

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.513 of 1996**

Chandra Shekhar Singh, son of late Sakaldeep Singh, resident of village-
Ramlagan Bigha, Police Station- Arwal, District- Jehanabad

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 550 of 1996

Satendra Singh Son of Udit Singh, resident of village – Ramlagan Bigha, P.S.
Arwal, District – Jehanabad.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 638 of 2009

Butan Singh, son of Late Ram Bilas Singh, Resident of Mahadeo Bigha, P.S.-
Parasi, District – Arwal.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 513 of 1996)

For the Appellant/s : Mr. Prince Kumar Mishra, Amicus Curiae.

For the Respondent/s : Dr. Mayanand Jha, Senior Advocate

(In CRIMINAL APPEAL (DB) No. 550 of 1996)

For the Appellant/s : Mr. Prince Kumar Mishra, Amicus Curiae

For the Respondent/s : Dr. Mayanand Jha, Senior Advocate

(In CRIMINAL APPEAL (DB) No. 638 of 2009)

For the Appellant/s : Mr. Prince Kumar Mishra, Amicus Curiae

For the Respondent/s : Mr. Dilip Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE A. M. BADAR

and

HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR)



Date : 08-03-2022

Heard the parties.

2. Since all these three appeals arise out of same Karpi P.S. No.54 of 1994 they are being decided by a common judgment.

3. These two appeals Cr. Appeals (DB) No. 513 of 1996 and Cr. Appeal (DB) No. 550 of 1996 arise from the one judgment of conviction and order of sentence dated 30.09.1996 passed by the learned Ist Additional District & Sessions Judge, Jehanabad in Sessions Trial No. 216 of 1994.

4. Cr. Appeal (DB) No. 638 of 2009 arises on the judgment of conviction and order of sentence dated 27.04.2009 passed by learned Additional Sessions Judge (Fast Track Court No.1), Jehanabad in Sessions Trial No. 211 of 1996/44 of 2002.

5. By the aforesaid judgment dated 30.09.1996, the appellants Chandra Shekhar Singh and Satendra Singh have been convicted for the offence punishable under Section 302/34 of the Indian Penal Code and awarded the sentence to undergo rigorous imprisonment for life. The appellant Satendra Singh further sentenced to undergo for two years under Section 27 of the Arms Act.

6. Vide judgment dated 27.04.2009, the appellant Butan Singh has been convicted under Section 302/34 of the



Indian Penal Code and Section 27 (1) of the Arms Act and awarded the punishment of imprisonment for life (R.I.) for the offence under Section 302 of the Indian Penal Code and further awarded the sentence of three years rigorous imprisonment for the offence under Section 27(1) of the Arms Act.

7. The prosecution case as reiterated as per the fardbeyan of Sunil Kumar (PW-11), son of late Krishna Singh of village- Ramlagan Bigha, P.S. Arwal, District- Jehanabad recorded by S.I. Mahadeo Chaudhary P.S. Deo Kund, District – Aurangabad on 04.06.1996 at 21 :00 hours at village- Bimli Chak, P.S. Deo Kund is that on the same day at about 1.45 P.M., he along with his father deceased Krishna Singh was going to the house of Shivdhari Mahato at Bhimali Chak riding on a bicycle to attend the *Tilak* ceremony at the house of Shivdhari Mahto. At about 5.30 P.M., when they reached near village- Radhenagar near Shamshan Ghat (Chirari) under Karpi police station, he saw accused Indra Deep Singh with pistol, Chandra Shekhar Singh with dagger, Satendra Singh with pistol and Bhutan Singh resident of Mahadeo Bigha with pistol. They surrounded his father Krishna Singh and caught hold of him. They tied his father's neck with his *Gamcha* and dragged him away up to Radhanagar Badhar and opened fire at him



