

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL APPEAL (DB) No.625 of 2017**

Arising Out of PS. Case No.-113 Year-2015 Thana- MARANCHI District- Patna

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1. Chandrika Kewat, Son of Late Natho Kewat;
  2. Dinesh Kewat, Son of Late Ramjee Kewat;
  3. Ranjit Paswan, Son of Shankar Paswan;
- All are resident of Village - Neema Pandey, Police Station - Halsi in the District of Lakhisarai.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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**Appearance :**

For the Appellant/s	:	Mr. Ramakant Sharma, Sr. Adv. Mr. Bipin Kumar, Adv.
For the Informant	:	Mr. Satyendra Prasad Singh, Adv.
For the State	:	Mr. Dilip Kumar Sinha, APP

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**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR**

**and**

**HONOURABLE MR. JUSTICE NANI TAGIA**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)**

**Date : 08-01-2024**

We have heard Mr. Ramakant Sharma, the learned Senior Advocate for the appellants and Mr. Satyendra Prasad Singh, the learned Advocate for the informant. The State is represented by Mr. Dilip Kumar Singh, the learned Additional Public Prosecutor.

2. All the three appellants have been



convicted under Section 302/34 of the Indian Penal Code (*in short, the I.P.C.*) *vide* judgment dated 01.04.2016 passed by the learned Additional Sessions Judge-II, Barh, Patna in Sessions Trial No. 673 of 2016 arising out of Maranchi P.S. Case No. 113 of 2015. Appellant No. 2/Dinesh Kewat has also been convicted under Section 27 of the Arms Act. The appellants, by order dated 07.04.2016, have been sentenced to undergo R.I. for life, to pay a fine of Rs. 50,000/- each and in default of payment of fine, to further suffer R.I. for nine months for the offence under Section 302/34 of the I.P.C. Appellant No. 2/Dinesh Kewat has further been sentenced to undergo R.I. for seven years, to pay a fine of Rs. 20,000/- and in default of payment of fine, to further undergo R.I. for nine months for the offence under Section 27 of the Arms Act.

3. The sentences have been directed to run concurrently.

4. While Surendra Kewat (P.W.1/informant)



and others were returning after cremating the dead-body of a local god-man, he saw the appellants and one Prahalad Kumar kill the deceased, who too was part of the cortege. The F.I.R. was lodged on 05.11.2015, alleging that the saint, who had lived for about 105 years, had died and the villagers had gone to the *ghat* (river bank) on vehicles to cremate his dead-body. The cremation ground is stated to be at a distance of about seventy to eighty kilometers from the village of the informant. While returning from the burning *ghat*, the appellants also were walking towards along with others, when Prahalad, who has not been put on Trial, and appellant/Dinesh Kewat fired at the deceased. They were helped by the other two appellants, namely, Chandrika Kewat and Ranjit Paswan. After killing the deceased, the accused persons are said to have run away.

5. Appellant/Dinesh Kewat had earlier also made an attempt at the life of the deceased, for which a



case already was pending consideration before the Courts of law.

6. It was, therefore, alleged that the deceased was killed by the appellants and one Prahalad Kumar.

7. On the basis of the *fardebayan* statement of the informant/P.W. 1, referred to above, a case *vide* Maranchi P.S. Case No. 113 of 2015, dated 05.11.2015, was instituted for the offences under Sections 302/34 of the I.P.C. and 27 of the Arms Act.

8. The police, after investigation, submitted *charge-sheet* against all the named accused persons including the appellants, but only the appellants were put on Trial as accused/Prahalad never surrendered to the process of law.

9. The Trial Court, after having examined five witnesses on behalf of the prosecution, convicted and sentenced the appellants as aforesaid.

10. At the Trial, the informant (P.W. 1) has



made certain statements, which strikes at the very root of the prosecution case, namely, of his or anybody else is having seen the occurrence. After repeating what he had to offer in the *fardbeyan* statement, P.W. 1 has stated that Maranchi burning ground was by the side of Ganges and near Tyagi Baba temple where the occurrence is said to have taken place. After the dead-body was burnt, the persons who had taken part in the procession were returning home and when they reached near Vijaygarh temple at about 2:30 P.M. on 05.11.2015, the occurrence took place. He has emphatically told the Court that while the deceased was moving ahead of him, the appellants were also walking alongside as they were also part of the procession. It was only when the deceased reached near Vijaygarh temple, co-accused/Prahalad took out a pistol from his waist and fired at the deceased, which hit him near his left armpit. Appellant/Dinesh Kewat also, thereafter, fired at the deceased, which shot also hit him. P.W. 1



and about four - five others rushed ahead for rescuing the deceased, but by that time, the miscreants/appellants had left the P.O. after giving the informant a threatening that he too would be killed.

