

ITEM NO.101

COURT NO.7

SECTION IIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 191 OF 2007

SANJIV @ MANGRA

Appellant (s)

VERSUS

STATE OF BIHAR

Respondent(s)

(With appln(s) for impleadment as party respondent)

WITH

APPEAL(CRL) NO. 192 of 2007
(With appln for impleadment as party respondent and office report)

APPEAL(CRL) NO. 193 of 2007
(With appln for impleadment as party respondent and office report)

APPEAL(CRL) NO. 194 of 2007
(With appln for impleadment as party respondent & office report)

APPEAL(CRL) NO. 195 of 2007
(With appln for impleadment as party respondent and office report)

APPEAL(CRL) NO. 196 of 2007
(With appln for impleadment as party respondent and office report)

Date: 26/07/2011

This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HARJIT SINGH BEDI
HON'BLE MRS. JUSTICE GYAN SUDHA MISRA

For Appellant(s)

Ms. Kumud Lata Das, Adv.
Mr. N.N . Jha, Adv.
Mr. Suresh Ghosh, Adv.

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For Respondent(s)

Mr. Rudreshwar Singh, Adv.
Mr. Gopal Singh, Adv.

Ms. Hemantika Wahi, Adv.

..2/-

UPON hearing counsel the Court made the following
O R D E R

The appeal of Chandilal Sah being Criminal Appeal No. 195 of 2007 is allowed and Chandilal Sah is acquitted of all charges but all the other appeals are dismissed. The appellants were ordered to be released on bail vide order dated 12th February, 2007. The bail bonds of Chandilal Sah shall stand discharged whereas the other appellant shall be taken into custody forthwith to serve out the remaining part of the sentence.

[KALYANI GUPTA]
COURT MASTER

[SHARDA KAPOOR]
COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE.]

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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 191 OF 2007

SANJIV @ MANGRA	.....	APPELLANT
VERSUS		
STATE OF BIHAR	.....	RESPONDENT

WITH

CRIMINAL APPEAL NO. 192 OF 2007

PAWAN SINGH	.....	APPELLANT
VERSUS		
STATE OF BIHAR	.....	RESPONDENT

CRIMINAL APPEAL NO. 193 OF 2007

BIR SINGH	.....	APPELLANT
VERSUS		
STATE OF BIHAR	.....	RESPONDENT

CRIMINAL APPEAL NO. 194 OF 2007

DILIP SINGH APPELLANT

VERSUS

STATE OF BIHAR RESPONDENT
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CRIMINAL APPEAL NO. 195 OF 2007

CHANDILAL SAH APPELLANT

VERSUS

STATE OF BIHAR RESPONDENT

AND

CRIMINAL APPEAL NO. 196 OF 2007

RAJENDRA SINGH APPELLANT

VERSUS

STATE OF BIHAR RESPONDENT

O R D E R

1. This judgment will dispose of all the six appeals noted above. The facts have been taken from Criminal Appeal No. 195 of 2007 which is the lead case.

2. On the 20th of September, 1997, Parshuram Singh, P.W. 5 had come to Rohri Chowk at about 9:00a.m. to purchase household articles. As he was returning home along with Mahendra Singh and Raghunandan Paswan, P.W. 6, he came across his elder brother Shatrughan Singh since deceased, who along with Sakal Deo Singh P.W. 1 was going

on his motor cycle to village Mahesh Khunt a short
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distance away. The deceased stopped the motor cycle to tell his brother P.W. 5 to wait for him at the Chowk as he would return in a short while as he wished to discuss some family matter with him. The deceased returned at about 10:00a.m. and as he had slowed down his motor cycle to have a conversation with his brother, Upendra Singh - accused (since acquitted) who was carrying a lathi gave a lathi blow on him on which the motor cycle came to a sudden halt. Immediately thereafter Chandilal Sah appellant in Criminal Appeal No. 195 of 2007 pulled Sakal Deo Singh P.W. 1 away from the motor cycle and in the meantime, the other appellants Bir Singh, Rajendra Singh, Pawan Singh, Dilip Singh and Sanjit @ Mangra armed with country made pistols fired at Shatrughan Singh killing him instantaneously. The entire incident was witnessed by P.W. 1, P.W. 5 and P.W. 6. The information with regard to the incident was conveyed to the police on which a police party from police station Khagaria reached the site and recorded the fardbayan at 10:45a.m. which led to the registration of the formal FIR at 8:30p.m., the same evening. On the inspection of the crime scene by the Investigating Officer, four spent rifle cartridges and a smashed and flattened piece of a bullet as also a lathi and large quantities of blood were picked up from the spot. The dead body was also despatched for its post mortem examination and five wounds of entry and four of

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exit were found on the dead body having been fired from a close range. Two pellets were also recovered from the dead body which too were taken out. In due course, the accused were sent up for trial for offences punishable under section 302/34 of the Indian Penal Code as also under Section 27(1) of the Arms Act, 1959. The trial court relying on the evidence of the aforesaid witnesses,

as supported by the medical evidence, convicted all the accused of the offences charged. Five appeals were thereafter filed before the Patna High Court. The High Court vide its judgment dated 01st August, 2005 allowed the appeal of Upendra Singh on the ground that there was no lathi injury on the dead body which indicated that he had not been present at the time of the incident. The appeals of the other accused were, however, dismissed. Aggrieved by the above judgment the present appeals have been filed and after grant of leave have been heard by us today.

