**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**CRIMINAL APPEAL (DB) No.343 of 2017**

Arising Out of PS. Case No.-300 Year-2013 Thana- BHABHUA District- Kaimur (Bhabua)

==========

Munna Singh son of Uma Singh, resident of Bhabhua Ward No. 20, P.S. Bhabhua, District- Kaimur.

... ... Appellant/s

Versus

The State Of Bihar

... ... Respondent/s

==========

with

**CRIMINAL APPEAL (DB) No. 228 of 2017**

Arising Out of PS. Case No.-300 Year-2013 Thana- BHABHUA District- Kaimur (Bhabua)

==========

Uma Singh son of late Ganesh Singh resident of Bhabhua Ward No. 20, P.S. Bhabhua, District Kaimur.

... ... Appellant/s

Versus

The State Of Bihar

... ... Respondent/s

==========

with

**CRIMINAL APPEAL (DB) No. 626 of 2018**

Arising Out of PS. Case No.-300 Year-2013 Thana- BHABHUA District- Kaimur (Bhabua)

==========

Satyendra Singh S/o Sheo Murat Singh @ Shiv Murat Singh, R/o Gawai Mohalla-Bhabua Ward No. 20, P.S.- Bhabua, District- Kaimur Bhabua.

... ... Appellant/s

Versus

1. The State Of Bihar and Ors

2. Nagina Singh S/o Late Dev Sharan Singh, R/o Bhabua Ward No. 23, P.S.- Bhabua, District- Kaimur Bhabua.
3. Dhupan Singh S/o Late Ramjanam Singh, R/o Vill.- Shilouta, P.S.- Sonhan, District- Kaimur Bhabua.

... ... Respondent/s

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Indian Evidence Act, 1872- Section 10

Appeal by the two accused persons against their conviction and sentence and the appeal by the complainant against the acquittal of other two accused persons.

Held that the depositions of PW-1, 2, 3 and 5 are doubtful.

Sec. 10 of the Indian Evidence Act- No evidence of conspiracy is found. (Para-23)

Versions of prosecution are uncreditworthy. (Para-24)

No independent persons came forward to support the prosecution case. (Para- 25)

Who killed the deceased remains a mystery. (Para- 27)

Conviction and sentence of two accused are set aside. (Para- 29)

Acquittal of other two accused is found justified. (Para- 31)

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... ... Appellant/s

Versus

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with

## CRIMINAL APPEAL (DB) No. 228 of 2017

Arising Out of PS. Case No.-300 Year-2013 Thana- BHABHUA District- Kaimur (Bhabua)

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Uma Singh son of late Ganesh Singh resident of Bhabhua Ward No. 20, P.S. Bhabhua, District Kaimur.

... ... Appellant/s

Versus

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with

## CRIMINAL APPEAL (DB) No. 626 of 2018

Arising Out of PS. Case No.-300 Year-2013 Thana- BHABHUA District- Kaimur (Bhabua)

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Satyendra Singh S/o Sheo Murat Singh @ Shiv Murat Singh, R/o Gawai Mohalla- Bhabua Ward No. 20, P.S.- Bhabua, District- Kaimur Bhabua.

... ... Appellant/s

Versus

1. The State Of Bihar and Ors
2. Nagina Singh S/o Late Dev Sharan Singh, R/o Bhabua Ward No. 23, P.S.- Bhabua, District- Kaimur Bhabua.
3. Dhupan Singh S/o Late Ramjanam Singh, R/o Vill.- Shilouta, P.S.- Sonhan, District- Kaimur Bhabua.

... ... Respondent/s

==========

**Appearance :**
(In CRIMINAL APPEAL (DB) No. 343 of 2017)
For the Appellant/s : Mr. Prabhakar Singh, Adv.
For the Respondent/s : Mr.Sri Satya Narayan Prasad, APP
(In CRIMINAL APPEAL (DB) No. 228 of 2017)
For the Appellant/s : Mr. Tribhuvan Narayan, Adv.

For the Respondent/s : Mr.Sri Dilip Kumar Sinha
For informant : Mr. Sidhendra Narayan Singh, Adv.
(In CRIMINAL APPEAL (DB) No. 626 of 2018)
For the Appellant/s : Mr.Sidhendra Narayan Singh, Adv.
For the Respondent/s : Mr. Ajay Mishra, APP
For respondent nos. 3 : Mr. Narendra Kumar, Adv.
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**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR**
**and**
**HONOURABLE MR. JUSTICE KHATIM REZA**
**ORAL JUDGMENT**
**(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)**

**Date : 14-03-2024**

All the three appeals have been taken up together and are being disposed of by this common judgment.

