

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.367 of 2010

Arising out of PS.Case No. 166 Year- 2005 Thana –Dhanarua District- PATNA

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Parma Paswan son of Lakhan Paswan resident of village Tarma P.s.-Dhanarua,
District-Patna.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant : Shri Dharendra Kumar Sinha, Advocate

For the State : Sushri Shashi Bala Verma, A.P.P.

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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

We have heard Shri Dharendra Kumar Sinha,
learned counsel appearing on behalf of the solitary appellant Parma
Paswan in this appeal as also Sushri Shashi Bala Verma, the learned
Additional Public Prosecutor on behalf of the State.

2. As per the prosecution case Baleshwar Paswan
(P.W.1) was going with his wife to see his daughter who was ill.
When the couple had reached at Tarwa Pamera and was on the road
it was stated that the seven accused persons named in the First
Information Report including the present appellant, who were
already waiting there, surrounded the couple and started abusing the
informant. The accused persons were armed with pistols. The
accused persons caught the wife of the informant. The lady pushed
the informant out and she ran away from there but the three accused

persons, namely, Bhushan Paswan, Tibul Paswan and this appellant Parma Paswan fired shot from their respective weapon killing Shakunti Devi, the wife of the informant.

3. The fardbeyan (Ext.4) in respect of the incident was recorded by S.I. Bali Sharma and the First Information Report of the case (Ext.3) was drawn up on that basis. The case was investigated into by P.W.8 A.S.I. Radha Marandi. On conclusion of the investigation the solitary appellant was sent up for trial as others evaded justice. The appellant by the judgment dated 17.02.2010 and order of sentence dated 22.02.2010 passed by the learned Presiding Officer of Fast Track Court No. 3, Patna in Sessions Trial No. 1373 of 2006/150 of 2009 was held guilty of committing offence under Sections 302/149 of the Indian Penal Code and 27 of the Arms Act and was directed after being heard on quantum of sentence to suffer rigorous imprisonment for life as also to pay a fine of Rs. 5,000/- else to suffer rigorous imprisonment for one year. The appellant was at the same time directed to suffer rigorous imprisonment for three years as also to pay a fine of Rs.1,000/- else to suffer rigorous imprisonment for six months for being convicted of an offence under Section 27 of the Arms Act.

4. This is how the present appeal was preferred by the appellant. While hearing the appeal in order to judging its merit,



what we came across was that P.W.1 the informant Baleshwar Paswan was produced for his evidence on 21st of November, 2008 and he was partly cross examined on that day. The hearing of the witness was again taken up on 12.02.2009 and it was again adjourned to 23.03.2009 for being further adjourned to 13.04.2009. On 13.04.2009, the learned counsel appearing for the present appellant did not appear before the trial Court for concluding the cross examination of P.W.1 and the learned judge, recording the evidence recorded on the deposition sheet that the accused was not willing to cross examine the witness and discharged P.W.1. However, other witnesses, like, P.W.2 Sohrai Yadav, P.W.3 Prabhu Dayal Bind, P.W.4 Patel Yadav, P.W.5 Munni Prasad and P.W.6 Deonandan Paswan all turned hostile and what appears from their deposition sheets is that the defence counsel had appeared to put questions in cross examination of those witnesses. But, when Dr. Arun Kumar Singh (P.W.7) was produced and when he had been examined in-chief the same tactics was adopted by the defence that its counsel did not appear in the Court below to take up the cross examination of the witness. Similar was the position with P.W.8 ASI Radha Marandi who had investigated into the case. Thus what appears from the record was that when a witness had deposed on the merits of the facts of the case then the defence was deliberately



avoiding to cross examine the witness and whenever the witness had been gained over, it was putting a few questions to them individually and thus taking part in trial of the case. As in the case of P.W.1 so in cases of P.Ws 7 and 8 also, the learned judge recorded the same fact that no one turned up to cross examine either P.W.7 or 8 neither the accused had put any question to the witnesses and, as such, the Court had discharged P.Ws. 7 and 8.

5. We are very much certain in our view that it was a deliberate act of the defence to absent itself and not to cross examine P.Ws. 1, 7 and 8 and that act was probably to render or put the Court in a position so as not to proceed with the trial of the case. We deprecate the attempt and we also decry the behaviour of the counsel who had appeared in the Court below. However, what we still feel is that even if the counsel was adopting a deliberate tactics of avoiding to cross examine the witness, the learned trial judge ought to have considered the provisions of Section 304 Cr.P.C. read with Section 12 of the Legal Services Authorities Act and ought to have provided a counsel from the panel of defence lawyers so as to defending the appellant before him. Section 303 Cr. P.C. grants a right into an accused to be defended in any proceedings instituted under the Code of Criminal Procedure by a counsel of his own choice. That choice had been exercised by the appellant during the



trial as he appears to have engaged the counsel of choice to defend him but that counsel had chosen not to appear in courts on important occasions to defend the appellant or to assist the Court in carrying out the trial proceedings. The appellant was in custody and as per Section 12 of the Legal Services Authorities Act irrespective of his financial well being the appellant was entitled to have free legal aid for defending himself in the trial Court. Section 304 Cr.P.C. also casts a duty upon the trial court to provide to the appellant a counsel from the panel which could have existed in the judgeship or in case of no such panel being in place, he ought to have requested a competent counsel to assist it in defending the appellant before it. We are of the view that not following the procedure as laid down by Section 304 Cr.P.C. and thus, not providing a counsel of its own, the learned trial judge appears proceeding with the trial somewhat ex-parte which was an ante-thesis to the principles of fair trial. The appellant could not have been convicted on evidence which was in nature ex-parte and that is the fallacy which vitiates the judgment.

6. In the result, we set aside the judgment of conviction and order of sentence and direct the re-trial of the case. If the appellant engages a counsel of his choice the learned trial court shall allow him to do it. In case the trial court is confronted with the same position as was confronted by him earlier to complete the cross

examination of P.W.1 or to cross examine P.Ws. 7 and 8, in that case the trial judge shall not detain himself for a second and draw up an order noticing all circumstances, to allot a counsel from the defence panel to the appellant for his defence or request one of the competent advocates of some standing at the bar to assist it in the trial of Sessions Trial No. 1373 of 2006/150 of 2009. It is also directed that the witnesses who were examined by the trial Court shall again be recalled only for the purpose of their cross examination and that cross examination shall be confined only in respect of those witnesses who had not been fully cross examined or had not been cross examined at all.

7. With the above direction, the matter is remitted back to the Court concerned for re-trial by disposing of the appeal in terms as indicated above.

(Dharnidhar Jha, J.)

(Ahsanuddin Amanullah, J.)

P.Kumar/Sanjay/AFR

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