

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.232 of 2010

Janardan Singh, son of late Kamdeo Singh, Resident of Village - Malpur,
Police Station- Maranchi, District-Patna. Appellant/s
Versus
The State of Bihar Respondent/s

with
CRIMINAL APPEAL (DB) No. 254 of 2010

Ranjit Kumar Singh @ Manjhi Singh @ Ranjit Singh @ Ranjit Kumar, son of
late Garib singh, Resident of village - Malpur, Police Station- Maranchi,
District-Patna. Appellant/s
Versus
The State of Bihar Respondent/s

with
CRIMINAL APPEAL (DB) No. 422 of 2010

Sanjit Kumar Singh s/o late garib singh r/o vill.-Malpur,P.S.-Maranchi,Dist.-
Patna. Appellant/s
Versus
The State of Bihar Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 232 of 2010)

For the Appellant/s : Mr. Deepak Kumar Sinha, Adv.

For the Respondent/s : Mr. D. K. Sinha, APP

(In CRIMINAL APPEAL (DB) No. 254 of 2010)

For the Appellant/s : Mr. Deepak Kumar Sinha, Adv.

For the Respondent/s : Mr. A. K. Singh, APP

(In CRIMINAL APPEAL (DB) No. 422 of 2010)

For the Appellant/s : Mr. Deepak Kumar Sinha, Adv.

For the Respondent/s : Mr. D. K. Sinha, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and

HONOURABLE MR. JUSTICE JITENDRA KUMAR
CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE JITENDRA KUMAR)

Date : 20-08-2024

All the three appeals have been taken up together as they have been preferred against the same impugned judgment of conviction and order of sentence dated 21.12.2009 and 05.01.2010 respectively, passed by learned Additional Sessions



Judge-IIIrd, Barh, in Sessions Trial No. 70 of 2005, arising out of Marachi P.S. Case No. 17 of 2002, whereby all the three appellants have been found guilty for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code and appellant/Sanjit Kumar Singh has also been found guilty under Section 27 of the Arms Act and all three appellants have been sentenced to undergo life imprisonment and to pay a fine of Rs. 5,000/- under Section 302/34 of the Indian Penal Code and appellant/Sanjit Kumar Singh has also been sentenced to undergo R.I. for three years and to pay a fine of Rs.3,000/- under Section 27 of the Arms Act. There is also a default clause in the order of sentence stipulating that in case the appellants do not pay the fine under Section 302 IPC, they would be further required to undergo R.I. for nine months and in case of default to pay the fine by the appellant/Sanjit Kumar Singh under Section 27 of the Arms Act, he has been directed to further undergo R.I. for six months. All the sentences have been ordered to run concurrently.

2. The prosecution case as emerging from the fardebayan of the informant/Ram Shankar Prasad Singh recorded by S.I. Satyendra Narayan Singh of Marachi Police Station at Malpur near N.H. 80 at 18:15 O' clock on 09.05.2002



is that at 16:45 O' clock on 09.05.2002, he was giving tuition to children of one Nirshu Singh. He got information that his elder brother Gauri Shankar Prasad Singh, aged 45 years, who was member of Malpur Panchayat Samiti, had been murdered by Sanjit Kumar Singh and Bugan Sharma by gunshot. Thereafter, he ran to the place of occurrence and came to know that his brother was already taken by the people to hospital for treatment. Thereafter, the dead body of his brother was brought back and it was stated that he died en-route to the hospital. The cause behind the occurrence has been stated to be kidnapping of son of Ramesh Prasad Singh (teacher) in the past in which Sanjit Kumar Singh and Bugan Sharma were accused and who were arrested at Bakhtiyarpur and his brother Gauri Shankar Singh had gone to see them at Bakhtiyarpur and who was instrumental in compromise between them and get them released on bail and after release on bail, the occurrence has been caused. The Informant has claimed that his brother Gauri Shankar Singh has been murdered by Sanjit Kumar Singh and Bugan Sharma (mistri) by gunshot.