2. Appellant/Munna Singh and appellant /Uma Singh have challenged their conviction in Cr. Appeal (DB) Nos. 343/2017 and 328 of 2017 respectively. Appellant / Uma Singh is the father of appellant /Munna Singh. They stand convicted for the offences under Sections 302 IPC and Section 27 of the Arms Act by judgment dated 17.01.2017 passed by the learned Additional Sessions Judge -IV, Kaimur at Bhabhua in Sessions Trial No. 07 of 2014 arising out of Bhabhua P.S. Case No. 300 of 2013. By order dated 23.01.2017, they have been sentenced to undergo imprisonment for life along with a fine of Rs.

10,000/- for the offence under Section 302 IPC and imprisonment for two years for the offence under Section 27 of the Arms Act.

3. Cr. Appeal (DB) No. 626/2018 has been preferred by appellant/Satyendra Singh, who is the father of the deceased and also the informant of the case, who is aggrieved by acquittal of two of the accused persons put on trial later because of their being charge-sheeted later, namely, Nagina Singh and Dhupan Singh, who have been acquitted of all the charges by judgment dated 04.04.2018 passed by the learned Sessions Judge -IV, Kaimur (Bhabhua) in Sessions Trial No. 420 of 2016 /564 of 2016 arising out of Bhabhua P.S. Case No. 300 of 2017

4. We have heard Shri Prabhakar Singh, the learned Advocate for the appellant /Munna Singh; Shri Tribhuvan Narayan Singh, the learned Advocate for the appellant /Uma Singh and Shri Sidhendra Narayan Singh, the learned Advocate for the appellant / Satyendra Singh/informant. Mr. Sidhendra Narayan Singh has

appeared for the informant in Cr. Appeal (DB) Nos. 343/2017 and 228 of 2017. With respect to two of the accused persons, who have been acquitted, namely, Nagina Singh and Dhupan Singh, we have heard Shri Narendra Kumar, the learned Advocate and Mr. Rajesh Kumar Singh, the learned Senior Advocate respectively. The State has been represented by Mr. Satya Narayan Prasad, Mr. Dilip Kumar Singh and Mr. Ajay Mishra, the learned Additional Public Prosecutors.

5. The witnesses in both the Sessions Trial are the same with minor difference in the sequence in which they were examined. We would be referring to the witnesses with reference to Sessions Trial no. 7/2013, in which, appellant /Munna Singh and Uma Singh have been convicted and sentenced.

6. Satyendra Singh / PW4 has lodged the First Information Report on 11.06.2013 at 7.45 P.M. which was recorded by the Sub-Inspector, namely, Mithilesh Kumar of Bhabhua Police Station, who has been examined as PW7. It has been alleged by him that while he was sitting

in his house on 11.06.2013 at 4.00 P.M in the evening, three boys including one Sintu Singh and two others, whom he did not identify, came and asked his son/Raghu Singh (deceased) to come for playing cricket. Afore-noted Sintu Singh was carrying a cricket bat in his hand. On the asking of the afore-noted three persons, the deceased went along with them to play cricket. Thereafter, P.W. 4 came out of his house for the purpose of tending his buffaloes and found that near the Kali Temple, there was a huge crowd. He left his buffaloes unattended and went near the temple where he found that the crowd had assembled to watch the cricket match in which his son (deceased) was also playing. He also got engrossed in seeing the cricket match. At about 5 p.m. in the evening, 6 persons on three motorcycles came. Sonu Singh and his father Nagina Singh came on one motorcycle whereas appellants/Uma Singh and Munna Singh came on the other motorcycle. On the third vehicle, two persons had come, one of whom was identified by P.W. 4 as Dhupan Singh. Sonu Singh was armed with a licensed rifle whereas

Nagina Singh had a country made pistol in his hand. All the miscreants got down from their vehicles and talked to Sintu Singh for a while. Thereafter, Sonu Singh fired from his rifle which hit the deceased in his back, as a result which he fell down. No sooner had he fallen down on the ground, Nagina Singh fired from his country made pistol; thereafter Munna Singh also fired at the deceased from a close range. Dhupan Singh and Uma Singh threatened the persons who had assembled there and who had made some overtures for coming forward to protect the deceased. Thereafter, all the miscreants exited firing in the air. P.W. 4 then went to his son and found that he was already dead. P.W. 4 therefore suspected that out of a well-hatched conspiracy, the deceased who was absolutely unguarded was killed at the hand of the accused persons.

