the

basic prosecution case brought out by the informant----delay in recording the statements of prosecution witnesses under Section 161 Cr.P.C., although those witnesses were or could be available for examination when the I.O. visited the scene of occurrence or soon thereafter casts a doubt on the prosecution case----evidence of a chance witness requires very cautious and close scrutiny and a chance witness must adequately explain his presence at the P.O.----conduct of the chance witness, subsequent to the incident also ought to be taken into consideration particularly as to whether he had informed anyone else in his village or neighbourhood about the incident---though informant, elder brother of deceased, has denied all suggestions of his being interested in the murder of the deceased for him to test the waters in the local politics, but it clearly appears that he had been harbouring a motive to implicate the appellants----where a witness is a close relative of the victim and is shown to share the victim's hostility to his assailant, that naturally makes it necessary for the criminal Courts to examine the evidence given by such witness very carefully and scrutinize all the infirmities in that evidence before deciding to rely upon it---- the fact that the informant did not elect to report the matter to the police even when the police party arrived at the emergency ward and within eight months of the killing, he also got elected to the post of *pramukh* in place of his younger brother, the deceased, coalesce together to give an impression that informant is not wholly reliable----glaring inconsistencies and material discrepancies in the prosecution case renders the accusation against the appellants to be highly suspect---appellants held entitled to be given benefit of doubt---judgment and order of conviction set-aside---appeals allowed. **(Para- 17-19, 30, 33, 38, 43, 50, 51, 57, 63)**

Case Law Cited
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*State of A.P. v. K. Srinivasulu Reddy*; (2003) 12 SCC 660; *Jarnail Singh v. State of Punjab*; (2009) 9 SCC 719; *Sachchey Lal Tiwari v. State of U.P.*; (2004) 11 SCC 410; *Puran v. State of Punjab*; (1952) 2 SCC 454; *Ganesh Bhavan Patel v. State of Maharashtra*; (1978) 4 SCC 371; *Darya Singh v. State of Punjab*; AIR 1965 SC 328  
 .....**Relied Upon.**

*Balakrushna Swain v. State of Orissa*, (1971) 3 SCC 192; *Maruti Rama Naik v. State of Maharashtra*, (2003) 10 SCC 670; *Jagjit Singh v. State of Punjab*, (2005) 3 SCC 689  
 .....**Referred To.**

#### List of Acts

Indian Penal Code; Code of Criminal Procedure, Arms Act.

#### List of Keywords

Appeal against Conviction---Murder---Testimony of Chance witnesses----Eyewitness Testimony----Testimony of Related/Interested Witness---Delay in lodging FIR----Delay in recording statement of witnesses---Motive for false implication---Benefit of Doubt.

#### Case Arising From

Order of conviction and sentence dated 15.03.2021 by the learned Additional Sessions Judge-VII, Vaishali at Hajipur in Sessions Trial No. 280 of 2019, arising out of Jandaha P.S. Case No. 202 of 2018.

#### Appearances for Parties

(In CRIMINAL APPEAL (DB) No. 411 of 2021)  
 For the Appellant/s: Mr. Sanjay Singh, Sr. Advocate  
 Mr. Arvind Kumar Sinha, Advocate  
 For the Respondent/s: Mr. Abhimanyu Sharma, APP  
**Headnotes Prepared by: Ghanshyam**

#### Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL APPEAL (DB) No.411 of 2021

Arising Out of PS. Case No.-202 Year-2018 Thana- JANDAHA District- Vaishali

1. Abhay Kumar @ Abhay Sahni S/o Ram Babu Sahni R/o Village-Dulaur, P.S-Jandaha, District-Vaishali.
2. Ram Babu Sahni S/o Ram Dhari Sahni R/o Village-Dulaur, P.S-Jandaha, District-Vaishali.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 322 of 2021

Arising Out of PS. Case No.-202 Year-2018 Thana- JANDAHA District- Vaishali

Jai Shankar Chaudhary S/o Upendra Sah @ Shankar Chaudhary @ Umesh Chaudhary R/o Village-Arniya, P.S. Jandaha, District Vaishali.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 411 of 2021)

For the Appellant/s : Mr. Sanjay Singh, Sr. Advocate  
Mr. Arvind Kumar Sinha, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, APP

(In CRIMINAL APPEAL (DB) No. 322 of 2021)

For the Appellant/s : Mr. Bimal Kumar, Advocate

Mr. Vasant Vikas, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 18-11-2024

Both the appeals have been taken up together for hearing.

