

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1384 of 2008

Arising Out of PS.Case No. 106 Year- 2006 Thana –Kudra District- BHABHUA (KAIMUR)

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Bishambhar Singh, son of late Bandhu Singh, R/O Village-Bajrahan, P.S. Kudra,
Distt-Kaimur.

.... Appellant

Versus

The State of Bihar

.... Respondent

with

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Criminal Appeal (DB) No. 1353 of 2008

Arising Out of PS.Case No. 106 Year- 2006 Thana –Kudra District- BHABHUA (KAIMUR)

=====

Laxman Singh, son of late Bandhu Singh, R/O Village-Bajrahan, P.S. Kudra, Distt-
Kaimur.

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

(In CR. APP (DB) No. 1384 & 1353 of 2008)

For the Appellant/s : Shri Promod Kumar Singh, Adv.
Shri Arvind Kumar, Adv.
For the Informant : Shri Vivekanand Singh, Adv.
For the State : Shri Dilip Kumar Sinha, APP
Sushri Shashi Bala Verma, APP

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 18-03-2015

The two appeals preferred by the two convicts, held
guilty by the learned Presiding Officer of Fast Track Court-2nd,
Kaimur at Bhabhua in Sessions Trial No. 34/2007/09/2007 by
judgment of conviction dated 11.09.2008 question the propriety of the

judgment dated 11.09.2008 and order of sentence dated 17.09.2008.

It appears that the appellants who had been indicted of committing offences under Section 302/34 of the Indian Penal Code and under Section 27 of the Arms Act, were adjudged guilty of committing the two offences by the judgment of conviction and after being heard on sentence on 17.09.2008 each of them was directed to suffer rigorous imprisonment for life as also to pay a fine of Rs.25,000/- each, else to suffer rigorous imprisonment for three years. As regards the conviction of the appellants under Section 27 of the Arms Act, the learned trial Judge did not find it prudent to pass any sentence upon the two appellants as they had already been sentenced under Section 302 Indian Penal Code.

2. The facts of the case are contained in the fardbeyan (Ext-5) of P.W.3 Jawahar Singh who undisputedly was one of the three brothers of deceased Ram Dhyan Singh. It was stated that he along with his deceased Ram Dhyan Singh were coming home after having taken a round of their fields and when they were on the



road situated south of the village at about 7:00 A.M., the accused persons named in the FIR, i.e., Bandhu Singh, Ramashankar Singh, Laxman Singh, Bishambhar Singh, Lilmi Devi and Indu Devi surrounded his brother Ram Dhyan Singh. Accused Bandhu Singh remonstrated his companions to kill the deceased upon which, it is alleged, the two appellants, namely, Laxman Singh and Bishambhar Singh fired shots from the rifles they were carrying with them. Deceased Ram Dhyan Singh was hit by the shots and he fell down there.

3. The informant stated that he raised alarm upon which the accused persons also fired at him, but he escaped being hit. Almost at the end of the statement, the informant alleged that the two lady accused persons, i.e., Lilmi Devi wife of appellant Laxman Singh and Indu Devi wife of other appellant Bishambhar Singh were giving cartridges to their husbands and were abetting them by egging them on to kill the deceased. As per the informant, the villagers had, by then, assembled at the place of occurrence as a result of which the

criminals escaped in the north east direction. He came near his brother and found that the deceased Ram Dhyan Singh was dead.

4. The informant stated that the murder of deceased Ram Dhyan Singh had been committed by the accused persons on account of some dispute for a particular land.

5. As may appear from the evidence of P.W.7 S.I. Arbind Kumar, he had picked up a rumour about the murder of a man in village-Bajrahan (place of occurrence) and he came to that village and found that a man had been murdered there. He recorded the fardbeyan Ext-5 of P.W.3 Jawahar Singh and took up the investigation himself. He held inquest upon the dead body of Ram Dhyan Singh in presence of the witnesses. He, thereafter, prepared and sent a copy of the inquest report and the dead body challan (Ext-6) with the dead body for postmortem examination. He, thereafter, inspected the place of occurrence on being pointed out by the informant and other witnesses. It was a road situated in the south east of the village and he found the dead body of deceased Ram Dhyan



Singh lying on that road. As may appear from the examination-in-chief of P.W.7 in paragraph-5 and his cross-examination in paragraph-11, the witnesses did not find any blood and, as such, did not seize it nor did he find any cartridge case lying at the place of occurrence. He could not complete the investigation as he was transferred and the job of submitting final report was performed by P.W.4 Siyaram Prasad Gupta who does not appear to have done anything in the investigation except that he sent up the accused persons for trial which ultimately ended in the impugned judgment.

