

Cr. Appeal (DB) No. 116 of 1995P
With
Cr. Appeal (DB) No. 180 of 1995P

(Against the judgment and order of conviction and sentence dated 8.5.1995 (sentence passed on 9.5.1995) passed by Sri Sudarshna Upadhyay, learned 3rd Additional Sessions Judge, Deoghar in S.T. No. 265 of 1993.

1. Samina Khatoon.
 2. Mamjan Seikh.
 3. Allauddin Seikh @ Allauddin
-**Appellants**
(In Cr. Appeal (DB) No.116 of 1995P)

Murtaza Seikh @ Md. Murtaza Sheikh @ Mumtaj.**Appellant**
(In Cr. Appeal (DB) No.180 of 1995P)

Versus

The State of Bihar (Now Jharkhand) ... **Respondent**

CORAM: HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY
: HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Appellant : Mrs. Amrita Sinha, Amicus Curiae
: Mr. Arvind Kumar Choudhary, Advocate
For the Respondent : Mr. Abhay Kumar Tiwari, A.P.P.

R. Mukhopadhyay, J. Heard Mrs. Amrita Sinha, learned Amicus in Cr. Appeal (DB) No. 116 of 1995 along with Mr. Arvind Kumar Choudhary, learned counsel for the appellant, in Cr. Appeal (DB) No. 180 of 1995 P and opposed by Mr. Abhay Kumar Tiwari, learned A.P.P.

2. Both these appeals arise out of a common judgment and hence they are being disposed of by this common order.

3. The appellants are aggrieved by the judgment and order of conviction and sentence dated 8.5.1995 (sentence passed on 9.5.1995) by Shri Sudarshna Upadhyay, learned 3rd Additional Sessions Judge, Deoghar in S.T. No. 265/93, whereby and whereunder, the appellants in Cr. Appeal (DB) No. 116 of 1995P have been convicted for the offence under sections 120B IPC and have been sentenced to undergo rigorous imprisonment for life while the appellant in Cr. Appeal (DB) No. 180/95P has been convicted for the offence punishable under section 302 IPC and Section 25(ia) as well as section 27 of the Arms Act and has been sentenced to undergo rigorous imprisonment for life for the offence under section 302 IPC.

4. The prosecution case arises out of the fardbeyan of Md. Habib Sheikh wherein it has been stated that on 7.6.93 at about 6 A.M. his nephew

Ishaque Sheikh had come to his house and disclosed that he had come to know that his child is suffering from illness. The wife of Ishaque Sheikh had left for her parents house about 25 days back and she did not return back to her matrimonial house even during the festival of Bakrid. At this, the informant, Ishaque Sheikh and Kasim at 6.30 A.M. went to Nawab More and thereafter the entire matter was disclosed to Sarfuddin Mian. Thereafter they went to the inlaws place of Ishaque Sheikh where Ishaque Sheikh saw his child and wanted to give him a biscuit. At this, the brother in law of Ishaque Sheikh namely Murtaza, his father in law Mamzan and his wife started abusing him. The wife of Ishaque Sheikh started pelting stones and stated in clear terms that she does not want to return to the house of Ishaque Sheikh. The brother in law and father in law of Ishaque Sheikh had assaulted Ishaque Sheikh with lathi and in response Ishaque Sheikh had also assaulted his father in law. It has been stated that Sarfuddin pacified the situation and advised them to place the matter before the Panchayat. The informant and the others thereafter returned back to their house. At about 11.15 A.M. on the same day, Ishaque, Kasim, Kurban, Hamid, Guddin, Pagla, Sukra, Farid and Fateullah as well as Karu Sheikh and Samir Sheikh went to village-Patharia and as soon as they entered the village they saw Murtaza who was going towards Nawab More returning back to his house. It has been alleged that Ishaque Sheikh with a biscuit had gone to his inlaws place. After Ishaque Sheikh reached his inlaws house there was a sound of firing and the screams of Ishaque Sheikh were also heard. When they reached the said place, they found Ishaque Sheikh lying on the ground in a pool of blood. Murtaza with a pistol was standing with his father and on seeing them Murtaza threatened them with the pistol. Thereafter Murtaza and his father fled away and though he and the others had followed them but they could not be traced out. The injured Ishaque Sheikh was taken to D.C. Hospital, Madhupur where the doctors declared him dead. It also came to light that the wife of Ishaque Sheikh with a smile was seen going towards the village.

