

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL APPEAL (DB) No.636 of 2018**

Arising Out of PS. Case No.-613 Year-2015 Thana- BEGUSARAI TOWN District- Begusarai

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Sunni Kumar @ Sunni Dewal S/o Rajendra Das, R/o Village- Ratanpur, P.S.-  
Begusarai Town Ratanpur, Dist- Begusarai.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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with

**CRIMINAL APPEAL (DB) No. 541 of 2018**

Arising Out of PS. Case No.-613 Year-2015 Thana- BEGUSARAI TOWN District- Begusarai

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Sonu Kumar S/o Kismat Das R/o-Village-Ratanpur, P.S.-Begusarai Town  
Ratanpur Dist.-Begusarai.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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**Appearance :**

(In CRIMINAL APPEAL (DB) No. 636 of 2018)

For the Appellant/s : Mr. Murlidhar Mishra, Advocate  
Mr. Shubhesh Pandey, Advocate

For the Respondent/s : Mr. Sri Satya Narayan Prasad, A.P.P.

(In CRIMINAL APPEAL (DB) No. 541 of 2018)

For the Appellant/s : Mr. Murlidhar Mishra, Advocate  
Mr. Shubhesh Pandey, Advocate

For the Respondent/s : Mr. Sri Ajay Mishra, A.P.P.

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**CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI**

**and**

**HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)**

**Date : 13-10-2023**

Both these appeals are filed under Section- 374(2) of the Code of Criminal Procedure Code, 1973 (hereinafter referred to as the 'Code') against the judgment of conviction dated 31.03.2018 and order of sentence dated 06.04.2018 rendered by 7<sup>th</sup> Additional District & Sessions Judge, Begusarai,



in connection with S. Tr. No.320 of 2016, arising out of Begusarai Town P.S. Case No.613 of 2015, whereby both these appellants have been convicted for the offences punishable under Sections 302/34 of I.P.C. and 27 of the Arms Act and sentenced to undergo life imprisonment and a fine of Rs.20,000/- and in default of payment of fine 08 months S.I., for Section 27 of the Arms Act directed to undergo 4 years and to pay Rs.-4000/- in default has to serve more 4 months S.I.

2. Against the aforesaid judgment and order, two different convicts have filed two separate appeals. However, learned counsel Mr. Murlidhar Mishra appears on behalf of the appellants in both these appeals.

3. The prosecution case in brief is as under:-

“On 01.11.2015, the husband of the informant, deceased Sanjeet Kumar at about 08:00 a.m. went to obey the call of nature to the field towards south of the house when accused Sunni Kumar @ Sunni Dewal, son of Rajo Das, accused Sonu Kumar, son of Kismat Das and Munna Sah, son of Ajit Sah, all residents of Ratanpur came to the said field, fired at her husband and fled away towards southern direction. On hearing the sound of firing, the informant and other villagers rushed to the field. By that time, all the three miscreants had fled away. When the informant reached near her husband along with Basdeo Das, son of Babloo Das and Ashok Das, son of Ramchandra Das and other villagers, the husband of the informant was



languishing in pain lying on the ground. Then he was taken to the Sadar Hospital, Begusarai on a cart *Thela*. On the way to the hospital, her husband died. On the way itself, the deceased informed that out of the three, it was Sunni Kumar who fired at him. Sunni Kumar always used to quarrel claiming a piece of land. There was land dispute for last one year approximately, because of which Sunni Kumar and his accomplices committed the said incident.”

4. On the basis of the information given by the informant, F.I.R. bearing Begusarai Town P.S. Case No. 613 of 2015 came to be registered with Begusarai Town Police Station for the alleged offences punishable under Section 302 read with Section 34 of the I.P.C. and under Section 27 of the Arms Act, 1959. As the case was exclusively triable by Court of Sessions, the concerned Magistrate committed the same to the Sessions Court where the same was registered as Sessions Trial No. 320 of 2016.

