

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.381 of 2010

Against the Judgment of conviction dated 04.01.2010 and Order of sentence dated 07.01.2010 passed by the 3rd Additional Sessions Judge, Bhagalpur, in Sessions Trial No.301(B) of 1992

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Suman Singh, son of Late Ram Kripal Singh, resident of Village- Tarer, P.S- Sanhaula, District- Bhagalpur.

.... Appellant.

Versus

The State of Bihar

.... Respondent.

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Appearance :

For the Appellant : Mrs. Tanuja Mishra, Advocate.

For the State : Mr. A.K. Sinha, A.P.P.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 08-12-2015

The Appellant has been convicted under Section 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life as also under Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for five years vide Judgment of conviction dated 04.01.2010 and Order of sentence dated 07.01.2010 passed by the 3rd Additional Sessions Judge, Bhagalpur, in Sessions Trial No.301(B) of 1992.

2. It is notable that three separate trials were held with regard to the nine accused. In the first trial, four persons were convicted whereas three acquitted and in the next two trials two persons were

convicted, one in each including the Appellant.

3. The case of the prosecution, according to the Informant Dushyant Singh (P.W.6) is that in the night of 08.08.1990 at about 08.00 P.M., nine accused persons came to the house of his maternal uncle and killed his maternal uncle, maternal aunt and his brother. Whereas the Appellant is concerned, the allegation against him is that he alongwith Jaldhar Yadav and Chhanguri Yadav fired at his brother on account of which he died. The reasons for the occurrence is that he used to give some share from the money which he used to receive from supply of sand from the river near NTPC Kahalgaon and, later on, some dispute arose between the accused persons and himself as also his brother on account of which they used to hide in his maternal uncle's house and on the date of occurrence, his brother was caught by them and killed alongwith his maternal uncle and aunt.

4. During trial, the prosecution examined altogether nine witnesses.

5. P.W.1 Purushotam Singh is a witness on the inquest report (Ext.2) and he proved his signature on the inquest report as Ext.1. P.W.2 Chandra Kishore Singh was declared hostile whereas P.W.3 Diwakar Malakar is tendered witness.

6. P.W.4 Nikhil Kumar Singh is the son of the deceased Subodh Singh and Nunia Devi and was aged about 6 years at the time of



occurrence. He stated that on the date of occurrence while he and his sister were studying in the house, the Appellant, Murari Singh, Nankari Singh, Jitu Singh, Bulu Singh, Subla Singh, Timha Singh, Jaldhar Yadav and Jhanguri Yadav came and caught hold of his father and shot him dead. He climbed on to the lap of his mother but he was pulled down from there and his mother was also shot dead. At a little distance, his cousin brother Buchi Bhaiya was also shot dead. He identified the accused persons in the dock. In cross examination, he stated that he had given his statement twice in the court and on both the days, he could not identify any accused persons but had disclosed the name of the accused on the basis of information derived by him. He explained that the deceased Bucho Bhaiya was his maternal brother. He confirms the presence of his sister Nima (P.W.7) on the date of occurrence, who was elder than him.

7. P.W.5 Gandhi Singh is merely a witness on the point of murder and is formal in nature.

8. P.W.6 Dushyant Singh is the Informant who stated that on the date of occurrence while he was in the Thakurbari, Appellant Suman Singh, Subla Singh, Ghanghuri Yadav, Jaldhar Yadav came from the north side gate of Subodh Singh. Murari Singh, Jitu Singh, Bhulur Singh, Ankari Singh, Timha Singh, all the five came from the south-west on the gate of Subodh Singh and entered the courtyard. They

caught hold of the deceased Subodh Singh and his wife Nunia Devi, who made attempt to run away but she was shot dead by the Appellant on the gate itself. Behind her, his younger brother deceased Jaswant Singh alias Bucha Singh tried to run but he was also caught hold of by the Appellant who shot him dead at a little distance. His uncle Subodh Singh was shot dead by Murari Singh and others and then accused persons ran away towards east. He stated that he used to do the contract work of sand lifting and there were some differences between Appellant Suman Singh and Pappu Yadav who used to make demand of share in the contract of sand which he had stopped giving. He proved the Fardbeyan and his signature and explained that twice he had given his evidence in the court. In cross examination, he stated that his own house was 500 yards away from the place of occurrence, where his wife, children and others were present. There were two cases pending against him but his brother was not accused in the said cases. In cross examination, he denied the suggestion that when he used to do the work of contract of supply of sand, others do not make bid on account of fear. He also explained that Appellant Suman Singh was his partner in the contract of sand and Suman Singh stopped giving him his share. His attention was drawn to the earlier statement that he had not stated before the police that Murari Singh, Jitu Singh, Bhulur Singh, Ankari Singh, Timha Singh, were standing in the south-west of the door of Subodh

Singh and his wife Nunika Devi had been shot dead by the Appellant when she was running away. He asserted about her killing by the Appellant in the Fardbeyan as also that his brother was caught 50 yards away and was shot dead by the Appellant. He also stated that few others had come on his 'hulla' to whom he had disclosed about the occurrence. His attention was drawn to the motive of the occurrence and that he had not stated so earlier, however, we find from his evidence that he had very much stated so in the Fardbeyan. His attention was also drawn to the details of the manner of occurrence which does not have any reasonable effect upon the evidence of the witnesses.

