

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1150 of 2024

Arising Out of PS. Case No.-97 Year-2021 Thana- MUSRIGHRARI District- Samastipur

Himanshu Rai @ Himanshu Ray @ Himanshu Kumar Son of Late Sanjay Rai
@ Sanjay Ray Resident of Village- Bakhari, Bujurg, PS- Musarigharari,
District- Samastipur, Bihar

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 1136 of 2024

Arising Out of PS. Case No.-97 Year-2021 Thana- MUSRIGHRARI District- Samastipur

Sunil Kumar Son of Ashok Rai Resident of Village - Bakhari Bujurg, P.S. -
Musrigharari, District - Samastipur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 1181 of 2024

Arising Out of PS. Case No.-97 Year-2021 Thana- MUSRIGHRARI District- Samastipur

Nilendra Giri son of Saroj Giri @ Saroj Kumar Giri Resident of Village
-Bathua Buzurg, Police Station- Musarigharari ,District -Samastipur



... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 1238 of 2024

Arising Out of PS. Case No.-97 Year-2021 Thana- MUSRIGHRARI District- Samastipur

Arjun Das @ Kariya Son of Sitaram Das Resident of Ward No. 13, Village -
Bakhari Buzurg, Rupauli Buzurg, Police Station - Musarigharari, Block -
Sarariranjana, District - Samastipur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 1278 of 2024

Arising Out of PS. Case No.-97 Year-2021 Thana- MUSRIGHRARI District- Samastipur

Sumit Kumar @ Phuchukiya Son of Ravindra Rai Resident of ward no. -07,
Village and Post Office- Nikaspur, Police Station- Tajpur, District
-Samastipur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s



Appearance :

(In CRIMINAL APPEAL (DB) No. 1150 of 2024)

For the Appellant/s : Mr. Apurva Kumar, Advocate

For the Respondent/s : Mr. Parmeshwar Mehta, APP

For the Informant : Mr. Siyaram Shahi, Advocate

(In CRIMINAL APPEAL (DB) No. 1136 of 2024)

For the Appellant/s : Ms. Khushi Awadh, Advocate

For the Respondent/s : Mr. Parmeshwar Mehta, APP

For the Informant : Mr. Siyaram Shahi, Advocate

(In CRIMINAL APPEAL (DB) No. 1181 of 2024)

For the Appellant/s : Mr. Nilendu Kumar Choudhary, Advocate

For the Respondent/s : Mr. Parmeshwar Mehta, APP

For the Informant : Mr. Siyaram Shahi, Advocate

(In CRIMINAL APPEAL (DB) No. 1238 of 2024)

For the Appellant/s : Mr. Kundan Kumar, Advocate , Advocate

Md. Huzaifa, Advocate

Mr. Anshuman Dheer, Advocate

For the Respondent/s : Mr. Parmeshwar Mehta, APP

For the Informant : Mr. Siyaram Shahi, Advocate

(In CRIMINAL APPEAL (DB) No. 1278 of 2024)

For the Appellant/s : Mr. Kundan Kumar, Advocate

Md. Huzaifa, Advocate

Mr. Anshuman Dheer, Advocate

For the Respondent/s : Mr. Parmeshwar Mehta, APP

For the Informant : Mr. Siyaram Shahi, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

4 11-12-2024 All the appeals have been heard together on the

issue of suspension of sentence.



2. We have heard Mr. Apurva Kumar; Mr. Nilendu Kumar Choudhary; and Mr. Kundan Kumar, Advocates for the appellants/applicants and Mr. Parmeshwar Mehta, APP for the State. The informant is represented by Mr. Siyaram Shahi, Advocate.

3. The written objection is on record.

4. The appellants have been convicted under Sections 302/34 read with Section 120B of the Indian Penal Code and Section 27(3) of the Arms Act, 1959 *vide* judgment dated 13.08.2024 passed by the learned Additional Sessions Judge-V, Samastipur in Sessions Case No. 274 of 2022 (224 of 2022 & 678 of 2022 both amalgamated) (CIS No. 274 of 2022), arising out of Musrigharai P.S. Case No. 97 of 2021. By order dated 20.08.2024, they have been sentenced to undergo imprisonment for life and to pay a fine of Rs. 10,000/- each under Section 302/34 read with Section 120B of the IPC. Appellant/Sunil Kumar is further sentenced to undergo imprisonment for life and to pay a fine of Rs.



10,000/- under Section 27(3) of the Arms Act, 1959. In default of payment of fine, to further suffer S.I. for three months.