3. On the basis of the *fardebayan* of the informant, Marachi P.S. Case No. 17 of 2002 was registered on 09.05.2002 against Sanjit Kumar Singh and Bugan Sharma (mistri) for the



offence punishable under Sections 302/34 of Indian Penal Code and Section 27 of the Arms Act.

4. After investigation, charge-sheet was submitted against only one accused/Ranjit Kumar Singh keeping the investigation pending against the rest accused. Subsequently, charge-sheet against Janardan Singh and some other accused was submitted and hence, their separate trials started. However, subsequently, trial of Janardan Singh was separated and his trial bearing Sessions Trial No. 809 of 2006 was amalgamated in Sessions Trial No. 70 of 2005 by the order dated 02.05.2007 passed in S.T. No. 70 of 2005. It further transpires that Sanjit Kumar Singh was being tried in Sessions Trial No. 1218 of 2007 arising out of the same Marachi P.S. Case No. 17 of 2002. However, his Sessions Trial No. 1218 of 2007 was also amalgamated in Sessions Trial No. 70 of 2005 by the order dated 05.11.2007 passed in Sessions Trial No. 70 of 2005.

5. During Trial, charge under Section 302 read with Section 34 IPC was framed against all three appellants and additional charge under Section 27 of the Arms Act was also framed against one appellant, viz., Sanjit Kumar Singh.

6. Before the amalgamation of Sessions Trial No. 1218 of 2007 on 05.11.2007 with S.T. No. 70 of 2005, the



following witnesses were already examined on behalf of the prosecution in Sessions Trial No. 70 of 2005 in which Sessions Trial No. 809 of 2006 was already amalgamated on 02.05.2007.

(i) **P.W.-1 Ram Sagar Singh** was examined on 21.07.2007.

(ii) **P.W.-2 Lalan Kumar Singh** was examined on 05.09.2007.

7. However, after amalgamation on 05.11.2007, the following witnesses were examined in Sessions Trial No. 70 of 2005:

(i) **P.W.-3 Ram Shanker Prasad Singh** on 05.11.2017

(ii) **P.W.-4 Braj Kishore Singh** on 27.11.2007

(iii) **P.W.-5 Malti Devi** on 10.01.2008

(iv) **P.W.-6 Ganga Prasad Singh** on 28.04.2008

(v) **P.W.-7 Dr. Raj Kumar Mandal** on 17.05.2008

(vi) **P.W.-8 Satyendra Narayan Singh (I.O.)** on 03.07.2008

8. The prosecution brought on record the following documentary evidence also:

(i) **Ext. 1-** Signature of informant on the fardebayan

(ii) **Ext. 2** Signature of Braj Kishore Singh & Bilaiti Singh on the inquest report.

(iii) **Ext. 3** - Signature of Braj Kishore Singh & Bilaiti Singh on the seizure list.

(iv) **Ext. 4** - Postmortem report.

(v) **Ext. 5** - Signature of Lalan Kumar on the Fardebayan

(vi) **Ext. 6** - Signature of Braj Kishore Singh & Bilaiti Singh on the death inquest report

(vii) **Ext. 7** - Carbon copy of the FIR of Marachi P.S. Case No. 45 of 2001.



(viii) **Ext. 8** - Carbon copy of Fardbeyan of Marachi P.S. Case No. 45 of 2001.

(ix) **Ext.9** - Carbon copy of charge of Sessions Trial No. 124 of 2002 arising out of Marachi P.S. Case No. 45 of 2001.

9. After closure of the prosecution evidence, accused persons were examined under Section 313 Cr.PC confronting them with incriminating circumstances which came in the prosecution evidence, so as to afford them opportunity to explain those circumstances. During this examination they stated that they had heard the evidence of the prosecution, but they did not explain any circumstances. However they denied the charges and claimed to be innocent.