5. Based on the aforesaid allegations, Madhupur P.S. Case No. 117/93 was instituted for the offence punishable under section 302/34 IPC and Section 27 of the Arms Act.

6. After completion of investigation, chargesheet was submitted and on

cognizance being taken, the case was committed to the Court of Sessions where it was registered as S.T. No. 265/93. Charge was framed against the accused-Mamzan Sheikh, Allauddin Sheikh and Samina Khatoon for the offence under section 120B IPC and against Murtaza Sheikh under section 302 IPC and Section 25(i)(a)/27 Arms Act which were read over and explained to the accused in Hindi to which they pleaded not guilty and claimed to be tried.

7. The prosecution has examined as many as nine witnesses in support of its case.

P.W-1-Farid Sheikh has stated that the incident is of a year back on 7.6.93. It was around 10.45 A.M. and he was talking to Bijli Sheikh when Ishaque Sheikh came and they went to the inlaws house of Ishaque Sheikh. After two minutes, he heard a sound of firing and when he rushed inside he saw Ishaque Sheikh lying in a pool of blood. All the persons involved in the Panchayat had reached the place of occurrence. He has stated that Murtaza had a pistol in his hand and he threatened to shoot if they did not go away at which he backed out. In the meantime, the accused persons fled away and they were chased for a distance. When they returned back to the house, they found Samina Khatoon, the wife of Ishaque Sheikh with a child in her arms going out from the house with a smiling face. Ishaque was taken to Madhupur hospital where doctors declared him dead. Samina Khatoon wanted to control her matrimonial house which was objected by Ishaque Sheikh resulting in Samina Khatoon leaving her matrimonial house and this was the cause for the incident.

In cross-examination, he has deposed that from Lalgah, 12 persons while from Patharia, 6-7 persons had come for participating in the Panchayat. They had arrived at a decision and were going to bring Samina Khatoon. He has deposed that Samina and Murtaza had not called for the Panches. After the sound of firing was heard, 40-50 persons had assembled. He had reached the place of occurrence within two minutes of hearing the sound of firing and the rest persons assembled after him and at that point of time, Murtaza was present though he fled away thereafter. He has deposed that Samina Khatoon had come out of the house laughing.

P.W-2-Md. Mustaque has been tendered by the prosecution.

P.W-3-Md. Ullah has stated that on 7.6.93 at around 10.45-11 A.M.

he was in village-Patharia in front of the house of Murtaza in the Panchayat. The village Pradhan Bijli Sheikh and other villagers were also present. In the meantime, Ishaque went inside the house to give biscuit to his son and thereafter a sound of firing came at which he ran inside and found Murtaza standing in the door and Ishaque was lying on the ground in a pool of blood. He has stated that Samina Bibi, Allauddin and Mamzan Sheikh were present. Murtaza was having a pistol in his hand and he was threatening him at which he stepped back and started shouting resulting in the others arriving. Murtaza thereafter fled away and he was chased. After five minutes when he came back he saw on the way Samina Bibi going towards the village with her children with a smiling face. He and the others had thereafter taken Ishaque to the hospital where he was declared dead. He has identified his signature in the inquest report, which has been marked as Ext-1.

In cross-examination, he has deposed that he and Farid were the first persons to reach the place of occurrence. Samina, Mamzan and Allauddin were present at the place of occurrence from the beginning. Those present at the place of occurrence had chased and had tried to apprehend Murtaza.

