

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.47 of 1993

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Rama Shankar Singh @ Rama Singh, son of Shivdhar Singh, resident of Village-
Paharpur, Police Station Amnaur, District- Saran

.... Appellant

Versus

The State of Bihar

.... Respondent

with

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Criminal Appeal (DB) No. 67 of 1993

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Sunil Kumar Singh @ Anil Kumar Singh, Son of Kapil Deo Singh, resident of
village – Paharpur, P.S. Amnaur, District- Saran

.... Appellant

Versus

The State of Bihar

.... Respondent

with

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Criminal Appeal (DB) No. 74 of 1993

**(Against the judgment and order dated 18.1.1993, passed by the Sixth
Additional Sessions Judge, Saran at Chapra, in Sessions Trial No.353/22 of
1989/1991, arising out of Amnaur P.S. Case No.58/85).**

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Ganesh Singh, sons of Vishwanath Singh, resident of Village- Balahan, Police
Station Amnaur, District- Saran

.... Appellant

Versus

The State of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (DB) No. 47 of 1993)

For the Appellant : Mr. Kanhaiya Prasad Singh, Sr. Adv.
Mr. Ram Kishore Singh, Adv.
Mr. Rahul Kumar, Adv.

For the Respondent : Dr. Mayanand Jha, Adv.

(In CR. APP (DB) No. 67 of 1993)

For the Appellant : Shri Jitendra Singh, Sr. Adv.
Shri Shankar Kumar Thakur, Adv.
Shri Tej Pratap Singh, Adv.

For the Respondent : Dr. Mayanand Jha, Adv.

(In CR. APP (DB) No. 74 of 1993)

For the Appellant : Shri Jitendra Singh, Sr. Adv.
Shri Shankar Kumar Thakur, Adv.
For the Respondent : Dr. Mayanand Jha, Adv.

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
Date: 30-01-2015

These three appeals are preferred by three accused in Sessions Trial No.353/22 of 1989/1991 on the file of the 6th Additional Sessions Judge, Saran at Chapra. The trial court convicted the appellants herein for the offence punishable under Sections-302/34 of I.P.C. and Sections 27 and 35 of the Arms Act. Sentence of imprisonment for life for the appellants under Section-302/34 of I.P.C. was imposed. No separate sentence was awarded for the offence punishable under the provisions of the Arms Act.

The case of the prosecution as presented before the trial court was as under:

The complaint regarding the incident was given by P.W.13, by name Ramachandra Sah, and his fardbeyan i.e. statement was recorded. According to the statement, the brother of P.W.13, by name Mathura Sah, was running a taxi between their native village Amnaur, and neighbouring village Paharpur. On 6.7.1985, Mathura Sah

gathered some passengers in his vehicle and, in the meanwhile, one Shiv Nath Singh, who too was running a vehicle (trekker), took up those very passengers and proceeded for Amnaur. In this context, a verbal duel took place, but no incident had occurred.

On the next day, at around 3:00 p.m., on an elephant, owned by one of the appellants, Ramashankar Singh @ Rama Singh, four persons, including one Samshuddin, armed with various weapons and accompanied by 30-40 persons, came towards Amnaur village. By the time the elephant and the persons accompanying it came near a medical shop, Mathura Sah came to that place in his vehicle. The vehicle was stopped by the persons in the procession and soon thereafter Shiv Nath Singh (Accused -1) instigated the persons around him, to attack Mathura. Thereupon, one Ganesh pulled him out of the vehicle. Thereafter, Appellant Ramashankar Singh @ Rama Singh fired bullets at the deceased and it was followed by firing by Appellant No.2 and Appellant No.3. On seeing this P.W.13, and his brother, P.W.2, came to the spot and took the dead body to the nearby hospital, where he was declared 'dead'. Thereafter, they went to the nearby police station, together with the body, and their statement

was recorded and the same constituted the basis for the F.I.R.

The station house officer got completed the formalities of conducting inquest and causing post mortem, and has taken up the investigation. Charge-sheet was filed alleging offence punishable under Sections-302, 304 of I.P.C. and 27 and 35 of the Arms Act against him.