6. The defence of the appellants was that they purchased a land from one Shivjee Roy which land had previously been sold by the father of the deceased and the informant to the said Shivjee Rai and that they were in possession of the land but somehow or the other P.W.3 Jawahar Singh started raising a dispute in respect thereof and it was for that particular reason that the appellants had been implicated falsely in the case. It was suggested to some of the witnesses that in fact Ram Dhyani Singh had been murdered

sometimes earlier than what was alleged by the informant and it was a cooked up story that had been framed by the informant so as to launching the prosecution.

7. In support of the charges, a total number of seven witnesses were examined by the prosecution, out of whom P.W.1 Hardeo Singh, P.W.2 Sukhari Singh, brother of the deceased and the informant himself, P.W.3 Jawahar Singh had deposed as an eye witnesses to the occurrence. We have just pointed out that P.W.4 S.I. Siyaram Prasad Gupta had submitted the chargesheet and that was the contribution from him as regards the investigation of the case. P.W.5 Dr. Ram Vilash Thakur had held postmortem examination on the dead body of deceased Ram Dhyan Singh and had prepared the postmortem report, Ext-2. P.W.6 Gupteshwar Pal was a Chaukidar and he had produced material exhibit, the part of the bullet which was found lodged in the dead body by P.W.5 and which was sealed and handed over by him to the companion Chaukidar. P.W.7, as just noted, had investigated the case.



8. Sri Pramod Kumar Singh, learned counsel appearing on behalf of the appellants had, time and again, attempted to impress upon us that it was an illustrative example of false implication on account of land dispute which was admitted by the witnesses. It was submitted that the wife of the deceased and his son were not examined and other persons who had accompanied the informant up to the scene of occurrence were also not produced by the prosecution. Submission was that the two brothers, P.Ws.2 and 3 had come forward to depose in the case and they had been supported by P.W.1 Hardeo Singh, but the evidence of P.W.2 Sukhari Singh may not fit to be accepted and he does not appear an eye witness to the occurrence. Submission was that it was Jawahar Singh, the informant who had raised the dispute over a particular piece of land as appears emerging from the evidence of witnesses and deceased Ram Dhyan Singh did not figure anywhere in that dispute. As such, it appears absurd to accept that these appellants should murder deceased Ram Dhyan Singh. Submission was that the place of occurrence was also

doubtful as the investigating officer did not find any blood nor did he find any cartridge case lying anywhere around it. On these submissions, it was submitted that the prosecution case suffered from serious doubt and the appellants deserved to be acquitted.

9. Sri Dilip Kumar Sinha, learned Public Prosecutor and Sri Vivekanand Singh, learned counsel appearing on behalf of the informant were submitting that the witnesses were consistent on the manner of assault and they had also deposed to a strong motive in the minds of the accused persons for committing the murder and mere non-finding of blood at the place where the dead body was found or non-finding of any cartridge case could not be as serious a lacuna as to discard the whole prosecution story. The basic prosecution story was that the deceased Ram Dhyan Singh and informant Jawahar Singh were coming home after having taken a round of their fields and when they were on the road situated south of the village, six accused persons named in the FIR appeared there and these two appellants fired shots from their respective rifles at the deceased.

