

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1318 of 2008

Arising Out of P. S. Case No. -49 Year- 2007 Thana -Bihia District- BHOJPUR

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Tunnu Kumar Singh son of late Murlidhar Singh, resident of Village Samardah,
P.S. Bihia, District Bhojpur at Ara

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant : Mr. Baxi S. R. P. Sinha, Sr. Advocate with
Mr. Prabhat Kumar Singh and
Mr. Anirudh Kumar Singh, Advocates

For the State : Ms. Shashi Bala Verma, APP

For the Informant : Mr. Shankar Dayal Singh, Advocate

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA
and
HONOURABLE SHRI JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 03-07-2015

The present appellant Tunnu Kumar Singh and his mother, Smt. Kusum Devi, were charged together by the learned Presiding Officer, Fast Track Court-V, Arrah under Sections 302 and 34 of the Indian Penal Code. The appellant was distinctly charged also under Section 27 of the Arms Act. Both the mother



and son were put on trial in Sessions Trial No. 632 of 2007 which ended in the judgment dated 19.08.2008 by which Smt. Kusum Devi was acquitted of the charge under Sections 302/34 of the Indian Penal Code while this appellant Tunnu Kumar Singh was held guilty of committing offences under Section 302 of the Indian Penal Code and Section 27 of the Arms Act. The appellant was heard under Section 235 of the Code of Criminal Procedure and was directed to suffer rigorous imprisonment for life and also to pay a fine of Rs. 10,000/-, else to suffer rigorous imprisonment for three months. As regards his conviction under Section 27 of the Arms Act, the appellant was directed to undergo rigorous imprisonment for three years and to pay a fine of Rs. 5,000/-, else to suffer rigorous imprisonment for one month. The substantive sentences of imprisonment awarded to the appellant were directed to run concurrently. Being aggrieved by and dissatisfied with the judgment of conviction and order of sentence, the appellant had approached this Court through the present appeal to question the correctness of the findings as regards his guilt and appropriateness of the sentence which he was directed to suffer.

2. As may appear from the evidence of P.W.-1 Parvati Devi, the acquitted accused Kusum Devi was her full younger sister and the deceased Vidya Nand Singh, a Jailor and



husband of P.W. 1, employed on the day of occurrence in Birpur, Saharsa was none else than the elder brother of the father of the appellant Tunnu Kumar Singh. It further appears from the evidence of P.W.-1 Parvati Devi that the two brothers had separated and partitioned their properties and they had their separate residential houses also situated side by side.

It was stated by P.W.-1 Parvati Devi that the deceased Vidya Nand Singh wanted to put a window in the wall of his house which was opening towards the house of appellant Tunnu Kumar Singh whose father had demised earlier and he had resisted that proposed construction by the deceased Vidya Nand Singh. Not only that only on the day or a day prior to the occurrence, some incident of scuffle or assault had taken place and the deceased Vidya Nand Singh had lodged a written report upon which a substantive criminal case had also been registered against the appellant.

3. In the above background, it was stated that while the deceased Vidya Nand Singh had come out of his house to go into his village, this appellant followed him and fired a shot which hit him in his lower back as a result of which he died. It was stated that the appellant was remonstrated by his mother Kusum Devi (since acquitted).

The reason for the occurrence was the pending old

land dispute between the two families.

4. The fardbeyan (Ext.-2) of P.W.-4 Gajendra Kumar Singh, who happened to be the son of the deceased Vidya Nand Singh was recorded in Bihia hospital on 10.03.2007 at 10:05 A.M. On that basis the officer-in-charge of Bihia Police Station drew up the F.I.R (Ext-3) of Bihia P.S. Case No. 49 of 2007 under Sections 302/34 of the Indian Penal Code and entrusted the investigation of the case to P.W.-6 S.I. Suresh Kumar, who came to the village and visited the place of occurrence and during the course of investigation recorded the statements of different witnesses. It appears from his evidence that the dead body had been dispatched for postmortem examination and, accordingly, it was held by doctor P.W. 5 Naresh Prasad who had found one lacerated wound over the back of chest on its lower part, lateral and to the right of the spinal cord. It was measuring $\frac{1}{2}$ "x $\frac{1}{2}$ "x cavity deep and was oval in shape with in inverted and blacken margin. In the opinion of P.W.-5, it was the wound of entry.

