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(2019) 09 PAT CK 0159

In the Patna High Court

Case No : Criminal Appeal (DB) No. 1052, 1049, 1083, 1101 Of 2013, 53 Of 2014

Ranjeet Singh @ Ranjeet And Ors — APPELLANT

Vs

State Of Bihar And Ors — RESPONDENT

Date of Decision : 25-09-2019

Acts Referred:
Indian Penal Code, 1860 — Section 147, 148, 149, 302
Arms Act, 1959 — Section 27
Code Of Criminal Procedure, 1973 — Section 313, 374(2)

Citation : (2019) 09 PAT CK 0159

Hon'ble Judges : Rakesh Kumar, J;Anil Kumar Sinha, J

Bench : Division Bench

Advocate : S.K. Lal, Pritish Kumar, Ajay Mishra, Tej Narain Singh, S.P. Singh, Bakshi S.R.P. Sinha, Sanjeev Kumar, Nilesh Kumar, Imteyaz Ahmad

Final Decision : Allowed

Judgement

1. All the appellants in aforesaid five appeals were tried together and by common judgment of the trial court they were convicted and sentenced and as such, all the five appeals were taken up together and are being disposed of by this common judgment.

2. All the appellants by judgment dated 21.10.2013 were convicted for the offence under Section 147/148/ 302/ 149 of the Indian Penal Code, 1860 [hereinafter referred to as "I.P.C."] and Section 27 of the Arms Act, 1959 [hereinafter referred to as "Arms Act"]. By order dated 31.10.2013 under Section 302 / 149 of the I.P.C. all the aforesaid appellants were sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 20,000/- each. In default in payment of fine, they were directed to further undergo rigorous imprisonment for six months. Under Section 148 /147 of the I.P.C. they were sentenced to undergo rigorous imprisonment for one year however, under Section 27 of the Arms Act all the aforesaid appellants were directed to undergo

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rigorous imprisonment for three years. The judgment of conviction and sentence was passed by Sri Deo Nandan Prasad Singh, learned Adhoc Additional District & Sessions Judge 1st Barh, Patna [hereinafter referred to as "trial judge"] in Sessions Trial No. 1186 of 2004 / Sessions Trial No. 905 of 2005 (arising out of Pandarak P.S. Case No. 32 of 2003).

3. Short fact of the case is that on 03.04.2003 at 20.00 Hours (8.00 P.M.) the Officer-in-charge of Pandarak Police Station recorded fardbyan of Umashankar Singh (P.W. 6) in the village: Bihari Bigha. In the fardbyan the informant stated that he was Mukhiya of Bihari Bigha Panchayat. He stated that on the same day at about 6.00 in the evening he along with his brother- Ramashankar Singh (deceased) and his villagers- Surendra Singh @ Ledha (P.W. 5), brother-in-law of deceased -Ramashankar Singh namely, Dhirendra Singh (P.W. 3) and Sunil Singh (P.W. 4) were moving towards telephone booth in the Bihari Bigha and while they reached at 6.10 P.M. near the house of one Shatrughan Sao (not examined) then he saw that (1) Ajay Singh [appellant in Cr. Appeal (DB) No. 53 of 2014], (2) Manoj Singh (absconder),