2. We have heard Mr. Sanjay Singh, the learned

Senior Advocate for appellants/Abhay Kumar @ Abhay



Sahni and Ram Babu Sahni in Cr. Appeal (DB) No. 411 of 2021 and Mr. Bimal Kumar, the learned Advocate for appellant/Jai Shankar Chaudhary in Cr. Appeal (DB) No. 322 of 2021.

3. The appellants/Jai Shankar Chaudhary and Abhay Kumar @ Abhay Sahni have been convicted under Sections 302/34 of the IPC and Section 27 of the Arms Act and appellant/Ram Babu Sahni has been convicted under Section 302/34 of the IPC by the learned Additional Sessions Judge-VII, Vaishali at Hajipur in Sessions Trial No. 280 of 2019, arising out of Jandaha P.S. Case No. 202 of 2018. By order dated 15.03.2021, all the three appellants have been sentenced to undergo R.I. for life each under Section 302 of the IPC and appellants/Jai Shankar Chaudhary and Abhay Kumar @ Abhay Sahni have been sentenced R.I. for five years under Section 27 of the Arms Act. The appellants have been directed to pay a fine of Rs. 50,000/- each under Section 302 of the IPC.



In default of payment of fine, to further suffer R.I. for six months.

4. The written report was lodged by one Om Prakash Sahni, the elder brother of the deceased (P.W. 7) on 14.08.2018 that on 13.08.2018, his brother Manish Kumar (deceased) was called by the local BDO to his house. Later, when the deceased came back from the BDO's house and was about to enter the chamber of Block *Parmukh*, appellant/Ram Babu Sahni ordered to kill him. On that exhortation, appellants/Jai Shankar Chaudhary and Abhay Kumar started firing on the deceased, as a result of which he got injured and fell down on the ground. Thereafter, the two assailants left the P.O. on motorcycle. On another motorcycle, appellant/Ram Babu Sahni and Binod Chaudhary fled from the P.O.

5. P.W. 7 and Anil Kumar Sahni (P.W. 2), who, at that time was the driver of the deceased, with the help of others, brought the deceased to the clinic of one Dr. Bindu Jha from where he was referred to a higher center for



treatment. The deceased was then taken to a private hospital, viz., Ganpati Hospital, where he was declared dead.

6. The dead-body was then brought to Sadar Hospital, Hazipur where post-mortem examination was done on the body. In the meantime, the police party had also arrived.

7. Explaining the cause for the murder, P.W. 7 has asserted in the written report that on 02.08.2018, a no-confidence motion was staged against appellant/Jai Shankar Chaudhary, who was holding the charge of *pramukh*. In that proceeding, appellant/Jai Shankar Chaudhary had lost to the deceased by eight votes. P.W. 7 was threatened by the local MLA of Maner, viz., Umesh Singh Kushwaha, Binod Chaudhary, Ajeet Kumar and others after the elections, of dire consequences and that the deceased would not be allowed to continue as *pramukh*.



8. This was the factor which had worked for the killing of the deceased.

9. On the basis of the afore-noted written report, a case *vide* Jandaha P.S. Case No. 208 of 2018 dated 14.08.2018 was registered for investigation under Sections 302, 120(B) and 506/34 of the Indian Penal Code and Section 27 of the Arms Act, 1959.

10. The police after investigation had submitted a charge-sheet against the appellants and five others.

11. The Trial Court, after having examined ten witnesses on behalf of the prosecution, convicted and sentenced the appellant only, as aforesaid, but acquitted the rest five of the persons who also were put on trial along with the appellants.

12. The deceased had died on 13.08.2018 before 05:30 P.M.

13. This is evident from the inquest report which was prepared by one Ashok Diwedi, a Police Officer at Hazipur. Even, according to the FIR, the shooting incident





had taken place at about 3 O'clock in the afternoon on 13.08.2018 in the Block office. The police had come to know about the occurrence shortly thereafter.

14. The evidence is galore that the local police station is situated only 100 yards away from the Block office, which is the P.O. of this case.

15. That apart, after the inquest, without the case being registered, the post-mortem examination was held at 05:45 P.M. by Dr. Sashidhar Kumar (P.W. 4). He had found four gun-shot injuries on the person of the deceased, two being wounds of entry and the two others being the wounds of exit. The entry wounds were found to be charred. The assessment of time when the death may have occurred was twelve hours from the post-mortem examination. The cause of death was opined to be hemorrhage, shock and trauma caused by the gun-shots. This post-mortem examination on the dead-body was done by P.W. 4 along with one Dr. Hari Prasad, a specialist in orthopedics, as an observer.