10. The appellants/accused persons have also examined the following three witnesses in their defence.

(1) **D.W.-1 Janardan Singh**

(ii) **D.W.-2 Bachu Chaudhary**

(iii) **D.W.-3 Rabindra Singh**

11. Learned Trial Court, after appreciating the evidence on record and considering the submissions of the parties, passed the impugned judgment of conviction and order of sentence, finding that the prosecution has proved its case against the accused persons beyond all reasonable doubts.

12. We have heard the learned Counsel for the appellants and the learned APP for the State.



13. Learned counsel for the appellants has submitted that the impugned judgment of conviction and order of sentence passed by learned Trial court are not sustainable in the eye of law or on facts.

14. He has further submitted that learned Trial Court has erroneously considered the evidence of **P.W.-1- Ram Sagar Singh** and **P.W.-2 Lalan Kumar Singh** while passing the impugned judgment. These two witnesses were not examined in the Trial following the amalgamation of Sessions Trial No. 1218 of 2007 in Sessions Trial No. 70 of 2005 on 05.11.2007. They were previously examined in Sessions Trial No. 70 of 2005 on 21.07.2007 and 05.09.2007 respectively i.e prior to 05.11.2007. Their evidence were not recorded in the presence of all the accused facing the joint trial after amalgamation on 05.11.2007, nor were all the accused afforded opportunity to cross examine them.

15. He has further submitted that there is no eye witness to the occurrence and the case of the prosecution is based purely on circumstantial evidence and even if the total evidence is taken into consideration, complete chain of circumstances is not established to lead to irresistible conclusion that it is the appellants who have committed the offence. Hence,



the prosecution has badly failed to prove its case against the appellants beyond all reasonable doubts.

16. However, the learned APP for the State vehemently submitted that there is no illegality or infirmity in the impugned judgment and order of sentence. The appellants have been rightly convicted and properly sentenced.

17. We considered the submissions advanced by both the parties and perused the material on record.

18. We find that in Sessions Trial No. 70 of 2005, initially the accused/appellant Janardan Singh was the sole accused facing the trial and the co-accused Ranjit Kumar Singh was facing trial in separate Sessions Trial No. 809 of 2006. However, on 02.05.2007 Sessions Trial No. 809 of 2006 was amalgamated in Sessions Trial No. 70 of 2005 and thereafter **P.W.-1 Ram Sagar Singh** and **P.W.-2 Lalan Kumar Singh** were examined in the joint trial. Subsequently, Sessions Trial No.1218, in which co-accused/ appellant Sanjay Kumar Singh was facing Trial, was amalgamated in Sessions Trial No. 70 of 2005 on 05.11.2007. But in the new joint trial following the amalgamation on 05.11.2007, P.W.-1 and P.W.-2 were not examined. But their evidence was considered by Learned Trial Court while passing the impugned judgment. This is not



permissible in law in our considered view. As per Section 273 Cr.PC, except otherwise expressly provided, all evidence taken in the course of trial are required to be taken in the presence of the accused, or, when his personal attendance is dispensed with, in the presence of his counsel. Only Section 299 Cr.PC provides for recording of evidence in the absence of the accused if it is proved that the accused has absconded. In normal circumstances, evidence against any accused in any trial has to be recorded in his presence or in presence of his counsel. He is also entitled to cross-examine the witnesses of the prosecution. That is why amalgamation of any Trial in a previous trial is followed by *de novo* trial and all the evidence on record of the previous trial is completely wiped out. The previous deposition of prosecution witnesses loses its status of prosecution evidence. They get reduced to the status of mere previous statements of the prosecution witnesses and those statements could be used for contradictions of the statements of the prosecution witnesses during the *de novo* trial. Hon'ble Supreme Court in **Nasib Singh Vs. State of Punjab, (2022) 2 SCC 89** has held that *de novo* trial means a new trial and the evidence and record of the previous trial is completely wiped out.