5. After registration of the F.I.R., the Investigating Agency carried out the investigation and during course of the investigation, the Investigating Officer recorded the statement of the witnesses. Dead body of the deceased was sent for *post mortem* and after the investigation was over, the Investigating Officer filed the charge-sheet against the present appellants.

6. At the outset, it is pertinent to note that Cr. Appeal



(DB) No.636 of 2018 was listed on board for considering the request for grant of bail and for suspension of the sentence on 9<sup>th</sup> October, 2023. However, at that time learned counsel for the appellant pointed out that appellant Sunni Kumar @ Sunni Dewal is in custody since last more than 7 years and 11 months, i.e. approximately 8 years and, therefore, instead of considering the prayer for grant of bail, this Court may take up the appeal itself for hearing and final disposal. It was also pointed out by the learned counsel that the appellant of Cr. Appeal (DB) No.541 of 2018 namely Sonu Kumar is also in custody since last approximately six years and a half and, therefore, both the appeals are taken up for final disposal.

7. Learned A.P.P's. appearing for the respondent State have also requested that, as the concerned appellant is in custody since last approximately 8 years, both these appeals be heard together and finally disposed of.

8. In pursuance of the request made by the learned counsel appearing for the parties and considering the fact that appellants are in custody since approximately 8 years, the Office was directed to list both these appeals for hearing.

9. Heard Mr. Murlidhar Mishra, learned counsel appearing for the appellants in both the appeals and Mr. Satya



Narayan Prasad, learned A.P.P. for the respondent State in Cr. Appeal (DB) No.636 of 2018 and Mr. Ajay Mishra, learned A.P.P. for the respondent State in Cr. Appeal (DB) No.541 of 2018.

10. Learned advocate for the appellants would mainly submit that, in fact, there is no eye-witness to the occurrence in question and the prosecution has projected only near relatives of the deceased as eye-witnesses. It is submitted that the *fardebayan* was given by the wife of the deceased, namely Rupam Kumari (P.W. 6). As per her deposition, on hearing the sound of firing, she reached to the field. At that time, she saw that her husband got fire-arm injuries on his abdomen and he was found dead. When inquired, one Ashok Das, elder brother-in-law of the said witness, informed her that one Sunni Kumar @ Sunni Dewal shot him dead. Thereafter, the deceased was taken to the hospital where she gave her *fardebayan*. However, at this stage, learned counsel referred the deposition of P.W.1 and other prosecution-witnesses and submitted that though P.W.1, who is father of the deceased, was not present, he has stated before the Court that he is an eye-witness to the occurrence. The said witness has stated that Sanjeet (deceased) stated that Sunni shot at him and while he



was taken to the hospital, on the way he succumbed to the injuries. Learned counsel, at this stage, has also referred the deposition of P.W. 3 Ashok Das, who, in fact, has stated that when he reached at the place of occurrence, wife of Sanjeet informed him about the incident/occurrence. Thus, learned counsel submitted that there is no eye-witness to the occurrence in question and all the prosecution-witnesses are the chance witnesses who are near relatives of the deceased. Thus, the deposition given by the said witnesses is not trustworthy.

10.1 It is further submitted that the prosecution has also failed to prove the motive on the part of the appellants to kill the deceased. It is the case of the prosecution that because of the land dispute, the appellants killed the deceased. However, it is reflected from the deposition of the prosecution-witnesses that deceased was not the owner of any land and the Investigating Officer has also not inquired with regard to the so-called land dispute between the parties. It is also submitted that no dispute was pending in any court with regard to the land between the parties. Learned counsel, therefore, urged that the prosecution has also failed to prove the said aspect before the trial Court despite which the trial court has recorded the order of conviction.



10.2 It is thereafter contended by the learned counsel for the appellants that the place of occurrence is also not ascertained by the Investigating Officer. Learned counsel has also pointed out major contradiction in the deposition of the prosecution-witnesses and thereafter contended that the present appellants have been falsely implicated in the occurrence in question and, therefore, the impugned judgment and order be quashed and set aside and thereby both these appellants be acquitted.

