

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.27 of 2024**

Arising Out of PS. Case No.-28 Year-2019 Thana- KACCHWA District- Rohtas

=====

Dara Singh @ Abhijit Singh @ Abhijeet Singh Son Of Badshah Singh
Resident Of Village- Sohda, Ps- Kachchawa, Dist- Rohtas
... .. Appellant/s

Versus

The State of Bihar
... .. Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Siddhartha Prasad, Advocate
For the Respondent/s : Mr. Binod Bihari Singh, APP
For the informant : Mr. Sudama Singh, Adv.

=====

**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER**

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

- 3 18-04-2024 1. Heard Mr. Siddharath Prasad, the learned
advocate for the appellant and Mr. Sudama Singh, the
learned advocate for the informant. The State has been
represented by Mr. Binod Bihari Singh, the learned APP.
2. The written objection on behalf of the State
is on record.
3. The sole appellant has been convicted under
Section 302 of the Indian Penal Code by judgment dated
07.11.2023 passed by the learned Additional Sessions
Judge -I, Rohtas at Sasaram in Sessions Trial No.



64/2020 arising out of Kachhawa P.S. Case No. 28/2019. By order dated 24.11.2023, he has been sentenced to undergo imprisonment for life along with a fine of Rs. 2,00,000/- and in default of payment of fine, to further suffer R.I. for three years for the aforesaid offence under Section 302 IPC.

4. According to P.W. 11, the father of the deceased, the appellant killed the deceased from a close distance firing. The cause of occurrence is stated to be a dispute which had erupted about two years ago with respect to parking of a bus. With respect to such dispute, the owner of the bus, namely, Vishnu Singh had filed a case against the deceased, but the same was settled. The deceased incidentally was the driver of that bus in question, because of which, there had been some dispute in the past.

5. The occurrence was witnessed by the father (informant) and the two brothers of the deceased, who too have been examined at the trial.



6. For the purposes of suspension of sentence of the appellant, it has been argued that the Trial Court took a specious plea for rejecting the document of alibi and the deposition of three of the defence witnesses. It is the case of the appellant that he is employed as an Accountant at a place which was 400 kilometers away from the place of occurrence, which was not possible to have been traversed in a day or before the occurrence.

7. The plea of alibi was taken right in the beginning of the investigation and the Investigator was asked to find out whether the plea was genuine. Though nothing substantial was done by the Investigator but on behalf of the defence, the entire attendance register of several months was brought on record. On the day of occurrence i.e. 28.05.2019, the appellant is shown to be present at his place of work.

8. In order to buttress the afore-noted contention, reference has been made to the deposition of the D.Ws. 1, 2 and 3, who are the S.D.O., the Revenue



Accountant and the Kanungo at the place where the appellant is employed. They have testified to the fact that the appellant was present on the day of the occurrence in his office for the whole day.

9. The reason assigned by the Trial Court for rejecting the deposition of those defence witnesses and the document, namely, the attendance register, is that the defence witnesses never clarified that they had seen the appellant at the place of work and that there was no seal or signature of the department on the attendance register.

10. There could be some force in the aforementioned reasoning but then, for the purposes of suspension of sentence of the appellant, it could be considered.

11. Apart from this, it has been argued that the weapon of assault was not seized and, therefore, not produced before the Trial Court. The motorcycle which was used by the appellant to come to the P.O. and fire at the deceased, has also not been



seized and produced before the Trial Court.

12. P.W. 12, the Investigator had visited the place of occurrence on the next day when he did not find any blood stained earth. He did not seize any blood stained earth also.

13. P.W. 13, the other I.O. had learnt reliably that the deceased was a driver who got easily piqued and fought with people.

14. Lastly, it has been submitted that the motive attributed for killing the deceased does not appear to be logical. There was some dispute two years ago with respect to the parking of the bus of which the deceased was the driver, which dispute admittedly had got settled. In fact, the case also was not lodged by the appellant but by the owner of the bus against the appellant. The appellant, as the evidence goes, wanted a clear road for his practice to run as he was attempting to get into Army.

15. This dispute may have occurred



sometimes in the past, but such a dispute would not leave any lingering effect in the mind of any person for committing murder of the deceased.

16. The appellant by that time had joined service as Revenue Accountant and was posted 400 kms away.

17. From the record of the case, there does not appear to be any flash-point or an event which would have triggered such an act.

18. The learned counsel for the appellant thus rested his argument that the accusation appears to be doubtful and the case is required to be heard finally.

19. As opposed to the afore-noted contention, Mr. Sudama Singh, the learned advocate for the informant has submitted that in presence of the father and two brothers, the deceased was shot at and he died instantaneously. There was no delay in logging the F.I.R by the father (P.W. 11), who was a witness to the occurrence and who got his statement recorded by



P.W. 12 who had visited the P.O. on such information.

20. However, we have also noted that P.W. 12 had received information at the police station that the deceased had been killed. The name of the assailant was not known to the Investigator when he had first received the information. However, he knew about the identity of the deceased. This also creates some doubt for the reason that if the name of the deceased was known to the Investigator, the name of the assailant also would have been known.

21. Considering all these aspects of the matter and taking into account the period of custody of the appellant which is from 11.09.2019 as also taking into account that there are no fair chances of this appeal being heard in near future, we are inclined to suspend the sentence of the appellant.

22. We order accordingly.

23. The appellant, above named, is directed to be release on bail, during pendency of this



appeal, on his furnishing bonds in the sum of Rs. 10,000 (Rs. Ten Thousand) with two sureties of like amount each to the satisfaction of the learned Additional Sessions Judge -I, Rohtas at Sasaram in connection with Sessions Trial No. 64/2020 arising out of Kachhawa P.S. Case No. 28/2019.

24. The direction for realization of fine shall also remain stayed till final hearing of the appeal.

(Ashutosh Kumar, J)

(Khatim Reza, J)

sunilkumar/-

U		T	
---	--	---	--

