

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.598 of 2010

Arising Out of P.S.Case No. 96 Year- 1996 Thana –Bairia District- West Champaran (Bettiah)

Dharamnath Mishra S/O Ram Briksha Mishra R/O Vill. Pujahan Patjirwa, P.S. Srinagar (Pujahan), Distt. West Champaran

State Of Bihar

Versus

.... Appellant/s

with

.... Respondent/s

Criminal Appeal (DB) No. 590 of 2010

Arising Out of P.S.Case No. 96 Year- 1996 Thana –Bairia District- West Champaran (Bettiah)

Subhash Mishra son of Jagdish Mishra, R/o- Laukaria, P.S. Bairai, District West Champaran

State of Bihar

Versus

.... Appellant/s

with

.... Respondent/s

Criminal Appeal (DB) No. 679 of 2010

Arising Out of P.S.Case No. 96 Year- 1996 Thana –Bairia District- West Champaran (Bettiah)

Anil Singh Late Sudama Singh Vill-Laukaria,P.S-Bairia,Dist-West Champaran

The State of Bihar

Versus

.... Appellant/s

with

.... Respondent/s

Criminal Appeal (DB) No. 662 of 2010

Arising Out of P.S.Case No. 96 Year- 1996 Thana –Bairia District- West Champaran (Bettiah)

Rajendra Rao Son Of Late Kamal Rao Resident Of Village- Laukariya, P.S.- Bairiya, District- East Champaran

The State of Bihar

Versus

.... Appellant/s

.... Respondent/s

Appearance :

For the Appellants : Shree Suraj Narayan Sinha, Sr. Advocate
Shree Kamal Nayan Choubey, Sr. Advocate
Shree Bimlesh Kumar Pandey, Advocate
For the State : Shree S.N. Prasad, A.P.P.
Shree S.B. Verma, A.P.P.
Shree A. Sharma, A.P.P.
Shree D.K. Sinha, A.P.P.

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA
and
HONOURABLE SHRI JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT
(Per: HONOURABLE MR.SHRI JUSTICE DHARNIDHAR JHA)
Date: 30-06-2015

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The present batch of four appeals preferred by one convict each of Sessions Trial No.244 of 2001/378 of 1999 set up the challenge to the correctness of finding of guilt in respect of the appellants and appropriateness of the order of sentence passed against each of them by judgment dated 14.05.2010 and order of sentence dated 19.05.2010 passed by the learned 2nd Additional Sessions Judge, West Champaran at Bettiah. The four appellants were put on trial by being charged under Sections 302/149 Indian Penal Code and on being found guilty of offence each of them was directed to suffer rigorous imprisonment for life as also to pay a fine of Rs.10,000/-, else to suffer simple imprisonment for one year. Appellants Anil Singh, Subhash Mishra and Rajendra Rao were also charged under Section 148 Indian Penal Code and Section 27 of the Arms Act and they were also held guilty of those offences. However, no sentence was passed against any of them after they had been convicted of those offences. But, the three appellants, namely, Anil Singh, Subhash

Mishra and Rajendra Rao were directed to suffer rigorous imprisonment for three years each as also to pay a fine of Rs.2,000/- each, else to suffer simple imprisonment for two months each for having committed the offence under Section 27 of the Arms Act.

2. The incident had taken place on 14.09.1996 as per the fardbeyan of P.W.12 Lalan Rao at 2.30 P.M. He along with deceased Satyendra Rao and his grandson Braj Kishore Rao (P.W.5) had gone out of their house for measurement of their sugarcane field by the employees of sugar mill. When they had reached in an orchard, it was stated that the appellants came out of a sugarcane field and seeing deceased Satyendra Rao, appellant Subhash Mishra is said to have said that they had found out their prey. Appellant Rajendra Rao, thereafter, said that deceased Satyendra Rao be captured and taken away. All accused caught deceased Satyendra Rao and started taking him away. The informant (P.W.12) Lalan Rao requested them to release him but appellant Dharamnath Mishra gave a blow with the butt of his gun to P.W. 12 after abusing him on his neck. The informant sat down there. The grandson of the informant, namely, Braj Kishore Rao (P.W.5) also attempted to get deceased Satyendra Rao released whereupon he was also assaulted by the butt of the gun and fists. In the meantime, deceased Satyendra Rao succeeded in wriggling himself out of the clutches of his captors where on accused Birendra Rao fired a shot at him which hit him in his arm. Deceased