3. Before we deal with the submissions made by the learned counsel for the parties, we are told that there are applications for impleadment filed by the complainant P.W. 5 - Parshuram Singh in all the appeals. The applications for impleadment are allowed.

4. Ms. Kumud Lata Das, the learned counsel for the appellants has raised several arguments before us. She has first pointed out that in the light of the fact that

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been the High Court had found that Upendra Singh had falsely implicated, the conviction of the other appellants on the basis of the same evidence could not be sustained. She has also submitted that all the witnesses were party men of the deceased inasmuch that they were also witnesses in another case where Bir Singh one of the appellants herein had been accused of having caused injuries to Parshuram Singh, P.W. 5 and those proceedings were being pursued against him by the deceased as he was an Advocate by profession. She has, accordingly, argued that all the witnesses were chance witnesses and had no business to be present at the spot on the day in question at about

8:45a.m.. She has finally submitted that the medical evidence did not support the prosecution story inasmuch that the doctor had noted that as rigor mortis had been present all over the body was indicative that the incident had happened earlier than 10:00a.m.

She has also referred

us to Dr. Modi's book on this aspect.

The learned counsel

for the State of Bihar, Mr. Rudreshwar Singh has, however, supported the judgment of the trial court.

5. It is true that the High Court has acquitted

Upendra Singh appellant on the grounds already mentioned

above. To our mind, however, the entire evidence of three

competent witnesses cannot be thrown out on the ground

that their evidence qua one of the accused has been

disbelieved.

It is the admitted position that Bir Singh

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had earlier caused injuries to P.W. 5 Parshuram Singh and the deceased Shatrughn Singh being an Advocate had been pursuing that case on behalf of his brother and a day prior to the incident some court proceedings had also taken place.

It is true that the incident happened in a busy Chowk which fell in between two prominent villages and no witnesses from the locality had been produced but it has come in evidence that P.W. 1 had come to the Rohri Chowk to do some household shopping and it was at that time that he had met the deceased going towards Mahesh Khunt earlier that morning and it was on his return that the murder had taken place.

The evidence also reveals that the Chowk had a large number of shops selling goods of common use and the fact that all the witnesses had been present at that time by itself was thus a clear possibility. Some doubt could perhaps have been raised in

the eye witness account if the First Information Report had been delayed. The fardbayan had been recorded within 45 minutes of the incident although the FIR had been recorded at about 8:30p.m. It has, however, come in the evidence that the dead body had been sent to the hospital, about 15kms. away from the place of incident, at about 4:20p.m. As per practice, the relevant papers which would include a copy of the inquest report would have been sent with the dead body. We must take it therefore that the genesis of the incident had been spelt out soon after the

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incident.

6. There is yet another circumstance which clearly supports the prosecution story and that is the medical evidence. It has come in the eye witness account that five of the accused were armed with country made pistols. The injuries found on the dead body fully correspond to the weapons that had been used and as four of the injuries had signs of tattooing would be indicative of firing from a very close range. The fact that there are five wounds of entry and four of exit clearly supports the view that several shots had been fired as two pellets had also been recovered from the dead body at the time of post mortem examination.

7. Some doubt has been expressed by Ms. Das as to the time of occurrence on the basis of some observations of Dr. Modi with regard to the onset and the length of the period of rigor mortis. No hard and fast rules can ever be laid down on this basis. We must, however, take it that the doctor who had conducted the post mortem and had the benefit of seeing the dead body was in a position to pin point the time of murder. He noted that the death had been caused within 24 hours of the post mortem which fully corroborates the prosecution story with regard to the time

factor as well.

8. We have, however, considered the involvement of Chandilal Sah in the incident. We find that his case

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would really be similar to that of Upendra Singh who has been acquitted by the High Court. In addition to the fact that he caused no injury to the deceased, Chandilal Sah is said to have held on to P.W. 1 while the other accused were firing at the deceased. This story is a little far-fetched as in this eventuality Chandilal Sah would have himself been in danger of being shot as the performance of country made weapons is always uncertain and the pellet pattern is likely to go completely awry and unpredictable. We are, therefore, of the opinion that there is some doubt as to the participation of Chandilal Sah. We, accordingly, allow Criminal Appeal No. 195 of 2007 and acquit Chandilal Sah of all charges but dismiss all the other appeals. The appellants were ordered to be released on bail vide order dated 12th February, 2007. The bail bonds of Chandilal Sah shall stand discharged whereas the other appellants shall be taken into custody forthwith to serve out the remaining part of the sentence.

.....J
[HARJIT SINGH BEDI]

.....J
[GYAN SUDHA MISRA]

NEW DELHI
JULY 26, 2011.