

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.495 of 2002

1. SUDHIR SINGH

2. ANIL SINGH

BOTH SONS OF DEONANDAN SINGH, BOTH RESIDENTS OF
VILLAGE-BRINDAVAN, P.S.-KAUAKOL, DISTRICT-NAWADA.

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... RESPONDENT/S

with

Criminal Appeal (SJ) No. 525 of 2002

1. DEVNANDAN SINGH, SON OF LATE TILAK SINGH.

2. MATHURA SINGH, SON OF LATE HARANGI SINGH.

BOTH RESIDENTS OF VILLAGE-BRINDAWAN, P.S.-KAUAKOL,
DISTRICT-NAWADAH.

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... RESPONDENT/S

Appearance:

(In CR. APP (SJ) No. 495 of 2002)

For the Appellant/s : Mr. Patanjali Rishi, Amicus Curiae

For the State : Mr. Sujit Kumar Singh, APP

(In CR. APP (SJ) No. 525 of 2002)

For the Appellant/s : Mr. Patanjali Rishi, Amicus Curiae

For the State : Mr. Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

CAV JUDGMENT

Date: 16-02-2015

As the learned counsel for the appellant have not
appeared on account thereof, Sri Patanjali Rishi, learned

advocate has been requested to assist as an Amicus Curaie which he conceded.

2. Criminal Appeal (SJ) No.495 of 2002 wherein Sudhir Singh and Anil Singh are appellants while in Criminal Appeal (SJ) No. 525 of 2002, Devnandan Singh and Mathura Singh are the appellants commonly originate against the judgment of conviction dated 23-08-2002 and sentence dated 24-08-2002 passed by Presiding Officer, Fast Track Court, Nawadah in Sessions Trial No.224 of 1989 / 295 of 2002 hence, have been heard analogously and are being disposed of by a common judgment.

3. Appellants, Devnandan Singh, Sudhir Singh and Anil Singh have been found guilty for an offence punishable under Section 307 IPC and each one has been directed to undergo R.I. for 5 years, under Section 27 of the Arms Act and each one has been directed to undergo R.I. for three years, appellant Mathura Singh has been found guilty for an offence punishable under Section 307/149 IPC and has been directed to undergo R.I. for three years, appellant Sudhir Singh and Anil Singh have been found guilty for an offence punishable under Section 379 IPC and each one has been directed to undergo R.I. for one year with a further direction to run the sentences concurrently.

4. Informant, Chandrika Singh (PW-6) had recorded his fardbeyan on 14-09-1988 at about 02:00 P.M. at PHC, Kauwakol disclosing therein that on the same day at about 09:00 A.M. he was putting soil over ridge of a field lying south-west to his village and at a distance of ten yards therefrom, his sons Nageshwar



Singh as well as Laliteshwar Singh were irrigating chilly crop. At that moment, he saw Devnandan Singh, Sudhir Singh, Anil Singh armed with pistol and Ramashray Singh armed with *Lathi* having *Khanti* approached therein coming towards them over which, he along with his two sons ran towards his house being chased by them. Sato Singh whose bungalow lies adjacent to his house, was present at his bungalow along with Mathura Singh who have provoked them to assault, over which, Devnandan Singh, with an intention to commit murder fired from his pistol which struck over right '*Pakhura*' (upper portion of back) of his daughter-in-law who was standing outside main gate. His daughter-in-law fell down after sustaining injury. Sudhir Singh and Anil Singh also fired but did not strike anybody. Then thereafter, Sudhir Singh snatched golden chain while Anil Singh took away golden bangle of his daughter-in-law. Burnika Singh, Rajendra Singh and others arrived. He along with his sons lifted his daughter-in-law for treatment.

5. On the basis of the aforesaid fardbeyan, Kauwakol P.S. Case No.74 of 1988 was registered under Sections 147, 148, 379, 307 IPC 27 of the Arms Act followed with investigation as well as submission of charge sheet, whereupon trial commenced and concluded in a manner, the subject matter of instant appeal.

6. The defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 Cr.P.C. is of complete denial of occurrence as well as false implication in the background of prosecution party having been

an accused for commission of murder of Rameshwar Singh, brother of appellant, Anil Singh, Sudhir Singh. Injured Soha Devi might have sustain injury at their own end.

7. In order to substantiate its case, prosecution had examined altogether nine PWs out of whom PW-1 is Laliteshwar Singh, P.W.-2 is Radhika Devi, P.W.-3 Savita Devi, P.W.-4 Shobha Devi, P.W.-5 is Suresh Singh, P.W.-6 is Chandrika Singh, P.W.-7 is Brijendra Prasad Yadav, P.W.-8 Baleshwar Prasad Damlitayar and PW-9 is Dr. Ramanand Prasad as well as had also exhibited Ext.-1, signature of informant over fardbeyan, Ext.1/1- signature of officer-in-charge over formal FIR, Ext.-2 fardbeyan, Ext.3 endorsement thereupon, Ext.-4-Case diary, Ext.-5 protest petition, Ext.-6- forwarding relating to injured Shobha Devi, Ext.-7 Series irrespective injury, marked Ext.-X, X/1, X/2 X-ray plates. Neither any DW nor any kind of documents has been exhibited on behalf of defence.