repeatedly due to which his father sustained injury and fell down and thereafter accused persons inflicted dagger blows upon him. Further case of the prosecution is that, his father again got up and ran to some distance but again fell down. On hue and cry made by the informant, an unknown person came to the informant to whom, asserted the entire incident in respect of occurrence and told that his father had been killed. The said unknown person brought the informant to village- Bhimali Chak at the house of Shivdhari Mahto. Many persons of village- Bhimali Chak, rushed towards the place of occurrence and from there, they took the injured Krishna Singh to the hospital but on way to the hospital he died. There was longstanding enmity between his father and the accused persons. The villagers of the Bhimali Chak brought the bicycle of his father. The occurrence was seen by a passersby who brought him to village- Bhimali Chak. The informant further stated that his uncle Ram Pravesh and his cousin Asta Nand Singh also came for participating in the Tilak ceremony reached at village- Bhimali Chak and took the dead body of the deceased.

8. After recording the fardbeyan of informant by the S.I. Mahadeo Chaudhary, he handed over the same to the S.I. Yamuna Singh (PW-13) of Karpi P.S. as the place of occurrence



comes within the jurisdiction of Karpi P.S. and thereafter Yamuna Singh forwarded the fardbeyan to Karpi P.S. for institution of the case and he himself took up the investigation at Deokund P.S., and Karpi P.S. Case No. 54 of 1994 dated 05.06.1994 was instituted.

9. After completing the investigation, chargesheet has been submitted by the Investigating Officer. Ultimately cognizance was taken in this case and was committed to the Court of Sessions for trial.

10. Charges have been framed against the appellants and other co-accused, namely, Indra Deep Singh. The trial Court explained the charges to the accused to which they pleaded not guilty and claimed to be tried.

11. It would be mentioned here that after conclusion of the trial one co-accused Indra Deep Singh has been acquitted by the learned trial Court and accused Butan Singh was absconded at the stage of 313 of the Cr.P.C. Accordingly, his trial was separated.

12. To substantiate the charges levelled against the accused persons, altogether 13 prosecution witnesses have been examined.

13. PW-1 Sri Bhagwan Singh is the man who had



brought the informant, namely, Sunil Kumar (PW-11) to village Bhimali Chak after picking him up from the place of occurrence and he has been declared hostile.

14. PW-2 Ram Pravesh Singh is the uncle of the informant (PW-11) and the elder brother of the deceased.

15. PW-3 Chandra Deep Mahto and PW-4 Suraj Dayal Singh have been declared hostile.

16. PW-5 Surendra Prasad Singh and PW-6 Bigan Singh have asserted about their presence on place of occurrence after the incident.

17. PW-7 Om Prakash Kumar and PW-8 Baldeo Singh have been tendered.

18. PW-9 Satyendra Singh and PW-10 Baldeo Singh are formal witnesses in this case who proved seizure list and fardbeyan respectively.

19. PW-11 Sunil Kumar is the so called eye witness and the informant of this case and is a minor boy aged about ten years at the time of occurrence.

20. PW-12 is Dr. Mithilesh Kumar who conducted the postmortem examination of the dead body of Krishna Singh.

21. PW-13 Yamuna Singh is the Investigating Officer of this case.



22. The learned Amicus Curiae has submitted that the sole so called eye witness PW-11 is a tutored witness who gave his fardbayan at the instance of his uncle Ram Pravesh Singh (PW-2) implicating the appellants who is on inimical terms with the convicts/appellants as the PW-2 Ram Pravesh Singh, the deceased and others were accused in the murder of the father of the accused Indra Deep Singh and Chandra Shekhar Singh. It is further submitted that the entire prosecution case is based on the solitary witness (PW-11) who is the informant of this case and is the only eye witness of the occurrence. He further submits that the informant made vital contradiction in his evidence contradicting his own fardbayan (Ext-4). Even the PW-1 Sri Bhagwan Singh who carried the informant in his lap to the Bhimali Chak village has not supported the prosecution story.