7. It may be relevant here to point out that Sonu Singh was found to be a juvenile and his case was remitted to the Juvenile Justice Board for determination for his guilt. He, as we have been informed, was held guilty and was sentenced to the period of custody which he

had already undergone, which must have been less than three years. Charge-sheet initially was submitted against the appellants/Munna Singh and Uma Singh who were put on trial vide Sessions Trial No. 7 of 2014.

8. Nagina Singh and Dhupan Singh after they were chargesheeted later, were put on trial in Sessions Trial No. 420 of 2016/564 of 2016.

9. In the Sessions Trial No. 7 of 2014, seven witnesses were examined, whereas in the other trial (Sessions Trial No. 420 of 2016/564 of 2016), only six witnesses were examined. However, in the aforesaid trial, four witnesses were examined on behalf of the defence. As noted above, Munna Singh and Uma Singh in Sessions Trial No.7 of 2014 were convicted whereas Nagina Singh and Dhupan Singh in Sessions Trial No. 420 of 2016/564 of 2016 were acquitted.

10. In Sessions Trial No. 7 of 2014, the informant (P.W. 4), though supported the prosecution case in its entirety, but the departure from the original prosecution version appears to be very stark. Before the Trial Court,

he had explained the presence of his son-in-law and other son, namely, Pramod and Manish (P.W. 5 and P.W. 3 respectively) about whom, he had not mentioned anything in his fardbeyan. According to him, his wife Bijouta Devi (P.W. 2) and his married daughter Shashi Devi (P.W. 1) had also come to the Kali Temple to offer their prayers. In the meantime, 6 miscreants on three motorcycles came. Sonu (juvenile) was carrying his father's licensed rifle. We are at a lost to understand as to how he could identify the weapon to be the licensed weapon of Nagina (Nagina being the father of aforesaid Sonu). Munna and Umma were on one motorcycle whereas Dhupan along with one another was on the other motorcycle. Sonu is alleged to have had some conversation with Sintu, who was never put on trial as the suspicion never veered towards him, whereafter he fired from his rifle hitting the deceased in his back. Shortly thereafter, Nagina fired aiming at the jaws of the deceased. Munna Singh followed suit and fired from his weapon at the neck of the deceased. A pandemonium broke out at the P.O. The miscreants

threatened anybody who would dare to come near them. And thereafter, all of them fled away towards eastern direction. After some time, the police had arrived. The police had found one empty cartridge of rifle. His statement was given to the police which was signed by Pramod (P.W. 5). He reiterated before the trial court that apart from him, Manish (P.W. 3), Shashi (P.W. 1) Bijouta Devi (P.W. 2) and Pramod (P.W. 5) had seen the occurrence. He had identified Munna and Uma in the Court.

11. What is further noticeable in his deposition is that he had found the that cricket match was being witnessed by about 300-400 persons. The first shot hit the deceased in his back whereas the second and third shot hit the deceased above his neck. Where P.W. 4 was standing, some of the onlookers namely, Ajit, Sujit, Kameshwar and his son were also there. None of them have been examined at the trial. Amongst the players, he had identified only Sintu. According to him, Sintu had been wicket-keeping.

12. It may be noted that Pramod (P.W.5) had stated before the Trial Court that it was the deceased who had been wicket keeping. His attention was drawn to his earlier statement made about his presence in his house at 5 pm which he denied and corrected himself that he had spoken about his presence at his house at 4 pm when the deceased was called by Sintu and two others for playing cricket. During his cross-examination, he has categorically stated that he did not make any attempt at rescuing his son or himself running away to safety. He completely denied about the accusation against the deceased regarding murder of one Mantu, who was the son of Nagina. He also denied that in that murder case, P.W. 4 or any other were made accused. He has denied the suggestion that only to feed fat the old grudge and taking advantage of the murder of the son, he has falsely framed the accused persons.

13. It would be profitable in this context to refer to the deposition of the Investigator (P.W. 7), who had recorded the fardbyan statement of P.W. 4. After

recording the fardbyan, he sent the dead body for post-mortem examination. The F.I.R. was recorded at 22.00 hrs. at the police station and the investigation proceeded at 22.30 hrs. At the mortuary, the further statement of P.W. 4 was recorded. It was at that time that he had recorded the statement of Narendra Singh, Anup Kumar Patel, Krishna Singh and Pramod Singh. Out of these, only Pramod Singh was brought to the witness stand. He visited the place of occurrence on the next day and found that the suggested place of occurrence was a cricket pitch made in the field of one Jay Prakash Kushwaha. Very near to the place of occurrence lay the fallow field of Nagina. Recalling the recovery of an empty cartridge (Exhibit 5) in the night of 11.06.2013, P.W. 7 confirmed that on the base of the cartridge, MMKF was inscribed. The same had been seized in the presence of Krishna Singh (not examined) and Pramod Singh (P.W. 5). He had recorded the statement of Bijouta Devi (P.W. 2), Manish Kumar (P.W. 3), Pallu Yadav, Ram Vinay Yadav, Shashi (P.W. 1) and Rupa.