10. P.W.1 Hardeo Singh had claimed his presence at the scene of occurrence that he was sitting at his Darwaja and when the deceased was coming from the south after having taken a round of his field and when he had reached south of the house of Bandhu Singh, the incident had occurred. He was cross-examined on his presence in paragraph-5 by drawing his attention to his previous statement that he had not stated before the police that he was sitting at his *Darwaja*, but while we were considering the evidence of P.W.1 we could not come across any line in the evidence of the investigating officer so as to seeking the proof of the above fact. During further cross-examination, P.W.1 was pointing out, as may appear in paragraph-7 of his cross-examination, that he was all alone at his Darwaja and he had come after attending to the call of nature and he was facing south. Thus, presenting himself in a natural position to see what was south of him or at the place where he was sitting. Moreover, what we could find out from his cross-examination was that there was no serious



attempt made by the accused persons to show that he could not have been present, firstly, at his *Darwaja*, as per his claim. Secondly, he had also claimed that he had no any particular motive so as to coming forward to depose against the appellants. Some attempt was made by the defence to obliquely suggesting to him that he was related by blood to the informant as the father of the informant happened to be his Mama, as may appear from paragraph-14 of his evidence. But in a village everyone somehow or the other gets related to his fellow villagers. This appears a reality of relationship existing in a village where even if not being descendants of some one one is known or called by such names which could be indicating as if he was the real relative to the other persons. That by itself may not impute any motive to P.W.1 to come into the witness box to depose falsely against the appellants. No real reason from recorded fact could be brought into our notice so as to convincing us that the witnesses were motivated to come forward and was holding an interest in the result of the trial for deposing during it with a motive that his evidence be accepted and

used in recording the conviction of the persons. That being the hall-mark of identifying interestedness of a witness and that not being found by us from the record we readily find ourselves accepting the evidence of P.W.1 as that of a trustworthy witness.

11. However, when we came to the scanning of evidence of P.W.2 who happened to be the brother of the deceased, we initially found him in his examination-in-chief projecting himself as an eye witness to the occurrence but during cross-examination in paragraphs-5,6 and 7, the effect of the evidence of the witness was to render him as not an eye witness to the real part of the occurrence. He stated that he was at his *Baithka* and after hearing *Hulla* and sounds of firing of multiple shots of 5-6 rounds, he was attracted to the scene of occurrence and found that deceased Ram Dhyan Singh was lying on the southern flank of the road and that flank was just by the side of deceased Ram Dhyan Singh's house and further saw that where Ram Dhyan Singh was lying, was the plot of 2 kathas which was probably the plot in respect of which some dispute in respect of sale and



purchase had arisen between the parties. P.W.2 further stated in paragraph-7 that on reaching there, he found that it Ram Dhyan Singh was bleeding and there was copious blood there. On reading these paragraphs of P.W.2, we find ourselves not persuaded to hold that P.W.2 could be the an eye witness. He does not appear to be an eye witness. He might have come at the place of occurrence, it appears a natural conduct of the full brother like P.W.2, after having come to know about the murder of his brother. He had rushed to the scene of occurrence to find as he did reaching there, but that by itself could not bring him into the category of a competent eye witness. However, his evidence could at best be utilized to note that deceased Ram Dhyan Singh was murdered on that day and that he was murdered on the road which was running south of the village and that his dead body was lying there and further that there was blood.

12. So far as the evidence of P.W.3 Jawahar Singh is concerned, it is true that he had claimed during cross-examination that he had also vied for purchasing the same land from the same



Shivjee Rai which had been purchased by the accused persons. His evidence, particularly in cross-examination, indicates that he had paid some premium amount and had obtained some written agreement also from the said Shivjee Rai, but we find it of no consequence except that these facts do indicate one thing that the parties, i.e., the accused persons on the one hand and the informant on the other, were competing with each other for purchasing a particular land and that had strained their relationship. The defence had claimed that it had obtained the possession of the land also because the sale deed had been executed in their favour, but it will be too dangerous proposition to uphold in a criminal trial that by merely obtaining a deed of sale in ones favour, one could claim possession by virtue of it or the courts should of its own motion hold in favour of possession of that particular person, especially when the facts are so converse to the defence that it is very difficult for a Court to reach a definite conclusion as regards the possession. Even if we had said some was in possession of the land it was not lead us to any conclusion as

regards the commission of the murder of deceased Ram Dhyan Singh.

