

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1050 of 2018

Arising Out of PS. Case No.-13 Year-2015 Thana- MAJORGANJ District- Sitamarhi

Murari Singh, Son of Shashi Bhushan Singh, R/o Village- Kansara, P.S.-
Mejarganj, District- Sitamarhi.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 806 of 2018

Arising Out of PS. Case No.-13 Year-2015 Thana- MAJORGANJ District- Sitamarhi

Shashi Bhushan Singh, Son of Late Birendra Singh, R/o Village- Kansara,
P.S.- Mejarganj, District- Sitamarhi.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 903 of 2018

Arising Out of PS. Case No.-13 Year-2015 Thana- MAJORGANJ District- Sitamarhi

1. Govind Singh, Son of Shashi Bhushan Singh, R/o Village- Kansara, P.S.
Mejarganj, District- Sitamarhi.
2. Mukesh Singh @ Mukesh Kumar @ Mukesh Kumar Singh, Son of Anand
Singh, Resident of Village- Kharshan, P.S.- Riga, District- Sitamarhi.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In all the Appeals)



For the Appellant/s : Mr. Ajay Kumar Thakur, Adv.
Ms. Kiran Kumari, Adv.
Mr. Ritwik Thakur, Adv.
Ms. Vaishnavi Singh, Adv.
Mr. Pravin Kumar, Adv.
Mr. Ritwaj Raman, Adv.
For the State : Mr. Dilip Kumar Sinha, APP

**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)
Date : 09-11-2023**

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

2. Mr. Ajay Kumar Thakur, the learned Advocate has appeared on behalf of all the appellants, whereas the State has been represented, in all the appeals, by Mr. Dilip Kumar Sinha, the learned Addl. Public Prosecutor.

3. These appeals are directed against the judgment and order of conviction and sentence dated 23.05.2018 and 26.05.2018 respectively, passed by the learned Sessions Judge, Sitamarhi in Sessions Trial Nos. 24 of 2016 + 489 of 2015, arising out of Majorganj P.S.



Case No. 13 of 2015, holding the appellants to be guilty under Sections 302 and 307 read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act, 1959 and they have been sentenced to undergo imprisonment for life for the offence under Sections 302 and 307 read with Section 34 of the I.P.C. However, no separate sentence has been awarded under Section 27 of the Arms Act, 1959.

4. The appellant/Murari Singh [Cr. Appeal (DB) No. 1050 of 2018] is said to have killed his cousin/Pankaj Kumar Singh, whereas the appellant/Govind Singh [Cr. Appeal (DB) No. 903 of 2018] is said to have injured Rahul Kumar (P.W. 3), a co-villager and an agnate. The occurrence took place on the orders of appellant/Shashi Bhushan Singh [Cr. Appeal (DB) No. 806 of 2018].

5. The case was lodged by the father of the deceased, namely, Krishnadeo Singh, who has been examined as P.W. 4. The appellant/Shashi Bhushan



Singh is his own brother. There is a pending land dispute between the two brothers.

6. According to the F.I.R., the occurrence took place some times after 6:30 P.M. on 25.01.2015 for which the *fardebayan* was recorded at 09:30 P.M. at Sub-Divisional Hospital, Sitamarhi in its Emergency Ward.

7. P.W. 4 has alleged in the F.I.R. that on the same day, while he along with others was returning from the river bank after immersing the Statue of Goddess *Saraswati*, he saw that his son/Pankaj Kumar (deceased), who had gone to collect *kirana* items from a local shop, was accosted and was shot at by the appellant/Murari Singh on the orders of the appellant/Shashi Bhushan Singh, who is his father. When Rahul Singh (P.W. 3) went to his rescue, he too was fired at by the appellant/Govind Singh, which hit him in his nose.

8. The appellant/Mukesh Singh [Cr. Appeal



(DB) No. 903 of 2018], a relative of the other co-convicts, is also said to have fired from his pistol a number of times, which resulted in pandemonium at the place of occurrence. It was thereafter that P.W. 4 along with others took Rahul Singh and the deceased to the *Sadar* Hospital on a Bolero vehicle, where the son of P.W. 4 was declared dead and Rahul Singh (P.W. 3) was admitted for being treated for the injuries suffered by him. P.W. 4, thereafter, asserted that because of the land dispute between the two brother, the occurrence had taken place.