19. It is also not a case of the prosecution that it had



moved an application before the trial court for bringing the previous evidence of P.W.- 1 and P.W.-2 on record in the joint trial after amalgamation and the accused persons facing the joint trial were afforded opportunity to cross examine those witnesses or the Accused persons/Appellants had given their consent to read the evidence of P.W.-1 and P.W.-2 in the joint trial after amalgamation on 05.11.2007.

20. In such situation, we have option to remand the matter back to the trial Court to pass fresh judgment after examining P.W.-1 and P.W.-2. But such option would not be pragmatic in view of the fact that the alleged occurrence had taken place in the year 2002 i.e. 22 years back and by now even the witnesses may not be alive. P.W.-1 was 62 years old and P.W.-2 was 42 years old in 2007. Hence, only option before us is to pass our judgment on the basis of evidence excluding the evidence of P.Ws.-1 and 2 who were not examined in joint trial after amalgamation on 05.11.2007.

21. Now coming to the prosecution evidence, we find that the **informant/Ram Shanker Prasad Singh** has been examined as **P.W.-3**. In his **examination-in-chief**, he has supported the prosecution case reiterating his statements as made in his *fardebayan*. But in his **cross-examination**, he has



admitted that he has not witnessed the occurrence and he had given his *fardebayan* only on the basis of information received from the villagers. However, he has deposed that the appellant/Sanjit Kumar Singh had threatened the deceased Gauri Shankar Singh from jail of dire consequences. However, Gauri Shankar Singh had not lodged any complaint regarding that threat.

22. Braj Kishore Singh, who has been examined as **P.W.-4**. He is also not an eye-witness to the occurrence. In his **examination-in-chief**, he has deposed that on halla, when he reached the place of occurrence, the deceased/Gauri Shankar Singh was lying on the ground in a pool of blood. He was taken to the hospital and he died en-route before reaching the hospital. He identified his signature on the inquest report. However, in his **cross-examination**, there is nothing substantive to take notice of.

23. Malti Devi has been examined as **P.W.-5**. She is the widow of the deceased Gauri Shankar Singh. She is also not an eye-witness to the occurrence. She has deposed in her **examination-in-chief** that on the date of occurrence, she was coming to her village along with her husband from Barhiya to their home. But when they reached their village Malpur, her



husband stayed back on the road to talk to the appellant/Sanjit Kumar Singh, Bagan Sharma, Ranjit Kumar and Janardan Singh who met them. But she proceeded to her home and as per her deposition, Sanjit Kumar Singh and Bagan Sharma were having pistol in their hands and when she reached her home, she heard sound of two firings. Thereafter, she came to know from the villagers that her husband Gauri Shankar Singh was shot at and he died on way to hospital for treatment. However, she did not go back to the place of occurrence to see her injured husband. In her **cross-examination**, she was unable to state the distance between Barhiya to her village and time taken in their journey. She was sick and almost unconscious and when she gained consciousness, she came to know from the villagers that her husband was killed by two accused persons.

24. Ganga Prasad Singh has been examined as **P.W.-**

6. He is a Post Master of Malpur, post office. He is also not an eye-witness as per his deposition. In his **examination-in-chief**, he has deposed that on 09.05.2002 at about 04:30 PM, when he was at his house, he heard the sound of firing. Thereafter, he went to the place of occurrence where he heard from the villagers that the accused Sanjit Kumar Singh, Ranjit Kumar, Bagan Sharma and Janardan Singh have killed the deceased



Gauri Shankar Singh by shooting. But in his **cross-examination**, there is nothing substantive to take notice of.

25. Dr. Raj Kumar Mandal (P.W.-7) had conducted the postmortem examination of the deceased Gauri Shankar Singh on 10.05.2002 at Sadar Hospital Barh. He had found the following ante mortem injury on the person of the deceased:

"(i) One lacerated wound in 1" radius track deep oval over the left temporal region margin inverted blackened entrance wound

(ii) One lacerated wound over right temporal region 3"x2"x track deep everted margin, exit wound of injury no. 1. Injury No. 1 and 2 are communicating with each other.

