

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.17 of 1994**

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Bijay Singh S/o Rameshray Singh Residents of Village- Mai, P.S.-
Warsaliganj, District- Nawadah.

... .. Appellant.

Versus

The State of Bihar

... .. Respondent.

with
CRIMINAL APPEAL (DB) No. 67 of 1994

1. Ram Jiwan Sharma.
2. Kaushalendra Singh.

Both sons of Ram Lakhan Singh, residents of village-Mai, P.S. Warsaliganj,
District-Nawadah.

... .. Appellants.

Versus

The State of Bihar

... .. Respondent.

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Appearance :

(In CRIMINAL APPEAL (DB) No. 17 of 1994)

For the Appellant : Mr. Arun Kumar Arun, Advocate.
Mr. Shankar Kumar, Advocate.

For the State : Ms. S.B. Verma, A.P.P.

(In CRIMINAL APPEAL (DB) No. 67 of 1994)

For the Appellants : Mr. Arun Kumar Arun, Advocate.
Mr. Shankar Kumar, Advocate.

For the State : Mr. Manish Kumar No.2, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE A. M. BADAR

and

HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE A. M. BADAR)

Date : 11-04-2022

Criminal Appeal (DB) No.17 of 1994 has been filed by
convicted accused Bijay Singh, convicted accused Ishwar Dayal
Singh as well as convicted accused Ramadhin Singh. It survives only
so far as convicted accused Bijay Singh is concerned. Rest of the



appellants, namely, Ishwar Dayal Singh and Ramadhin Singh, died during the pendency of the appeal and their appeal stood abated. Criminal Appeal (DB) No.67 of 1994 is filed by convicted accused Ram Jiwan Sharma and convicted accused Kaushalendra Singh.

2. The appellants by these appeals are challenging the Judgment and Order dated 23.12.1993 passed by the learned 3rd Additional Sessions Judge, Nawadah, in Sessions Trial No.399/83 (101/87) thereby convicting them of the offences punishable under Sections 302/149 and under Sections 307/149 of the Indian Penal Code. They all are sentenced to suffer rigorous imprisonment for life and rigorous imprisonment for 7 years on each of these counts respectively. In addition, convicted accused/ appellants Ram Jiwan Sharma and Kaushalendra Singh are convicted of the offence punishable under Section 27 of the Arms Act and on this count, they both are sentenced to suffer rigorous imprisonment for 7 years. Substantive sentences are directed to run concurrently by the learned trial court. It would be apposite to mention here that originally in all six accused persons came to be charge-sheeted in the subject Sessions Trial. However, one of the accused Krishnandan Singh died during the pendency of the trial whereas, as noted earlier, two of the convicted accused died during the pendency of these appeals.

3. The facts in brief leading to the prosecution of the accused persons can be summarized thus:

(a). On 11.04.1983, first informant Kamta Singh (P.W.10)



who happens to be resident of village-Warsaliganj, District-Nawadah, along with his co-villagers had been to Nawadah. In the evening, they returned to their village by the train and alighted at the Railway Station Baghi-Vardiha, at about 07.30 P.M. They then started proceeding to their village on foot. Sukhdeo Singh (since deceased), P.W.3 Mithilesh Singh, P.W.4 Ram Nandan Singh as well as Shailendra Singh were accompanying the first informant Kamta Singh (P.W.10). When they all reached near Nawrangi orchard of their village, convicted accused Bijay Singh had allegedly flashed a torch at them and stopped them. At that time, convicted accused Bijay Singh was accompanied by other accused persons. Out of them, appellant/accused Ram Jiwan Sharma and appellant/accused Kaushalendra Singh were holding guns. Convicted accused Ishwar Dayal Singh was holding a torch as well as the knife. Deceased accused Krishnandan Singh was holding a bag containing bombs whereas deceased appellant/accused Ramadhin Singh was holding a Gadasa. Appellant/accused Bijay Singh then exhorted to kill and thereupon appellant/accused Ram Jiwan Sharma and appellant/accused Kaushalendra Singh fired the bullets from the guns held by them at Sukhdeo Singh. Deceased accused Krishnandan Singh hurled a bomb which caused wounds to Sukhdeo Singh (since deceased) as well as P.W.4 Ram Nandan Singh. Sukhdeo Singh was assaulted by means of Gadasa by Ramadhin Singh. Similarly, accused Ishwar Dayal Singh also gave blows of knife to deceased