9. On the basis of the afore-noted *fardbeyan* statement made by P.W. 4, Majorganj P.S. Case No. 13 of 2015, dated 26.01.2015, was registered for investigation for the offences punishable under Sections 302, 307, 120(B) and 34 of the Indian Penal Code and Section 27 of the Arms Act, 1959.

10. The Trial Court, after examining eight (8) witnesses on behalf of the prosecution including the



Doctor and the I.O. and one on behalf of the defence, convicted and sentenced the appellants as aforesaid.

11. Mr. Ajay Thakur, the learned Advocate has urged that from the deposition of the witnesses, it would clearly appear that the deceased had received injuries in some other transaction, at some other place and at some other time, but because of the existing enmity between the family of the two brothers, namely, P.W. 4 and appellant/Shashi Bhushan Singh, the act of firing at the deceased and also at P.W. 3, the lone surviving injured person of the case, has been attributed to the two sons of the appellant/Shashi Bhushan Singh, who, as we have noted, is the own brother of the informant (P.W. 4).

12. It has further been submitted that the details provided by the witnesses clearly demonstrate that the occurrence could not have taken place at the time suggested by the prosecution for the reason that even if the suggested time is accepted to be true, it



would not be in concord with the medical testimony, especially with respect to rigor mortis having set in all the four limbs of the deceased.

13. Mr. Thakur has urged that the occurrence took place in the month of January and the post-mortem was conducted in the night of the occurrence at about 10:40 P.M. There would be little possibility of rigor mortis setting in the body and that also in all the four limbs. The cold weather of January has to be taken into account while analyzing the evidence against the appellants.

14. Apart from this, it has been submitted that the medical testimony confirms that the deceased died of gunshot injury but the wound of entry was behind the chest, whereas the wound of exit was on the left side of the upper chest near the nipple. However, the spleen was found to be ruptured. This, Mr. Thakur has argued, has to be seen in juxtaposition to the specific averments of the other eye-witnesses that the



deceased was hit in the stomach.

15. It has further been submitted that *inter-*
se the statements of the witnesses, there is no reference
of the presence of P.W. 4, who, incidentally, is the
informant of this case and claims to have seen the
occurrence from very close quarters. Apart from this,
what makes the prosecution case highly doubtful is the
assertion of the witnesses that firing was resorted to
when the procession for the immersion of Goddess
Saraswati was on its way.

16. If this were true, there would have been
more casualties.

17. According to some of the witnesses,
appellant/Mukesh Singh fired several rounds from his
pistol which led people to run helter and skelter but
despite this, no other person, independent in nature, was
examined at the Trial.

18. Lastly, it has been submitted that the
sole injured witness of this case, namely, Rahul Singh



(P.W. 3), claims to have first gone to Riga Hospital along with the deceased and only thereafter, to Sitamarhi Hospital, where the deceased was declared dead. However, the Doctor/Arun Kumar Singh (P.W. 8), posted at P.H.C., Riga, has been chosen to be a witness by the prosecution, who has talked about the medication given to Rahul Singh (P.W. 3). His complete silence about the deceased also having been brought to Riga Hospital from where he was referred to Sitamarhi becomes very consequential, especially when it is the consistent case of the prosecution, as can be inferred from the F.I.R. as also from the deposition of the witnesses, that the deceased and Rahul Singh (P.W. 3) both were taken on a vehicle to Riga Hospital in the first instance and only thereafter to the Hospital at Sitamarhi.

19. This, it has been urged, makes the prosecution case highly doubtful, especially in view of the enmity between the family of two brothers and some occurrence having taken place in which the deceased



may have been killed and the effort of the prosecution to rope in all the members of the family of the brother with whom the informant is at loggerheads.

