

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Appeal (DB) No.271 of 2010**

Arising Out of P.S.Case No. -51 Year- 2003 Thana -Karakat District- SASARAM (ROHTAS)

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Ranjan Singh son of Late Raghu Nandan Singh, resident of village-Kirahi P.S.  
Karakat, District-Rohtas.

.... .... Appellant/s

Versus

The State of Bihar

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Bhaskar Shanker

For the Respondent/s : Mr.

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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: 20-05-2015**

The present appellant has challenged through the present appeal the judgment of conviction dated 28.01.2008 and order of sentence dated 31.01.2008 passed by the learned Presiding Officer, F.T.C. -IV, Rohtas at Sasaram in Sessions Trial No. 367 of 2003/Trial No. 166 of 2006 by which the appellant was held guilty of committing offences under Section 302 Indian Penal Code and Section 27 of the Arms Act and was directed to suffer rigorous imprisonment for life and for two years respectively on the above two counts.

2. The prosecution case is that on 28.4.2003, the informant P.W.-5 Sudarshan Singh along with the deceased Om Prakash @ Gharbharan Singh and the present appellant Ranjan Singh, Wakil Singh (not examined) and Bikal Singh were sitting at the Darwaza of

above named Wakil Singh. The appellant Ranjan Singh was found somewhat perplexed and was giving out that he would have to shoot someone. The deceased Om Prakash @ Gharbharan Singh was started persuading him to get rid himself of such thoughts.

3. After a while, the appellant Ranjan Singh, it is said left the place and started for his house and the deceased followed him. Seeing that the deceased Om Prakash @ Gharbharan Singh was coming towards his house, he ran into his house to emerge from there with a pistol. He fired a shot at Om Prakash @ Gharbharan Singh. Om Prakash @ Gharbharan Singh fell down and he died instantaneously.

4. After having killed Om Prakash @ Gharbharan Singh, it is stated that the appellant re-entered his house running to re-appear again with a sword on his shoulder and ran into the west.

5. The informant stated that many persons heard the sound of gun shot and assembled there. The information about the murder of deceased Om Prakash @ Gharbharan Singh was conveyed to his family members through a boy on which the family members of the deceased also came there wailing and weeping.

6. The Investigating Officer has not been examined. We are, as such, in complete dark as to how the investigation had proceeded. However what we find is that being sent up for trial, the appellant was

held guilty of committing the offence and sentenced as pointed out at the very outset of the present judgment.

7. The defence of the appellant as suggested to P.W.-5 the informant of the case and the solitary witness coming in support of the incidence as an eye-witness was that there was some altercation between the informant and the deceased on the occasion of Saraswati Puja and it was the appellant who had himself killed the deceased. The other suggestion which was given to P.W. 5 in paragraph-7 was that in fact the deceased and he himself was taking liquor in the house of the said Wakil Singh and during that course, there was some quarrel between the deceased and the informant and it was the informant who had killed him. Thus, what was suggested by the appellant in his defence was that it was none other than P.W.-5 who had murdered Om Prakash @ Gharbharan Singh.

8. The prosecution examined as many as eight witnesses in support of the charge. P.W.-1 Dinanath Singh was a resident of village-Badiladih the place of residence of the deceased Om Prakash @ Gharbharan Singh and as per his evidence, he had come to village Khirhi for purchasing medicines and other articles and on hearing the sound of gun shot, he came to the house of appellant Ranjan Singh to find that the deceased was lying dead with gun shot injury. P.W.-1 stated that he did not see the shot being fired. P.W.-2 Chhotelal Singh

was yet another resident of village-Badilahdih and he stated that while working in his Khalihan, he heard about the murder of the deceased Om Prakash @ Gharbharan Singh at village Khirhi and he came to the house of this appellant Ranjan Singh to see that the dead body of the deceased Om Prakash @ Gharbharan Singh was lying there in front of the Darwaza of the appellant and he further learnt that the appellant had ran away with a sword from the village after committing the murder. It was this witness P.W.-2 Chhotelal Singh who was suggested one of versions of the defence pleas that the informant had some altercation with the deceased at the occasion of the Saraswati Puja and it was the informant who had shot and killed the deceased Om Prakash @ Gharbharan Singh. P.W.-3, Meera Devi, was the wife of deceased Om Prakash @ Gharbharan Singh and she was not an eye-witness to the occurrence. She had also similarly arrived at the scene of occurrence as did P.W.-4 Butai Singh, the father of the deceased. Both of them stated that after having been communicated the message about the murder of the deceased Om Prakash @ Gharbharan Singh, they came to the house of this appellant to find the deceased lying dead bearing a gunshot injury at the Darwaza of the house of the present appellant. None of the two witnesses or P.Ws.1 and 2 had claimed that they had seen any part of the occurrence.