(3) Vijay Singh [appellant in Cr. Appeal (DB) No. 1083 of 2013] and (4) Mirtunjay Singh (died during the trial) carrying pistol in their hands, (5) Ranjeet Singh (appellant in Cr. Appeal (DB) No. 1052 of 2013] carrying rifle in his hand, (6) Nawal Singh (acquitted), (7) Satendra Singh (acquitted), (8) Rajesh Singh (absconder), (9) Upendra Singh [appellant in Cr. Appeal (DB) No. 1101 of 2013, (10) Gopal Singh all carrying pistols in their hands came near the beetle shop of Vijay Yadav. All of them surrounded the informant and his companion and started abusing and stated as to why the informant's side were not leaving/ relinquishing quota as well as contract work whereupon, Ramashankar Singh (deceased) replied that he would not leave the same. Thereafter, the aforesaid accused persons started firing on Ramashankar Singh which hit Ramashankar Singh and he fell down. After Ramashankar Singh fell down the accused persons also fired on the informant and others however, anyhow, they succeeded in fleeing away towards Southern Area and while fleeing away turning back he [informant] saw that accused after killing Ramashankar Singh were fleeing away towards Northern side. The informant with others then came to the place of occurrence and saw that his brother- Ramashankar Singh had received shot of firing and had died. After hearing sound of firing number of villagers also saw the accused persons while they were fleeing away. The informant claimed that along with the aforesaid named F.I.R. accused there were 3-4 other unknown accused persons who were variously armed and they were not known to the informant. The informant claimed that aforesaid ten accused persons with other 3-4 unknown accused persons with common intention had killed his brother by giving fire arm injuries. The reason for the murder of his brother was explained by the informant that accused persons were forcing his deceased brother to give up quota and also they were demanding contract work from the informant. The said fardbyan was read over to him and after finding it correct he put his signature on the bottom of the fardbyan. On the basis of the said fardbyan on same day i.e. on

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03/04/2003 at 9.45 P.M. a formal F.I.R. vide Pandarak P.S. Case No. 32 of 2003 was registered for the offence under Section 147/ 148/ 149/302 of the I.P.C. and Section 27 of the Arms Act against:-

(1) Ajay Singh (appellant in Cr. Appeal (DB) No. 53 of 2014),

(2) Manoj Singh (absconder),

(3) Vijay Singh (appellant in Cr. Appeal (D.B.) No. 1083 of 2013),

(4) Ranjeet Singh (appellant in Cr. Appeal (DB) No. 1052 of 2013),

(5) Mirtunjay Singh (died during the trial)

(6) Gopal Singh (absconder),

(7) Upendra Singh (appellant in Cr. Appeal (D.B.) No. 1101 of 2013),

(8) Nawal Singh (acquitted),

(9) Satendra Singh (acquitted), and

(10) Rajesh Singh (his trial separated) and 3-4 unknown accused persons

4. After registering F.I.R. the case was investigated and on 08/07/2003 first charge sheet was submitted against: Upendra Singh [appellant in Cr. Appeal (D.B.) No. 1101 of 2013] , Pappu Singh (case separately tired). Ajay Singh and Rajesh Singh [both were shown absconder] keeping investigation pending and thereafter, on 30/09/2003 supplementary charge sheet was submitted against :-

(1) Ranjeet Singh (appellant in Cr. Appeal (D.B.) No. 1052 of 2013),

(2) Nawal Singh (acquitted),

(3) Satendra Singh (acquitted),

(4) Shiv Dayal Singh ,

(6) Gautam Kumar Singh and 4 accused persons were shown absconder.

5. After submission of charge sheet, the case was committed to court of Sessions on 07/10/2004. Thereafter, on 17/05/2006 charge under Section 148, 302/147 of the I.P.C. and Section 27 of the Arms Act was framed against the accused persons, which were denied by them and they claimed to be tried.

6. During the trial to establish its case on behalf of the prosecution altogether eleven witnesses were examined. Out of eleven witnesses, P.W. 1 -Usha Devi (wife of deceased), P.W. 2 -Sunita Devi (wife of informant), P.W. 3 Dhirendra Kumar / brother- in- law (sala) of deceased, P.W. 4 Sunil Singh/ another brother-in- law (sala) of deceased and P.W. 6- Umashankar Singh (informant) were examined as eyewitnesses to the occurrence. Among the aforesaid witnesses some have claimed to had seen accused persons while fleeing away immediately after the occurrence. P.W. 9-Shyam Kishor Ram and P.W. 10 - Bachchu Prasad

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are formal witnesses who have proved certain documents. P.W. 7 - Dr. Dilip Kumar Singh conducted post- mortem examination on the dead body of the deceased, P.W. 11 - Prakash Yadav is a Police Official who had produced empty live cartridges during the trial, which were marked as material exhibits and P.W. 8 - Lalan Prasad is the Investigating Officer of the case, however , P.W. 5 - Surendra Singh @ Ledha, a co-villager of the informant since did not support the prosecution case was declared hostile.

