

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.131 of 1991

Against the judgment and order of conviction and sentence dated 11.4.1991, passed in Sessions Trial No.39 of 1979, passed by the 1st Additional Sessions Judge, Begusarai.

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1. Ashok Singh @ Munna Singh, son of Shyam Sunder Singh.
 2. Nawal Singh, son of Ramji Singh.
 3. Anil Kumar Singh @ Langra, son of Late Ram Chandra Singh.
 4. Ashok Singh, son of Kapildeo Singh.
 5. Ganesh Singh @ Bhoti Chand Singh, son of Ram Balak Singh @ Khopri Singh.
- All residents of village Bihat, P.S. Barauni, District Begusarai

.... Appellants

Versus

The State Of Bihar

.... Respondent

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Appearance :

For the Appellants : Mr. Ashwani Kr. Sinha, Adv.

For the Respondents : Dr. Mayanand Jha, A.P.P.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 05-02-2015

This appeal under Section 374 of the Code of Criminal Procedure is filed by the accused in Sessions Trial No.39/79, on the file of the 1st Additional Sessions Judge, Begusarai. The appellants were tried for the offence punishable under Sections-302 read with 149 of I.P.C. They were alleged to have killed one Shri Sitaram Mishra, M.L.A. at 7:15 p.m. on 23.8.1978 at Bihat. Through its judgment dated 11.4.1991, the trial court convicted the appellants and sentenced them to undergo imprisonment

for life.

The facts, as presented by the prosecution before the trial court, are as under:

P.W.4, by name Noonoo Prasad Singh, submitted a complaint at 9:00 p.m. on 23.8.1978 stating that at about 7:00 p.m. on that day, he was sitting in M/s. Ajay Pharmacy in the Bihat Bazar and at that time, the deceased Sitaram Mishra came to that place and asked him whether he would accompany him. P.W.4 is stated to have accompanied the deceased and after they proceeded upto some distance, he went aside to answer nature call. In the meanwhile, he is said to have seen about 9-10 persons, including the appellants herein, proceeding towards the deceased, and that he saw them with the help of the torch in his hand. One Mr. Laddu Singh (who is alleged to have died and as such not put to trial) is said to have fired a shot with his country-made gun on the deceased and when the deceased fell on the ground, he threatened the people around, by firing a shot into the air. The accused are said to have participated in the attack. P.W.4 further stated that he raised hue and cry and on hearing the same, P.Ws.1, 2 and 3 came to that place.

On the basis of the complaint, an F.I.R. was



registered against the appellants herein. The steps, as required under the law, such as conducting of inquest, causing post mortem, were completed. Based on the investigation conducted by it, the prosecution filed a charge-sheet. The appellants pleaded not guilty and the trial was conducted. Before the trial court, P.Ws.1 to 12 were examined and, except post mortem report, no documents were filed. On behalf of the appellants herein, D.Ws. 1 to 5 were examined. The trial court convicted and sentenced the appellants as indicated above.

Shri Ashwani Kumar Sinha, learned counsel for the appellant, submits that there is any amount of inconsistency in the statements of the crucial witness P.W.4, compared to the contents of the complaint on the one hand, and the other oral evidence on the other hand. He submits that while in the complaint P.W.4 stated that he raised cries on noticing the incident, in the cross-examination he stated that he did not raise any cry at all. He further submits that, according to P.W.4, the other witnesses, such as P.Ws.1 to 3, came to the spot on hearing his cries, whereas none of the P.Ws. 1 to 3 mentioned about the cries. He further submits that in contradiction to that, P.W.4 stated in his cross-

examination that P.Ws.1 to 3 came to the spot on hearing the shot fired into the air. He further submits that P.W.3 mentioned about the light through an electric bulb, whereas P.W.4 was silent about it. Other grounds are also pleaded.

Dr. Maya Nand Jha, learned A.P.P., on the other hand, submits that except for minor details, the evidence of P.Ws.1 to 3, the eye-witnesses, was consistent in all aspects and that, in turn, accorded the version in the complaint and F.I.R. Medical evidence and other evidence supported the case of the prosecution. He submits that there does not exist any ground for interference with the judgment rendered by the trial court.

It is the statement recorded from P.W.4 that has put the machinery of prosecution into motion, in relation to the death of Shri Sitaram Mishra. We have carefully gone through the contents thereof, and find the following salient features: (a) P.W.4 was sitting at about 7:00 p.m. in the M/s. Ajay Pharmacy; (b) at that time, the deceased came to the place and verified whether P.W.4 would accompany him; (c) P.W.4 accompanied the deceased up to some distance and when he was answering nature call, he noticed a group of about 10 persons going towards the

deceased and he saw one Laddu Singh firing with a country-made gun; (d) he raised hue and cry and, on hearing it, P.Ws.1 to 3 reached the spot.

Obviously, he is a crucial witness. He was examined extensively. On certain important aspects he spoke in a different line. For example, he stated that he did not raise any cries at all. Therefore, the very circumstances under which P.Ws. 1 to 3 have come to the spot become unexplained. Added to that, he gave a fresh version, namely, that on hearing the sound of the shot into the air, P.Ws.1 to 3 arrived at the place. Even if these are to be treated as minor contradictions, certain other aspects exist which make the version of P.W.4 doubtful.

He stated that he saw a group of 10 persons going towards the deceased when he was standing and none of them made any voice or attempted to attack the deceased. There is contradiction as to whether he noticed the group, either in standing or in sitting posture. In the cross-examination, he has also stated that even the deceased did not make an attempt to run away when the group of persons was coming towards him. Further, except stating that one Laddu Singh (who did not figure as accused in the proceedings) had shot with his country-

made gun and on that the deceased fell down, he did not attribute any specific acts to the appellants herein. Therefore, the very basis for convicting the appellants becomes shaky.

The evidence of P.Ws.1 to 3, if believed, constitutes the eye-witnesses' account. However, they too spoke in different voices and all of them are, in turn, at variance with what was stated by P.W.4. None of them have stated the reason for their coming to the place of occurrence was either hue and cry raised by P.W.4, or the sound of the shot fired into the air. Each one of them has his own account. P.W.2 stated that he witnessed the incident when he was washing his face with the water from a bore well. This all was not stated by P.W.4. Added to that, P.Ws.1 to 3 deposed as though they had seen the attack when it was taking place. This not at all was the version in the fardbeyan, much less the evidence of P.W.4.

One of these witnesses stated about the light from a bulb in the rice-mill. That, however, was not the case of prosecution. When the prosecution itself was unable to present a consistent version as to the attack, and when no specific acts are attributed to the appellants, the medical evidence and other evidence hardly become

relevant.

We, therefore, allow the appeal and set aside the sentence. The appellants are said to be on bail. Their bail-bonds shall stand cancelled.

(L. Narasimha Reddy,CJ)

(Vikash Jain, J)

K.C.jha/-
A.F.R.

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