9. It was P.W.5, the informant of the case who had supported the story by stating that while sitting at the house of Wakil Singh at village-Khirhi with the deceased Om Prakash @ Gharbharan Singh and this appellant, he heard that this appellant had expressed to the deceased his intention of killing some one by gun shot and the deceased was persuading him to free himself of such ideas and while talking between themselves, the two left the house of Wakil Singh and started moving towards that of the present appellant. The informant claimed that he followed the deceased and the present appellant, when appellant Ranjan Singh entered inside his house to come back with a pistol and he fired a shot in the chest of the deceased Om Prakash @ Gharbharan Singh who fell injured and died there. Persons of the village assembled there and this appellant ran away towards west picking up a sword.

10. The police was informed and on arrival of the Officer-in-Charge of the police station, the statement of P.W.5 was recorded. A boy was sent to the house of deceased Om Prakash @ Gharbharan Singh for conveying the message about his murder. The inquest report was prepared by the investigating officer S.I., R.K.Pathak.

During cross-examination, the informant stated that the deceased was his nephew considering village relationship and further stated that the distance between village Badiladih and Khirhi was

about one kilometer. The investigating officer came after 2.15 hours of the incident. As regards the purpose of the informant going to village-Khirhi, he had stated that he had gone to contact the barber and blacksmith as they were required at the occasion of the marriage of his niece. However, the witness could not point out the date on which his niece was to be married when he was put questions as to what was the reason for going to the house of Wakil Singh, he stated that he cannot point out any and he further stated that he did not himself go to convey the news of the murder of the deceased Om Prakash @ Gharbharan Singh to his family members. And, that he sent a boy after 15-20 minutes of the occurrence for conveying the message of the murder of the deceased to his family members upon which all the family members of the deceased had come there.

11. P.W.6 was Dr. Tej Narain Singh who had held postmortem examination on the dead body of deceased Om Prakash @ Gharbharan Singh and had found following ante-mortem injuries:-

- i. Lacerated wound 2 cm x 1 cm up to cavity deep with inverted and blackened margin in left 4<sup>th</sup> costal rib 2 cm. left to turner.

In the opinion of P.W.6, it was wound of nature.

- ii. The other wound was also a lacerated ½ cm x ½ cm. on the left fifth inter-costal space, 3 cm. left to vertebra.

In the opinion of P.W6 the thorax and chest cartages were found full of blood. The right lung was pale and intact. The left lung was found lacerated. Heart was found pale and lacerated.

P.W.6 extricated a single bullet from beneath the skin of the 4<sup>th</sup> left inter-costal space posteriorally 5 cm. left to vertebra which was sealed and handed over to the police. The other underlying organs were intact and in the opinion of P.W.6, the death had occurred due to haemorrhage and shock resulting from the above noted injuries caused by fire arm. P.W.6 stated that injury no.1 was the wound of entry and the injury no.2 was separate injury which was not caused by fire arm. Injury no.1 might have been caused from the distance of about five feet.

12. P.W.7 was the cousin of the deceased Om Prakash @ Gharbharan Singh and he stated that he did not know as to who had murdered him and he had seen the dead body of deceased Om Prakash @ Gharbharan Singh at the Darwaza of the appellant.

13. While addressing arguments to us, it was contended by Smt. Meena Singh, learned counsel appearing on behalf of the appellant that there is a ring of suspicion about the place of occurrence and P.W.5 was not satisfactorily explaining as to why he was at the

house of Wakil Singh and likewise, he was again not giving the date on which his niece was likely to be got married. Submission was that these two circumstances coupled with the fact that there was no motive for the appellant to commit the murder of deceased Om Prakash @ Gharbharan Singh indicated that the prosecution story was suspicious.

14. Susri Sashi Bala Verma, learned Additional Public Prosecutor submitted that P.W.5 had definitely not pointed out as to what was the reason for his presence at the house of Wakil Singh nor he had stated the date on which his niece was to be married but still the circumstances appearing from the evidence of other witnesses indicated that there could be none but this appellant who had committed the murder of deceased Om Prakash @ Gharbharan Singh.

15. On scanning the evidence of witnesses, we find that the conviction of the appellant was based on the solitary testimony of P.W.5 whom the learned trial Judge had found trustworthy. We had carefully considered the evidence of P.W.5 and we do not find any particular reason appearing from the record or his cross-examination which could distract our opinion from that of the learned trial Judge that he appeared to be a trustworthy witness. It is true that he had not given any reason as to why he was there at the house of Wakil Singh to sit with the deceased Om Prakash @ Gharbharan Singh or this



appellant and others, but could not we remind ourselves that due to our casual behaviours, it is not unusual for us to go to anybody's place at any unearthly hour for no particular reasons or purpose. Our society is not a society as could be compared with an European or American society where behavioral patterns are definite. We are society of indefinite behaviour and uncertain demonstration of the same. The witness P.W.5 had given a reason that he had come to village- Khirhi for contacting the barber and blacksmith for taking there services on the occasion of marriage of her niece which was likely to be solemnized and if that was so, then during that course as usually happens in rural areas of our country. P.W.5 could have sat down to gossip or chat with other persons even if there was no particular necessity of sitting there. The behaviour of P.W.5 in sitting with others at the house of certain Wakil Singh to us does not appear an unacceptable behaviour rendering the witness a chance witness or a witness who could not be relied upon as regards his claim of remaining there.