7. After completion of prosecution evidence, on 09/05/2007 circumstances and evidences which were brought on record against the accused persons were explained to them and their statement under Section 313 of the Cr.P.C. was recorded on 09/05/2007.

8. From the defence side also five witnesses were examined, who are D.W. 1 - Alakh Deo Singh who took the plea of alibi in respect of accused persons, D.W. 2 / Rakesh Kumar, D.W. 3 - Parmatma Singh and D.W. 4 - Ajay Kumar were examined to support the plea of alibi in respect of accused persons however, D.W. 5 - Krishna Deo Prasad Singh (Advocate's Clerk) is a formal witness who proved supervision note, which was marked as Ext. E. Learned trial judge on the basis of evidence on record and submission made by learned counsel for the parties by the impugned judgment while acquitting three accused persons, has convicted and sentenced aforesaid five appellants by the impugned judgment which has been assailed before this court by way of filing appeals under Section 374 (2) of the Cr.P.C.

9. Sri S.K. Lal, learned counsel assisted by Sri Pritish Kumar Lal, learned counsel for the appellant in Cr. Appeal (D.B.) No. 1052 of 2013 on behalf of the appellant-Ranjeet Singh @ Ranjeet after placing entire evidence has argued that the learned trial judge has committed error in passing the judgment of conviction and sentence on the basis of evidence of only family members and interested witnesses. He submits that in the 1st charge- sheet besides five family members (witnesses) there were other independent witnesses who were not even summoned to appear as prosecution witnesses whereas, only one independent witness P.W. 5 namely Surendra Singh was declared hostile on 23.11.2006 and thereafter, on 27.11.2006 a petition was filed by the prosecution that all other independent witnesses had gone in collusion with the accused persons, and as such, he submits that prosecution has purposely suppressed independent witnesses which may go in favour of the defence. He submits that there was one witness namely: Akshybar Upadhyay who had prepared seizure list and inquest report however he was not even cited as prosecution witness. There is no eye witness to the occurrence. Sri Lal, learned counsel for the appellant has further tried to persuade the court that in the fardbyan there was no reference / mentioning regarding presence of P.W. 1 and P.W. 2 which creates doubt on the case of prosecution. He also tried to persuade the court that at the place of occurrence presence of P.W. 3 and P.W. 4 was doubtful.

10. Learned counsel for the appellant has further argued that as per prosecution

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occurrence took place at 6.10 P.M. and immediately thereafter Police recorded Sanha entry and rushed to the place of occurrence however no reason has been assigned as to why belatedly fardbyan was recorded at 8.00 P.M. on the same day. He submits that there is no explanation of delay in recording fardbyan. He further submits that even after lodging F.I.R. which was lodged on 03.04.2003 it was belatedly sent to the court of learned Additional Chief Judicial Magistrate, Barh and as such, it was received on 05.04.2003. According to learned counsel for the appellant neither station diary entry was produced by the prosecution nor medical evidence supports the prosecution case. Lastly it has been argued that on examination of evidence of Investigating Officer / P.W. 8 it is evident that no source of light has been referred regarding preparation of seizure list, recording fardbyan, inquest report etc. Accordingly, it has been argued that prosecution has not been able to establish its case beyond all reasonable doubts even then, the learned trial judge has incorrectly passed judgment of conviction and sentence.