(iii) One lacerated wound over right hip lateral side 3"x1"x1/2" margin blacken."

26. On dissection of the dead body of the deceased, he (P.W.-7) had found as follows:-

"Skull Right and left temporal bone fractured margin torned brain tissue lacerated

Chest and Abdomen Heart empty, both right and left lungs pale, Liver pale, both right and left kidney pale. Spleen congested.

Stomach empty, small and large intestine full of gases and facial matters.

Time since death- 6 to 36 hours.

Cause of death Haemorrhage and shock due to above injuries caused by fire arms."

27. Satyendra Narayan Singh has been examined as **P.W.-8**. He was Investigating Officer of the case. In his **examination-in-chief**, he has deposed that he had made only part investigation of the case. Second Investigating Officer was



one Mithilesh Kumar Sinha, S.I. who has not been examined. He has further deposed that the place of occurrence was situated at village Malpur. In his **cross-examination**, he has deposed that the witness Braj Kishore Singh had not stated to him that Sanjit Kumar Singh and Janardan Singh were present at the time of occurrence. He has clearly deposed that no witness claimed to be eye-witness to the occurrence. He has further deposed that Braj Kishore Singh had stated to him that he had also deposed that Lalan Kumar had not stated before him that he had seen Sanjiv Kumar Singh and Bagan Sharma fleeing away from the place of occurrence having pistol in their hands. Lalan Kumar had not stated to him that he had seen Ranjit Kumar and Janardan Singh fleeing from the place of occurrence.

28. D.W.-1, Janardan Singh, who is an accused/appellant himself, in his **examination-in-chief**, has deposed that he is a handicap. He cannot stand without stick. He is a teacher in a primary school and he has been appointed as a Treasury Messenger by the school. He had gone Mokama Sub Treasury on 09.05.2002 with treasury bills. In his **cross-examination**, he has deposed that there are four trains available from Rampur Dumra to Mokama Station around the clock. He has also deposed that Rampur Dumra is also approachable by



road from Begusarai through Lakhisarai. Motor vehicles are also available through Rampur Dumra in between Hatidah and Lakhisarai. He has also deposed that there is no departmental order for his appointment as Messenger of pay bills and Mokama Station is situated at a distance of eight kilometer from his village.

29. D.W.-2, Bacchu Pandey is a retired teacher from the middle school, Rampur Dumra. He has also deposed that primary school Devitola was also annexed with that school and he had deposed that Janardan Singh had worked at primary school Devitola from 1996 to 2005. He worked as Treasury Messenger of the school on 07.05.2002. Janardan Singh was sent to Mokama sub treasury on 09.05.2022. He was sent to SBI, Mokama and after completing the work of treasury, Janardan Singh had handed over the messenger bills to him. In his **cross-examination**, he has deposed that there was no order of any authority for work of Janardan Singh as Treasury Messenger.

30. D.W.-3, Rabindra Singh, is the Assistant Teacher of Middle School, Dumra. In his **examination-in-chief**, he has deposed that on 09.05.2002, there was no attendance of Janardan Singh in the register of the primary school, Devitola because he had gone for depositing bills in the SBI, Mokama.



He has proved the messenger book of middle school Dumra and signature of Janardan Singh on it. It is marked as **Ext. E**. In his **cross-examination**, he has deposed that on 09.05.2002, the attendance register has not been attested by any authority.

31. From the perusal of the evidence on record, it clearly transpires that no witnesses have claimed to be eye-witness to the occurrence and hence, the prosecution case is based completely on circumstantial evidence.

32. Hence, it becomes imperative to find out the principles regarding proof of a case based on circumstantial evidence. Here, it becomes apposite to refer to the celebrated judgment of **Sharad Birdhichand Sarda Vs. State of Maharashtra, (1984) 4 SCC 116**, wherein Hon'ble Supreme Court after referring to relevant precedents had enunciated five golden principles called panchsheel of the proof of a case based on circumstantial evidence holding as follows:-

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established.

