IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.960 of 2018

Arising Out of PS. Case No.-134 Year-2001 Thana- KARAKAT District- Rohtas

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Janardan Singh @ Janardan Singh Yadav Son of Late Ram Bachan Singh, resident of Village- Tilma Chougri Police Station- Karakat, District- Rohtas.

... ... Appellant/s

Versus

The State Of Bihar

... ... Respondent/s

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with

CRIMINAL APPEAL (DB) No. 967 of 2018

Arising Out of PS. Case No.-134 Year-2001 Thana- KARAKAT District- Rohtas

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Nandji Yadav Son of Shyam Bihari Singh, resident of Village- Nawada, Police Station- Karakat, District- Rohtas at Sasaram.

... ... Appellant/s

Versus

The State Of Bihar

... ... Respondent/s

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with

CRIMINAL APPEAL (DB) No. 1084 of 2018

Arising Out of PS. Case No.-134 Year-2001 Thana- KARAKAT District- Rohtas

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1. Bali Yadav, Son of Mukh Lal Yadav,
2. Binod Yadav, Son of Bali Yadav, Both Resident of Village- Nawada, Police Stattion- Karakat, District- Rohtas.
3. Ram Pravesh Singh, Son of Late Devki Singh, Resident of Village- Tilima Chaigri, P.O.- Belwain, Police Station- Karakat, District- Rohtas.

... ... Appellant/s

Versus

The State Of Bihar

... ... Respondent/s

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Appearance :
(In CRIMINAL APPEAL (DB) No. 960 of 2018)
For the Appellant/s : Mr. Sanjay Kumar, Advocate
Mr. Kamla Kant, Advocate
Mr. Nil Kamal, Advocate
For the Respondent/s : Mr. Abhimanyu Sharma, APP
(In CRIMINAL APPEAL (DB) No. 967 of 2018)

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For the Appellant/s : Mr. Sanjay Kumar, Advocate
Mr. Atul Chandra, Advocate
For the Respondent/s : Mr. Ajay Mishra, APP
(In CRIMINAL APPEAL (DB) No. 1084 of 2018)
For the Appellant/s : Mr. Nitya Nand Tiwary, Advocate
Mr. Mukesh Kumar, Advocate
For the Respondent/s : Mr. Abhimanyu Sharma, APP

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
and
HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)

Date: 24-04-2026

1. These appeals arise out of the judgment of conviction, dated 06.07.2018 and the order of sentence, passed by the learned Additional Sessions Judge, Fast Track Court-II, Sasaram, Rohtas, in Sessions Trial No. 80 of 2003, arising out of Karakat P.S. Case No. 134 of 2001.

2. Criminal Appeal (DB) No. 960 of 2018 has been preferred by Janardan Singh @ Janardan Singh Yadav; Criminal Appeal (DB) No. 967 of 2018 has been preferred by Nandji Yadav; and Criminal Appeal (DB) No. 1084 of 2018 has been preferred by Bali Yadav, Binod Yadav and Ram Pravesh Singh.

3. Since all the appeals arise out of the same judgment, relate to the same occurrence and involve common questions of facts and law, they have been heard together and are being disposed of by this common judgment.

4. The prosecution case, as disclosed in the

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fardbeyan of the informant Keshav Singh, is that on 18.11.2001, the informant along with several other persons was travelling in a jeep. When the vehicle reached near Belwai, it was allegedly intercepted by a group of about fifteen persons, who were said to be armed with firearms.

5. It is alleged that the said persons surrounded the jeep and, upon identifying the occupants, opened indiscriminate fire. As a result of the firing, the driver of the jeep, Raju Pandey, along with other occupants, sustained fatal injuries. Some persons also received injuries.

6. In the fardbeyan, several accused persons, including the present appellants, were named as participants in the occurrence. The allegation against them is that they acted in concert and took part in the firing upon the occupants of the jeep.

7. On the basis of the said fardbeyan, Karakat P.S. Case No. 134 of 2001 was instituted under Sections 302, 307 and 34 of the Indian Penal Code and Section 27 of the Arms Act.

8. After registration of the case, investigation was taken up and, upon completion thereof, charge-sheet was submitted against the accused persons.

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9. The case was committed to the Court of Sessions and was registered as Sessions Trial No. 80 of 2003.

10. Charges were framed against the accused persons under Sections 302/34 and 307/34 of the Indian Penal Code and Section 27 of the Arms Act. The accused persons denied the charges and claimed to be tried.

11. In course of trial, the prosecution examined a number of witnesses in support of its case. The prosecution relied mainly upon the testimony of the informant and other alleged eye-witnesses, including those who claimed to have sustained injuries in the occurrence.