11. Sri Ajay Thakur, learned counsel assisted by Sri Nilesh Kumar, learned counsel for the appellant Ajay Singh in Cr. Appeal (D.B.) No. 53 of 2014 in furtherance of submissions made by Sri S.K. Lal, learned counsel for the appellant in Cr. Appeal (D.B.) No. 1052 of 2013, has argued that admittedly F.I.R. in the case was received in the court much belatedly and even the author of the fardbyan i.e. the Police Officer who had recorded fardbyan has not been examined during the trial. He submits that earlier version of the case was suppressed by the prosecution. He highlights that P.W. 3 - Dhirendra Kumar in paragraph 17 of his cross -examination has stated that one Surendra Singh after fleeing away from the place of occurrence went to Police Outpost. Similarly P.W. 4 - Sunil Singh in paragraph 6 of his cross -examination has stated that after the occurrence Umashankar Singh (P.W. 6) met with the Police at Police Outpost. He submits that this indicates that after the occurrence P.W. 4, P.W. 5 and P.W. 6 remained together at the police Outpost. Sri Thakur has also argued that there appears some cutting or penning down in the inquest report. In column no. 3 and 8 some lines were subsequently added, however at the time of submission made by learned counsel for the appellant; Sri Ajay Mishra, learned Additional Public Prosecutor has pointed out that in the first column itself date and time was mentioned and as such, the allegation of some addition in column 3 and 8 as alleged by learned counsel for the appellant has got no relevance. Sri Thakur has further tried to persuade the court to disbelieve the prosecution case on the ground that on none of the documents there is signature of either P.W. 3 or P.W. 4 whereas, one of the relatives Chakradhar Singh was a witness to the inquest report and seizure list but he has not been examined as prosecution witness. Shri Thakur further submits that the manner of occurrence has also not been established and he submits that P.W. 3 in his evidence has stated that altercation took place for a minute and in the occurrence only two shots were fired.

12. Sri Bakshi S.R.P. Sinha, learned senior counsel assisted by Sri Sanjeev Kumar, learned counsel for the appellant - Vijay Singh in Cr. Appeal (D.B.) No.

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1083 of 2013 adopting the submission advanced by earlier learned counsel for the appellants has further argued that the motive which has been shown for the commission of occurrence appears to be not sufficient for committing the crime. He submits that prosecution has come out with a case that deceased was murdered only on the story of non leaving/ giving up quota which may not be considered as sufficient for killing the deceased. He further submits that even if for the time being for release/ relinquish of quota motive was there, then in that event Mukhiya (P.W. 6) was not required to be spared. He further submits that nothing has been brought on record during the trial that the accused persons were having information regarding the movement of deceased and informant.

13. Sri Tej Narayan Singh, learned counsel appearing on behalf of appellant - Akhilesh Singh @ Nakata Singh @ Nand Lal Singh in Cr. Appeal (D.B.) No. 1049 of 203 and Upendra Singh in Cr. Appeal (D.B.) No. 1101 of 2013 has argued that Akhilesh Singh @ Nakata Singh @ Nand Lal Singh was not named in the F.I.R. nor it is case of the prosecution that this appellant was put on test identification parade and as such, in absence of any identification there was no reason for the learned trial judge to convict the appellant / Akhilesh Singh @ Nakata Singh @ Nand Lal Singh. Regarding appellant -Upendra Singh in Cr. Appeal (D.B.) No. 1101 of 2013, Sri Tej Narain Singh, learned counsel for the appellant has argued that this appellant was not having any interest in the quota nor there is any specific evidence against him however, he has adopted the argument advanced by learned Advocates for appellants in the earlier appeals.

14. Learned counsel for the appellants has also argued that evidence of defence witnesses suggests that at the time of occurrence number of the appellants were not present at the place of occurrence.

15. Sri Ajay Mishra, learned Additional Public Prosecutor opposing the appeals has argued that it is specific case of prosecution that all the appellants with common intention surrounded the deceased, informant and others and they threatened the deceased regarding leaving / giving up quota in respect of his P.D.S. dealer shop and due to refusal by the deceased all the accused persons participated in the occurrence in which firstly firing was made by Ajay Singh [appellant in Cr. Appeal (D.B.) No. 53 of 2014] and all other accused persons who were also having fire arms abused and fired. He further submits that informant - P.W. 6, P.W. 3 / Dhirendra Kumar and P.W. 4 - Sunil Singh are eye witnesses to the occurrence and they have categorically established participation of the appellants in the occurrence. He further submits that after committing the crime while accused persons were fleeing away they were seen by P.W. 1 - Usha Devi (wife of deceased) and P.W. 2 - Sunita Devi (wife of informant). Sri Mishra has argued that it is true that in the present case all the eye witnesses are relatives of the deceased but on cautious examination of their evidence it is established that those witnesses are truthful and reliable and there is no question to examine their evidence as doubtful. Sri Mishra has further argued that the Investigating Officer has found the place of occurrence as informed by