P.W-4-Bijli Sheikh has stated that the incident occurred at 11 A.M. when he was busy in feeding the poor. When Ishaque and 3-4 persons came they told him to take a decision as they have come to take the bidai of Samina Khatoon. He asked them to wait for half an hour at which Ishaque and the others went to the house of Murtaza. He heard the sound of firing and when he rushed to the place of occurrence he found Ishaque lying on the door with a fire arm injury on his chest. Murtaza had left and went towards the house.

In cross-examination, he has deposed that his house is near to the house of Murtaza. An incident had taken place on the date of occurrence between Ishaque and his inlaws though he has no knowledge whether an assault had taken place between both the sides in the morning.

P.W-5-Guddin Sheikh had gone to Patharia at the instance of Ishaque to the house of Bijli Sheikh for arriving at a decision but Bijli Sheikh told that Murtaza would not accept any decision. He has stated that Bijli Sheikh had asked them to wait as he was feeding the poor. The son of Ishaque was ill at which Ishaque went to give him biscuits. When Ishaque went to the veranda of Murtaza he heard the sound of firing and when he

rushed to the place of occurrence he found Ishaque lying on the ground in a pool of blood. He has stated that Mamzan Sheikh, Murtaza and Allauddin were standing and Murtaza had a pistol in his hand who threatened that if anyone came forward he will be shot at. All the three accused persons fled away. When they were taking Ishaque to the hospital, Samina was found laughing and going towards the west along with her children. She did not even come to visit her injured husband.

In cross-examination, he has deposed that he is not aware that on the date of occurrence, a fight had taken place between Ishaque and his father in law and brother in law. He had not seen the firing made by Murtaza.

P.W-6-Md. Habib has stated that the incident is of one year back on a Monday at about 11.15 A.M. In the morning at 6 A.M. Ishaque had come to his house who had disclosed that his son is ill but his inlaws are not allowing him to come and only after a decision is taken he will take them back to his house. He thereafter along with Ishaque and Kasim went to Patharia and got down at Nawabmore at 9.30 A.M. where they met Salauddin to whom everything was disclosed. Salauddin also accompanied them to the inlaws house of Ishaque where they asked Mamzan and Murtaza to give the 'bidai' of Samina Khatoon, the wife of Ishaque but it was refused by Mamzan and Murtaza. This resulted in a quarrel and Mamzan Sheikh and Murtaza landed 2-4 lathi blows upon Ishaque. Samina Khatoon had also pelted stones and bricks upon her husband. The matter was pacified and he along with others left and went to Bijli Sheikh who was divulged the entire facts and he was requested to decide the issue. Bijli Sheikh asked them to bring 2-4 persons from his village and assured that the matter will be resolved. He and the others thereafter went back to their village and came back with a few other villagers at 10.30 P.M. and went to the house of Bijli Sheikh at Patharia. Bijli Sheikh had asked them to wait till he feeds the poor. He has stated that Ishaque went to his inlaws place to give biscuits to his son and he was followed by Farid and Attaullah. As soon as Ishaque reached the door, Murtaza who was inside shot at him. He had seen the firing from a distance of 8-10 ft. Ishaque fell down and blood started oozing out from his right chest. At that point of time, Murtaza and Allauddin Sheikh were also present though Samina Khatoon was absent. Murtaza had a pistol in his hand. Allauddin fled away towards the east. Mamjan and

Murtaza with a pistol had threatened to do away with his life if he stepped forward. They fled away from the door on the western side and though attempts were made to apprehend them but the same failed. When the body of Ishaque was being taken away, Samina Khatoon was seen going towards the village with a smiling face. Ishaque was taken to D.C. Hospital, Madhupur where doctors declared him dead. He has proved the signature in the fardbeyan, which has been marked as Ext-2. He has identified the signature of Salim in the fardbeyan, which has been marked as Ext-2/1.