12. It appears from the record that some of the witnesses did not support the prosecution case in its entirety and were declared hostile.

13. The statements of the accused persons were recorded under Section 313 of the Code of Criminal Procedure, wherein they denied the allegations and asserted that they have been falsely implicated.

14. It further appears that certain witnesses connected with the investigation and medical examination were not examined during the course of trial.

15. The learned Trial Court, upon appreciation of

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the evidence on record, came to the conclusion that the prosecution had succeeded in proving the occurrence and the participation of the accused persons therein.

16. The Trial Court placed reliance upon the evidence of the eye-witnesses and held that the accused persons had acted in furtherance of their common intention.

17. Accordingly, the accused persons were convicted under Sections 302/34 and 307/34 of the Indian Penal Code and also under Section 27 of the Arms Act.

18. Upon conviction, they were sentenced to undergo imprisonment for life for the offence under Section 302/34 of the Indian Penal Code and rigorous imprisonment for five years for the offence under Section 307/34 of the Indian Penal Code, along with other sentences.

19. Learned counsel appearing on behalf of the appellants submitted that the judgment of conviction suffers from serious infirmities both on facts and in law and is not sustainable.

20. It was contended that the prosecution case rests upon general and omnibus allegations without any specific overt act being attributed to the individual accused persons. According to the appellants, mere presence at the place of

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occurrence, even if assumed, cannot form the basis of conviction in the absence of clear and specific evidence regarding participation.

21. It was further submitted that the identification of the accused persons is doubtful. The occurrence is said to have taken place in a sudden manner and in the course of indiscriminate firing, and under such circumstances, the possibility of proper identification is seriously impaired.

22. Learned counsel appearing for the Appellants also contended that there are material inconsistencies in the evidence of the prosecution witnesses. It was argued that the witnesses have not given a consistent account regarding the manner of occurrence and the role of the accused persons, which creates a reasonable doubt in the prosecution case.

23. It was also urged that some of the witnesses have not supported the prosecution case and have been declared hostile, thereby weakening the prosecution version.

24. A further submission was made that material witnesses connected with the investigation and medical examination have not been examined, which has caused prejudice to the defence and affects the reliability of the prosecution case.

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25. On the aforesaid grounds, it was submitted that the appellants are entitled to the benefit of doubt and the judgment of conviction is liable to be set aside.

26. In so far as the appellants Bali Yadav, Binod Yadav and Ram Pravesh Singh are concerned, it was submitted that no specific role has been attributed to them in the occurrence and their implication is based on general allegations.

27. Learned counsel appearing on behalf of Nandji Yadav submitted that apart from his name being mentioned, there is no substantive evidence to establish his participation in the occurrence.

28. Similarly, on behalf of Janardan Singh, it was contended that there is no reliable evidence connecting him with the commission of the offence and his conviction is based on conjectures.

29. In the light of the submissions advanced on behalf of the parties and upon perusal of the record, the following points arise for determination:

(a) Whether the prosecution has been able to prove the occurrence beyond reasonable doubt?

(b) Whether the identity and participation of the

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appellants in the alleged occurrence have been established by reliable and cogent evidence?

(c) Whether the conviction of the appellants with the aid of Section 34 of the Indian Penal Code is sustainable in the facts and circumstances of the case?

(d) Whether the appellants are entitled to the benefit of doubt?

30. The occurrence in question, as alleged by the prosecution, relates to an incident of firing upon the occupants of a jeep resulting in death and injuries. The fact that an occurrence did take place, in which some persons lost their lives and others sustained injuries, is not seriously in dispute. The core issue, however, is whether the appellants can be safely held to be the perpetrators of the said occurrence.

31. The prosecution case rests primarily upon the testimony of the informant and other witnesses who have been projected as eye-witnesses to the occurrence. It is, therefore, necessary to examine whether their evidence inspires confidence and is sufficient to establish the guilt of the appellants beyond reasonable doubt.

32. Upon a careful evaluation of the evidence on record, it emerges that the prosecution case rests on general

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and omnibus allegations that a group of 15–20 persons participated in the occurrence. However, none of the witnesses has attributed any specific overt act to the individual accused. The evidence does not disclose as to which accused fired the fatal shot or caused injuries. In such circumstances, it would be unsafe to sustain conviction solely on the basis of collective and unparticularised allegations.