11. It was shortly thereafter that the Maranchi police had arrived at the P.O.

12. The F.I.R. was registered by Dinesh Bahadur Singh (P.W. 5).

13. The cause of occurrence as was narrated by P.W. 1 before the Trial Court was that appellant/Dinesh Kewat and the deceased together had undertaken some contract work and there was some dispute with respect to sharing the profits. It was on this account that earlier also, an attempt was made in the year 2012 on the life of the deceased by appellant/Dinesh Kewat, which case had still not concluded but was pending before the Courts of law. The burning ground and the contiguous river bank is near the National Highway. The National Highway has



been stated to be three kilometers away from the burning ground. The funeral procession took the National Highway for reaching the burning *ghat*. The distance of Maranchi village, where the burning *ghat* is situated, about seventy to eighty kilometers from the village of P.W. 1 and the deceased.

14. Mr. Ramakant Sharma, the learned Senior Advocate has argued on behalf of the defence that it does not appear to be probable that after burning the dead-body, the informant (P.W. 1) would return home on foot as it is expected that he would return to his village home which is about eighty kilometers away by his vehicle. The occurrence, as appears from the topography suggested by the witnesses, did not take place any where close to the burning *ghat* or the river bank. The Highway intersects the two places at a distance of three kilometers. The dead-body was said to be lying in the field by the side of the Highway. This topography, therefore, suggests that the dead-body was



found at some distance from the burning *ghat*, if not closer to village home of the deceased. Under such circumstances, it has been argued, the deposition of clarification of P.W. 1 would be a reproach to his case.

15. The vehicle in which the dead-body was brought, was left at some distance from the *ghat*. When P.W. 1 claims to have left the *ghat*, either for boarding his vehicle or going to his home, he had heard the sound of firing. There were two gunshots. Had P.W. 1 seen the occurrence happening before his eyes, this would not have been his explanation. Again, P.W. 1 affirmed that he saw the deceased lying down on his left side. He was bleeding. When he reached near the dead-body, he found that some of the blood drops had dried up. The clothes of the deceased were completely drenched with blood.

16. This very statement makes it very clear that P.W. 1 had not seen the actual part of the assault.

17. There is no evidence which could be used



for measuring the distance between the burning *ghat*/river bank and the place where the dead-body was found. If there is doubt about P.W. 1 having seen the actual part of the assault, it would naturally lead us to disbelieve Balram Kewat (P.W. 3), who is the son of the deceased, and Jitendra Kewat (P.W. 4), who is one of co-villagers of the deceased, who have also talked about their having seen the actual part of the assault.

18. P.W. 1 had never gone to the police station and had no idea as to who had informed the police. He kept waiting near the dead-body. He had also raised shouts on which nobody had arrived from Maranchi village.

19. Few people of the village, who came on the shout of P.W. 1, later, spoke about the murder of the deceased.

20. There was no necessity for the informant to be told by the villagers when he had himself seen the occurrence.



21. In what direction did the accused persons leave has also not been stated.

22. That may not be very important, but if P.W. 1 is to be believed, even the appellants were part of the funeral procession and had come along with the dead-body.

23. When did they change their mind or thought of executing the murder, also remains unknown.

24. Therefore, it has been urged by Mr. Sharma, the learned Senior Advocate that it would not be too off the perpendicular to suggest that neither P.W. 1 nor P.Ws. 3 and 4 had seen the actual part of assault.

25. That the deceased had earlier been attempted to be killed at the instance of appellant/Dinesh Kewat was the reason, perhaps, for P.W. 1 and others to conclude that on this occasion also, appellant/Dinesh Kewat along with his cohorts had killed the deceased.

26. We find force in the submission of Mr.



Sharma that if the appellants/accused persons were part of the procession and were returning together with the informant (P.W. 1) and the deceased, the story of their choosing a particular place somewhere between the Highway and the burning *ghat* to execute the murder, appears to be slightly doubtful. So, the deposition of P.Ws. 1, 3 and 4 regarding their having seen the occurrence appears to be a set of porkies.

27. The only possible reason which can be ascribed for the witnesses resorting to falsehood is their belief that appellant/Dinesh Kewat and the deceased were having bad blood between them.

28. That the deceased died of gunshot is beyond question.

29. There were two gunshots wounds found in the body of the deceased by Dr. Uma Shankar Singh (P.W. 2), who had conducted the *post-mortem* examination. There were four injuries and two of the wounds of entry were communicating to the two other



injuries of exit.

30. Perhaps, because P.W. 1 had seen the dead-body before lodging the F.I.R., he has alleged that Prahalad and Dinesh Kewat fired shots, whereas the other appellants helped them in executing the murder.

31. The time of occurrence also coincides with the possible timing of the murder.

32. But this would not make the prosecution story any strong; for the reason that the tall claim of P.Ws. 1, 3 and 4 of having seen the occurrence has been rendered doubtful.

33. In order to test whether P.W. 1 had made a correct statement, we have examined the deposition of the Investigator (P.W. 5) in some greater detail.