9. P.W.7 Neema alias Namina is the daughter of the deceased Subodh Singh and Nunia Devi, who stated that on the date of occurrence while she was sitting in the courtyard alongwith her brother Nikhil Kumar Singh and studying, Suman Singh, Murari Singh, Ankuri Singh, Bullu Singh, Jitu Singh, Timha Singh, Jaldhar Yadav and Anguri Yadav came armed with gun and shot dead her parents and her cousin brother. She identified the appellant in the dock. She also stated that she was 8 years old on the date of occurrence and that her brother was younger than her. She also stated that she had given her evidence earlier and that what evidence was to be given was discussed with the informant. Her attention was also drawn to her earlier evidence given earlier which she had given 10 years earlier and she asserted that even

then she had named the Appellant Suman Singh. In cross examination, she stated that her parents were shot dead near the gate whereas cousin brother was shot dead in the field. Her attention was drawn to the evidence given on 25.04.2004 in the earlier trial and that she had only named Murari Singh but she denied such suggestion. A general contradiction was taken by her that she had not given such statement to the Investigating Officer as she had done in the court.

10. P.W.8 is Dr. Nagendra Narayan Bhagat who conducted the Post-Mortem Examination of all the three deceased. He appeared to have found the firearm injuries which were the cause of death of all the three deceased.

He found the following ante mortem injuries on the person of the deceased Nunia Devi:

(i) Firearm, wound of entry 2.5 Cm. in diameter, Margin inverted, tattooing and blackening around over posterior side of right arm upper part.

On dissection projectile traversed through interior side of right scapula, fracturing and 2nd right rib, right lung, Metallic ball was in the muscle and blood in the chest cavity.

(ii). Firearm wound of entry 2.5 Cm. in diameter blackening around Margin inverted 5" below right nipple, 3" right lateral of right nipple on right side chest. Projectile traversed through 5th rib, right lung

lacerating it. Metallic ball in the lung recovered.

(iii). Firearm- wound of entry 2.5 Cm. in diameter, Margin inverted 1" right of mid sternal line and 1/2" above nipple line on chest. Projectile traversed fracturing sternum right lung, in the heart.

He found the following ante mortem injuries on the person of the deceased Subodh Singh:

(i) Firearm wound of entry 1.5 Cm. in diameter, Margin inverted, tattooing in 4" area around the wound, 3" left of mid spinal line 9" below cervical prominence on back.

(ii). Wound of exit 2 Cm. in diameter, Margin inverted, 1/2" below right nipple and 4" right of mid sternal line.

Both wounds were found communicating projectile travelled through lacerating spleen, lungs, liver, right lungs, fracturing 5th rib and out through wound of exit. Blood in chest in abdominal cavity were present.

(iii). Wound of entry 1.5 Cm. in diameter Margin inverted 1" above medial of left nipple with tattooing.

(iv). Wound of exit 2.5 Cm., Margin inverted, 2" below right side on back, 6" right lateral of mid spinal line.

Both wounds communicating, projectile traversed through wound of entry left lung, heart, right lung out through wound of exit. Blood in chest cavity.

He found the following injuries on the person of the deceased Jashwant Singh alias Buchha Singh.

(i). Firearm wound of entry 1/2 Cm. in diameter, Margin inverted, tattooing around wound 1" right of mid spinal line 5" below cervical prominence.

(ii). Wound of exit 1/2 Cm. diameter, Margin inverted on left side chest 4" below left nipple 2½" left of mid sternal line. Blood in chest cavity and abdomen.

Both wound found communicating. Projectile traversed through wound of entry through 5th rib. Posteriority injuring right lung diaphragm, stomach, mesentery, coloured and through end of exit.

(iii). Wound of entry 2 Cm. diameter with blackening and tattooing 3" area around the wound 5" right side of mid spinal line, 6" below interior angle of right scapula.

On dissection projectile traversed through liner, stomach, and lung and mesentery, a conical bullet recovered.

(iv). Wound of entry 1 Cm. diameter oblique down wards directed, right side spinal line 12" below cervical prominence. On dissection projectile traversed through spinal muscles, loops of intestines and laying left side in pelvic cavity in muscles, conical bullet.