14. Shashi (P.W. 1) had not made any statement before him that appellant/Munna had fired at the neck of the deceased. However, she had stated that when her brother, namely, Manish had gone to save the deceased, the appellant/Uma and one unknown person had caught hold of him and on gunpoint threatened him to go away. Further details about the manner and sequence of occurrence was not stated by anyone of the witnesses. PW7 (the Investigator) had been informed about the occurrence on his official mobile telephone, but he did not ask for the name of the caller nor could he find out during the course of the investigation as to who was the person who had informed him about the occurrence. At the place of occurrence, he did not find any playing equipment. What is of extreme importance is that Bijouta Devi (P.W. 2), who is the mother of the deceased had specifically told the Investigator that the only person who had witnessed the occurrence was her husband i.e. P.W. 4 and none else. No reason was provided by P.W. 7 for not getting the recovered empty cartridge forensically examined. Beyond

this, P.W. 7 had nothing to state.

15. From a conspectus of the deposition of P.W. 4 and P.W. 7, few things appear to be very clear. P.W. 4 (Informant) initially had not spoken about his family members having come out of their house to witness the cricket match. We do reckon that it is not necessary for the informant to state all details about the occurrence. But this fact namely, his wife, his other son and his married daughter along with his son-in-law also being present at the place of occurrence, was an important piece of information, which ought not to have been missed by P.W. 4, while giving his fardbyan.

16. We have found out from the deposition of Shashi (P.W. 1), the married daughter of P.W. 4, that her statement was recorded after one month of the occurrence. This would not have been possible if Shashi would have been a witness to the occurrence. At the trial, however she has given the same sequence of events with minor changes as has been suggested by P.W. 4 and others witnesses. The story of Manish (P.W. 2) having

moved forward to save the deceased but he being held back on gun point, was for the first time introduced by P.W. 1 at the Trial. This, if it were true, would pre-suppose that all the witnesses i.e. the family members of the deceased were in close vicinity of the deceased when he was attacked. A cricket match was going on which was being witnessed by 300-400 people. This statement also does not appear to be correct as the match was played in the village which may not have had the population of 300-400. And out of those 300-400 who were seeing the match, no one came forward to support the prosecution case. None of them made any attempts to stop the occurrence or prevent the miscreants from exiting. The accused persons were not hired assassins who would have been instilled fear in the minds of the on-lookers. They were villagers and relatives of the villagers whom all of them would have known. If those many number of persons were present at the place of occurrence, it would not have been an easy exit for the assailants. There is no chase reported. Frightening a mass of 400 and odd villagers,

appears to be a bit doubtful.

17. Under the aforesaid circumstances, the deposition of P.Ws. 1, 2, 3 and 5 is rendered doubtful.

18. That the deceased was murdered is proved by the post-mortem report and the deposition of the doctor (P.W. 6). According to the prosecution version, the deceased was shot at thrice. The doctor had found four injuries; out of which two were wounds of entry, whereas two were of exit. The third shot was missing. The shots were fired from close distance. P.W. 4 and others have been very specific about this. There was no charring or tattooing mark near the wound. The use of rifle in the occurrence also is doubtful for the reason that there is no evidence of the exit wound being bigger than the wound of entry. No rifling was found by the doctor during the post-mortem examination. The deceased, for sure, died a homicidal death by gunshot but the question which beckons an answer is; who were the assailants of the deceased. If the eye witness account of P.Ws. are to be believed without any caveats, it was Sonu (juvenile),

Nagina and Munna who had fired at the deceased.

19. That the I.O. did not find any blood at the place of occurrence and the empty cartridge not being put to any forensic examination further creates doubt abut the prosecution case. There is nothing in the evidence of anyone of the witness including the investigator (P.W. 7) that the dead body was removed from the actual place where the occurrence had taken place. Three gunshots wounds leading to the instantaneous death of the deceased and no blood near the dead body, makes the story somewhat unbelievable.