33. In ***Masalti v. State of U.P.*** reported in ***1964 SCC OnLine SC 30,*** wherein the Hon'ble Supreme Court, in paragraph no. 156, has cautioned that in cases involving a large number of accused, conviction cannot be sustained on the basis of general and omnibus allegations without specific evidence of individual participation. Paragraph 15 reads as hereunder:

> *"15. Then it is urged that the evidence given by the witnesses conforms to the same uniform pattern and since no specific part is assigned to all the assailants, that evidence should not have been accepted. This criticism again is not well-founded. Where a crowd of assailants who are members of an unlawful assembly proceeds to commit an offence of murder in pursuance of the common object of the unlawful assembly,*

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it is often not possible for witnesses to describe accurately the part played by each one of the assailants. Besides, if a large crowd of persons armed with weapons assaults the intended victims, it may not be necessary that all of them have to take part in the actual assault. In the present case, for instance, several weapons were carried by different members of the unlawful assembly, but it appears that the guns were used and that was enough to kill 5 persons. In such a case, it would be unreasonable to contend that because the other weapons carried by the members of the unlawful assembly were not used, the story in regard to the said weapons itself should be rejected. Appreciation of evidence in such complex case is no doubt a difficult task; but criminal courts have to do their best in dealing with such cases and it is their duty to sift the evidence carefully and decide which part of it is true and which is not. In the present case, the High Court has in fact refused to act upon the evidence of Bahoran and Prabhu Dayal, because it appeared to the High Court that the evidence of these two witnesses suffered from serious infirmities.

34. The prosecution has examined nine witnesses in

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support of its case. PW-1 Vinod Singh has been examined as an eye-witness. PW-2 Rajendra Singh has also supported the prosecution case. PW-3 Munna Singh, PW-4 Ramdular Singh, PW-8 Upendra Singh and PW-9 Ajay Singh have been declared hostile. PW-5 Vinod Singh (a witness distinct from PW-1), PW-6 Satyendra Singh and PW-7 Bhawan Singh have been examined as supporting witnesses.

35. PW-1 Vinod Singh, has deposed that on the date of occurrence, while travelling in the jeep, a group of about 15–20 persons intercepted the vehicle and opened indiscriminate fire. He has named several accused persons, including the present appellants.

36. The evidence of PW-1 establishes that an occurrence of firing did take place and that multiple persons were involved in the assault. However, upon careful scrutiny, it appears that his testimony is general in nature. He has not attributed any specific overt act to the individual accused persons. His statement is that all the accused persons fired, without clarifying as to which of them caused the fatal injuries or played a distinct role.

37. In a case involving a large number of accused persons, such general and omnibus allegations require

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cautious evaluation. The testimony of PW-1, though relevant to establish the occurrence, does not by itself fix individual liability upon the appellants.

38. PW-2 Rajendra Singh has supported the prosecution case to the extent that he has stated that the jeep was intercepted and firing took place. He has also named certain accused persons.

39. However, similar to PW-1, the evidence of PW-2 is also general in nature. He speaks about the presence of a large number of persons and firing by the group but does not clearly specify the role played by each accused. His deposition does not indicate as to which accused fired the shots resulting in death or injury.

40. Furthermore, the testimony of PW-2 does not fully corroborate PW-1 in material particulars regarding the manner of occurrence and identification of individual accused, thereby affecting the overall consistency of the prosecution case.

41. PW-3 Munna Singh, PW-4 Ramdular Singh, PW-8 Upendra Singh and PW-9 Ajay Singh have been declared hostile. These witnesses have not supported the prosecution case in material particulars.

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42. The hostility of these witnesses assumes significance, particularly in a case where the prosecution relies heavily on ocular evidence. Their failure to support the prosecution version weakens the chain of evidence and reduces the reliability of the case projected by the prosecution.

43. PW-5 Vinod Singh (a witness distinct from PW-1), PW-6 Satyendra Singh and PW-7 Bhawan Singh have been examined as supporting witnesses.

44. The evidence of these witnesses, however, does not materially advance the prosecution case. Their testimony is either based on limited observation or lacks clarity regarding the identification and role of the accused persons. None of these witnesses has provided a clear and cogent account attributing specific acts to the appellants.

45. Their evidence, therefore, remains insufficient to corroborate the version of PW-1 and PW-2 in a manner that would establish the individual participation of the appellants.

46. In such circumstances, it becomes unsafe to hold individual accused persons guilty solely on the basis of collective allegations, particularly when the evidence does not clearly establish their distinct participation.

47. The occurrence is stated to have taken place

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suddenly and involved indiscriminate firing by a large group of persons. In such a situation, the possibility of mistaken identity cannot be ruled out.

48. The evidence on record does not indicate that any test identification parade was conducted. The identification of the accused persons in Court, in the absence of prior reliable identification, requires cautious evaluation.

49. The identification of the appellants, therefore, cannot be said to be free from doubt.

50. It appears from the record that the Investigating Officer has not been examined. This has deprived the defence of an opportunity to bring on record contradictions in the statements of witnesses and to test the fairness of the investigation.