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the informant and medical evidence i.e. post- mortem examination report is consistent with the oral evidence. According to Sri Mishra on the basis of entire evidence on record which is cogent and reliable, the learned trial judge has rightly passed judgment of conviction and sentence which may not be interferred with. So far as evidence of defence witnesses is concerned, it has been argued that it appears that almost all the defence witnesses have come out with a case of alibi in respect of number of accused persons which apparently shows they were cited on behalf of defence to create false evidence of alibi.

16. Besides hearing learned counsel for the parties, we have minutely examined entire evidence on record. In evidence during the trial the informant has been examined as eye witness to the occurrence. In his evidence it has come that he alongwith his brother (deceased) and other two witnesses i.e. P.W. 3 and P.W. 4 were moving in the village towards a P.C.O. however, on the way he saw ten F.I.R. named accused persons who were having various fire arms and he in his evidence like facts disclosed in the fardbyan has categorically stated as to how the accused persons surrounded them. However, during evidence he failed to exactly name all the accused persons who participated in the occurrence and it appears that this was the reason that the learned trial judge has passed judgment of acquittal in respect of three accused persons who were put on trial along with the aforesaid five appellants. But in any event evidence of P.W. 6 may not lose its credence only due to non naming of all accused persons who were named in the F.I.R. This witness was cross examined at length however during his entire cross examination no substantial fact could be extracted which may create doubt on his evidence. During his evidence P.W. 6 has identified the fardbyan, which was marked as Ext. 1, seizure list relating to seizure of fired and live cartridges and also blood stained soil which was marked as Ext. 2. He also identified and proved inquest report, which was marked as Ext. 3. This witness has also proved his signature on the protest petitions, which were marked as Ext. 4 and 4/1. In his evidence he stated that on 3.4.2003 at about 6.10 P.M. (evening) occurrence had taken place. He had left his house alongwith his deceased brother- Ramashankar Singh, Dhirendra Singh (P.W. 3), Sunil Singh (P.W. 4) and one Surendra Singh (P.W. 5). While they were proceeding by the side of house of Shatrughan Sao near the gumti of Vijay Yadav when they arrived, Ajay Singh, Rajesh Singh, Upendra Singh, Nawal Singh, Satendra Singh, Ranjeet Singh, Manoj Singh, Vijay Singh and 3-4 other accused persons were seen by him. Ajay Singh was having rifle, Ranjeet Singh (rifle) and others were having pistols. The accused persons asked them to leave / give up the quota of contract work which was refused by his brother whereupon Ajay Singh gave shot of firing on his brother which hit him. Others also started firing. His brother after injury fell down however, the informant and others fled towards Southern side being frightened. The accused persons started firing on them also. Again after 2-3 minutes when accused persons had fled away the informant and others came back and saw that his brother had already died. The accused persons had fled towards the village. At the place of occurrence Police arrived. He gave his

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statement which was recorded by the Police and read over to him. Thereafter, he put his signature. He further stated that in his presence Police recovered four fired cartridges [khokha] and four live cartridges and also blood stained soil,prepared seizure of blood stained soil which was prepared by one Akshaybar Upadhyay over which he and one Chakradhar put their signature. Inquest report on the dead body of his brother was also prepared by the same Officer over which he and Chakradhar Singh put their signature. In paragraph 3 of his evidence he further stated that he had also filed protest petitions during investigation and he identified his signature on the protest petitions, which were marked as Ext. 4 and 4/A. After the occurrence his re-statement was also recorded. Of course in paragraph 4 of his cross -examination his attention was drawn to his previous statement but on examination of his entire evidence we do not find any sufficient contradictions brought on record and as such there is no reason not to rely on the evidence of P.W. 6.