Sukhdeo Singh. The accused persons then flee from the spot. Because of murderous assault by accused persons, Sukhdeo Singh died on the spot whereas P.W.4 Ram Nandan Singh came to be injured. He was taken to the hospital and was medically treated by P.W.12 Dr. Abdul Hakim Ansari.

(b). P.W.10 Kamta Singh then went to the police station and lodged the F.I.R. against the accused persons. Dead body of his brother Sukhdeo Singh was then dispatched for autopsy and P.W.2 Dr. Ajay Kumar of Sadar Hospital, Nawadah, conducted post-mortem examination on the dead body.

(c). Routine investigation followed. The spot came to be inspected by Investigating Officer P.W.11 Sita Ram Singh. Seizure came to be affected. On completion of routine investigation, in all six accused persons as indicated in the opening paragraph of this Judgment came to be charge-sheeted out of which Krishnandan Singh died during the pendency of the trial itself.

(d). The learned trial court framed the charges and in order to bring home the guilt to the accused persons, the prosecution has examined in all 12 witnesses. The defence of the accused is that of total denial. As per defence version, deceased Sukhdeo Singh had criminal history and he was killed by his own associates out of the enmity.

(e). After hearing the parties, the learned trial court was pleased to convict the accused persons and to sentence them as



indicated in the opening paragraph of this Judgment.

4. We heard the learned counsel appearing for the appellants. He argued that there are only three eye witnesses, namely, P.W.3 Mithilesh Prasad Singh, P.W.4 Ram Nandan Singh and P.W.10 Kamta Singh. They are interested in the deceased and their evidence is not trustworthy. It is further argued that other witnesses such as villagers were not examined by the prosecution. He further argued that P.W.1 Baso Manjhi, P.W.5 Ram Charitar Singh and P.W.9 Lalan Kumar Singh are hearsay witnesses whereas P.W.6 Visheshwar Singh, P.W.7 Deoki Singh and P.W.8 Awadhesh Kumar Singh are tendered witnesses. Evidence of these witnesses is of no assistance to the prosecution. It is further argued that the prosecution has not adduced evidence regarding source of light on the spot of the incident and as such identification of the accused persons becomes suspect. As against that, the learned A.P.P. supported the impugned Judgment and Order.

5. We have considered the submissions so advanced. We have also perused the records and proceedings including oral as well as documentary evidence.

6. At the outset, let us examine whether the prosecution has proved the fact that deceased Sukhdeo Singh has died homicidal death. His brother P.W.10 Kamta Singh has categorically deposed that after being hit by bullets, Sukhdeo Singh succumbed to the wounds suffered by him. Similar is the evidence of other eye



witnesses such as P.W.3 Mithilesh Prasad Singh and P.W.4 Ram Nandan Singh. Dead body of Sukhdeo Singh as seen from the evidence of the Investigating Officer was found drenched with blood in the orchard named Nawrangi Bagh. It was sent for post-mortem examination to the Sadar Hospital, Nawadah. P.W.2 Dr. Ajay Kumar of the said Hospital had conducted autopsy and had found the following antimortem injuries on the dead body of Sukhdeo Singh:

- 1) Incised wound 2" x 1 1/2" x 3/4" just below left eye.
- 2) Left eye damaged.
- 3) Circular or oval wound with inverted margin and blackening of the skin around 3" x 3/4" x 3/4" x inner deep over right side of chest just below and lateral to the right nipple (wound of entry).
- 4) Circular wound 1 1/2" x 1 1/2" x inner deep with inverted margin over middle of right side of back (wound of exit).
- 5) Lacerated wound with scorched margin and blackening of the skin around 2" x 1 1/2" x 3/4" on medial surface of lower part of right forearm.
- 6) Lacerated wound 2" x 1 1/2" x 1/2" with scorched margin and blackening of the skin around over dorsum of right wrist.
- 7) Swelling 3" x 2 1/2" x over right forearm in its lower part.
- 8) Fracture of radius and ulna of right side in its lower part.

Evidence of P.W.2 Dr. Ajay Kumar further shows that injury no.3 had resulted in fracture of 6th rib of right side apart from damaged to right lung and plura of the deceased. Similarly, 9th rib on the right side of the deceased was also fractured because of exit of the bullet. As per version of the Autopsy Surgeon, injury no.1 was



caused by a sharp cutting weapon such as dagger, injuries no.3 and 4 were caused by the firearms whereas injuries no.5 and 6 were caused by the explosive substance of the bomb. He also testified that injuries no.7 and 8 found on the dead body can be caused by the blunt portion of Gadasa. P.W.2 Dr. Ajay Kumar has stated that cause of death of Sukhdeo Singh was because of shock and haemorrhage caused by the injuries. The post-mortem report duly proved by him is at Ext.1. Thus, it is seen from the evidence of the Autopsy Surgeon that Sukhdeo Singh died homicidal death principally by injuries suffered by firearms.

7. Now, let us examine whether the accused persons are proved to have formed an unlawful assembly with common object of commission of murder of Sukhdeo Singh and for attempting to commit murder of the victim. For that purpose, we are having eye witness account of three eye witnesses who were accompanying deceased Sukhdeo Singh from the Railway Station Baghi-Vardiha to his village-Warsaliganj. One of them, namely, P.W.4 Ram Nandan Singh is an injured witness having received injuries in the incident in question.

8. P.W.3 Mithilesh Prasad Singh is one of the persons who was accompanying deceased Sukhdeo Singh and injured P.W.4 Ram Nandan Singh as well as P.W.10 Kamta Singh at the time of the incident. As per version of P.W.3 Mithilesh Prasad Singh, at about 07.45 P.M. of 11.04.1983, he along with Sukhdeo Singh (since



deceased), P.W.10 Kamta Singh, P.W.4 Ram Nandan Singh as well as Shailendra Singh were proceeding by walk to their village, after alighting from the train at Baghi-Vardiha Railway Station. He testified that on the way, appellant/accused Bijay Singh flashed a torch at them and stopped them. At that time, Appellant/accused Ram Jiwan Sharma and appellant/accused Kaushalendra Singh were holding guns, accused Ishwar Dayal Singh was holding a torch as well as accused Krishnandan Singh was having a bag containing a bomb whereas accused Ramadhin Singh was holding a Gadasa. As per version of P.W.3 Mithilesh Prasad Singh, appellant/ accused Bijay Singh exhorted to kill and thereupon appellant/ accused Ram Jiwan Sharma and appellant/accused Kaushalendra Singh fired bullets which hit Sukhdeo Singh. Then accused Krishnandan Singh threw a bomb, the explosion of which caused wounds to right groaning area of P.W.4 Ram Nandan Singh as well as to the hand of Sukhdeo Singh (since deceased). This witness had identified the accused persons. He was subjected to searching cross-examination in order to create doubt about his visit to Nawadah town and consequent return journey. However, Perusal of his evidence does not reflect anything suspicious about his alighting from the train and thereafter his returned journey to his village-Warsaliganj at about 07.45 P.M. of 11.04.1983. In cross-examination also, P.W.3 Mithilesh Prasad Singh has confirmed that there was light from two torches which were being carried by the accused persons. He