11. On the other hand, learned A.P.P's. appearing for the respondent State in the respective appeals have vehemently opposed these appeals. They mainly contended that, after referring to the deposition of the witnesses that they are eye-witnesses to the occurrence in question and they have specifically deposed before the Court that they have seen both the appellants at the place of occurrence and Sunni Kumar opened fire from his pistol in which Sanjeet (deceased) sustained injuries, it is submitted that the case of the eye-witnesses is supported by the medical evidence. It is also submitted that oral dying declaration was given by Sanjeet (deceased) before P.W. 2, who is uncle of the deceased, when the uncle reached immediately at the place of occurrence. It is,



therefore, urged that when the prosecution has proved the case against the appellants beyond reasonable doubt, the trial court has not committed any error while recording the order of conviction against the appellants. Learned A.P.P's., therefore, urged that both these appeals be dismissed.

12. We have considered the submissions canvassed by the learned counsel appearing for the parties. We have also perused the evidence produced by the prosecution before the concerned trial court.

13. It would emerge from the record that P.W. 6 Rupam Kumari is the informant whose *fardebayan* was recorded in the hospital by S.I. Rakesh Kumar who has not been examined by the prosecution, wherein the informant has stated that on 01.11.2015, the husband of the informant, deceased Sanjeet Kumar at about 08:00 a.m. went to obey the call of nature to the field towards south of the house when accused Sunni Kumar @ Sunni Dewal, son of Rajo Das, accused Sonu Kumar, son of Kismat Das and Munna Sah, son of Ajit Sah, all residents of Ratanpur came to the said field, fired at her husband and fled away towards southern direction. On hearing the sound of firing, the informant and other villagers rushed to the field. By that time, all the three miscreants had fled away. When the



informant reached near her husband along with Basdeo Das, son of Babloo Das and Ashok Das, son of Ramchandra Das and other villagers, the husband of the informant was languishing in pain lying on the ground. Then he was taken to the Sadar Hospital, Begusarai on a cart *Thela*. On the way to the hospital, her husband died. On the way itself, the deceased informed that out of the three, it was Sunni Kumar who fired at him. Sunni Kumar always used to quarrel claiming a piece of land. There was land dispute for last one year approximately, because of which Sunni Kumar and his accomplices committed the said incident.

14. P.W. 6 Rupam Kumari, in her examination-in-chief before the Court, has stated that on 01.11.2015, at about 08:00 a.m. in the morning, she was present at her house. At that time, she heard the sound of firing. Therefore, she immediately had gone to the agriculture field and saw that her husband sustained gun-shot injuries on his abdomen and he was found dead. Thereafter, he was taken to the hospital at Begusarai. When she inquired, one Ashok Das, who is her elder brother-in-law, informed her that one Sunni Kumar opened fire in which her husband sustained gun-shot injury. Her statement was recorded by *Darogaji* in the hospital and she had signed the said



*fardbeyan.*

14.1 During cross-examination, the said witness has specifically admitted that she had stated that Shiv Das is her father-in-law. At the time of occurrence, he was at Ranchi. She had further admitted that she along with her uncle-in-law and mother-in-law had gone to the agriculture field.

15. P.W. 1 Shiv Das, who is father of the deceased, has stated in the examination-in-chief, that on 01.11.2015, at 08:00 a.m., the occurrence took place. At that time, he was present at his agriculture field. At that time, he saw that Sonu and Munna were using filthy/abusive language. At that time, Sunni came at the place of occurrence and opened fire and in the said firing Sanjeet sustained fire-arm injury on his chest. Thereafter, all the accused fled away from the spot. Sanjeet was taken to the hospital at Begusarai and on the way Sanjeet stated that Sunni shot at him. Thereafter, on the way Sanjeet succumbed to the injuries. Police came to the hospital. The said witness identified Sunni and Sonu who were present in the Court.