23. On the other hand, learned APP on behalf of the State has submitted that the prosecution case is well proved and the evidence of PW-11 (Informant) is well corroborated by the medical evidence. The medical evidence is in consonance with the prosecution evidence.

24. The evidence of PW-12 Dr. Mithilesh Kumar is as follows:-

“On 05.06.1994 at 12.30 P.M. he had conducted postmortem examination on the dead



body of deceased Krishna Singh and found the following antimortem injuries” -

(i) Incised wound over right side of the scalp 3” x 1/4” up to bone deep.

(ii) Incised wound 3/4” x 1/4” x skin deep adjacent to injury no.1.

(iii) Lacerated wound over the right side of the cheek 1- 1/2” x 1/2” up to bone deep. There is charring around 1” area. There is fracture of right Maxillary bone. Foresight body resembling bullet was found lodged in the right side of HYOID.

(iv) Lacerated wound posterior side of the right arm 1” x 3/4” up 2nd wound. Margin inverted and black. This is the wound of entry.

(v) Lacerated wound over the medial side of right arm 1 1/2” x 3/4” up to first wound margin averted. This is wound of exit.

(vi) Lacerated wound over the right side of the chest 1” x 3/4” x lungs deeps with margin black and inverted. He has further deposed that on the dissection foreign body resembling bullet was found lodged in the right side of the loin including rupture of diaphragm and adjacent gut. He has further deposed that injuries no.1 was caused by sharp cutting weapon and injury no.3, 4 and 5 were caused by fire arms and the cause of death was haemorrhage and or shock due to fire arm injuries. He has also proved his postmortem report which has been marked Ext-3. In cross-examination, he has deposed that the injury nos.3, 4 and 5 can be caused by firing twice or thrice.”

25. It is apparent from perusal of the prosecution evidence that the entire prosecution case hinges upon solitary



witness who is the informant of this case and is son of the deceased. PW-11 Sunil Kumar has supported the version which is stated by himself in fardbayan which is marked as Ext-4 and on the day of occurrence, he was going to Bhimali Chak along with his father riding on a bicycle to attend the *Tilak* ceremony and when he reached near Radhenagar, he saw accused Indra Deep Singh, with pistol, Chandra Shekhar Singh with dagger and Satendra Singh and Butan Singh with pistol. He further corroborates the fardbayan that all the aforesaid accused caught hold of his father and tied with *Gamcha* and thereafter Satyendra Singh and Butan Singh shot fire at his father and accused Indra Deep Singh and Chandra Shekhar Singh assaulted him with dagger. His father ran up to some distance and fell down. One unknown person reached there who took the deceased in his lap and ran away. He reiterated all incident to the several persons and brought his injured father to the hospital but on way, deceased succumbed to the injury. He gave his fardbayan to Sub Inspector at Bimali Chak and put his signature (Ext-1/5) on it.

26. As according to the prosecution case, Indra Deep Singh, Satyendra Singh and Butan Singh were armed with pistol whereas accused Chandra Shekhar Singh was armed with



dagger. But in the evidence of PW-11 (Sunil Kumar) only two persons, namely, Satydnra Singh and Butan Singh were armed with pistol and the rest two persons, namely, Indra Deep Singh and Chandra Shekhar Singh were armed with dagger. In this case, PW-11 Sunil Kumar is a 12 years old boy at the time of adducing the evidence before the court below.

27. The pall of gloom descended upon the minor son (PW-11) of the deceased on 04.06.1996 by way of murder of his father, informant was in a state of shock at the time of lodging of the FIR as his father was brutally assaulted by the accused persons in his presence. It is natural that some variations and contradictions may happen on account of the details of the occurrence. It is well proved by the evidence of this witness that he was accompanying his father at the time of occurrence.

28. PW-1 Sri Bhagwan Singh also corroborated this fact that just after occurrence, he was present at the place of occurrence and he heard the sound of two firings.