16. According to P.W. 4, no assessment could be made at the time of post-mortem whether the injuries were caused from upwards to downwards or from downwards to upwards. The only observation of P.W. 4 was that the entry wounds were on the upper part of the body and the exit wounds were on the lower region. This, therefore, only indicates that the assailants were on higher platform than the deceased when he was shot at.

17. Be that as it may, the post-mortem and the evidence of P.W. 4 clearly prove that the deceased died a homicidal death because of gun-shots. The death had occurred sometimes after 03:00 P.M. but before 05:30 P.M. on 13.08.2018. As noted above, the police party had also arrived which is evident from the inquest report and the post-mortem examination.

18. The question which immediately comes to our mind is that if the police station was located at a distance of only 100 yards from the Block office (the P.O.) and the police had reached the Sadar Hospital, Hazipur where the



post-mortem was done, the only logical sequel would have had been the lodging of the FIR. In fact, if the written report is to be believed, the informant himself and P.W. 2 had taken the deceased to hospital. However, both of them do not appear to be witnesses to the inquest report. If they were there at the hospital along with the deceased, there was no reason for them, viz. Om Prakash Sahni (P.W. 7) and Anil Kumar Sahni (P.W. 2) not to have lodged the FIR there.

19. This sends us doubting whether the written report lodged a day after was only after consultations and several thoughts regarding the implication of the appellants. Normally, a delay of a day in lodging the FIR would not attract any flak as such, but in the present circumstances, the prosecution receives a jolt with the late recording of the FIR.

20. One other very interesting but disturbing feature of the case is that two other cases were lodged on 13.08.2018: one by the Investigator of this case, viz.,



Sobha Kant Paswan (P.W. 9) and the other by the local BDO *vide* Jandaha P.S. Case Nos. 200 of 2018 and 201 of 2018 respectively. These two cases were with respect to the action of loot, arson and the ruckus created by the accused persons therein after the killing of the *pramukh* (deceased). In both these two FIRs, there is no reference of the appellants having killed the deceased.

21. This again raises eyebrow for the reason that if a *pramukh* is killed in his office by an *ex-pramukh* and his two associates, the news would have been agog in the entire area. Their names not being mentioned in the two documents *viz.*, the two FIRs lodged by P.W. 9 and the local BDO, which have been marked as X and X1, renders the accusation against the appellants to be very doubtful.

22. Even at the cost of repetition, we indicate that appellant/Jai Shankar Chaudhary was the erstwhile *pramukh*. In the no confidence proceeding against him, the deceased had contested for the post and appellant/Jai Shankar Chaudhary was defeated.



23. This could be the reason for false implication of Jai Shankar Chaudhary.

24. The other two persons, *viz.*, appellants/Ram Babu Sahni and Abhay Kumar, who are father and son amongst themselves, are also no strangers.

25. The wife of appellant/ Ram Babu Sahni had defeated both the mother and wife of the deceased in the elections for the post of *mukhiya* at two different times.

26. This fact clearly establishes the reason for the accusation against the appellants after a day of the killing.

27. Raj Kumar Sahni (P.W. 1) claims to have visited the Block office on 13.08.2018 for the purposes of getting his Aadhaar card made. He saw appellant/Jai Shankar Chaudhary and one unknown person firing at the deceased. He thereafter came back home. He has admitted that the police station is located at a distance of 100 yards from the Block office and that his statement was recorded by the police after seven to eight days of the occurrence.



At the time of the occurrence, the BDO was present in his chamber.

28. His deposition appears to be doubtful for very many reasons. One, his presence at the P.O. is only per-chance. We say so for the reason that notwithstanding the fact that he was one of the eyewitnesses to the occurrence, he gave his statement to the police after seven to eight days of the killing. He is related to the deceased, though distantly. According to the informant (P.W. 7), the deceased was called to the residence of BDO and the deceased alone came back to the Block office. This renders the statement of P.W. 1 highly doubtful that the BDO was present at the time of the occurrence.

29. A word about chance-witnesses would be necessary in this context as the other so-called eyewitness also appear to be chance-witness of this case.

30. A chance witness is the one who happens to be at the P.O. of an offence by chance and, therefore, not as a matter of course. In other words, he is not normally



expected to be in the said place. A person walking on a street, witnessing the commission of an offence can be a chance witness. The law is very clear that merely because a witness happens to see the occurrence by chance, his testimony cannot be discarded, though it is required to be scrutinized with greater circumspection at times.