20. As opposed to the aforesaid contention, Mr. Dilip Kumar Sinha, the learned APP has submitted that these minor variance in the deposition of the witnesses does not discredit the entire prosecution case, especially in view of a number of eye-witnesses who had seen the occurrence and in view of the injured witness having deposed before the Trial Court that the appellant/Murari Singh fired at the deceased and the appellant/Govind Singh fired at him, which firing was done on the exhortation of the appellant/Shashi Bhushan Singh. It has further been submitted on behalf of the State that the very fact that P.W. 3 was treated at Riga Hospital confirms that P.W. 3 and others were making a correct statement regarding the occurrence in which the deceased and P.W. 3, both, were injured, but, unfortunately, only P.W. 3 survived. Mere silence of



P.W. 8 about the deceased also having been brought to Riga Hospital, it has been argued, does not weaken the prosecution case in its entirety for it to be rejected by the Court.

21. It has further been submitted by Mr. Sinha that the deceased died a homicidal death, the cause of death being gunshot. The trajectory of the bullet confirmed the manner of occurrence. The deceased had received a wound of entry with everted margin on his back and with a corresponding and continuous wound of exit in the upper part of the abdomen below the nipple. Under such circumstances, the minor peccadilloes of the I.O. of not investigating or inquiring about the association of the deceased with a private Militia (*Azad Hind Fauj*) and recording the statement of persons residing in the neighbourhood of the place of occurrence or persons participating in the procession, would not make the prosecution case unworthy of reliance.



22. Satish Kumar Singh (P.W. 1) deposed before the Trial Court for the first time which clearly appears from the deposition of the I.O. (P.W. 7) that he had never recorded the statement of P.W. 1 during the course of investigation. However, on analyzing his evidence, it appears that he was present in front of the rice-mill of the appellant/Murari Singh. It was at that time that a procession had been coming from a certain direction and the deceased was found walking behind the procession. The deceased had picked up consumable articles from the *kirana* shop of a co-villager and was going towards his home, when he was attacked by the appellant/ Murari Singh. According to P.W. 1, no sooner the deceased was spotted by the appellant/Shashi Bhushan Singh, he ordered his son/Murari to kill him. He has also confirmed the fact that he saw that when Rahul (P.W. 3) went to the rescue of the deceased, the appellant/Govind Singh fired from his weapon, which hit him on his nose. When people started gathering at the



place of occurrence, appellants/Shashi Bhushan Singh and Mukesh Singh also started firing, creating a pandemonium over that place. Later, he along with Shivendra Kumar Singh (P.W. 5) and Dilip Singh (not examined) took the deceased and P.W. 3 on a bolero vehicle to the *Sadar* Hospital, Sitamarhi where the deceased was declared dead.

23. What is noticeable in his deposition is that nowhere has he mentioned about the presence of the informant at the place of occurrence. Another aspect, which is also worth noticing, is that there is no specific enmity with the deceased. If the entire family of the appellants was inimically deposed towards the family of the informant, there were other targets available from before and there was no necessity for waiting for the deceased to come near the rice-mill of the appellant/Murari Singh for executing the murder.

24. Pawan Kumar Singh (P.W. 2) is the brother of the deceased. He also claims to be present at



the time of the occurrence in front of the rice-mill of the appellant/Murari Singh. There does not appear to be any plausible reason of the appellants sparing Pawan and killing Pankaj (deceased), unless the appellants were piqued by some action of the deceased.

25. There is no reference of any such specific enmity with the deceased.

26. If that be the case, even the informant was present at the place of occurrence, according to his assertion. Where was the necessity of killing of one of the sons of the brother with whom the informant had enmity?

27. It thus leaves room for speculation that the deceased may have died in some other transaction and the two sons of the estranged brother of the informant were attributed with the role of firing; killing one and injuring the other.

28. According to the I.O. (P.W. 7), P.W. 1, as noted above, had not stated anything about the



occurrence before him and Pawan Kumar Singh (P.W. 2) had also not stated before the police that when the deceased came near Murari Singh's rice-mill, on the orders of the appellant/Shashi Bhushan Singh, Murari and Govind, who were standing there from before, fired at the deceased. In fact, Pawan Kumar Singh (P.W. 2) had not stated anything about the injuries suffered by the deceased, especially with respect to the part of the body where the deceased had been hit. Incidentally, Pawan Kumar Singh has also not been referred to by his father (P.W. 4) while narrating the entire story in the *fardbeyan* or P.W. 1, who, according to him, was present at the place of occurrence.