5. The sentences have been ordered to run concurrently.

6. One Sashinath Jha, an up-*Mukhiya* of village Udapatti is said to have been killed by the appellants and others while he was returning after conducting a *panchayati* for a dispute between one Horial Sah and Arvind Sah. Afore-noted Horil Sah and Arvind Sah have not been examined at the Trial.

7. The occurrence of murder was witnessed by Chandan Kumar Choudhary, the personal driver of the deceased (P.W. 1). Shortly after the occurrence, Nabonath Chaudhary and Koushal Kumar Jha, associates of the deceased (P.Ws. 2 and 3), also arrived.

8. The occurrence had taken place some times on 06.08.2021 at about 10:30 in the morning. The FIR



has been lodged by the wife of the deceased, *viz.*, Madhuri Kumari (P.W. 4), who had been elected as *Mukhyia* of the *panchayat* recently. Before she took over, the deceased was the *Mukhiya* of the *panchayat* for the last fifteen years. P.W. 4 had come to know about the occurrence and the assailants from aforesaid Chandan Kumar Choudhary, Nabonath Choudhary and Kaushal Kumar Jha (P.Ws. 1, 2 and 3 respectively) on 06.08.2021 only.

9. However, the *fardebayan* was registered on 08.08.2021 at about 04:00 P.M. in the house of Madhuri Kumari (P.W. 4).

10. The learned counsel appearing for the appellants have submitted that this alone makes the prosecution case highly doubtful. Elaborating further, they have argued that P.W. 4 is not a *pardanashin* lady, whose explanation that her two sons were away and therefore the case was lodged after two days of the occurrence, is not acceptable as any valid reason for the



delay in lodging the case.

11. The post-mortem examination was conducted on the dead-body on 07.08.2021 at about 07:23 A.M.

12. There is a delay in bringing the dead-body to the morgue as well. There is no evidence on record of any treatment having been meted out to the deceased. The story narrated by P.W. 4, therefore, *prima facie*, appears to be an incorrect version of the occurrence as according to her, she had accompanied the deceased while he was still alive to hospital.

13. Where and when was the deceased treated; what happened when he was declared dead; and the reason for the delayed post-mortem examination, make the prosecution case further doubtful.

14. Some of the appellants have been named in the first instance, but since the FIR has been registered after two days of the occurrence; the informant being the



wife and serving *Mukhiya* of the Gram Panchayat and such statement having been recorded only after the post-mortem examination which revealed that the deceased had received six gun-shot wounds, the appellants have underscored that the accusation is doubtful.

15. Another aspect which has been highlighted by the appellants is that the Doctor, who conducted the post-mortem examination, candidly admitted that he has no experience of conducting the post-mortem examination and has no idea about forensics of any kind. On this disclosure of the Doctor, it has been argued that the evidence of such a Doctor would not be admissible as a valid piece of evidence under the Indian Evidence Act, 1872.

16. Mr. Siyaram Shahi, the learned Advocate for the informant as also Mr. Parmeshwar Mehta, the learned APP have submitted that P.W. 4 has never claimed herself to be an eye-witness to the occurrence. She came to learn about it only from P.Ws. 1, 2 and 3, more



particularly P.W. 1, who has withstood the test of cross-examination. The afore-noted witness, *viz.*, Chandan Kumar, the personal driver of the deceased, has given a vivid description of the assailants and the person who came up to the deceased and shot him from close quarters.

17. In that view of the matter, it has been argued that merely because there was a delay in registering the FIR, the prosecution case ought not to be discarded totally. It could be a case of motivated murder and for the Doctor to talk about gun-shot wounds on the body of the deceased, it may not be necessary for him to be an expert in forensics.

18. After having examined the records of this case, though sketchily, we are of the view that the delay by the wife of the deceased, a sitting *Mukhiya*, in reporting the matter, has provided sufficient space for the appellants to argue that they have been falsely implicated, perhaps because of political motives.



19. We are thus inclined to suspend the sentences of the appellants during the pendency of the appeal.

20. For the reasons afore-stated, the sentences of the appellants/applicants are suspended and they are directed to be released on bail, during the pendency of the appeal, on their furnishing bail bonds in sum of Rs. 10,000/- (ten thousand) each with two sureties of like amount each to the satisfaction of the learned Additional Sessions Judge-V, Samastipur, in connection with Sessions Case No. 274 of 2022 (224 of 2022 & 678 of 2022 both amalgamated) (CIS No. 274 of 2022), arising out of Musrigharai P.S. Case No. 97 of 2021.

(Ashutosh Kumar, J)

(Rajesh Kumar Verma, J)

Sauravkrsinha/
Praveen-II-

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