20. The family members of the deceased had not informed the police station. Some onlookers had talked about an occurrence of killing on the official mobile telephone of the Investigator. What was that information remains unknown. The I.O. never took any care to know about the identity of the caller. He did not even record such information before proceeding to the place of occurrence. That information, which would have been the first in point of time, would have been very relevant. The

police, according to the records, reached the place of occurrence sometimes around 7.45 pm in the night of 11th June, 2013. Shortly thereafter, inquest was prepared. A death taking place in view of 300-400 people in the village, the crime being perpetrated by the villagers and there was nobody else except those family members who signed the inquest report. Where was the dead body kept for the night ? Who declared the deceased dead ?. When was the dead body taken to the mortuary for examination and by whom? These issues are left unanswered by the Investigator.

21. These facts, if seen in the context of the clear suggestion to the witnesses about the deceased being the killer of one Mantu (son of Nagina) who too was made accused but acquitted, assumes lot of importance. Some explanation is available from this background fact of enmity.

22. In the other Trial, where Nagina and Dhupan were tried, the same Investigator told the Trial Court that the deceased had a very tainted background. He was a

known criminal of the area. Such assessment of the Investigator would be no evidence in the eyes of law, but can only provide some link to the story of murder. The deceased already was facing prosecution for the murder of the son of one of the accused persons, namely, Nagina. The other accused person, who too has been acquitted is the father-in-law of slain. There was every reason for framing him as well.

23. Dhupan, the *samadhi* of Nagina is a resident of different village. There could be a possibility of the deceased having been killed because of the conspiracy of Nagina, Dhupan and others; but that would be only in the realm of speculation and conjectures. That they had a definite grudge against the deceased is beyond doubt. But in the absence of any evidence, admissible under Section 10 of the Evidence Act, for any conspiracy for killing the deceased, the conviction of the appellants/Munna and Uma appears to be unjustified. Had there been any conspiracy, the time when a cricket match was being played before 300-400 persons was the most inopportune time to effect

a crime. Nagina's field is nearby the field of Jay Prakash where make-shift cricket pitch was carved out. Except for Dhupan, all other persons acquitted or convicted are residents of the same village. There is no evidence of the deceased remaining in hiding for all this while.

24. From the deposition of PW4, it appears that he was leading a normal life. Had being an accused of the murder of a co-villager, would not have readily agreed to play unguarded in the cricket field. There was no apprehension in the mind of anyone of the witnesses. There was thus existing enmity, but perhaps the accused persons had taken resort to legal methods of dealing with the crime in their family. There was no trigger-point for the miscreants to have resorted to this act of murder before full public view and none of the persons who were watching the cricket match have come forward to even talk about their knowledge of the complicity of the accused persons in the killing of the deceased. This raises eye-brows about the correctness of the prosecution version.

25. If seen in totality, namely, discrepant version

of P.W. 4; his wife having told the Investigator that it was P.W. 4 only who had seen the occurrence; the chance arrival of the sister and brother-in-law of the deceased at the cricket match; the story of the mother and sister of the deceased having gone to Kali Temple to offer their prayers, specially when there was no function in the family of the informant on that day and the time of visit of temple was approximately 5 pm and; no independent person having come forward to support the prosecution case, the version of the prosecution clearly totters at the seams.

26. To take it further, the I.O. not having found any blood near the dead body and the used cartridge seized at the place of occurrence not having been put to any forensic examination, further confounds the issue. The weapon of assault, a licensed one, was never seized.

27. Who killed the deceased then, remains a mystery.

28. For the afore-noted reason, we find the conviction of appellants namely, Munna and Uma in

Criminal Appeal A(DB) No. 343 of 2017 and Criminal Appeal (DB) No. 228 of 2017 to be unsustainable in the eyes of law. Perforce, we set aside their conviction and sentence after acquitting them of their charges, giving them benefit of doubt.

29. Appellant/Munna Singh is in jail, he is directed to be released from jail forthwith, if not required in any other case.

30. Appellant/Uma Singh is on bail. He is discharged from the liability of his bail bonds.

31. The acquittal of respondents, namely, Nagina and Dhupan appears to be absolutely justified. No interference is required to be made with the judgment of the acquittal of respondents namely, Nagina and Dhupan.

32. Thus, Criminal Appeal (DB) No. 343 of 2017 and Criminal Appeal (DB) No. 228 of 2017 are allowed and Criminal Appeal (DB) No. 626 of 2018 is dismissed.

33. All the appeals stand disposed of accordingly.

34. Let a copy of this judgment be dispatched to the Superintendent of concerned jail for record and

compliance.

35. Let the records of these appeals be returned to the concerned court below forthwith.

**(Ashutosh Kumar, J)**

**( Khatim Reza, J)**

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| **AFR/NAFR** | AFR |
| **CAV DATE** | N/A |
| **Uploading Date** | 19.03.2024 |
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