confirmed in the cross-examination that he had seen weapons in the hands of the accused persons and has further stated that they were frightened but did not run away. The reason for this behaviour is also stated by him by narrating that many villagers are having guns in his village. His cross-examination further reveals that in the light of the torch he saw that two bullets were fired. P.W.3 Mithilesh Prasad Singh has confirmed that wounded person was just 6 cubits away from the persons firing the bullet. He confirmed in the cross-examination that that even after Sukhdeo Singh being hit by bullets, he himself did not run away. Very honestly, he stated in the cross-examination that only after explosion of the bomb, he ran away from the spot. P.W.3 Mithilesh Prasad Singh has confirmed about enmity of the prosecuting party with the accused persons.

9. If this evidence of P.W.3 Mithilesh Prasad Singh is considered then it is clear that it is free from doubt and is not containing any discrepancy which can go to the root of the matter. Version of this witness is not at all shattered in the cross-examination. Thus evidence of P.W.3 Mithilesh Prasad Singh shows that he has seen the incident in the light of the two torches held by accused persons, after witnessing the accused persons with the weapons. His evidence reveals that the accused persons were holding guns, sharp edged weapons as well as the bomb. We see no reason to disbelieve the evidence of this witness. We see no merit in the contention of the learned counsel for the appellants that there was



no source of light at the place of the incident, particularly when from the cross-examination of this witness, the defence has elicited that there was light of two torches at the spot of the incident.

10. P.W.4 Ram Nandan Singh is an injured witness. Soon after the incident he was examined at the State Dispensary of Warisaliganj by P.W.12 Dr. Abdul Hakim Ansari. This Medical Officer has noted the following injuries on P.W.4 Ram Nandan Singh.

- 1) Lacerated wound with scorch margin 1" x 1/2" x 1/2" on right thigh, lower third inner aspect.
- 2) Lacerated wound with scorch margin 1 1/4" x 3/4" x 1/4" on the right thigh upper third inner aspect.

P.W.12 Dr. Abdul Hakim Ansari had opined that injuries found on the person of P.W.4 Ram Nandan Singh were caused by the explosive substances. He proved the contemporaneous injury report at Ext.5. The version of P.W.12 Dr. Abdul Hakim Ansari makes it clear that P.W.4 Ram Nandan Singh had sustained injuries in the incident in question. Thus, as P.W.4 Ram Nandan Singh had suffered the injuries in the incident under examination, his evidence carries a great weight as he is undoubtedly an eye witness to the incident.

11. Importance of evidence of injured eye witness is highlighted in the catena of Judgments by the Hon'ble Supreme Court including that in **Bonkya Vs. State of Maharashtra reported in (1995)2 SCC 447**, wherein it is held that the injured witnesses are stamped witnesses whose presence on the spot admit no doubt as



they themselves are victims of the crime in question.

12. Statement of P.W.4 Ram Nandan Singh before the court is congruous to the version of P.W.3 Mithilesh Prasad Singh. As per his version, while returning to their village from the Railway Station, at Nawranghi Bagh, appellant/accused Bijay Singh accosted them. Other accused persons, namely, appellant/ accused Ram Jiwan Sharma and appellant/accused Kaushalendra Singh were holding guns, accused Ishwar Dayal Singh was holding torch and the knife, accused Krishnandan Singh was holding a bag having the bomb, accused Ramdhani Singh was holding Gadasa. In the similar manner, P.W.4 Ram Nandan Singh has stated that on the order of appellant/accused Bijay Singh, appellant/accused Ram Jiwan Sharma and appellant/ accused Kaushalendra Singh fired bullets. As per his version, the bullet fired by the appellant/accused Ram Jiwan Sharma hit deceased Sukhdeo Singh. Accused Krishnandan Singh hurled a bomb which exploded at his right leg and he ran away and suffered a fall at some distance. This witness has also identified the accused persons.