8. Learned Amicus Curiae while challenging the judgment of conviction and sentence has submitted that learned lower court acted in mechanical manner during course of scrutinizing the evidence while concluding the appellants guilty. To support the same, it has been submitted that learned lower court failed to consider the improbability in the prosecution version as well as the inconsistency found amongst the evidence of the witnesses on each and every material point.

9. It has been submitted that though the prosecution witnesses tried to conceal their status to be an accused in a



murder case on account of committing murder of Rameshwar Singh and that happens to be reason behind institution of instant false case against the appellants, in the background of the fact that as per own disclosure, the appellants chased the prosecution party from their field up to their house, but had not fired a single round during course thereof. Had there been authenticity in the prosecution version, then in that event, the appellants would not have sparked the prosecution party, that too, in absence of any sort of intervening circumstance. In likewise manner, it has also been submitted that there happens to be inconsistency amongst PWs with regard to location of the victim at the time of assault. As per fardbeyan, PW-4 had sustained injury outside her house where she was standing, however, during course of evidence, the prosecution shifted the place of occurrence inside the house. Furthermore, had there been an intention to commit murder of either Chandrika Singh or his sons Laliteshwar Singh as well as Nageshwar Singh, coming inside the house, as alleged, they would not have been spared them moreover in the background of the fact that all the three have been alleged to have fired shots out of which only one shot fired by Devnandan Singh had caused injury to PW-4. Therefore, the story of firing as suggested by the prosecution at the end of appellants is found completely manipulated.

10. Then, it has been submitted that there happens to be positive suggestion at the end of appellants that PW-4 had sustained injury on account of their own illegal activity which is

found corroborated with the injury report identifying presence of two injuries over the person of PW-4 as well as having blackening around the same. Presence of blackening is indicative of the fact that PW-4 had sustained injury at the close range, while as per evidence, the distance in between did not justify the same. As such, the version of the prosecution in the aforesaid background is found completely demolished.

11. It has further been submitted that there also happens to be inconsistency amongst the witnesses over place from where firing was made. Moreover, the occurrence as alleged was committed in broad day light as well as house of informant is found within midst of densely populated area and having absence of independent witnesses as well as in the background of animosity prevailing amongst the parties since before the occurrence whereunder prosecution party had committed murder of one of the family member of appellants, the false implication is found duly exposed. Therefore, mere presence of firearm injury would not attract conviction as well as sentence.

12. Per contra, it has been argued on behalf of learned Additional Public Prosecutor that from medical evidence firearm injury is found over person of PW-4. Furthermore, from the evidence of witnesses including PW-4, the victim Devnandan Singh has been identified as author of the injuries. In likewise manner, illegal activities of other appellants are also found duly engrafted by the prosecution witnesses. Therefore, the conclusion recorded by the learned lower court is found based upon the

material availability on the record, hence needs no interference.

13. From bare perusal of the evidence available on the record, it is apparent that during course of chase from the field up till the house of prosecution party neither any firing was made nor an attempt was there at the hands of appellant to commit murder of the prosecution party. It is also evident that the bungalow of Sato Singh lies in vicinity of informant's house where Sato Singh as well as Mathura Singh both were present, also failed to intervene. In the aforesaid background, when the initial prosecution version is taken up, it is evident from the fardbeyan that after having joined by Sato Singh as well as Mathura Singh and being provoked at their end, Devnandan Singh fired, having narrow escape to the informant while Sobha Devi, who was standing outside main gate of his house, sustained injury over her right upper portion of shoulder (Pakhur) followed by another shot by Anil Singh as well as Sudhir Singh however, could not strike anybody. That means to say as per initial version, PW-4 had sustained injury while she was standing outside her house. PW-4, is the injured. She had stated that while she was at her *Darwaja*, her Debar, Laliteshwar Singh, husband Nageshwar Singh and father-in-law Chandrika Singh came running having been chased by the accused persons (named all of them) duly armed with pistol. Out of them, Devnandan Singh who was armed with pistol, aimed at her father-in-law but as he slipped, she sustained injury. She sat down after sustaining injury. Then thereafter, Sudhir Singh snatched away golden chain and Anil

Singh golden bangle. Therefore, from her evidence it is evident that she also sustained injury while she was at Darwaja.