15.1 During cross-examination, the said witness has specifically admitted that he is not having any land-dispute with anybody and he is not possessing any land. He has further stated



that he was cutting grass in the field. He has not shown the sale-deed to the police. The distance between the place where he was cutting grass and where the occurrence took place is 10 steps. The said witness further stated in the cross-examination that when he had shouted, his daughter-in-law came at the place of occurrence from the house. At that time, his wife was also present in the field. Police did not seize the blood stained clothe of his son. He had also not shown the place where he was working, to the police. His son had gone to the field to obey the call of nature. However, the police did not seize the water pot which he was carrying. The said witness further stated in the cross-examination that, in his statement given before the police, he had not stated that Sonu asked Sunni to open fire. The said witness further admitted in the cross-examination that when he reached near his son, he came to know that his son had become unconscious. However, he regained consciousness after five minutes and thereafter he stated that Sunni shot at him. The Investigating Officer also did not collect the blood stained soil from the place of occurrence. He further stated that there was no dispute with Sonu.

16. P.W. 2 Basudeo Das is the uncle of the deceased.

The said witness, in his examination-in-chief, has stated that he



was present at about 08:00 a.m. in the agriculture field. At that time, Sanjeet had gone for call of nature in the field. At that moment, Sunni, Sonu and Monu came at the place of occurrence and used abusive language. Thereafter, Sunni took out the pistol and fired at Sanjeet. At that time, Sonu asked him to kill Sanjeet. In the said occurrence Sanjeet sustained gun-shot injury on his chest. When he reached near Sanjeet, Sanjeet informed him that Sunni had shot at him.

16.1 In the cross-examination, the said witness has stated that he did not hear the sound of firing when he was working in the agriculture field. However, after hearing *Hulla* when he reached near the place of occurrence, he heard the sound of firing. He further stated that Sanjeet died on the way to the hospital. He further stated that the wife of the deceased became unconscious and she regained consciousness after two days.

17. P.W. 3 Ashok Das, though as per the informant is the elder brother-in-law of the informant, in fact, he is one of the villagers. The said witness has deposed that he heard the sound of firing and reached at the place of occurrence. At that time, he saw the dead body of Sanjeet and wife of Sanjeet informed him that Sunni Dewal fired at her husband. He has identified Sonu



and Sunni Dewal who were present in the Court.

17.1 During cross-examination, the said witness has also admitted that on the date of occurrence Shiv Das, who is father of the deceased, was in Ranchi. Said witness has admitted that he had not seen any other person working in the agriculture field. After seeing the occurrence, he gave information to the house of Shiv Das. He has further admitted that the family members of Shiv Das came at the place of occurrence after 10 minutes. He has further admitted that when he reached at the place of occurrence, nobody else was present.

18. P.W. 4 Ghurni Devi is the mother-in-law of the informant. The said witness in her examination-in-chief has stated that the occurrence took place at 08:00 a.m. At that time, she was cutting grass in the agriculture field. At that time, all the three accused Sunni, Sonu and Munna were using abusive language. At that time, Sonu said "Kill Sanjeet" and, therefore, Sunni opened fire and in the said firing Sanjeet sustained injury on the chest. Thereafter all the three accused fled away from the place of occurrence. It is further stated that the son of the said witness was taken to the hospital and on the way to the hospital he succumbed to the injuries. Said witness also stated that the land-dispute was going on with Sunni, as a result of which all



the accused killed her son. The said witness identified the accused who were present in the Court.