The other part of the evidence of P.W.5 is that he heard the deceased Om Prakash @ Gharbharan Singh and this appellant talking to each other when the appellant was found a bit perplexed and disturbed mentally and he was talking of killing somebody by gun. The deceased had attempted and continued to persuade him to throw



out these mischievous ideas from his mind and was attempting to calm down the appellant so that no untoward incident was to happen. It appears that the deceased had started moving with the appellant up to his house when the appellant had gone inside to come with a pistol to fire a shot at him. The informant stated that he had heard the dialogue between the two and had himself started following the two and thus was somewhere in the proximity to see the occurrence.

16. The present appellant had killed the deceased Om Prakash @ Gharbharan Singh at his Darwaza appears established from other circumstances also. P.W.1 stated that he was at his Khalihan when he heard the sound of gun shot and he rushed to the scene of occurrence, i.e., the house of the present appellant to find that the deceased Om Prakash @ Gharbharan Singh was lying dead with a gun shot injury in his chest. There, he learnt that the appellant had ran away from his house carrying a sword. This part of the evidence of learning about the fleeing away of the appellant may not be admissible as P.W.1 had not pointed out as to who were persons from whom he had learnt about the appellant's flight from his house with a sword after committing the murder of the deceased. But other witnesses, like, P.W.2 who was very much at village-Khirhi to purchase some medicines or articles, also testified to the fact that the dead body of deceased Om Prakash @ Gharbharan Singh was found



lying bearing gun shot injury at the very house of this appellant. The wife of the deceased P.W.4 and his father P.W.4 also came to the scene of occurrence after being conveyed the message of the murder of their near and dear ones and they also found the dead body of the deceased lying at the house of the appellant. We have pointed out that we are handicapped because the investigating officer did not come for his evidence, but the evidence of these witnesses clearly indicated that the dead body was lying at the house of the appellant, thus, definitely indicating that the murder had been committed at the house of the appellant. We could not find out any particular reason as to why we should doubt the evidence of P.W.5 and his claim of having seen the occurrence. Thus, what we find from the circumstance and direct evidence is that it was this appellant who had committed the murder of deceased Om Prakash @ Gharbharan Singh.

17. But, then, there are circumstances which mitigate the offence of the appellant. P.W.5 has himself stated right from the time of filing of the report that the appellant was mentally agitated and upset and was blurring out his intentions of firing a shot to kill someone. He was so much agitated or excited that the deceased Om Prakash @ Gharbharan Singh attempted to pacify and calm him down by talking to him and suggesting to him to get rid of such destructive ideas and thoughts. It was in this attempt of the deceased that he



accompanied the present appellant up to his house. The appellant was definitely upset as appears indicated by the evidence of P.W.5 and he was probably over taken completely by his nerves of excitement which caused definitely the loss of his composure and control over himself. What appears to us is that the act of running inside the house to bring a pistol and after finding that the appellant was unnecessarily following him, was such an act, to us, which was caused the disappearance of self-control of the appellant and finally, the act of firing the shot was done, more on account of the circumstances which had provoked the appellant to do it in a state of being excited so much so as to lose self control. In that view of the matter, what we find is that the act of firing the shot, could not be said to have been committed by the requisite intent and knowledge and, as such, may not fall within the category of culpable homicide amounting to murder rather it could be culpable homicide not amounting to murder and thus, we find that the offence committed by the appellant is one under Section 304 Part II of the Indian Penal Code. The appellant had definitely used the unlawful arms for achieving the most heinous unlawful purpose and, as such, his conviction under Section 27 of the Arms Act appears appropriately recorded.

18. Coming to the sentence which we propose to inflict upon him, we direct the appellant to be sentenced to the period he has

already undergone without disturbing the sentence which was imposed upon the appellant after being convicted for committing the offence under Section 27 of the Arms Act. With the above modification in the finding of guilt and the order of sentence, we find no merit in the appeal and the same is dismissed. The sentences have run concurrently. As a result of this order of sentence, the appellant shall be released forthwith, if not wanted in any other case.

**(Dharnidhar Jha, J.)**

**(Ahsanuddin Amanullah, J.)**

Brajesh Kr./Saif-

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