Before the trial court, P.Ws.1 to 14 were examined and certain documents were filed. On behalf of the defence, two witnesses were examined and two documents were exhibited. Plea of *alibi* was taken by one of the appellants. The trial court disbelieved the plea of *alibi* and convicted the appellants, and sentenced them.

Shri Kanhaiya Prasad and Shri Jitendra Singh, learned Senior Counsel, argued for the appellants. They submit that the prosecution failed to lead consistent and reliable evidence and the trial court convicted and sentenced the appellants just on the basis of imagination and surmises. It is argued that the principal witnesses, i.e. P.W.1 and P.W.13, were not consistent in their version and their evidence, in turn, is at total variance with the one contained in the F.I.R. They submit that the F.I.R. is silent as to the purpose for which the elephant was entering the

village or as to the manner in which it proceeded, whereas the P.W.1 stated that the elephant became wild, and acted in an uncontrollable manner, leading to the fleeing of people, and P.W.13, on the other hand, stated that the elephant was coming as part of a procession.

Learned counsel submit that none of these versions finds place in the F.I.R. It is also argued that, though all the three accused are stated to have pumped bullets into the body of the deceased, the medical evidence is only to the effect that the death was caused only on account of one firearm injury caused through pellets. They submit that in the evidence, it has been clearly elicited that not only the deceased, but also P.W.13, are notorious criminals, facing serious criminal cases and have been convicted in several cases and that the appellants have been implicated falsely. Learned counsel further submits that the motive pleaded by the prosecution is so trivial and weak that it hardly constitutes any basis for one to cause the death of any individual; that too, in such a pre conceived and pre-planned manner, as stated by the prosecution. It is also argued that, though several independent persons were examined as witnesses, all of them turned hostile and there was no basis for the trial court to convict the appellants.



Dr. Mayanand Jha, learned A.P.P., on the other hand, submits that except for minor aspects, the evidence adduced by the prosecution was consistent and the trial court has analyzed the matter on correct lines. He submits that the factum of the death of the deceased, the cause thereof and the participation of the appellants herein, was spoken to by P.Ws.1, 2, 3, 4, 5 and 13, and the mere fact that some witnesses have turned hostile, does not make much of difference. He submits that motive, suggested in this case, may appear to be inconsequential or trivial, but cannot be brushed aside and it is difficult to standardize the motive in the matters of this nature. Other grounds are also urged.

The F.I.R. registered on the basis of statement recorded from P.W.13 and P.W.1, constituted the basis for prosecution. The broader aspects thereof have already been furnished in introductory paragraphs of this Judgment. To the extent it is relevant, the version of the two witnesses, who are the brothers of the deceased, was that an altercation took place between their brother, and one Mr. Shiv Nath Singh, in the context of picking up of passengers, in their respective vehicles. It was not even suggested that the accused have anything to do with the said Shiv Nath



Singh. To the specific questions put in the cross-examination, P.Ws.1 and 13 stated that they do not know any person in Paharpur village, much less Mr. Shiv Nath Singh. If at all, the incident was the sequel of the quarrel between the deceased and Shiv Nath Singh, he ought to have been shown as one of the accused. The prosecution did not take steps in that behalf. The result is that Shiv Nath Singh, who can have some grudge against the deceased, was not tried and those who are tried, did not have any relation, concern or grievance with the deceased. Once that is so, hardly there exists any motive for the appellants to do away with the life of the deceased.

Assuming that the mere absence or weakness of the motive may not be a factor to extricate an accused from the prosecution, if the crime is otherwise proved, it needs to be seen as to how far the prosecution has proved its case, vis-à-vis the appellants.

The principal complainant, P.W.13, stated that at about 3:00 p.m., himself and his brother, i.e. P.W.1, their mother and sister were within the house and they saw an elephant, followed by a group of about 40 persons, coming from the Eastern direction in their village; by standing near the entrance. In the F.I.R., not a single word was said as to



whether presence of the elephant was in the context of any religious or other procession or whether it had behaved in an uncontrolled manner. Their case was that the elephant, on which some persons were sitting, armed with weapons, was coming, and it was accompanied by 30-40 persons. They did not mention that they had any prior acquaintance with the accused. In the F.I.R. it is also stated that when the elephant reached the medical shop, deceased came there in his vehicle from the opposite direction and at that time he was pulled out, on the instigation of Shiv Nath Singh. Thereafter, the bullets are said to have been pumped into the body of the deceased.