29. Mr. Prince Kumar Mishra, learned Amicus Curiae has vehemently argued that PW-11 (Sunil Kumar) is a child and tutored witness and the evidence of PW-11 is not corroborated by the other prosecution evidence so the evidence of PW-11 (Sunil Kumar) as a child witness should not be counted for



proving the prosecution case.

30. It is observed by the Hon'ble Apex Court in the case of *Dattu Ramrao Sakhare and others V. State of Maharashtra* rendered in *(1997) 5 Supreme Court Cases 341* at para-5 which is as follows:-

“The entire prosecution case rested upon the evidence of Sarubai (PW 2) a child witness aged about 10 years. It is, therefore, necessary to find out as to whether her evidence is corroborated from other evidence on record. A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored. There is no rule or practice that in every case the evidence of such a witness be corroborated before a conviction can be allowed to stand but, however as a rule of prudence the court always find it desirable to have the corroboration to such evidence from other dependable evidence on record. In the light of this well-settled principle we may proceed to consider the evidence of Sarubai (PW 2).”

31. The learned trial Court recorded his reasons and



found that PW-11 (Sunil Kumar) is a competent witness and his evidence is unblemished, therefore, we do not see any reason to discard with the observations of the learned court below as recorded in the evidence of PW-11 Sunil Kumar. We have gone through the judgments of the court below as well as the evidence of PW-11 Sunil Kumar wherein he has stated that in his evidence about the place of occurrence, manner of occurrence and weapon used in the crime by the accused persons/appellants. This witness also deposed about all counts which is mentioned in his fardbeyan Ext-4. This fact is also well proved by this witness that he was accompanied by his father at the time of occurrence when his father was killed by the accused persons. His evidence finds corroboration with the postmortem report Ext-3 and the doctor who conducted the postmortem report of the deceased. He finds two incised wounds which are possible by the sharp edged weapon and four injuries which was found lacerated wound which are possible by fire arms. The doctor opined that the cause of death was haemorrhage and shock due to fire arm injuries. Thus the evidence of PW-11 (Sunil Kumar) that his father was shot at twice finds full support from the evidence of PW-12 (Dr. Mithilesh Kumar). According to the evidence of PW-11, the learned trial Court also



found that deceased was shot at from a distance about two feet also find corroboration from the evidence of PW-12 (Dr. Mithilesh Kumar) as he had found charring and blackening around the wound.

32. We find no reason to believe the submissions raised by the learned Amicus Curiae that the star and prime witness namely Sunil Kumar (PW-11) is tutored at the instance of PW-2 Ram Pravesh Singh who made his signature on fardbeyan but does not support the prosecution version during course of trial as PW-2. So the circumstances belied that the fardbeyan was recorded at the instance of PW-2 Ram Pravesh Singh because he himself is not supporting the prosecution case fully and therefore, we are of the view that PW-11 (Sunil Kumar) cannot be a tutored witness.

33. We come to the conclusion that the prosecution has established its case beyond all reasonable doubts against the convicted accused/appellants in commission of murder of the deceased Krishna Singh. Hence, these appeals in respect of appellants are devoid of merit.

34. The instant appeals stand dismissed. The judgment of conviction and order of sentence dated 30.09.1996 and 27.04.2009 respectively passed by learned Ist Additional



District & Sessions Judge, Jehanabad and Additional Sessions Judge (Fast Track Court No.I), Jehanabad respectively are hereby confirmed.

35. We record our appreciation for extraneous efforts made by Mr. Prince Kumar Mishra, the learned Advocate appointed to represent the appellants at the cost of State in order to assist this Court for arriving at the correct conclusion in the instant appeals. We also quantify the fees to be payable to him as Rs.5,000/- (Five thousand) from the Patna High Court Legal Services Committee.

(Sunil Kumar Panwar, J)

(A. M. Badar, J)

Brajesh Kumar/-

AFR/NAFR	
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