Satyendra Rao started running away when appellant Anil Singh is said to have fired the other shot which hit him in his hand. Deceased Satyendra Rao fell down near a *bandh* and was surrounded by the accused persons who stated that his head should be blown off. Rammurti Rao fired a shot into the temple of the deceased Satyendra Rao while appellant Anil Singh fired another shot into his neck causing serious injury to the deceased Satyendra Rao. He bled profusely and died there.

After committing the murder of deceased Satyendra Rao, the accused persons in order to terrorizing persons of the locality, ran away firing shots blank into the air. It was stated that on the alarms raised by the informant as also on the cries of his grandson Braj Kishore Rao (P.W.5), Ram Babu Rao (P.W.6) and Mohan Yadav (not examined) came and saw the occurrence. The informant stated that the accused Ram Murti Rao was a dreaded criminal who had serious antecedents and he was threatening through his gangmen, to hit, the appellants and his son to relinquish a particular land in his favour which was not down and, as such, the offence had been committed.

3. P.W.15 S.I. Satya Narayan Mandal who had investigated the case who say that he had left the police station at 3 P.M. on 14.09.1996 and reached at the place of occurrence at 3.30 P.M. He did not find anyone present there and people started arriving at the scene of occurrence after he had arrived there. He did not record



the statement of any person of Matiyar Tola. He held inquest upon the dead body as appears from his evidence in paragraphs-9 and 13. He recorded the fardbeyan of the informant subsequently and took up the investigation during which course, he inspected the place of occurrence and sent the dead body for postmortem examination. He also recorded the statements of witnesses and after closing the investigation, sent up the appellants for their trial.

4. It appears that there were originally six accused named in the FIR, out of whom, Ram Murti Rao and Birendra Rai died before the trial had commenced leaving the four appellants on trial who had been charged as noted above. The appellants had various defences. Appellant Dharamnath Mishra pleaded that the deceased Satyendra Rao had applied for an arms licence and he had opposed the application as a result of which, he could not get the licence and that annoyance was the reason for implicating the said appellant.

5. The defence of appellants Subhash Mishra and Anil Singh was the same that appellant Subhash Mishra had transferred some land to appellant Anil Singh and the informant and his family wanted that land but could not succeed and on that account, he had implicated both appellants Subhash Mishra and Anil Singh. As regards appellant Rajendra Rao, it appears that there was serious enmity and pendency of criminal cases between the informant and his family members.

6. Out of 15 witnesses, P.W.1 Sanjay Kumar Rao, P.W.2 Mohan Prasad Srivastava, P.W.3 Ashok Kumar Mishra, P.W.4 Sahmad Ali, P.W.8 Sunil Kumar Gupta, P.W.9 Shiv Shankar Prasad Verma and P.W.10 Prem Chand Pandey did not support the charges rather stated that appellant Dharamnath Mishra was not present at the scene of occurrence and was rather present in the office of the Public Relations and the District Transport Officers while attending to the repair of his tractor which was carried out by P.W.4 Sahmad Ali who also supported that fact. Out of the other witnesses P.W.5 Braj Kishore Rao was the grandson of the informant who had allegedly accompanied P.W. 12 at the time of occurrence. P.W.6 Ram Babu Rao was named in the FIR as the person who had come at the scene of occurrence hearing the alarms of the informant. P.W.7 Barister Rao was the son of the informant, not named in the FIR as a witness, and claimed that he came up after hearing the sound of firing, but still claimed to be an eye witness to the occurrence. P.W.11 Kashi Nath Yadav was declared hostile. P.W.12 Lalan Rao was the informant of the case. P.W.13 Madan Rao was not an eye witness while P.W.14 Dr. Sunil Kumar had held postmortem examination on the dead body of the deceased Satyendra Rao and had issued the postmortem examination report. P.W.15 Satya Narayan Mandal was the investigating officer.