There was yet another lacerated wound over the epigastric area measuring $\frac{1}{2}$ "x $\frac{1}{2}$ " which was oval in shape and was up to cavity deep. The margin was everted. One bullet was found partially lodged into the skin and subcutaneous fatty tissues. Both the injuries were communicating to each other and on dissection, it

was found that the right lungs were lacerated with further laceration of the liver. The gut and the mesentery were lacerated. A bullet was recovered from the wound of exit which was sealed and handed over to the constable accompanying the dead body. In the opinion of P.W. 5, the death had occurred due to haemorrhage and shock leading to the death of the deceased Vidya Nand Singh within 6-36 hours of the holding of the postmortem examination.

5. P.W. 6 Suresh Kumar, the Investigating Officer, after closing the investigation had sent up the two accused persons for their trial which ended in the impugned judgment and order of sentence.

6. The defence of the appellant was of his innocence and non-participation and further of false implication on account of the land dispute. There was a challenge to the witnesses as well that they had not been present and had never seen the offence being committed.

7. During the course of trial, the prosecution examined six witnesses, out of whom P.W. 1 Parvati Devi, the wife of the deceased Vidya Nand Singh, P.W. 2 Pinki Kumari, the 18-year-old daughter of the deceased Vidya Nand Singh and P.W. 4 Gajendra Kumar Singh, the informant of the case and son of the deceased Vidya Nand Singh had supported the story as eye



witnesses. P.W. 3 Upendra Kumar Singh, the younger brother of the informant and yet another son of the deceased Vidya Nand Singh had stated that he was informed telephonically by P.W. 4 Gajendra Kumar Singh about the murder of his father by this appellant while he was away in Ghatshila in Jharkhand. We have already noted that P.W. 5 Dr. Naresh Prasad had held postmortem examination and P.W. 6 S.I. Suresh Kumar had investigated into the case.

8. Shri Baxi S. R. P. Sinha, learned senior counsel appearing on behalf of the appellant took us through the evidence of each and every witness and submitted that there does appear some doubt in their claim of being present at the place from where they could have seen the offence being committed. The next submission of Shri Sinha was that it was a village thoroughfare and it was 8:30 A.M. when people are supposed to be moving around and, as such, there could be every possibility that the incident had been seen by others than the witnesses, but no independent person appears either examined by the police or coming forward to support the case in trial. Submission, lastly, was that the Investigating Officer did not find any blood at the place of occurrence as appears from paragraph-11 of his evidence and on these submissions Shri Sinha wanted this Court to acquit the accused after giving benefit of doubt.



9. Sushri Shashi Bala Verma, learned Additional Public Prosecutor appearing for the State assisted by Shri Shankar Dayal Singh, learned counsel appearing on behalf of the informant submitted that P.Ws. 1, 2 and 4 were consistent in their support and their presence appear natural as the incident had occurred almost in front of the '*darwaja*' they were present at. Submission was that the oral testimony of these witnesses was being supported by the medical evidence of P.W. 5 Dr. Naresh Prasad. Submission was that the evidence does not indicate that there had been any other person than the witnesses who could have also seen the occurrence or who were present there and, as such, the prosecution was not guilty of suppressing some material witnesses.

10. We have already noted some of the background facts leading to the murder of deceased Vidya Nand Singh. There is no dispute in it that Vidya Nand Singh, the younger brother of the father of the appellant Tunnu Kumar Singh had separated from him and as may appear from the evidence of P.W. 1 Parvati Devi, the wife of the deceased, the two brothers had built their own residential apartments. The deceased had wanted to fix a window in the wall which was to be open towards the premises of this appellant and that had been opposed and further strained the relationship between the two families, which already was not good



which is amply indicated not only from the evidence of P.W. 1 but also from the record as on the very previous day of the incident some incident had taken place between the deceased on the one hand and this appellant and his mother on the other and the deceased had filed a written report at Bihia Police Station (Ext. 4/2) on 09.03.2007 upon which Bihia P.S. Case No. 48 of 2007 was registered against this appellant and his mother Kusum Devi. The F.I.R. (Ext.-4) of that case was also brought on record and these documents not only raised an inference sufficiently indicating besides their relationship being strained but also an inference that the incident could have been the outcome of the previous incident for which Ext.-4 was drawn up. This is the evidence of P.W. 1 and thus what we find is that the motive for the occurrence or the reason for which Vidya Nand Singh was shot and killed appears established by the prosecution.