13. Injured P.W.4 Ram Nandan Singh has withstood the test of cross-examination. In cross-examination, he stated that when he saw the accused persons, he noticed weapons in their hands. His cross-examination shows that the bomb was pelted at him at the distance of about 9 cubits, causing bleeding injury to him and then he ran away. His cross-examination shows that thereafter he did not



hear the sound of firing. This implies that the bullets were fired prior to pelting the bomb at this witness. Thus, cross-examination of this witness could not bring on record any material to doubt his version about the incident.

14. P.W.10 Kamta Singh is brother of deceased Sukhdeo Singh. He has lodged the report of the incident, being an eye witness to the incident. He vouched about the presence of other witnesses with him apart from that of Sukhdeo Singh (since deceased) during their returning journey. His evidence regarding the incident is in tune with the prosecution case and is consistent with the testimony of P.W.3 Mithilesh Prasad Singh and P.W.4 Ram Nandan Singh. P.W.10 Kamta Singh has spoken about accosting them by flashing light of the torch by accused Bijay Singh. He has also stated presence of the co-accused with appellant/accused Bijay Singh with weapons and the bomb. After narrating this, P.W.10 Kamta Singh has stated that appellant/accused Bijay Singh had ordered firing and thereupon appellant/accused Ram Jiwan Sharma fired bullet which hit Sukhdeo Singh. This witness has also spoken about hurling a bomb at deceased Sukhdeo Singh by accused Krishnandan Singh as well as giving blows of knife to Sukhdeo Singh by accused Ishwar Dayal Singh. P.W.10 Kamta Singh had identified the accused persons. In cross-examination, an attempt was made to doubt journey of this witness to village Nawadah and consequential returning. However, this witness has clarified the purpose of going to Nawadah which



also includes meeting with an advocate. In cross-examination, P.W.10 Kamta Singh has confirmed that the torch was flashed at them from a distance of about 10-12 feet and after flashing the torch, two persons fired bullets. He reiterated in the cross-examination that then a bomb was thrown at them. Thus, the cross-examination of this witness is, in fact, cementing the case of the prosecution and disclosing the source of light on the spot of the incident. He is the natural witness to the incident in question.

15. This is an eye witness account brought on the record by the prosecution in support of its case. Evidence of all these three eye witnesses are totally consistent with the prosecution case and the evidence of P.W.10 Kamta Singh is duly corroborated by the F.I.R. lodged by him with the promptitude. There is nothing in the version of all these three eye witnesses to cast shadow of doubt on their version. Thus with the reliable and trustworthy evidence of all these three eye witnesses, the prosecution has established its case of formation of an unlawful assembly by accused persons with common object of committing murder of Sukhdeo Singh as well as attempting to commit murder of the victims. The accused persons were holding torches, guns as well as a bomb and sharp-edged weapons. The manner in which they were armed as well as their conduct in accosting the victims and thereafter assaulting them makes it clear that they were sharing common object by forming the unlawful assembly. Thus, their acts make all of them vicarious liable for the



result secured by them. Evidence of the eye witnesses is duly corroborated by the medical evidence on record which speaks about the explosion of bomb and resultant injuries caused by it. The bullet wounds on the dead body of Sukhdeo Singh makes it clear that the common object of the unlawful assembly was to eliminate him. Pelting a bomb at the victims makes intention of the members of the unlawful assembly clear. The explosion of the bomb, no doubt has caused simple injuries to P.W.4 Ram Nandan Singh but what is relevant for making out the offence punishable under Section 307 of the Indian Penal Code is an overt act coupled with the requisite intention de hors the wounds.

16. In the result, we see no reason to interfere with the impugned Judgment and Order of the learned trial court in convicting and sentencing the appellants/accused as indicated in the opening paragraph of this Judgment. The appeals, therefore, fail and, as such the following order:

The appeals are dismissed.

(A. M. Badar, J)

(Sunil Kumar Panwar, J)

P.S./-

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