In cross-examination, he has deposed that Ishaque was the informant in the case of murder of his brother. In the morning, he had gone to the house of Samina and had asked her parents to give 'bidai' of her daughter but they refused since the child was ill. In the morning there was a physical tussle between both the sides. He does not know as to how many slaps Ishaque had given to his father in law. He has deposed that Ishaque was assaulted with a danda by his father in law. When Ishaque had gone for the second time to the house of Murtaza, no one from Patharia had accompanied him. Farid and Fateullah were sent by him to bring him back. He also had followed them. When he had reached he found Ishaque standing near the door. Farid and Fateullah were seen standing behind him. The firing was done from inside the room. When the firing was done, Samina and her mother were not present but Allauddin and his father were present. When he had reached the courtyard of Murtaza, he had heard the sound of firing.

P.W-7-Sukar Sheikh has been tendered by the prosecution.

P.W-8-Awadh Bihari Pandey was posted as an Officer in charge in Madhupur P.S. and he had taken over the investigation of the case. He has proved the fardbeyan, which has been marked as Ext-4. He has also proved the formal FIR, which has been marked as Ext-5. He had prepared the inquest report and had sent the body for postmortem to Deoghar. He has proved the carbon copy of the inquest report, which has been marked as Ext-6. He had recorded the restatement of the informant and the statement of the other witnesses. He had inspected the place of occurrence, which is at village-Patharia in the mud tiled house of the accused. The cartridge from the body of the deceased was kept in a bottle, which has been marked as material Ext-I. He had submitted the chargesheet against the accused

persons.

In cross-examination, he has deposed that he had recorded the statement of Guddin in Lalgah. Guddin had not disclosed that Murtaza had shot his brother in law.

P.W-9-Dr. Ashok Kumar Chatterjee had conducted autopsy on the dead body of Ishaque Sheikh on 7.6.93 and had found the following injuries:-

- (i) *One circular wound of entry one inch in diameter with blackening around its edges were inverted on right side of chest in front at the fifth intercostal space. Just by the side of the nipple and an further dissection tissue was fracture of 4th to 7th night ribs in pieces. On opening of chest-The chest cavity was full of blood and right lung was completely lacerated and ruptured. Left lung was pale and heart was empty.*
- (ii) *On opening of abdomen-abdominal cavity was full of blood. The liver and the large-gut was lacerated and ruptured. The bullet was lodged in second lumber, vetibre and 1st lumber to third lumber vetibre were broken in pieces.*

The cause of death was opined to be on account of shock and hemorrhage as a result of the above injuries caused by gunshot. He has proved the postmortem report, which has been marked as Ext-3.

8. The statement of the accused were recorded under section 313 Cr.P.C. in which they have denied their involvement in the offence.

9. The defence has examined two witnesses in support of its case.

D.W-1-Allimuddin Mian has stated that after having lunch he had heard some commotion and on coming out of his house he saw people running towards Nawab More. He also went and found the mother and sister of Murtaza coming. On being asked, they disclosed that their son in law/husband has been murdered. The father of Murtaza disclosed that someone has killed his son in law. He has stated that the distance between his house and the house of Murtaza is 50 ft.

In cross-examination, he has deposed that Murtaza had not committed the murder.

D.W-2-Md. Hayat Ali has stated that the deceased had a good relationship with his wife and inlaws. On 7.6.93, no untoward incident had occurred at Patharia.

In cross-examination, he has deposed that he came to know from Habibullah that Ishaque Sheikh has been injured and he has been taken to

the hospital.

10. It has been submitted by Mrs. Amrita Sinha, learned Amicus and Mr. Arvind Kumar Choudhary, who had subsequently put in appearance on behalf of the appellants in Cr. Appeal (DB) No. 116/95P that there is no iota of evidence that these appellants had hatched a conspiracy in order to eliminate Ishaque. The only circumstance put forward by the prosecution is the presence of appellant no. 3 when the firing took place and the demonor of the appellant no. 1 who was the wife of the deceased and who was seen going towards the village with a smiling face. There is nothing to indicate that it was a preplanned exercise and the altercation between the deceased and his inlaws cannot demonstrate the involvement of these appellants in absence of any ingredients pointing towards a conspiracy.