11. The oral testimonies of P.W. 1 Parvati Devi, P.W. 2 Pinki Kumari and P.W. 4 Gajendra Kumar Singh are consistent as regards the manner of occurrence. These three witnesses have equivocally stated that the deceased had gone out into the village, may be for search of some labourers, and while he was moving on the road, this appellant had followed him for a few steps and after pulling out a pistol, he fired a shot which hit him in



the lower back as a result of which he died. Some of the facts which were stated by these three witnesses could not go down well with us, like, that the deceased after falling down on the ground after he was hit by the shot, was shouting or telling the witnesses that it was this appellant who had injured him and he should be caught. This line of evidence which appears in the evidence of P.Ws. 1, 2 and 4 does appear a subsequent addition to the prosecution case probably to make their evidence more acceptable to the Court and also possibly with a view to seeking the approval of the Court as regards the act of the appellant by injecting into the plethora of the evidence that a dying declaration. If this fact was really stated by the deceased to the witnesses, then we do not see any reason why this was left being mentioned in the F.I.R. We, as such, have discarded this from the evidence of witnesses and thereafter, have seen and scanned the same.

While scanning the evidence of P.Ws. 1, 2 and 4, we were requested to consider the attention of the witnesses drawn to the facts during the trial. We were really conscious that if those statements, attention to which was drawn of P.Ws. 1, 2 and 4 had indeed not been made during investigation by them, then it could be a peril for the prosecution as regards the proof of charges. However, when we sought proof of those facts which were brought



on record by drawing the attention of the above noted three witnesses by going to the evidence of P.W. 6, the I.O., to find out as to whether he had deposed to those facts having not been stated to him, we could find that the attention was not only inadmissible but quite misleading in its substantial parts. If a couple of statements which were quite innocuous had indeed been not stated by the witnesses, like their hands had been stained or their clothes had been stained with blood or P.W. 2 Pinki Kumari had shown the cartridge case to the Investigating Officer, which appear really not stated by those witnesses to the Investigating Officer it was not to affect the proof of charge as the material facts of the case that the appellant had followed the deceased and had fired a shot which had fatally injured him, appears going uncontroverted and unchallenged. There was no improvisation made by the three witnesses while giving their statements before the Investigating Officer and we find from their evidence that they were consistent in narrating the story in Court which story had been stated by them to the Investigating Officer. This aspect of the evidence of P.Ws. 1, 2 and 4 leaves no manner of doubt that they had been present some where around the scene of occurrence from where they could have seen the offence being committed.

12. The witnesses have stated that they were



present at their '*darwaja*'. It appears that the '*darwaja*' was facing the road and the deceased had moved only 11-12 steps to access the road so as to moving on the road in the village. He had moved a few steps on it and was within the vision of the witnesses when this appellant had fired a shot. The occurrence had been committed very well in front of the house as appears stated by P.W.6 in his evidence in paragraph-4 wherein he has stated as to what was the place of occurrence where the deceased had been shot and killed. The presence of witnesses was natural. It was not a place where they are not supposed to be standing or sitting. It was there own citadel and they were free to go into the part of the house including the '*darwaja*'. Besides, what we could find was that not even a suggestion was thrown to the three witnesses that they had never been present at their '*darwaja*' and the claim of the witnesses to that extent was wrong or false. All these circumstances and facts convince us that the witnesses were present there and had seen the occurrence.

13. The time of occurrence was 8.30 A.M. and it was rightly suggested to us by Shri Sinha, learned counsel appearing on behalf of the appellant that there could be persons around in the village who could have seen it but should not we avoid any speculation or imagination when we do not have any



concrete evidence on record to suggest that situation to us. What appears from the statement of the witnesses or from the records of investigation which were placed through the evidence of P.W.6 before the trial Court is that there was indeed none around there incidentally, except the witnesses who deposed to the facts of the case and, as such, we cannot draw any adverse inference against the prosecution for not producing any material independent witnesses.

The Investigating Officer has pointed out in paragraph-11 of his evidence that he did not find either a cartridge case lying on the place of occurrence, that's, on the road or any blood having fallen there. We find that he had been entrusted with the investigation of the case and he had come to the village. It was a village road which was the place of occurrence and possibility might be that on account of the murder of the deceased, people of the village could have been attracted to the scene of occurrence after the incident had occurred and there might be the possibility that whatever blood had fallen there and that had been erased.

14. After considering the evidence and the circumstances of the case, what we find is that the prosecution had succeeded in bringing the charges home to the present appellant. His conviction for the two offences, i.e., Section 302 Indian Penal Code and Section 27 of the Arms Act appears appropriately

recorded and the appellant also appears properly sentenced.

15. In the result, we do not find any merit in the present appeal. It is hereby dismissed.

(Dharnidhar Jha, J)

(Ahsanuddin Amanullah, J)

Anjani/Brajesh Kr.

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