17. P.W. 3 - Dhirendra Kumar and P.W. 4 / Sunil Singh both had accompanied the informant and the deceased and occurrence had taken place in their presence. On examination of their evidence it is evident that they are eye witnesses to the occurrence and there is no reason to consider their evidence as doubtful.

18. P.W. 1 - Usha Devi, who is wife of the deceased, in her evidence has stated that on the date and time of occurrence she was in her house alongwith his gotni -Sunita Devi (P.W. 2). After hearing sound of firing she came out from her house and saw that daughter of one Tiro Singh raising hulla was coming back and saying that Rama Bhaiya was murdered. This witness alongwith her gotni (P.W. 2) from there went towards the house of one Nandkeshwar Singh. While she reached there she saw that all the accused persons were coming raising hulla that they had killed Ramashankar Singh. She also saw that Ajay Singh (appellant) was carrying rifle in his hand and she named that other accused persons were carrying small fire arms. She further deposed that her husband was running public P.D.S. dealer shop and accused persons were insisting him to leave / give up the same however her husband was insisting not to leave the same. She further stated that her bhaisur (P.W. 6) was Mukhiya and accused persons were asking him to give contract work and this was the reason for animosity. In paragraph 9 of her cross -examination she stated that her bhaisur (elder brother of her husband) -P.W. 6 was Mukhiya and appellant /Ranjeet Singh @ Ranjeet was Up- Mukhiya. She reiterated that accused persons were demanding contract work from her bhaisur. In paragraph 36 of her cross examination she voluntarily stated that on the date of occurrence children of Gopal Singh had come to the village. Again in paragraph 45 of her cross examination she stated that while accused persons were fleeing away from the lane she saw that appellant -Ajay Singh among other accused was ahead. This witness was cross examined at length however on examination of the same, we do not find any sufficient reason for disbelieving her evidence whereas on examination of her evidence it is evident that this witness had seen the accused persons while after committing the crime they were fleeing away.

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19. Similarly P.W. 2 - Sunita Devi has deposed. She in her evidence has stated that on the date and time of occurrence she was along with her gotni -Usha Devi (P.W. 1) and after hearing sound of the firing she along with her gotni had come out from her house and saw that daughter of Piro Singh was coming raising hulla that jkek Hkb;k dks ekj fn;k . She too saw the accused persons like P.W. 1 while they were fleeing away and she gave description in paragraph 1 of her evidence regarding identification of the accused persons. In paragraph 2 of her evidence she stated that her devar (deceased) was running a P.D.S. shop and accused persons were insisting to leave / give up the same. This witness too was cross examined at length however on examining the same we do not find any sufficient ground to consider her evidence as not credible.

20. P.W. 7 / Dr. Dilip Kumar Singh on 04.04.2003 was posted as Medical Officer in Sub Divisional Hospital, Barh and on the same day at 9.30 A.M. he conducted post mortem on the dead body of the deceased and noticed anti mortem injuries and following facts:

"(1) Lacerated circular wound over the left middle side of eye lid lower esprit 1/2" in diamter margin inverted, tracing into scalp cavity with blackening tatooing -wound of entry

(2) lacerated wound over the occipital region 1" in diameter margin inverted wound of exit of injury no. 1

(3) lacerated wound over right partieal region 4" x 2" x tatooing the bone plate with smoking and tatooing

(4) lacerated wound over left second intercostal reign below nipple 1/4" in diameter margin inverted with tatooing and blackening tracing into chest cavity wound of entry

(5) Lacerated wound over left scapular region circular 2" circular in diameter, margin inverted with fracture scapula left wound of exit of injury no. 4

(6) lacerated wound over left loboute partially imputed with blackening and tatooing

(7) lacerated wound over intra memory circular 1/4" in diameter, margin inverted with blackening in tatooing tracing in chest cavity wound of entry

(8) lacerated wound over the left paraventicular region on level of 10th thoracil vertibra with margin inverted wound of exit of injury no. 7

(9) lacerated wound over the apegatrium circular 1/4" diameter margin inverted with blackening and tatooing tracing into abdominal cavity wound of entry

(10) Lacerated wound over the right hypo condriam circular 1/2" in diameter margin inverted with blackening and tattooing tracing into abdominal cavity wound of entry.