29. Rahul Singh (P.W. 3), the injured witness, surprisingly has not referred to the presence of the informant (P.W. 4) at the place of occurrence. He is very specific in his deposition that he and the deceased were first taken to Government Hospital, Riga and from there to *Sadar* Hospital, Sitamarhi.



30. Krishnadeo Singh (P.W. 4) admits of his deep enmity with his brother/appellant/Shashi Bhushan Singh. Though he has tried to support the statement made by him in the F.I.R. but, according to P.W. 7, he had not stated before the police that on seeing the deceased, appellant/Shashi Bhushan Singh had acknowledged that the target is near and he should be attacked.

31. Thus, it appears to us that a very serious attempt has been made by the witnesses to prove the narrative in the F.I.R. that the deceased was murdered by the appellant/Murari Singh and Rahul (P.W. 3) was injured by appellant/Govind Singh.

32. We have examined the post-mortem report and the evidence of the Doctor, who conducted the post-mortem, namely, Dr. Anil Kumar Srivastava (P.W. 6). The post-mortem report does confirm that the deceased died of gunshot, but the time fixed for the death has been left too wide open, perhaps purposely, as



has been assigned by the appellants, so as to fit in the prosecution narrative.

33. There is force in the submission of the appellants that in any case, the occurrence would have taken place after 6:30 P.M. as deposed by the witnesses. For sure, the post-mortem examination was done at 10:40 P.M. on the same day. The occurrence is of the month of January when the weather is cold and which prevents early setting in rigor mortis. The presence of rigor mortis in all the four limbs of the deceased clearly gives an indication that the timing of murder was some times before what has been projected by the prosecution.

34. If this be so, then the question remains to be answered as to where did the occurrence take place and the supplemental question, in that case, as to how had it take place. The doubt further gets confounded when P.W. 8 confirmed that P.W. 3 was given first-aid treatment at Riga and the statement of



P.W. 3 that the deceased also was taken to Riga, but there being no record of any medical examination of the deceased at Riga.

35. The doubt further deepens when one looks at the timing of the lodging of the F.I.R. The F.I.R., as noted by us, was lodged at 9:30 P.M. in the Emergency Ward of the Sub Divisional Hospital, Sitamarhi on 25.01.2015. However, the I.O. (P.W. 7) visited the place of occurrence and collected an empty cartridge at 7:00 P.M. on the same day, *i.e.*, much before the F.I.R. was lodged. This could be done without raising an eyebrow as the F.I.R., for the reasons to be explained, could be lodged some times later, but in this case when the I.O. clearly states that he had received information that there was firing from both sides and pursuant to such information to him, he had visited the place of occurrence much before lodging of the F.I.R. and had collected an empty cartridge, the timing of the F.I.R. makes the entire story



doubtful.

36. We have further noted that the I.O. did not investigate the case the way in which he should have. No independent persons were questioned about the occurrence. No investigation was made with respect to the association of the deceased with the private Militia.

37. We have also taken into account the suggestion given to all the witnesses that there was some charge against the deceased of siphoning off the party funds leading to his being killed by the members of the cadre.

38. It is no doubt speculation, but the space left by the prosecution entitles the appellants to suggest that the story of the prosecution is doubtful. In the background of deep enmity between the family of two brothers, which stands admitted by all the witnesses, such doubt assumes a proportion which is big enough to doubt the very prosecution case.



39. For the reasons afore-noted, we have been persuaded to give benefit of doubt to all the appellants as the murder might have taken place in some other transaction, at some other time, in a different manner.

40. 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 all the charges levelled against them.

41. All the other appellants except appellant/Murari Singh [Cr. Appeal (DB) No. 1050 of 2018] are on bail.

42. Their liabilities under the bail-bonds are cancelled.

43. The appellant/Murari Singh [Cr. Appeal (DB) No. 1050 of 2018] is said to be in custody. He is directed to be set at liberty forthwith unless his detention is required in any other case.

44. All the appeals stand allowed.



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

46. The records of these appeals be returned to the Trial Court forthwith.

47. Interlocutory application/s, if any, in all the appeals, also stand disposed off accordingly.

(Ashutosh Kumar, J)

(Alok Kumar Pandey, J)

Praveen-
II/Shahzad

AFR/NAFR	NAFR
CAV DATE	N/A
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