It was merely a motive. There was no case either of the prosecution or of the defence that the murder of deceased Ram Dhyan Singh had been committed in any transaction than what was alleged by the prosecution and especially, never in connection with some incident that had taken place for taking possession over that particular piece of land. We cannot reconstruct the third theory outside the evidence which is available to us. The Court has to confine itself to the limits of the evidence and its appreciation. The reason for murder was a land dispute and as from the examination-in-chief of P.W.3, more particularly also from his cross-examination, it appears coming out vividly to us.

13. The argument was as to why should the deceased Ram Dhyan Singh be killed by the present appellants. The trial had proceeded by virtue of Section 34 of the Evidence Act which presupposes a pre-concert between the accused persons so as to achieving a particular goal. This is a mental state of the accused persons who act



after sharing their minds to achieving the goal. The action real and effective could be performed by all or any one of them. No such preconcert or meeting of mind could be known to the world. It could be known to the accused only as to why they chose to act in a particular manner. This may probably explain as to why the appellants chose deceased Ram Dhyan Singh out of three brothers to be shot and killed. Witnesses were stating on the personal perception of the incident what they had stated after what they had seen. Why deceased Ram Dhyan Singh was murdered and why P.W.3 Jawahar Singh was spared could not be balanced together so as to acquitting the accused persons. Proof on proving on probability is the hall-mark in criminal trial as regards proof of charges to the hilt. There was strong motive and spite of the evidence which indicated that the three brothers were separate from each other, we do not see any absence of unity of purpose in the three brothers, because the evidence of P.W.3 was very categorical that his father had scribed the deed conveying the land measuring 2 *kathas* to Shivjee Rai. But, there was a dispute from the



very day Shivjee Rai had obtained the sale deed due to the fact that he had obtained possession of the land in excess of two *kathas*. The total area of the land was one acre and 53 decimals and the properties were joint as appears undisputed and told by two brothers, i.e., P.Ws.2 and 3. It appears a natural effort which had been made by the three brothers including the deceased, to retrieve the excess of the land sold by his father which appears very precious inasmuch as it was situated just at the edge of the village and by the side of the road. There does appear reason for us to infer that the three brothers must have very strongly acted to pursue their cause of referring the excess of the land which had been transferred by Shivjee Rai to any other persons including the accused. In this background of the evidence, we do see the reason as why the eldest of the three had been targeted by the appellants on that particular day so as to warding off any threat of their ouster from the land they had purchased from Shivjee Rai.

14. The manner of occurrence as also the place of occurrence was challenged before us at the strength of the lacerated



entry wounds which were bearing margin with tattooing and charring around it. P.W.1 has stated that before the deceased Ram Dhyan Singh was shot dead, there was some altercation in between P.W.3 and the accused persons. In paragraph-10 he stated that before any shot was fired at Ram Dhyan Singh, Bandhu Singh had raised Hulla and he himself had intervened and asked accused persons not to quarrel as Panchayati had been convened. But the accused persons did not listen to him and fired two shots at him. On perusal of the evidence of P.W.3 on the manner of occurrence, we find that there was virtually no movement in the deceased when the accused persons were seen armed with rifles and when they had prepared themselves for firing the shot. In fact the distance between the deceased and the accused persons were about 10 feet as appears stated by P.W.3 in paragraph-21 of his evidence. A rifle was used in firing the shot. It is never a small weapon, like a pistol or a revolver. Calculating the distance probably existing between the deceased and his assailants, it does not appear improbable that the shot should have caused the

tattooing or charring around the entry wound.

15. P.W.7 the investigating officer, as we have earlier noted, had stated that he did not find any blood at the place of occurrence. But on considering the evidence of P.W.2 when he was deposing on finding of the dead body which was lying on the southern flank of the road, he was stating that the deceased had bled and blood had spilled over on to the soil also. The evidence of P.W.3 in paragraph-25 is that blood had fallen on the soil. We do not find the evidence of P.W.7, the investigating officer is of much consequence as it appears to us that he was handling the investigation in the most inept manner. In spite of that his evidence sufficiently indicates that the dead body was found at same place where it was found by P.W.1 and even by P.W.2. The investigation which had been carried out ineptly or was completed unmindfully by an officer as regards his duties in that regards, cannot have any bearing on the ultimate result of the case.