7. Seven witnesses were examined in their defence by

the appellants and they all stated that the appellants had not committed the offence and some of them stated that they were very much present there for getting fields measured by the employees of the sugarcane mill.

8. We were taken through the evidence of the witnesses, like, P.W.5 Braj Kishore Rao, P.W.6 Ram Babu Rao besides that of P.W. 12 and what we find is that the learned trial Judge had himself refused to act upon the evidence of P.W.7 Barister Rao because he had stated before the police that he was not present at the scene of occurrence and he was away from his house and when he came, he learnt about the incident. So far as P.W.5 Braj Kishore Rao, P.W.6 Ram Babu Rao and P.W.12 Lalan Rao, the informant is concerned, there were many conflicting statements brought into our notice by the learned counsel appearing on behalf of the appellants. It was contended that the FIR recited as if appellant Ram Murti Rao had fired a shot into the temple of the deceased Satyendra Rao while the other was fired by appellant Anil Singh into his throat, but P.W.6 Ram Babu Rao stated that it was appellant Anil Singh who had fired the shot into the right temple of the deceased Satyendra Rao from a point blank range. PW-7 Barister Rao supported the allegation that Ram Murti Rao fired a shot by his rifle on the temple of his brother, while appellant Anil Singh shot the deceased into his jaw and not in his throat which is the initial prosecution allegation as per FIR against

appellant Anil Singh. P.W.-7 appears a hearsay witness as he stated in Para 29 that he was told about the occurrence by his father and nephew. PW 12 the informant had stuck to his story contained in the FIR with a minor abrasion that appellant Anil Singh as per PW 12 had ordered for blasting the head of the deceased off. Similar was the evidence of P.W.5 Braj Kishore Rao who also stated that appellant Anil Singh had fired into the left temple of the deceased. Those witnesses had besides coming up with the story that appellant Anil Singh had fired into the throat of the deceased Satyendra Rao and attributed that act to appellant Anil Singh which was contrary to the basic prosecution story which recited that appellant Rajendra Rao had fired the shot into the temple of the deceased Satyendra Rao while appellant Anil Singh had fired the shot into his throat.

9. In addition to the above contradictory evidence of witnesses, our attention was also drawn to the fact that the witnesses had stated that appellant Anil Singh had fired the shot on his right temple whereas the medical evidence given by P.W.14 Dr. Sunil Kumar was pointing out that the shot, i.e., injury no.6 which was on the right side of the neck with blackening around the skin, could not have been fired by a rifle rather it was a gun shot and a single pellet had been recovered. In addition to the above conflict appearing between the oral and medical evidence, what we find further was that injury no.3 a multiple lacerated injuries ten in number each of the size



by ¼”x in diameter was in the front of the chest and that shot and firing thereof is not attributed to any of the accused persons. Thus, the manner of occurrence which was described by the witnesses, like, P.Ws.5,6, or 12 appear not only contrary to each other as regards the individual act which was initially stated in the First Information Report but the finding of injury no.3 a cluster of lacerated multiple wounds ten in number each measuring ¼” could also not be attributed to any shot and that too to any of the accused persons. These serious defects in the prosecution case lead us to raise an inference as if the occurrence had not been seen by any of the witnesses.