.....

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,



(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.

.....

163. We then pass on to another important point which seems to have been completely missed by the High Court. It is well settled that where on the evidence two possibilities are available or open, one which goes in favour of the prosecution and the other which benefits an accused, the accused is undoubtedly entitled to the benefit of doubt.”

33. In Padala Veera Reddy Vs. State of A.P., 1989

Supp (2) SCC 706, similar view has been expressed by **Hon’ble**

Supreme Court in the following words:-

“10. ... (1) The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.”

34. In Shailendra Rajdev Pasvan Vs. State of



Gujarat, (2020) 14 SCC 750, Hon'ble Supreme Court has held that in a case of circumstantial evidence, law postulates the following twofold requirements:-

- (i) Every link in the chain of the circumstances necessary to establish the guilt of the accused must be established by the prosecution beyond reasonable doubt.
- (ii) All the circumstances must be consistent pointing only towards the guilt of the accused.

35. Recently, in **Neeraj Dutta v. State (NCT of Delhi), (2023) 4 SCC 731** and **Pritinder Singh Vs. State of Punjab, (2023) 7 SCC 727**, also Hon'ble Apex Court has held that in a case of circumstantial evidence, the prosecution is required to prove all necessary circumstances constituting a complete chain without a snap and pointing to the hypothesis that except the accused, no one had committed the offence.

36. It has been also consistently held by Hon'ble Apex Court that in a case based on circumstantial evidence, motive assumes a great significance. Motive may also have a role to play even in a case of direct evidence, but it carries much greater importance in a case of circumstantial evidence than a case of direct evidence. It is an important link in the chain of circumstances. It is not as if motive alone becomes the crucial link in the case to establish by the prosecution and in its absence, the case of prosecution must be discarded. But, at the



same time, complete absence of motive assumes a different complexion and such absence definitely weighs in favour of the Accused. In this context, one may refer to the following authorities:-

**(i) Shankar Vs. State of Maharashtra, 2023
SCC Online SC 268**

**(ii) Indrajit Das Vs. State of Tripura, AIR
ONLINE 2023 SC 150**

**(iii) Nandu Singh Vs. State of Chhattisgarh,
2022 SCC OnLine SC 1454**

**(iv) Shivaji Chintappa Patil Vs. State of
Maharashtra, (2021) 5 SCC 626**

37. Now Coming back to the case on hand, we find that only following facts are established beyond reasonable doubts, as per the evidence on record-

- (i) Previous enmity between the deceased and the Appellants/Accused persons,
- (ii) Deceased/Gauri Shankar Prasad Singh was shot at on 09.05.2002 in his village at Malpur,
- (iii) He died on the same day on way to hospital,
- (iv) He died of hemorrhage and shock due to *ante mortem* injuries caused by fire arms.

38. Needless to say that the aforesaid circumstances do not form a complete chain which may lead to irresistible conclusion that it is the Appellants who have caused the death of the deceased. There are so many missing links to connect the Appellants with the alleged crime. Only enmity or motive and death of the victim are not sufficient to prove the prosecution



case against the Appellants beyond reasonable doubts. Suspicion, howsoever strong, is not proof and it cannot be the basis of conviction of the accused.

39. Hence, we find that the prosecution has failed to prove its case against the accused beyond all reasonable doubts. The appellants deserve to be acquitted getting benefit of doubt and the impugned judgment of conviction and order of sentence are liable to be set aside.

40. The appeals are, accordingly allowed, setting aside the impugned judgment of conviction and order of sentence.

41. The Appellants are on bail. They stand discharged from their liabilities under their bail bonds.

(Jitendra Kumar, J.)

I agree

(Ashutosh Kumar, J.)

ramesh/Shoaib

AFR/NAFR	AFR
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