

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Appeal (DB) No.477 of 1992**

Arising Out of P.S.Case No. -552 Year- 1989 Thana -Chandi District- NALANDA  
(BIHARSHARIFF)

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Sunil Singh son of Bindeshwar Singh, deceased, resident of village-Gadanpura,  
Police Station-Chandi, District-Nalanda (Accused)

.... .... Appellant

Versus

The State of Bihar

.... .... Respondent

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**Appearance :**

For the Appellant : Shri Anil Kumar Singh, Amicus Curiae.

For the Respondent : Shri Dilip Kumar Sinha, APP.

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**CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA**

**and**

**HONOURABLE SHRI JUSTICE AMARESH KUMAR LAL**

**ORAL JUDGMENT**

**(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)**

**Date: 15-01-2015**

The present appeal is directed against the judgment of conviction dated 26.11.1992 passed by the learned 4<sup>th</sup> Additional Sessions Judge, Nalanda at Biharsharif in Sessions Trial No.231 of 1991/13 of 1991 by which the solitary appellant Sunil Singh was held guilty of committing offences under Section 302 read with 34 IPC and Section 27 of the Arms Act. The appellant was heard on sentence on 28.11.1992 and was directed to suffer rigorous imprisonment for life under Sections 302/34 IPC and rigorous imprisonment for three years under Section 27 of the Arms Act. The sentences were directed to run concurrently.

2. The three accused persons were named in the FIR but Yogendra Singh was never arrested and he was shown absconder by

the police in the chargesheet submitted in the case and other accused Bindeshwar Singh died during the course of the trial and the trial proceeding was dropped against him by the learned trial Judge on 25.03.1992 and leaving thus, solitary appellant Sunil Singh on trial.

3. P.W.4 Ambika Sharma, the husband of the deceased Girija Devi gave his statement that Gyatri Devi (P.W.1) was the *samdhan* of his brother and she was also residing in the rented house of one Sitaram Thathera in Chandidih just by the side of the residents of the Anchaladhikari, Chandi. The deceased Girija Devi had gone to meet P.W.1 Gyatri Devi in the evening and she over stayed there, as a result of which, the informant, the peon in the office of the Anchaladhikari, Chandi went there to the house of one P.W.1 Gyatri Devi to ask his wife to return home but it appeared that the two ladies continued talking and while P.W.4 Ambika Sharma (informant) was there, P.W.3 Ramashray Sharma also came there and the two kept talking together standing outside the house.

4. It was stated by the informant that four persons came there and ascended on the verandah of the house and at the orders of deceased accused Bindeshwar Singh that the lady, i.e., P.W.1 Gyatri Devi was sitting there and that she be killed. The accused Yogendra Singh fired a shot which hit the deceased Girja Devi in her right temple who tumbled down on the very cot, she was sitting on.

Accused Bindeshwar Singh and this appellant Sunil Singh were also alleged to fire one shot each and to have run away from there. The unknown person who was standing at the outside of the house, threw a bomb from a jhola he was carrying while the accused persons were making good their escape.

5. The reason for the occurrence as given by P.W.4 Ambika Sharma was that P.W.1 Gyatri Devi was issueless and the occurrence had been committed for usurping the land belonging to her.

6. P.W.7 Babu Lal Prasad, Sub-Inspector of Police, who was posted in the Chandi police station reached the place of occurrence where he recorded the statement of P.W.4 and sent the same to the police station for registration of a case, himself taking up its investigation. He recorded the statement of the witnesses, held inquest upon the dead body by preparing the inquest report, also seized bloodstained earth and un-exploded bomb from the place of occurrence and after completion of the investigation sent up the accused persons showing accused Yogendra Singh absconder for their trial which ultimately ended in the impugned judgment.