11. Mr. Arvind Kumar Choudhary, learned counsel appearing for the appellant in Cr. Appeal (DB) No. 180/95P has submitted that there are no eye witnesses to the allegation of this appellant firing at the deceased. Merely because the sound of firing had come from inside the house, the same cannot be attributed to the appellant-Murtaza Sheikh.

12. Mr. Abhay Kumar Tiwary, learned A.P.P., has submitted that the evidence of P.W-1, P.W-3, P.W-5 and P.W-6 clearly reveals that all the appellants in active concert had planned and designed the murder of Ishaque. He has stated that Murtaza was seen firing at the deceased and so far as the rest of the appellants are concerned, their involvement has also come to light in the evidence of the witnesses.

13. We have heard the learned counsel for the respective sides and have also perused the Lower Court Records.

14. The prosecution has claimed that P.W-1, P.W-3, P.W.-5 and P.W-6 are the eye witnesses to the murder. P.W-1 in his examination in chief has stated that after hearing the sound of firing he had rushed to the house of Murtaza and found Ishaque lying in a pool of blood. He had reached the place of occurrence after two minutes and the other persons came after him. After Murtaza was chased but could not be apprehended he returned back and saw Samina Khatoon coming out of the house with a smiling face. P.W-3-Md. Attaullah had also rushed to the place of occurrence on hearing the sound of firing. Samina Bibi and Allauddin were also present and Murtaza had a revolver in his hand. On returning after an unsuccessful attempt to

apprehend Murtaza, Samina Bibi was seen going towards the village with a smiling face. He had followed Farid (P.W-1) on hearing the sound of firing. Samina and Allauddin were present at the place of occurrence from before. P.W-5-Guddin Sheikh had also reached the place of occurrence after hearing the sound of firing and found Ishaque lying on the ground in a pool of blood. He has also stated about the demonor of Samina Khatoon. Allauddin was found standing with Murtaza. The informant Habib Sheikh has been examined as P.W-6 who has stated about a quarrel and a scuffle on the same day between both the sides and the deceased was given some danda blows by Murtaza and Mamjan Sheikh (since deceased). The appellant-Samina Khatoon had also pelted stones at her husband. This witness claims that he had seen the firing done by Murtaza though at the same time he has stated that when Ishaque went back to his inlaws place, he was followed by Farid (P.W-1) and Attaullah (P.W-3). This witness had not seen Samina Khatoon inside the house. P.W-6 is therefore not an eye witness and though he admits that P.W-1 and P.W-3 had followed the deceased and had admittedly not seen the firing, the question of P.W-6 having witnessed the occurrence cannot arise more so when in the fardbeyan P.W-6 has not claimed himself to be an eye witness. P.W-6 it seems has developed a story by projecting himself to be an eye witness. It also seems to be out of place that even though the deceased was assaulted with a danda by his father in law on the same day when he had gone to his inlaws place which has been deposed by P.W-6, he had once again visited the same house knowing fully well that the chance of a settlement at the behest of P.W-4 was in the offing. The entire scenario would thus suggest that there are no eye witnesses to the act of Murtaza firing at the deceased-Ishaque. There also does not seem to be existence of any motive in committing such dastardly act. There was a friction in the matrimonial life of the deceased and Samina Khatoon and the deceased had wanted to take the 'bidai' of his wife. This marital discord was also not to such an extent which would invite conspiracy to eliminate Ishaque. An inference can be drawn that since the witnesses have stated that Murtaza was wielding a pistol, the firing was done by him. There has been no recovery of any fire arms from Murtaza and in the backdrop of the case the evidence of such witnesses appears to be exaggerated. It has also come in course of trial that

the deceased-Ishaque was the informant in the murder case of his brother Sohail and this fact of the case regarding previous enmity with persons other than those who are accused in the present case has not been looked into by the learned trial court. The role of Murtaza in committing the murder of deceased-Ishaque gets obliterated.