18.1 During cross-examination, the said witness has admitted that at the time of occurrence nobody was present in the field. When she reached at the place of occurrence, her son was lying and thereafter her brother-in-law, husband and daughter-in-law came at the place. She has further stated that her daughter-in-law became unconscious and she regained consciousness on the next day. Said witness further admitted that any case with regard to the land-dispute was not pending before any Court. She has further admitted that there is a toilet in her house. However, the same is used only by lady members of the family. She has further admitted that there was no enmity or any dispute with Sonu. She has also stated that she did not get any information with regard to the occurrence from her husband or from any other member of the family.

19. P.W. 5 Dr. Diwakar Singh was posted at Sadar Hospital, Begusarai as Medical Officer. The said witness had performed the *post mortem* of the dead body of deceased Sanjeet and he found the following external injuries:-

“Rigor Mortis was present on eyelid and neck only, Rigor Mortis was absent in upper and lower limbs.



(i) Wound of entry ovally shaped with inverted margin charring tattooing about 4” in diameter.

Size 1/2” over mid line of back at level of D6 vertebrae.

On dissection track of bullet passed slightly on obliquely and anteriorly lacerating muscle of back, fracturing D5 vertebrae and lacerating spinal cord, left lung pericardium, major vessels hard and blood was found in thoracic cavity. One bullet was received from the chamber of heart, sealed it in clean glass jar and handed over to accompanying police personal.

X-ray of chest was advised and done at Sadar Hospital, Begusarai. X-ray plate shows foreign bodies simulating as Bullet in left side of chest.

Liver, spleen, both kidney were found pale, blood was present in stomach, small and large intestine within normal limit.

Urinary Bladder was empty, blood was present in trachea.

Time elapsed since death- two to three hours.

Cause of death- Due to hemorrhagic and cardiogenic shock, produced by above mentioned injuries as a result of fire arm.”



19.1 The said witness has stated in the cross-examination that only one *entry* wound was found and the said injury was due to firing from close range.

20. P.W. 7 Pawan Kumar Singh is the Investigating Officer who had carried out the investigation. The said witness has deposed before the Court that he had recorded the statements of witnesses, visited the place of occurrence, collected the necessary material evidence and thereafter filed the charge-sheet against the present two appellants.

20.1 During cross-examination, said witness has stated that information with regard to the death of the deceased was received, which was registered in the station diary. He has further stated that he did not find any grass which was cut at the place of occurrence. There was no land of the informant near the place of occurrence. He has not inquired into with regard to the land dispute between the parties. He has further stated that he did not find anybody at the place of occurrence nor he had seized clothes of the deceased. He has further admitted that he did not seize any blood-stained soil from the place of occurrence.

21. P.W. 8 Amit Kumar is another police officer who has carried out the investigation and arrested the accused and



filed charge-sheet against them.

22. The defence has also examined two defence witnesses. Both the said defence witnesses have stated that immediately after hearing the sound of firing they reached the place of occurrence and when they reached, one Ashok Das and Neeraj were present. However, they have not seen the accused at the said place nor any other person was present.

23. From the aforesaid evidence led by the prosecution before the Trial Court, it is revealed that P.W.6 Rupam Kumari is the informant whose *fardebayan* was recorded in the hospital by S.I. Rakesh Kumar. However, the said police officer has not been examined by the prosecution. It is further revealed that on the date of occurrence, she was present at her house at 08:00 a.m. and after hearing the sound of firing, she immediately rushed to the agriculture field and saw that her husband sustained gun-shot injury on his abdomen and he was found dead. The said witness further stated that when she inquired, one Ashok Das, who is elder brother-in-law, informed that Sunni Kumar opened fire in which her husband sustained gun-shot injury, though from this deposition of P.W.6, it is revealed that she is not the eye-witness to the occurrence and the information was given to her about the assailants by one



Ashok Das, i.e., P.W.3.

23.1. At this stage, It is pertinent to note that P.W.3 Ashok Das in his deposition stated that he heard the sound of firing and reached at the place of occurrence. At that time, he saw the dead body of Sanjeet and wife of Sanjeet informed him that Sunni Dewal fired at her husband. Thus, from this deposition, it can be said that Ashok Das is also not an eye-witness to the occurrence and there is major inconsistencies in the story put forward by the prosecution through the aforesaid witnesses. It is further revealed that, as per the deposition of both the aforesaid witnesses, when they reached at the place of occurrence, they found Sanjeet dead.