7. The defence of the appellant was of false implication on account of mistaken identity.

8. The prosecution examined as many as seven witnesses



in support of the charges and the defence examined a solitary witness, namely, Surendra Sharma. P.W.1 Gyatri Devi supported the prosecution story with P.W.3 Ramashray Nirala and P.W.4 Ambika Sharma, the husband of the deceased. P.W.2 Ram Jee Prasad was a witness to seizure of blood, unexploded bomb and other articles from the scene of occurrence. P.W.5 Dr. Shankar Kumar Jha had held postmortem examination on the dead body of the deceased and had issued Ext-4, the postmortem examination report. Suresh Mahto was the constable who was posted in Chandi police station and had produced the material exhibits, like, a lantern, a dhibari (earthen lamp and unexploded bomb from the Malkhana of the police station as material Exts-1,2 and 3. P.W.7 S.I.Babu Lal Prasad had investigated the case.

**9.** D.W.1 Surendra Sharma had given evidence on the alibi of absconding accused Yogendra Singh and has stated that he was working in the Indian Air Force on the day of occurrence and he has falsely been implicated.

**10.** Sri Anil Kumar Singh, learned Amicus Curiae submitted that there was doubt that there was sufficient light facilitating the identification of the accused persons. It was also contended that it is admitted that the accused persons did not bear any animosity or grudge either towards the informant or his wife deceased



Girija Devi and that they had come to kill P.W.1 Gayatri Devi but they killed the deceased Girija Devi or that itself sufficiently shows that on account of the lack of appropriate light at the scene of occurrence, they had mistaken to identify the right person to kill. We were taken through the evidence of witnesses and it was submitted that the evidence of Dr. Shankar Kumar Jha, P.W.5 indicates as if the shots have been fired from the very close range but the evidence of P.W.4 Ambika Sharma and other witnesses would indicate as if the assailant was standing at quite some distance to fire the shot and that position of the assailant may not cause charring or blackening around the wounds which was found by P.W.5, the doctor. It was, lastly, contended that the initial prosecution case was of firing one shot to kill the lady by Yogendra Singh but while leading the evidence, the prosecution finding that the doctor P.W.5 had found as many as three gun shot injuries which was probalizing its case by making the witnesses to depose that after Yogendra Singh had fired the first shot, the two accused Bindeshwar Singh and the present appellant Sunil Singh also fired the shot which hit the deceased. Submission was that the above evidence besides being contrary to the basic prosecution case was also indicating that the witnesses had not seen the occurrence and they were simply making the statements so as to bringing the prosecution case in consonance with the medical



evidence. Both P.W.1 Gyatri Devi and P.W.4 Ambika Sharma have been very categorically stating that the incident was the result of the land belonging to the husband of P.W.1 Gyatri Devi being transferred to accused Bindeshwar Singh by a deed of gift. P.W.4 Ambika Sharma stated in paragraph-17 of his deposition that the deed showing the transfer of the land in favour of Bindeshwar Singh has been forged and fabricated by the accused persons. The evidence of P.W.4 Ambika Sharma also indicates that P.W.1 Gyatri Devi, who was married to Mundrika Singh had abandoned her matrimonial house and had gone to live in her parents' house and had subsequently migrated to Chandi to live in a tenanted accommodation. There were suggestions given to P.W.4 Ambika Sharma and P.W.2 Ram Jee Prasad that she was having some relationship with P.W.3 Ramashray Nirala was also running his office from the same house in which P.W.1 Gyatri Devi was residing but that appears a mere suggestion which does not corroborate from any other source. But it remains a fact that there was some strained relationship between Gyatri Devi P.W.1 and her husband and her husband had transferred the land to accused Bindeshwar Singh. The admitted position was that the accused persons did not have any animosity with the informant and especially towards his wife and they had no reason to kill the deceased. In this background, the submission of the learned counsel

appearing for the appellant that it was a case of mistaken identity requires to be considered.