31. In ***State of A.P. v. K. Srinivasulu Reddy; (2003) 12 SCC 660***, the Supreme Court adumbrated that *"in a murder trial, if "independent witnesses" are described as as "chance witnesses" it cannot be implied thereby that their evidence is suspicious and their presence at the scene doubtful. Murders are not committed with previous notice to witnesses, soliciting their presence. If murder is committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a street, only passers-by will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere "chance witnesses". The expression "chance witness" is borrowed*



*from countries where every man's home is considered his castle and everyone must have an explanation for his presence elsewhere or in another man's castle. It is quite unsuitable an expression in a country where people are less formal and more casual, at any rate in the matter explaining their presence."*

32. Similar view was expressed by Supreme Court in ***Jarnail Singh v. State of Punjab; (2009) 9 SCC 719.***

33. The Supreme Court in the above-noted case, while referring to the case law in ***Sachchey Lal Tiwari v. State of U.P.; (2004) 11 SCC 410***, cautioned that evidence of a chance witness requires very cautious and close scrutiny and a chance witness must adequately explain his presence at the P.O. The conduct of the chance witness, subsequent to the incident also ought to be taken into consideration particularly as to whether he had informed anyone else in his village or neighbourhood about the incident.





34. The defining attributes of a chance witness were explained by J. Mahajan in ***Puran v. State of Punjab; (1952) 2 SCC 454***. It was held that "*such witnesses have the habit of appearing suddenly on the scene when something is happening and then of disappearing after noticing the occurrence about which they are called later on to give evidence.*"

35. We have already noticed that the purpose of visiting the Block office by P.W. 1 was the preparation of his Aadhar card. He had seen appellant/Jai Shankar Chaudhary and one another firing at the deceased. According to him, there were three gun-shots and the BDO was present in his chamber.

36. All these facts are inconsistent with the basic prosecution version. The deceased had received two gun-shots. The BDO was not present at the scene. And P.W. 1 had given his statement before the police after seven to eight days of the occurrence.

37. No Court can rely on such a testimony.



38. It must be noted here that in ***Ganesh Bhavan Patel v. State of Maharashtra; (1978) 4 SCC 371***, which is an authority for the proposition that delay in recording the statements of prosecution witnesses under Section 161 Cr.P.C., although those witnesses were or could be available for examination when the I.O. visited the scene of occurrence or soon thereafter, it was held that it casts a doubt on the prosecution case (also refer to ***Balakrushna Swain v. State of Orissa, (1971) 3 SCC 192; Maruti Rama Naik v. State of Maharashtra, (2003) 10 SCC 670*** and ***Jagjit Singh v. State of Punjab, (2005) 3 SCC 689***).

39. P.W. 1 (referred to above) is also related to the deceased, which fact we have noted.

40. Similarly, Lal Babu Sahni (P.W. 5), another eyewitness to the occurrence had visited the Block office for the purposes of making cast-certificate. It was in this process that he saw the act of killing the deceased. He had himself approached the Investigator of this case and had



told him that he shall be a witness in the case. Only after that disclosure, after about four days of the occurrence, his statement was recorded by the police. He does not appear to be a resident of the P.O. In fact, he worked at Delhi in Azadpur Fruit Mart. He claims to have come back to his village home only a month before. He too was one of the accused persons in the FIRs, referred to by us, and brought on record as X and X1 on behalf of the defence.

41. Likewise, Laldev Sahni (P.W. 6) had come to the Block office on 13.08.2018 for making his LPC. Again a chance witness. According to him, there were 200 to 400 persons at the Block office. He also was aware of the fact that the mother and wife of the deceased were earlier defeated by the wife of appellant/Ram Babu Sahni in the elections for the post of *mukhiya*.

42. Likewise, Saroj Kumar Singh (P.W. 8) claims to have visited the Block office with some work.

43. All these persons have made their statements before the police after several days of the occurrence.



Their depositions also vary from the basic prosecution case brought out by P.W. 7.

44. Let us now examine the evidence of P.W. 7, the informant. His background would have to be necessarily discussed. He is the elder brother of the deceased and the informant of this case. After about eight months of the killing of the deceased, he was elected to the post of *pramukh* uncontested.

45. There is substance in the argument on behalf of the appellants that he is definitely interested in not having any adversary in the field and appellant/Jai Shankar Chaudhary was one of the most potent and formidable contestant. His deposition therefore is required to be seen in this context.