10. We have other reasons to hold that the witnesses had not seen or could not have the seen the occurrence. It was admitted by almost all the witnesses that the informant had not received any notice to get his sugarcane field measured by the employees of the mill and if that be so then the informant and his son and for that matter his grand son did not have any reason to go to the place of occurrence. It has come into the evidence of the witnesses consistently that many persons of Matiyar Tola which was comprised by many Tolas, hailing from different castes and communities had assembled there or were present there because the employees of the sugar mill had arrived there for measuring sugarcane fields of different farmers. The occurrence had taken place allegedly at 2.30 P.M., i.e., in the broad-day light and if any independent and

uninterested persons were present there, it would have been natural that they ought to have come to support the manner of occurrence and the participation of the appellants in commission of offence. None of them or any other independent persons came forward to support the prosecution story.

11. The evidences of the witnesses indicate as if they had remained there throughout till the police had arrived there but as we have pointed out with reference to the evidence of P.W.15 Satya Narayan Mandal, the investigating officer, he had probably picked up a rumour and had jotted down that information into the station diary and had left the police station by a scooter to reach the place of occurrence and when he had reached at 3.30 P.M., he did not find any one present at the place of occurrence. The dead body was lying there. His arrival attracted persons of Matiyar Tola, but none from the family of the informant was there and it appears that many other persons had arrived there after the arrival of PW 15 at the place of occurrence. The investigating officer did not question any one of them and probably no one was willing to come forward to tell him as to what had happened and who had indeed committed the murder of deceased Satyendra Rao. PW 15, as such, proceeded to hold inquest upon the dead body to prepare the inquest report at 3.30 P.M. This fact is evidently clear from Ext-6 the inquest report that inquest was held at 3.30 P.M. on 14.09.1996. The investigating officer also

admitted this fact in paragraph-13 of his cross-examination. He also pointed out in paragraph-9 that when he arrived, he had not found either the informant or any one of his family and no one indeed came forward to support the prosecution story. The above statement of the investigating officer also gets corroboration from the fact that the fardbeyan of P.W.12 Lalan Rao was recorded on 14.09.1996, at 04.00 PM. i.e., half an hour after the inquest was held and the report was prepared and the FIR of the case was drawn up at 5.45 P.M. The above facts lead to one irresistible conclusion that neither the informant nor any one of his family was ever present at the place of occurrence and their claim that they had been there throughout the incident appears a false and unacceptable claim. The other natural inference which could be drawn on the basis of the above conclusion is that neither the informant nor his grandson or his son or any one who could be accompanying him, could be an eye witness to the occurrence. This is the inference which concretely comes out of the evidence on record and the attending circumstances appearing from it also support the same view. The cross-examination part of the evidence of P.W.5 Braj Kishore Rao who happened to be the grandson of the informant indicates as if there were series of criminal cases of murder, etc. which had cropped up between the parties. There was ill-will between the informant's family and those of the present appellants for other reasons also which were suggested to the

witnesses during their cross-examination. The suggestions regarding the pendency or institution of criminal cases were not admitted but the same was also not categorically denied. Pendency of criminal cases against the deceased was admitted which indicated that the deceased Satyendra Rao was bearing animus to many persons who were equally inimical to him. It was a secluded place which was amidst the sugarcane fields of village-Matiyar Tola and it could be possible that no one was there except the enemies of deceased Satyendra Rao who had the opportune moment to utilize and it was probably it that the deceased was killed by any of his enemies.

12. The defence witnesses examined by the appellants were pointing out that they were very much present near the scene of the occurrence when the occurrence, had taken place and each of them was pointing out that it were not the appellants who had committed the offence rather it was some one else not identified who perpetrated the offence. We do not see any reason, after having analyzed the prosecution evidence, why not to act upon the probability which was appearing from the defence evidence and acting accordingly, we find merit in the four appeals which are allowed by setting aside the judgment of conviction and order of sentence. The appellants are acquitted of the charge they had been held guilty of. All the appellants than appellant Anil Singh are on bail. They shall stand discharged from the liabilities of their respective bail

bonds. Appellant Anil Singh who is in custody, shall be released
forthwith, if not wanted in any other case.

(Dharnidhar Jha, J.)

(Ahsanuddin Amanullah, J.)

Brajesh Kumar/Saif/-

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