11. The evidence of P.W.4 Ambika Sharma, the informant of the case in paragraph-33 indicates that the sun had set one hour prior to the incident and nothing was visible inside the house from outside. The prosecution had claimed that a lantern was kept burning on the verandah of the house and a Dhibri was kept inside it. The two ladies, as per the prosecution case and evidence, had sat on a small cot in the passage of the house which had divided the house into two parts, to the west of the passage were located four rooms and on the other side, i.e., eastern side of the verandah, the two rooms which were in occupation of P.W.1 Gyatri Devi were situated. It has come in the evidence of P.W.4 Ambika Sharma itself in paragraph-9 that the Dhibri which was burning inside the room was burning a very faint light and nothing was visible very clearly in it, whereas, the lantern which was kept in the verandah of the house had lighted sufficiently. Before making that statement, the informant stated in paragraph-8 that the accused persons had come determentally to kill P.W.1 Gyatri Devi as neither he nor his wife had any animosity with them. The very prosecution case right from the FIR till the evidence of the witnesses indicates that the accused persons were really intending to kill P.W.1 Gyatri Devi and with that intention in his view. P.W.4 Ambika



Sharma had pointed out to accused Yogendra Singh that it was the lady, i.e., P.W.1 Gyatri Devi and that she be killed but what appears is that not only Yogendra Singh had fired the first shot targeting the deceased Girija Devi but the two subsequent shots as per the evidence of the witnesses were also fired by accused Bindeshwari Singh and this appellant Sunil Singh at the same lady Girija Devi. The evidence sufficiently indicates that the accused persons were fully acquainted and knew Gyatri Devi (P.W.1) quite well. The acquaintance between the accused and the witness Gyatri Devi (P.W.1) was very old so much so that accused Bindeshwar Singh was the very brother of her husband, as such, accused Bindeshwar Singh would not commit mistake in identifying the lady whom he was intending or whom he was ordered to accompany to kill is not acceptable to us. There could be two inferences which could arise from this circumstance. The first could be that it was so dark as not making it possible to identify even one of the family members of the accused or there could be persons who could have perpetrated the offence who did not really know Gyatri Devi (P.W.1) and Girija Devi deceased individually. We do not know exactly what was the circumstance under which deceased Girija Devi was shot and killed by the accused persons but this could be clear from the evidence that the light was not enough to facilitate the identification especially when the two ladies were sitting and talking



together in the dark passage of the house. It was the 30<sup>th</sup> of November and we believe that at 6.15 P.M. darkness could have enveloped the surrounding area making it difficult to distinguish the identifying features of two persons that two the ladies so as to finally accomplishing the job the accused persons in their hands. The other circumstance which we have noted that it could be any one who was not known to the ladies might also be one of the probabilities. This circumstance in itself makes it utterly doubtful that it were the accused persons who had perpetrated the offence. It was indeed a case of mistaken identity as was in case of the *State of UP v. Hari Prasad and others* reported in *AIR 1974 Supreme Court 1740*. In that case also the identification was claimed in the light of a lantern and a Dhivri but the accused persons who were the staunch enemies of the informant Kanahaiya Bux Singh could not kill the person whom they had intended to kill him rather they had killed the family members Vishwanath Panda who had come for some purposes did not state in the house of the informant and was mistakenly killed as Kanahaiya Bux. The facts of the present case appear very much akin to the facts of the *Hari Prasad* (supra).

**12.** The other circumstance which very clearly come out from the evidence of the witnesses is that P.W.5 Dr. Shankar Kumar Jha, who held postmortem examination on the dead body of deceased

Girija Devi had found the following ante-mortem injuries on it:-

“(i) Lacerated wound 4”x2”x3” with black margin on right cheek with loss of soft tissue and upper and lower jaw-bones. One cap of the bullet was recovered from the wound and on tracing the wound further bullet was found lodged on the back of skull with fracture of occipital bone. The brain tissues were found damage with blood clot in brain captivity.

(ii) One lacerated wound with tattooing wound measuring 2”x1”x1” found 2” below right elbow on posterior aspect with inverted margin wound of entry. One lacerated wound 2 ½” x1”x1” found 2” below right elbow on its anterior with averted margin wound of exit. Both bones of the arms were fractured.

(iii) One lacerated wound 1/3" in diameter with inverted margin and black margin on anterior side of neck 2” below angle of right mandible.

On dissecting the wound vessels of the neck on right side and right lungs were found damaged. Right pleural cavity was full of blood. A bullet was found lodged below the 6<sup>th</sup> rib on right side.