34. He has deposed that on 05.11.2015, when he was posted as S.H.O. in the Maranchi police station, he learnt by around 03:00 P.M. in the afternoon that somebody, who had come to take part in the



cremation of a local Saint, has been murdered. On such information, which does not appear to have been recorded in the station diary, P.W. 5 along with the police party proceeded to the P.O. Near Vijaygarh at Tyagi Baba temple, he saw the dead-body of a 50 year old person, who had gunshot wounds on his body. There were more than a hundred people at the P.O. The crowd included local persons as also persons from outside. The boundary of the place where the dead-body was found, as noted by him and which could not be confirmed, was a field by the side of the main road. In the east was located the community hall, whereas on the north and west, there were houses of local people. The P.C.C. road ran in the north-south direction. The inquest report was prepared at the place where the dead-body was found.

35. This sequence of events narrated by P.W. 5 has further given a jolt to the prosecution version regarding the witnesses having seen the occurrence.

36. Had the name of the appellants been told



by P.W. 1 to the onlookers, perhaps, their names would have pulsed and would have been known to the Investigator.

37. There is some requirement then of knowing as to what was the source of information for the I.O. to proceed to the P.O. Till the time the I.O. reached the P.O., the only information which he and his police party had was of one person, who had come for the cremation along with others, having been killed.

38. With P.Ws. 1, 3 and 5 having seen the assailants, their names ought not to have been under the wraps even at the initial stage.

39. It would be too much to believe that four of the persons, who were part of the procession, resorted to murder and were allowed to escape. If this were true, many independent persons would have come forward to depose against the appellants.

40. As we have already noted, there was no occasion for P.W. 1 to have been informed by local



people at Maranachi that the deceased had been killed. Obviously, therefore, P.W. 1 had reached the P.O. along with others and had no clue as to who had killed the deceased.

41. At least their claims of having seen the actual part of the assault becomes doubtful.

42. In paragraph 10 of his cross-examination, P.W. 5 denies to have recorded any statement of P.W. 1 that it was appellant/Dinesh Kewat who took out his weapon from his waist and fired at the deceased. On being specifically questioned about the P.O., P.W. 5 has stated that the village was dotted by around hundred houses of local people. He has been candid enough to state before the Court that he did not consider it important to record the statement of anyone of the local persons who could have known about the occurrence.

43. There was no vehicle parked at the place where the dead-body was found.



44. This pre-supposes that either the P.O. was somewhere far from the place where the vehicles were parked or somewhere in between the river bank and the place where the dead-body was found.

45. Was the deceased chased and killed or was he killed from behind? We do not know. What attempts were made to apprehend or nab them? This also remains totally unknown.

46. Under such circumstances, the disclosure of the Investigator (P.W. 5) that he did not investigate whether the murder had been committed somewhere else and the dead-body was thrown at the place where it was found, assumes significance.

47. The investigation to say the least was not proper.

48. That may not auger well for the prosecution but that by itself, would not make the prosecution case liable to be discarded totally.

49. We have found that apart from poor



investigation of the case, P.Ws. 1, 3 and 5 were also only making a guesswork about the deceased having been killed by appellant/Dinesh Kewat and his other associates.

50. It is not that we have doubted their testimony only on account of one folly of their having made a claim of witnessing the assault, which they could not prove but even otherwise, their statements do not project a probable picture of what actually happened.

51. That there was an earlier attempt at the life of the deceased at the hands of appellant/Dinesh Kewat, cannot be read as an evidence strong enough for P.Ws. 1, 3 and 5 to concur that this time also, he would have been instrumental.

52. Such background fact would have been helpful for the prosecution, if the deposition of the witnesses would have been consistent and trust worthy.

53. The depositions though are consistent, but they are off the line for the reason of the narration



of events and the sequence suggested, does not bring out a correct picture.

54. We say so for another reason that shortly after the murder, the police party had arrived but the Investigator had not found anything incriminating at the P.O.

55. That there were no vehicles parked in around the P.O. and even the blood was not seized and, therefore, never sent for any forensic examination, further gives a jolt to the prosecution version.

56. With these frailties in the prosecution case, we are left with no option but to give benefit of doubt to the appellants.

57. For the afore-noted reasons, we set-side the judgment of conviction and order of sentence, referred to above, and acquit the appellants, above-named, of the charges levelled against them.

58. The appellant No. 2, namely, Dinesh Kewat is said to be in custody. He is directed to be set



at liberty forthwith unless his custody is required in any other case.

59. The appellant Nos. 1 and 3, namely, Chandrika Kewat and Ranjit Paswan, are on bail. Their liabilities under the bail-bonds are discharged.

60. The appeal stands allowed.

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

62. The records of this case be returned to the Trial Court forthwith.

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

**(Ashutosh Kumar, J)**

**(Nani Tagia, J)**

Praveen-II/Manoj

AFR/NAFR	NAFR
CAV DATE	N/A
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