11. P.W.9 is the Investigating Officer of the case, who stated that on 08.08.1990 he was posted at Sanhaura Police Station

where at about 11.00 O'clock he learnt about the untoward incidents in the village. He made Sanha No.118 and came to the place of occurrence where he recorded the Fardbeyan of P.W.6. Thereafter, he conducted the inquest report and sent the dead bodies for Post-Mortem Examination. He also inspected the place of occurrence and recorded the further statement of the Informant. According to him, the place of occurrence was the house of the deceased Subodh Singh, which was situated on the eastern Tola of the village. The house was consisting of three rooms and a verandah. There was a door which led to the courtyard. Discharged cartridges have been found at the place of occurrence. He found the dead body of the deceased Nunuia Devi about three yards away from the eastern side of the gate About 50 yards north-west corner, he found the dead body of Jaswant Singh alial Buchcha Singh. Inside the house in a passage, there was dead body of Subodh Singh. He then recorded the statement of other witnesses. In cross examination, he was asked as to when First Information Report was sent to the court to which he stated that he did not remember. We find that his attention was drawn to the earlier statement of the informant but it is not so longwinding that it leaves us only to speculate as to what was the exact difference. In fact, we find that the attention of the Informant was drawn to even the contents stated in the fardbeyan. We also find no important contradiction in the statement of Neema and Nikhil , P.W.7

and P.W.4 respectively. We find that the evidence of Neema and Nikhil Kumar Singh of earlier trial even though exhibited but it has no meaning since it has not been put to them. Hence the contents remain inadmissible in law.

12. We also find that there are four defence witnesses. They are Parmanand Paswan (D.W.1), Sushil Kumar Choudhary (D.W.2), Awadh Narayan Jha (D.W.3) and Diwakar Prasad Singh (D.W.4). Some of them were named in the First Information Report having been informed by the informant. and have been examined by the defence.

13. D.W.1 stated that after the occurrence when he went to the place of occurrence he did not find the Informant present there.

He appears to be Chowkidar of the village who stated that after the occurrence he had gone to see the dead bodies and even though he was examined by the police and saw the dead bodies neither of the children of Suobdh Singh nor the Informant were present. In the evening no one used to live at the Thakurbari and while he was at the place of occurrence nobody had given statement to the police. He has stated that he had given the statement to the police and that he had informed the police but we find that neither there is any mention in the case diary about the information having been received from the Chowkidar nor his statement had been recorded.

14. D.W.2 Sushil Kumar Choudhary stated he had not heard

the name of the Appellant having been disclosed by anyone and that there was no dispute between the Appellant and the informant over contract work of sand.

15. D.W.3 Awadh Narayan Jha stated that he did not find anyone at the place of occurrence and that the Appellant did not have any dispute with the Informant over the contract work of sand.

16. D.W.4 Diwakar Prasad Singh stated that some outsiders have committed the murder of Subodh Singh and the rests.

17. However we find that D.Ws.2, 3 and 4 were not examined by the police and, hence, their evidence has no value.

18. It has been submitted on behalf of the Appellant that the First Information Report reached Court only on 18.08.1990 which is enough to discard the prosecution case. Further, there are contradictions in the evidence of P.W.6 of which attention has been drawn and evidence of P.W.9 the Investigating Officer completely contradicts the witnesses. Further the statement of the Informant is that he was an eye witness to the extent of seeing the occurrence is highly doubtful since the occurrence had taken place late at night.

19. On an analysis of evidence, discussed above, we find that P.W.6 has consistently narrated what he had done in the Fardbeyan which was given within two hours of the occurrence leaving no scope for any interpolation. His statement has further been corroborated by the

evidence of P.W.4 Nikhil Kumar Singh and P.W.7 Neema alias Namina, both children of Subodh and Nuniya.

20. We are inclined to place much reliance on the evidence of P.W.4 who has innocently stated that he reiterated the names of Appellant and others on what he had heard. He evidently could not have been in a position to identify the accused since he was merely six years of age on the date of occurrence and, therefore, his statement is very natural and trustworthy. Similar is the evidence of P.W.7, who was also aged about 8 years on the date of occurrence and she has given very truthful narration about the occurrence which is consistent with the evidence of the rest of the witnesses. P.W.9, the Investigating Officer found the marks of blood and the dead bodies as was narrated by the witnesses. Thus, the manner of occurrence is well proved. Also since the Appellant was very well known to the Informant, there is no scope for his wrong identification. Further, even though we are inclined to ignore the specific allegation against the Appellant of having shot dead the three deceased but consistent evidence being that he was one of the perpetrators of the crime alongwith others a case under Section 302/34 of the Indian Penal Code is well made out. We thus reject the arguments advanced on behalf of the Appellant in this regard.

21. As for First Information Report having reached court on 18.08.1990, no doubt, we find that the signature of the C.J.M. appears to

be 18.08.1990 but this fact specifically was not put to the Investigating Officer as to why it was received in the court on 18.08.1990. Instead, just a general query was made from him requiring him to give the date as to when he had sent the First Information Report. When we tried to cross check this fact with the order sheet of the Magistrate, we find that the order sheets of the Magistrate of the year 1990-91 is missing from the records. In the facts of the case, we are not inclined to give benefit to the Appellant of this infirmity. We are instead inclined to believe that due to inadvertence the Chief Judicial Magistrate had noted the date of receiving the First Information Report as 18.08.1990 which can be a slip of pen specially when the matter was reported immediately to the police and F.I.R. was registered.

22. In the result, finding no merit in this appeal, the same is dismissed.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

Pradeep Srivastava/A.F.R.

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