In the opinion of P.W.5, death had occurred as a result of shock and haemorrhage due to the injuries nos.1,2 and 3 caused by fire arms such as pistol.”

**13.** Thus, what appears from the evidence of P.W.5 Dr.

Shankar Kumar Jha was that there were at least three shots which had been fired at the lady. We may note that the initial prosecution story which was contained in the FIR (Ext-7) of P.W.4 Ambika Sharma was that on being ordered to kill the lady by accused Bindeshwar Singh, accused Yogendra Singh fired a single shot at the lady which hit her in a right temple. The doctor did not find any injury on the right temple of the deceased Girija Devi and he found three injuries one on the right cheek and the other on the right of neck and the third on the



right hand 2" below right elbow. The injuries which were found in cheek and the right side of neck were fatal individually and the injury which was found on the right neck may not be fit. The informant had stated in his FIR that while the accused persons were leaving the place of occurrence, one shot each was fired by accused Bindeshwar Singh and this appellant Sunil Singh and unknown accused had brought out a bomb from a jhola and had thrown but did not detonate. However, while leading the evidence of the witnesses, like, P.W.1 Gyatri Devi, P.W.3 Ramashray Mishra and P.W.4 Ambika Sharma were equivocally stating that the first shot was fired at the orders of accused Bindeshwar Singh by Yogendra Singh and that hit the deceased in her right temple. Thereafter, one shot each was by fired by accused Bindeshwar Singh and this appellant Sunil Singh. The attention of the witnesses had been drawn to the above improbablized version as regards the manner of occurrence and the investigating officer as may appear from paragraphs-31,32 and 33 had not stated that the accused Bindeshwar Singh and appellant Sunil Singh had fired one shot each after being first shot had been fired by accused Yogendra Singh. We find a purpose when the prosecution was improbabilizing upon its story while leading oral evidence. In fact, after they had found that P.W.5 Dr. Shanker Kumar Jha had noted down three wounds of entry at three different parts of the dead body. The prosecution was

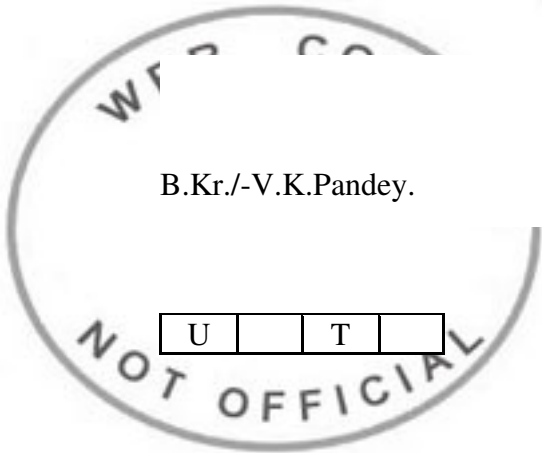


probably attempting to reconcile its deficiency which had crept into its case on account of the initial story being of a single shot. This conflict in the oral and medical evidence again makes it difficult for us to act upon the evidence of the witnesses. There could be two reasons that the witnesses were making such improbable statements during trial, the first could be as we have just noted to fulfill the lacuna which had crept in the prosecution case and secondly, that might be on account of having not properly seen the occurrence. They were stating from their imagination on account of some motive. These are the infirmities in the prosecution evidence, which, in our opinion, makes the evidence suspect, as a result of which, we find merit in the present appeal.

**14.** In the result, the appeal succeeds and the same is allowed by setting aside the judgment of conviction and the order of sentence. The solitary appellant Sunil Singh is acquitted of the charges he had been held guilty of. He is on bail. He is discharged from the liabilities of his bonds.

**15.** Sri Anil Kumar Singh has assisted the Court as Amicus Curiae and the Court desires that he be paid one fee of hearing by the Patna High Court Legal Services Committee and for that purpose let a copy of the first and last pages of this judgment be made over to Sri Singh, an Advocate of this Court appearing in this

matter as Amicus Curiae.



**(Dharnidhar Jha, J)**

**(Amaresh Kumar Lal, J)**