In the evidence in that regard, P.W.13 stated that the elephant was coming as part of a procession and, even when the procession was in progress, the deceased came in his vehicle from the opposite direction. He further stated that several persons had gathered around the vehicle, no one caused any harm to the vehicle and that one person who was not armed, has drawn the deceased from the vehicle, but did not cause any harm to him. According to him, when the deceased was standing by the side of his vehicle, a person from a distance of 4 or 5 yards shot bullets and thereupon the deceased fell down. The name of

the person who is said to have shot the bullets is not mentioned, much less the other persons were said to have shot at the deceased thereafter.

In contrast, P.W.1 stated that when he himself and P.W.13 were standing in their house, they saw the elephant going wild and the persons running away in panic. At that time, the deceased is said to have arrived in the vehicle and that the appellants attacked him. He too did not mention that he had any prior acquaintance with the appellants.

Apart from this, the other variation is that while according to P.W.1 the body of the deceased fell on the ground with his face upward, P.W.13 stated that the body was in a lateral position, in the sense, the head was looking towards a side. P.W.13 stated that when he himself and his brother, P.W.1, took their brother in injured condition to the hospital, the doctor declared him 'dead', whereas P.W.1 stated that when they took their brother to the hospital, it was closed.

Notwithstanding these variations, the normal conduct would be that if an incident occurs, leading to the death of a person, either the dead body is left at that very place or, at the most, it would be in the hospital. The question of the dead body being taken to the police station



does not arise. That had occurred in this case. Removal of the body from the place of occurrence or from the hospital would certainly have the effect of wiping away the important ingredients from the point of view of investigation. In a way many important links in the chain of prosecution version, stand removed.

From the evidence of the investigating officer, P.W.14, it becomes clear that the version contained in the F.I.R. is totally unbelievable. He stated that when he proceeded to the place of occurrence, after receiving the information, he did not find any stains of blood anywhere, whereas P.W.1 and P.W.13 stated that there was profuse bleeding soon after the deceased suffered bullet injuries. Several contradictions were elicited through the investigating officer. The medical evidence is equally unreliable, as is the case with other evidence of the prosecution. According to the post mortem report, the deceased died on account of a shot injury through pellets. This belies the contention of the prosecution that all the appellants herein shot bullets at the deceased one after another. The record is also silent as to the manner in which, the appellants were implicated.

The conduct and character of a deceased may not



reduce the seriousness of the crime, wholly. Nevertheless, sometimes it plays significant role to enable the Court to understand the background. Particularly, when the evidence is not clinching P.W.1 and P.W.13 flatly denied the suggestion that they or the deceased figured as accused in certain cases. However, in the cross-examination, P.W.13 admitted that he figured as an accused in about seven or eight cases and that he was also convicted in some cases. From the investigating officer, it was elicited that the deceased was also a dreaded criminal and he was not only prosecuted in many cases, but also was convicted and sentenced in substantial number of them. Though the fact that an individual is a criminal, may not justify an attack upon him, the background of a person assumes significance when the motive for killing him is not that clear and pronounced.

It has already been mentioned that the only person, who could have any grievance or grudge against the deceased, if at all, can be Shiv Nath Singh. Even that becomes slippery on account of the fact that it is Shiv Nath Singh, who is said to have taken away the passengers of the deceased, and the grievance must be of the latter. It was not even suggested that any altercation, much less any

physical assault or quarrel, had taken place between them. Though the F.I.R. mentioned the presence of Shiv Nath Singh, at the occurrence, he was not made an accused and, barring Shiv Nath Singh, there is no other link suggested, to connect the appellants with the deceased.

Viewed from any angle, we do not find any basis for the conviction and sentence ordered by the trial court against the appellants herein. We, therefore, allow the Appeals and set aside the conviction and sentence.

Since the appellants are already on bail, their bail-bonds shall stand cancelled.

(L. Narasimha Reddy,CJ)

(Gopal Prasad, J)

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