On dissection skull: occipital bone managing formal pil brain matters lacatature ,

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right lunnes falls and lacerature liff lines fails and lacerative, heist plain and empty leaves plain and empty stomach -rupture and contains digested food. Spleen plain and ruptured. Small and large intstine ruptured and failed and contains faicoil anagagious material. Kidney failed , urinary bladder- empty. One bullet found into the left axillary region imparted in subutanius tissue. One bullet found into the right infra scapular region inverted in spontaneous fissure. Both the bullet recovered from the body were sealed and duly attested handed over to the police with the post mortem. time elapse since death - 7 to 36 hours cause of death - cardiac respiratory failure due to shock and haemorhage due to above injury caused by fire arm as rifle and pistol"

21. He also identified the post mortem report which was in his writing and signature and same was marked as Ext. 6. He further clarified that in the report by slip of pen injuries were mentioned as blackening and tatooing. It is not case of the prosecution that from close range firing was made. On examination of the evidence of P.W. 7 and Ext. 6 it is established that the deceased received multiple fire arm injuries which corroborates oral evidence, meaning thereby that medical evidence is consistent with oral evidence.

22. P.W. 9 / Shyam Kishore Ram is a formal witness who proved the protest petitions i.e. protest petition dated 26/04/2003 which was marked as Ext. 5 and protest petition dated 30.06.2003 which was marked as Ext. 5/A. Exhibit 5 depicts that since Police was not arresting accused persons the protest petition was filed.

23. P.W. 10- Bachchu Prasad is another formal witness who has proved the license of Ramashankar Singh regarding his P.D.S. dealer shop. Signature of A.D.S.O. in license was got marked as Ext. 4/B and signature on the letter dated 04.03.2006 of S.D.O. was marked as Ext. 9.

24. P.W. 11 - Prakash Yadav was Assistant Sub Inspector of Police who produced four empty cartridges and two live cartridges vide letter dated 16.08.2007 and said letter was marked as Ext. 10. Four empty cartridges were marked as material Ext. No. I, II, III, IV and live cartridges as material Ext. No. V, VI.

25. P.W. 5 - Surendra Singh @ Ledha who was also one of the companion of the informant, witnesses and deceased and co-villager since did not support the prosecution case was declared hostile.

26. P.W. 8 - Lalan Prasad on the date of occurrence was posted as Sub Inspector of Police in Bihari Bigha Outpost under Pandarak Police Station. He stated that on the said date he gave telephonic information to the Officer- in-charge of Pandarak Police Station regarding firing in the village and thereafter with other Police officials and armed forces he went to the place of occurrence. Immediately after his arrival at the place of occurrence Officer -in- charge of Barh Police Station Sri D.K. Verma with armed forces also arrived there and after arrival Officer -in- charge Verma Ji recorded fardbyan of Umashankar Singh which after recording was read over to informant and thereafter the informant put his

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signature on the fardbyan in presence of this witness. He also claimed that the said fardbyan was read by Verma Ji in his presence and on the same signature of Umashankar Singh / informant was taken. The said fardbyan was already earlier marked as Ext. 1. He identified the inquest report which was marked as Ext. 7. Thereafter charge of investigation of this case was handed over to him and this witness thereafter recorded re-statement of the informant and inspected the place of occurrence. The place of occurrence was in the village Bihari Bigha near the house of Shatrughan Sao on cemented road where dead body of Ramashankar Singh was found in pool of blood. In paragraph 1 he described the place of occurrence. In paragraph 1 of his evidence itself he further stated that he found huge blood at the place of occurrence. Four live and fired cartridges each were also found at the place of occurrence. The seizure list was prepared, inquest report was also prepared. During investigation he recorded statement of Dhirendra Kumar (P.W.