51. It further appears that the medical evidence has not been properly proved through the examination of the doctor. As a result, the nature of injuries and their correlation with the alleged acts of the accused persons remain inadequately established.

52. These omissions create gaps in the prosecution case and assume significance in assessing the overall reliability of the evidence.

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53. The prosecution has sought to fasten liability upon the appellants with the aid of Section 34 of the Indian Penal Code. In order to attract the said provision, it must be shown that the accused persons shared a common intention and participated in the commission of the offence in furtherance of such intention.

54. In the present case, the evidence on record does not disclose any specific act, conduct or circumstance from which a pre-arranged plan or meeting of minds can be inferred. The witnesses have merely stated that a group of persons was present and fired indiscriminately, without attributing any distinct role to the appellants.

55. Mere presence in a group, without clear evidence of participation and shared intention, is not sufficient to attract liability under Section 34 of the Indian Penal Code. In the absence of clear and cogent evidence establishing common intention, the application of Section 34 IPC becomes unsustainable.

56. Upon a cumulative assessment of the evidence on record, this Court finds that while the occurrence of firing resulting in death and injuries stands established, the participation of the appellants has not been proved with the

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degree of certainty required in criminal law.

57. The evidence against the appellants is general in nature, lacks specific attribution of roles, and suffers from inconsistencies and deficiencies. The presence of hostile witnesses and the non-examination of material witnesses further weaken the prosecution case.

58. In such circumstances, it would be unsafe to sustain the conviction of the appellants.

59. It is well settled that suspicion, however strong, cannot take the place of proof, and if two views are possible on the evidence, the one favourable to the accused must be adopted, as held in paragraph no. 25 of Hon'ble Supreme Court Judgement in case of ***Kali Ram v. State of Himachal Pradesh,*** reported in ***(1973) 2 SCC 808***, which runs hereunder:

> ***25.*** *Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the*

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accused is sought to be established by circumstantial evidence. Rule has accordingly been laid down that unless the evidence adduced in the case is consistent only with the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the Court should refrain from recording a finding of guilt of the accused. It is also an accepted rule that in case the Court entertains reasonable doubt regarding the guilt of the accused, the accused must have the benefit of that doubt. Of course, the doubt regarding the guilt of the accused should be reasonable; it is not the doubt of a mind which is either so vacillating that it is incapable of reaching a firm conclusion or so timid that is is hesitant and afraid to take things to their natural consequences. The rule regarding the benefit of doubt also does not warrant acquittal of the accused by report to surmises, conjectures or fanciful considerations. As mentioned by us recently in the case of State of Punjab v. Jagir Singh [(1974) 3 SCC 227 : 1973 SCC (Cri) 886] a criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the

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> *question as to whether the accused arraigned at the trial is guilty of the offence with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the Court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the Courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures.*

60. The prosecution has succeeded in proving the occurrence, but has failed to prove the role of the appellants beyond reasonable doubt.

61. On perusal of the evidence on record, we find that during the trail only 09 witnesses were examined. Out of them, two injured witnesses supported the prosecution case in course of their evidence. PW-1, Vinod Singh only identified Jaj Yadav; PW-2, Rajendra Singh identified accused Vinod Yadav and Bali Yadav. Thus, all the assailants were not

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identified by the witnesses. Informant was not examined during trial. The Medical Officer, who conducted postmortem of the deceased was also not examined. Therefore, the cause of death of the deceased has not been established. The I.O. of this case was also not examined.

62. In the absence of their evidence, it would be highly risky to affirm conviction of the accused persons on the basis of evidence of PW-1 and PW-2, specially because it is established that there was political and caste related rivalry between the accused persons and the witnesses and the deceased.

63. No explanation has been furnished by the prosecution for withholding such a material witness. The non-examination of such a material witness assumes significance and casts a serious doubt on the prosecution case, particularly when the case rests primarily on ocular evidence.

64. In view of the analysis made hereinabove, the points for determination are answered in following words:

(i) The prosecution has not been able to prove the case against the appellants beyond reasonable doubt.

(ii) The identity and participation of the appellants have not been established by reliable and cogent evidence.

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(iii) The conviction of the appellants with the aid of Section 34 of the Indian Penal Code is not sustainable.

(iv) The appellants are entitled to the benefit of doubt.

65. Accordingly, the appeals are allowed.

66. The judgment of conviction, dated 06.07.2018 and the order of sentence passed by the learned Trial Court in Sessions Trial No. 80 of 2003 are set aside.

67. The appellants are acquitted of the charges levelled against them.

68. The appellants are on bail. They are discharged from the liabilities of their bail bonds.

(Bibek Chaudhuri, J)

Chandra Shekhar Jha, J: I agree.

(Chandra Shekhar Jha, J)

skm/-

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