16. The medical evidence of P.W.5 lends credible



support to the oral evidence of P.Ws.1 and 3 as the doctor had found wounds of entry one on the mid fore arm measuring 2 ½” x ½” exposing the bone over its lateral aspect of margin everted and tattooed. It was the wound of entry. The corresponding wound of exit measure 3”x 3”x bone deep. Over the medial aspect of left forearm with everted margin. It was the wound of exit which corresponded with injury no.(i). The third wound noted by P.W.5 was yet another lacerated wound measuring 3 ½” in diameter upto thoracic cavity deep present over the left side of front of just below the left nipple. Its margin was tattooed. It was the wound of entry. The dissection of the dead body revealed that the 3rd, 4th ribs on the left side of front of chest were fractured. Both pleura, lungs, pericardium and heart along with diaphragm was badly lacerated. The apex of liver and the spleen were also lacerated. A metallic foreign body 1 ½” long, flattened in shape was recovered during dissection. Thus the story of two shots being fired clearly gets support from the evidence of P.W.5.

17. One last submission which requires to be



noticed was that as regards the non-examination of the wife of the deceased and his son, we want firstly to point out that the FIR did not cite them as witnesses and it was during cross-examination of P.W.3 in paragraph-28 that it was brought on record that Sachidanand, son of the deceased Ram Dhyan Singh and his mother had also come to the place of occurrence. On a careful consideration of the lines of evidence in paragraph-28 of P.W.3 what appears to us is that Sachidanand appears having accompanied his father from the field and while his father stayed behind, Sachidanand moved ahead and when he reappeared at the scene of occurrence, his mother had accompanied him. The informant stated that the mother and the son appeared after he had come to the scene of occurrence. Thus, these lines of evidence in themselves are testimony to the fact that the mother of Sachidanand or himself must not have been witnesses to the real part of the occurrence. So far as the non-examination of other witnesses who had allegedly accompanied the deceased Ram Dhyan Singh as per paragraph-26 of his evidence is concerned, we have



considered the very challenge set up by the defence itself that they had never accompanied the informant. Thus, what appears to us is that the stand of the defence is completely in contrast to its own stand. During cross-examination of P.W.3 it was suggested to him that Rajkumar Singh, Mahendra Singh and Vijay Singh had never accompanied the informant, P.W.3 to the place of occurrence and they were as such not necessary witnesses to be examined. The witnesses could be necessary to be examined only when he is a material witness. A material witness could be a witness whose evidence is necessary to be brought on record by the prosecution for upholding the material facts of the case. We do not find Raj Kumar Singh, Mahendra Singh and Vijay Singh as material witnesses. As such, the above contention on the non-examination of the three witnesses is fit to be noticed for being rejected only.

18. So far as the other contention regarding the delayed dispatch and receipt of the FIR is concerned, we do find that the FIR was drawn up on 30th of September, 2006 at 17.30 hours but it



had reached the Chief Judicial Magistrate, Bhabua on 02.10.2006. The place of occurrence as per FIR itself was situated at a distance of 40 K.Ms. from the police station-Kudra. We do not have any evidence as to what was the geographical situation of the village. There was opportunity for the defence to cross-examination the investigating officer as regards the geographical situation of the village vis-à-vis that of police station and thus to bring on record the facts which could have created a foundation so as to assuming that it was a case of purposeful delay in dispatching the FIR because the prosecution and the police both were colluding together to fabricate it. In absence of any attempt on behalf of the defence to lay down the necessary foundation by cross-examining the investigating officer and thereby not allowing him to place his explanations by some truthful fact relating to the geographical situation of the police station and the place of occurrence and the district headquarters, in our opinion, could itself be sufficient to deny the argument of the defence that the dispatch was in violation of the provisions of Section 157 of the

Cr.P.C.

19. After having said what we have on scanning the evidence of the prosecution in the light of the arguments raised by the defence, we find that the two appeals lack merit. The conviction of the two appellants was properly passed and the sentences were also appropriately inflicted. In the result, the two appeals fail and they are dismissed.

(Dharnidhar Jha, J)

(Aditya Kumar Trivedi, J)

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