46. He has supported the prosecution case in its entirety and has admitted that the police party had arrived at the hospital in the evening of 13.08.2018 only. There is no reason then why he should not have lodged the FIR then only as he had seen the entire part of the occurrence



and had brought the deceased, while he was still alive, to the hospital. According to him, he had never contested any election during the lifetime of the deceased. In the elections, after the death of his brother, he was elected uncontested. While he had participated in the electoral process, appellant/Jai Shankar Chaudhary was in jail. He had come to the Block office along with the deceased. He had no work of his own. Appellant/Jai Shankar Chaudhary according to P.W. 7 was present there from before. He never asked Jai Shankar Chaudhary as to the reason for his presence in the Block office near *pramukh's* chamber. He had already lost the election. P.W. 7 had not seen appellant/Jai Shankar Chaudhary armed with any weapon. After his brother was shot at, he rushed to his brother but never chased the assailants. The reason was that the assailants was armed with pistols.

47. These are contradictory statements of P.W. 7.

48. He had no idea whether the police party had reached to the Block office on hearing the sound of gun-



shots. He has also admitted of his being in know on the FIR lodged by the BDO for an occurrence which took place in the Block office after the killing of the deceased. In that FIR, no assailant of the deceased was named by the BDO.

49. None of the appellants were also named in the FIR lodged by the Officer-in-Charge with regard to the ruckus in the Block office after the killing.

50. Though P.W. 7 has denied all suggestions of his being interested in the murder of the deceased for him to test the waters in the local politics, but it clearly appears that he had been harbouring a motive to implicate the appellants. Otherwise, he being an eyewitness to the occurrence, through and through, he should have lodged the FIR in the evening of 13.08.2018 only when the police party had arrived in the hospital.

51. In ***Darya Singh v. State of Punjab; AIR 1965 SC 328***, the Supreme Court was of the opinion that a related or interested witness may not be hostile to the assailant but if he is, then his evidence must be examined



very carefully and all the infirmities must be taken into account. Where a witness is a close relative of the victim and is shown to share the victim's hostility to his assailant, that naturally makes it necessary for the criminal Courts to examine the evidence given by such witness very carefully and scrutinize all the infirmities in that evidence before deciding to rely upon it.

52. In dealing with such an evidence, a Court must begin with the inquiry as to whether the said witnesses is a chance witness or whether he was really present at the scene of the offence. If the criminal Court get satisfied that the witness who is related to the victim was not a chance witness, then his evidence has to be examined from the point of view of probabilities and the account given by him as to the assault has to be carefully scrutinized.

53. There is yet another doubt in our minds.

54. Two of the assailants, viz. appellants/Jai Shankar Chaudhary and Abhay Kumar are alleged to have



fired indiscriminately. Nobody else was hurt. In such a circumstance, it is difficult to accept the claim of P.W. 7 that he had seen the occurrence from close quarters.

55. We have also referred to the wounds of entry on the deceased to be charred.

56. The other observation in the post-mortem examination report is that the injuries moved upwards to downwards. This observation was because the wounds of exit were lower than the wounds of entry. This gives an impression that, perhaps, the deceased was shot at when he was still climbing the stairs and the assailants were on a higher platform.

57. P.W. 7 had not even seen appellant/Jai Shankar Chaudhary with any weapon in his hand. Within few seconds, the shooting incident happened. P.W. 7 did not inform anybody, which is though quite explainable in the circumstance that his own younger brother was shot at, and he proceeded to a private hospital and thereafter to the Sadar Hospital, Hazipur. But he does not elect to





report the matter to the police even when the police party arrived at the emergency ward. Within eight months of the killing, he also got elected to the post of *pramukh* in place of his younger brother.

58. All these facts coalesce together to give us an impression that P.W. 7 is not wholly reliable.

59. Did he see the occurrence?

60. If he did, then he had a miraculous escape.

61. In that case, his naming all the accused persons with exactitude and five of them having been acquitted for want of evidence, makes his evidence doubtful.

62. Is he then not making a wrong declaration with an ulterior purpose?

63. All these glaring inconsistencies and material discrepancies in the prosecution case renders the accusation against the appellants to be highly suspect. Giving benefit of doubt to the appellants, therefore, we set



aside the judgment and order of conviction and acquit the appellants of all the charges.

64. The appeals stand allowed.

65. All the appellants are in jail. They are directed to be released forthwith from jail, if not detained or wanted in any other case.

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

67. The records of these cases be returned to the Trial Court forthwith.

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

**(Ashutosh Kumar, J)**

**(Rajesh Kumar Verma, J)**

krishna/saurav

AFR/NAFR	AFR
CAV DATE	NA
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