15. The appellants in Cr. Appeal (DB) No.116/95P are said to be involved in the conspiracy to commit the murder of Ishaque. The appellant no. 2 has died in the year 2009 and this appeal already stood abated so far as the appellant no. 2 is concerned.

16. The appellant no. 1 who is the wife of the deceased was seen going towards the village with a smile on her face. Some of the witnesses have stated about the presence of the appellant no. 1 at the place of occurrence but P.W.6 has stated that she was not present in the house. The presence of the appellant-Allauddin with Murtaza seems to be the damaging factor against appellant-Allauddin. There has been no overact alleged and mere presence would not be sufficient to allege criminal conspiracy. So far as the appellant-Samina Khatoon is concerned, there appears to be a major deviation by P.W-6 in his evidence as in his fardbeyan he has stated about coming to know the demonor of Samina Khatoon from the persons of the village. The version of P.W-6 so far as the appellant Shamima Khatoon is concerned has been repeated by P.W-1, P.W-3 and P.W-5. All these witnesses belong to village-Lalgarh which perhaps reveals a common refrain from them but P.W-4 who is a resident of village-Patharia do not say so.

17. So far as the theory of conspiracy is concerned, we may refer to the case of **Surendra Kumar and Another Vs. State of U.P.** reported in **2021 SCC Online SC 360** wherein it has been held as follows:-

“25. Similarly for the husband Ramveer, there is no direct evidence to establish his role in the incident. As his conviction is entirely based on a conspiracy theory, it is essential to determine whether there was an agreement between the parties for doing an unlawful act and it must emerge clearly from evidence that there was meeting of mind towards a common goal between Ramveer and his brother and also between Ramveer and the two armed robbers. The case evidence on record does not however establish any such agreement between Ramveer and the other accused. Conspiracy is a matter of inference and inference must be based on solid evidence. In case of any doubt the benefit must inevitably go to the accused. The second appellant's conviction simply because of his dislike for the deceased, even if accepted to be correct, would not in our opinion be justified in the absence of any evidence either direct or of conspiracy, to link him with the crime.

26. The conspiracy theory to kill Kamla Rani, only because she was not liked by her husband is far too improbable to accept since the prosecution failed to present any evidence to show meeting of minds and common intention of all the accused. Ramveer may not have been happy with his wife but this by itself does not establish that he hatched a conspiracy with his brother Surendra and his father Om Prakash (who died during trial), to kill Kamla Rani. The simple fact of being unhappy with a person even if accepted, do not provide a strong enough motive to hatch a conspiracy to eliminate the person. But this aspect was ignored by the courts below to attribute motive for the murder. In our assessment the motive element in the chain of circumstances is not acceptable and the benefit of the broken link must be made available to the appellants.

27. In view of the foregoing, we are of the considered opinion that there are several missing components in the chain of circumstantial evidence and the High Court misdirected itself in finding support for conviction on such unclinching evidence. The innocence of the appellants is a distinct possibility in the present matter and when two views are possible the benefit must go to the accused. The impugned judgment [Surendra Kumar v. State of U.P., 2019 SCC OnLine All 4561] is accordingly set aside with direction for immediate release of both the appellants. It is ordered accordingly”.

18. The element of conspiracy gets eradicated in view of the finding showing no involvement of Murtaza in the commission of the murder. Even otherwise, the prosecution has failed to prove the meeting of minds of the accused persons to eliminate Ishaque.

19. We therefore on the basis of what has been discussed above set aside the judgment and order of conviction and sentence dated 8.5.95 (sentence passed on 9.5.95) by Shri Sudarshan Upadhyay, learned Illrd Additional Sessions Judge, Deoghar in S.T. No. 265/93.

20. These appeals are allowed.

21. Since the appellants are on bail, they are discharged from the liabilities of their bail bonds.

(R. Mukhopadhyay, J.)

(Deepak Roshan, J.)

**Jharkhand High Court, Ranchi,
Dated the 10/06/2024
Rakesh/NAFR**