24. At this stage, we would like to observe that P.W.6, during the course of her cross-examination, has specifically stated that Shiv Das, her father-in-law, at the time of occurrence was in Ranchi. The said witness further admitted that she along with her uncle-in-law and mother-in-law had gone to the agriculture field.

24.1. Now, from the deposition of P.W.1 Shiv Das, it is revealed that the said witness has tried to project himself as an eye-witness to the occurrence and he has narrated the occurrence as if he had seen the incident in question. However,



as observed hereinabove, P.W.6 as well as P.W.3 Ashok Das both have specifically stated during their cross-examination that Shiv Das was in Ranchi on the date of occurrence. Further, from the cross-examination of P.W.3, it is further revealed that when he reached at the place of occurrence, family members of Shiv Das came at the place after ten minutes and when he reached at the said place, nobody else was present. Thus, from the aforesaid deposition of P.W.6 and P.W.3, it would emerge that P.W.1, P.W.2 and P.W.4 are not the eye-witnesses to the occurrence despite which they projected themselves as eye-witnesses. Further, as per P.W.6 and P.W.3, when they reached at the place of occurrence, they found Sanjeet dead whereas as per P.W.1, P.W.2 and P.W.4, when they reached at the place of occurrence and when Sanjeet was taken to the hospital, on the way, he informed about the name of the assailants and the role played by the assailants, i.e., the present appellants. We are of the view that in view of the deposition given by P.W.6 and P.W.3, the so called story of oral dying declaration of deceased before P.W.1, P.W.2 and P.W.4 cannot be believed. Further, there are major contradictions in the depositions of the prosecution witnesses.

25. The prosecution has attributed the motive on the



part of the appellants to kill the deceased by stating that there was a land dispute between P.W.1, i.e., father of the deceased and one of the appellants as a result of which, the occurrence took place. However, from the deposition given by P.W.1, it would emerge that the said witness has specifically stated during cross-examination that he is not having any land dispute with anybody and he does not possess any land. He had also not shown any sale deed to the police. Further, the Investigating Officer, P.W.7 Pawan Kumar Singh stated during his cross-examination that that there is no land of the informant near the place of occurrence and he had not inquired with regard to the land dispute between the parties. P.W.4, who is mother of the deceased, has also admitted during cross-examination that no case with regard to the land dispute was pending before any court and there was no enmity or dispute with Sonu (appellant). Thus, from the aforesaid evidence of the prosecution, we are of the view that the prosecution has also failed to prove the motive on the part of the appellants to commit the alleged offences.

26. In view of the aforesaid discussions, we are of the view that the prosecution has failed to prove the case against the appellants beyond reasonable doubt despite which the Trial Court has recorded the order of conviction against the appellants



and thereby committed grave error which requires interference in the present appeals.

27. Accordingly, both these appeals stand allowed. The impugned judgment of conviction dated 31.03.2018 and order of sentence dated 06.04.2018 passed by learned 7<sup>th</sup> Additional District & Sessions Judge, Begusarai in connection with Sessions Trial No.320/2016, arising out of Begusarai Town P.S. Case No.613 of 2015 is quashed and set aside. The appellant, namely, Sunni Kumar @ Sunni Dewal in Criminal Appeal (DB) No.636 of 2018 and appellant, namely, Sonu Kumar in Criminal Appeal (DB) No.541 of 2018 are acquitted of the charges levelled against them by the learned trial court. Since both the appellants, named above, are in jail, they are directed to be released forthwith, if their presence is not required in any other case.

**(Vipul M. Pancholi, J.)**

**( Chandra Shekhar Jha, J.)**

K.C.Jha/-

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