14. PW-7 is the Investigating Officer. In para-2 of his examination-in-chief, he had detailed topography of place of occurrence which happens to be the barren land lying in front of Darwaja of house of informant, where PW-4 had sustained injuries. He had further identified East-house of Rambhajju Mahto, West-House of Bacchu Singh, East-open space and then land of Harinandan Singh, South-residential house of informant. In para-4 he had further stated that one empty cartridge was found in the *Deodhi* of building of informant. One projectile was also seized therefrom.

15. Now coming to the evidence of remaining witnesses over place of occurrence, it is apparent from the evidence of PW-1, Laliteshwar Singh, in para-2 that the accused persons came near his house while sharing them. On an order of Sato Singh and Mathura Singh, Devnandan Singh fired which struck his Bhabhi Shobha Devi. Sunil and Anil also fired but strike none. During cross-examination at para-6 he had stated that when the accused persons arrived at his Darwaja, they have gone inside house in *Deodhi*. He was at the front and his father was at the last. Accused had fired aiming his father. In para-6 he had stated that after sustaining injury, his Bhabhi fell down. He further stated that accused persons have not dispersed after firing rather, after two minutes they dispersed. Accused have come inside *Deodhi* wherefrom they have snatched away ornaments.



PW-2 is the mother-in-law of PW-4, who had stated that after arriving at her house, Devnandan Singh, Anil Singh and Sunil fired out of which, firing made by Devnandan Singh caused injury to her daughter-in-law. Her daughter-in-law sat down and then, Sudhir and Anil snatched away her ornaments. During cross-examination at para-3 she had stated that she along with her daughter-in-law was sitting at western side in the *Deodhi*. Her daughter-in-law was ahead of her. She had further stated that that at the time of firing, her sons as well as husband was in *Deodhi*. She had further stated that accused persons have fired from the field of Rajo Singh. This lands belongs to them. That land lies adjacent to her house. PW-6, informant had stated that when they reached near Darwaja of his house, Devnandan Singh fired from pistol which struck his daughter-in-law Shobha Devi. Sudhir and Anil also fired which did not strike anybody. Anil and Sudhir snatched away ornaments. During cross-examination at para-13 had stated that he, after seeing accused persons, gone inside his house and never came outside. At the time when he gone inside his house, he found his wife and daughter-in-law. At that very time his daughter-in-law. His both sons have not already gone inside house.

16. As such, from the evidence available on the record, it is apparent that all the prosecution witnesses are not at all consistent over the place where PW-4, injured was present at the time of alleged assault and in likewise manner, the place from where firing was made. From the evidence of PW-2, it is evident

that she categorically stated that firing was made by the accused from outside her house while having in the field of Rajo Singh. From the evidence of PW-7 para-2 (Investigating Officer) it is evident that the land of Rajo Singh did not find place in the boundary of the house of the informant. PW-4, injured also spoke having been assaulted by the accused from outside her house, while PW-1 as well as PW-6 have had dragged the assailant in *Deodhi*, inside their house.

17. Furthermore, from the evidence of PW-4, injured it is apparent that she had not disclosed Anil Singh as well as Sudhir Singh having pistol in their hand as well as they both have fired however, from the evidence of PW-1, PW-2 and PW-6, it is evident that they have alleged like so, against appellant Sudhir and Anil.

18. From the record, it is also evident that Dr. R.N. Jha who had examined PW-4 died and on account thereof he could not be examined. Moreover, from the evidence of PW-9, it is evident that while examining PW-4 Dr. R.N. Jha had found following injury:-

1) Circular wound 1/4th 1/2 diamert x 2" deep on upper part of shoulder, (2) circular would 1 x 1/2' diameter x 1 1/2" deep. 1" below the right clavicle.

19. Because the doctor is dead on account thereof, in terms of Section 321(1) of the Evidence Act, the injury report has become admissible. After going through the same, it is evident that two firearm injuries were found over person of PW-4 and having blackening around the injury. On account thereof,

certainly it could have been from close range which is found inconsistent with the prosecution version. Moreover, none of the prosecution witnesses during course of examination-in-chief have stated the distance as well as certify presence of two injuries caused by firearms.

20. Apart from this, from the evidence of PWs, it is evident that there happens to be material contradiction. PW-1, over corroborated by the PW-7 para-8, PW-2 para-5, PW-7 para-9 which in the background of status of witnesses being family members as well as inimical to appellants since before the occurrence, certainly, will play an important role.

21. Taking into account the inconsistency having amongst the evidence of the prosecution witnesses, presence of appellants at the house of prosecution party to facilitate commission of crime became doubtful, consequent thereupon the manner of occurrence. Accordingly, the judgment of conviction and sentence recorded by the learned trial court is set aside. Appeal is allowed. Appellants are on bail hence are discharged from its liability. First and last page of judgment be handed over to learned Amicus Curiae for the needful.

(Aditya Kumar Trivedi, J.)

Patna High Court
Dated, the 16th day of Feb., 2015
Prakash Narayan

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