3), Sunil Singh (P.W. 4), Surendra Singh (P.W. 5), Usha Devi (P.W. 1), Sunita Devi (P.W. 2), Mahendra Singh, Mohan Kumar Singh and Sanjay Kumar Singh (not examined) who supported the prosecution case and disclosed the name of accused persons. He further stated that Surendra Singh @ Ledha Singh (P.W. 5) had also disclosed the name of accused persons. This witness further identified endorsement of Officer -in- charge on the fardbyan which was marked as Ext. 7 and he also identified formal F.I.R. which was marked as Ext. 8. In paragraph 6 of his cross examination he stated that during investigation he could not record statement of either Shatrughan Sao or any of his family members since his house was found closed. It is pertinent to note that the place where occurrence had taken place was near the house of Shatrughan Sao. Accordingly, there is plausible reason for non recording of statement of Shatrughan Sao by the Investigating Officer. The Investigating Officer after finding the case true had filed the charge sheet. Accordingly, on examination of evidence of P.W. 8 / Investigating Officer the place of occurrence has specifically been established and also it is evident that at the place of occurrence fired and live cartridges were found and seizure list to this effect was prepared. There was also seizure of blood stained soil.

27. On examination of evidences which we have discussed hereinabove, we do not find any gap in the prosecution case so far all appellants are concerned save and except case of appellant /Akhilesh Singh @ Nakata Singh @ Nand Lal Singh in Cr. Appeal (D.B.) No. 1049 of 2013. This appellant was not named in the F.I.R. nor during evidence prosecution has brought any fact that this appellant was ever put on test identification parade and as such identification of this appellant has not been established beyond all reasonable doubt. The informant in the fardbyan was specific with the name of ten accused persons and ten persons were arrayed with name as accused in the F.I.R. whereas 3-4 accused persons were not known to the informant and as such they were not named. Accordingly, we are of opinion that prosecution has not been able to establish its case beyond all reasonable doubt so far appellant -Akhilesh Singh @ Nakata Singh @ Nand Lal

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Singh is concerned. So far defence evidence is concerned of course four defence witnesses have come out with a plea of alibi but on examination of their evidence there is no reason to place any reliance on their evidence regarding the plea of alibi since at least appellants were identified by informant himself at the place of occurrence and it was corroborated in the evidence of other witnesses. One witness i.e. D.W. 5 -Krishna Deo Prasad Singh who was an Advocate's Clerk has simply proved supervision note which was marked as Ext. E.

28. After going through the entire evidence, we do not find any substance in the submission of learned counsel for the appellants that prosecution has not been able to establish its case beyond all reasonable doubt and as such we do not find any ground to interfere with the judgment of conviction and sentence. Accordingly judgment of conviction dated 21.10.2013 and sentence dated 31.10.2013 passed by Sri Deo Nandan Prasad Singh, learned Ad-hoc Additional District & Sessions Judge, Ist, Barh, Patna in Sessions Trial No. 1186 of 2004/ Sessions Trial No. 905 of 2005 [arising out of Pandarak P.S. Case No. 32 of 2003] is hereby approved so far as appellant -Ranjeet Singh @ Ranjeet [Cr. Appeal (D.B.) No. 1052 of 2013], Vijay Singh [appellant in Cr. Appeal (D.B.) No. 1083 of 2013], Upendra Singh [appellant in Cr. Appeal (D.B.) No. 1101 of 2013] and Ajay Singh [Cr. Appeal (D.B.) No. 53 of 2014] are concerned, however there is some doubt regarding involvement of appellant- Akhilesh Singh @ Nakata Singh @ Nand Lal Singh in Cr. Appeal (D.B.) No. 1049 of 2013.

29. Accordingly judgment of conviction and sentence dated 21.10.2013 and 31.10.2013 respectively so far as appellant / Akhilesh Singh @ Nakata Singh @ Nand Lal Singh in Cr. Appeal (D.B.) No. 1049 of 2013 is concerned is hereby set aside and he is acquitted from all the charges by way of extending benefit of doubt and Cr. Appeal (D.B.) No. 1049 of 2013 is allowed. Appellant - Akhilesh Singh @ Nakata Singh @ Nand Lal Singh is on bail and in view of his acquittal he is discharged from liability of his bail bond.

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