

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.997 of 2009

Arising Out of P.S.Case No. -110 Year- 1993 Thana –Noorsarai District- NALANDA
(BIHARSHARIFF)

Ramashray Singh son of late Lakhan Singh, resident of village-Kewai Dih, P.S.
Noorsarai, District-Nalanda.

.... Appellant

Versus

The State of Bihar

.... Respondent

with

Criminal Appeal (DB) No. 875 of 2009

Arising Out of P.S.Case No. -110 Year- 1993 Thana –Noorsarai District- NALANDA
(BIHARSHARIFF)

- 1. Sidheshwar Singh S/O Late Lakhan Singh Vill.- Kewai Dih, P.S.- Noorsarai, Distt.- Nalanda
- 2. Basudeo Singh S/O Late Meharchand Singh Vill.- Kewai Dih, P.S.- Noorsarai, Distt.- Nalanda
- 3. Brajesh Singh @ Brijesh Singh S/O Late Munsii Singh Vill.- Kewai Dih, P.S.- Noorsarai, Distt.- Nalanda

.... Appellants

Versus

The State Of Bihar

.... Respondent

Appearance :

(In CR. APP (DB) No. 997 of 2009)

For the Appellant : Shri Ajay Kumar Thakur, Advocate.
Shri Imteyaz Alam &
Shri Malay Kr. Choudhary, Advocates.

For the Respondent : Sushri Shashi Bala Verma, APP.

(In CR. APP (DB) No. 875 of 2009)

For the Appellants : Shri Ajay Kumar Thakur, Advocate
Shri Imteyaz Alam &
Shri Malay Kr. Choudhary, Advocates.

For the Respondent : Sushri Shashi Bala Verma, APP
Shri Abhimanyu Sharma, APP.

CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 25-08-2015



Six accused persons, also named in the FIR (Ext-2) of the case, were put on trial by the learned Additional Sessions Judge, Fast Track Court No.V, Nalanda at Bihar Sharif in Sessions Trial No.62 of 1994/107 of 2008, out of whom, five, namely, Sidheshwar Singh, Basudeo Singh, Munshi Singh (since dead), Brajesh Singh @ Brijesh Singh and Promod Singh were charged under Sections 302/149 of the Indian Penal Code. Appellant Ramashray Singh was distinctly charged under Sections 302 Indian Penal Code and 27 of the Arms Act. Appellant Sidheshwar Singh besides, being charged as noted above under Sections 302/149 Indian Penal Code, had also been charged under Section 27 of the Arms Act with appellant Ramashray Singh.

It appears that accused Munshi Singh died during the pendency of the trial and the proceedings against him was consigned by order dated 14.08.1997 passed by the trial Court. Out of the remaining five accused, Rabindra Singh also died as appears from the evidence of PW 5 (Narendra Kumar), the informant of the case, in paragraph-11, leaving the four appellants on trial. By judgment dated 11th September, 2009, the learned Presiding Officer, Fast Track Court No.V, Nalanda at Bihar Sharif convicted the appellants guilty of committing the offence under Section 302 Indian Penal Code and also convicted the appellants Ramashray Singh and Sidheshwar Singh under Section 27 of the Arms Act. After hearing the appellants on



sentence on 16.09.2009, the learned trial Judge directed each of the appellants to suffer rigorous imprisonment for life as also to pay a fine of Rs.10,000/-, else to undergo rigorous imprisonment for two years under Section 302 Indian Penal Code. The appellants Ramashray Singh and Sidheshwar Singh were directed to suffer rigorous imprisonment for five years each on account of being convicted under Section 27 of the Arms Act. The two appeals arise out of the above judgment of conviction and order of sentence. We have heard the two appeals together and we are disposing the same of by this common judgment.

2. The prosecution story is contained in Ext-2, the FIR lodged by PW 5 Narendra Kumar on 20.09.1993 at 9 P.M. in which he stated that the deceased Kamlesh Prasad, who happened to be his cousin, was surrounded by all the seven accused persons named in the FIR in front of the *Dalan* of appellant Sidheshwar Singh, when he was returning after attending to call of nature. He was beaten up by the accused persons with *lathi* which was being carried by five accused persons except accused Sidheshwar Singh and Ramashray Singh on account of which he had fallen down on the ground. The deceased Kamlesh Prasad got up and attempted to run away when appellant Basudeo Singh remonstrated to shoot the deceased Kamlesh Prasad dead upon which it is stated that appellants Sidheshwar Singh and Ramashray Singh fired one shot each from their respective rifles and

that fired by appellant Ramashray Singh hit the deceased Kamlesh Prasad as a result of which, he fell down.

3. Persons of the neighbour-hood converged upon the place of occurrence and raised alarms as a result of which, the accused persons ran away from there.

4. As regards the reason for committing the murder of the deceased Kamlesh Prasad it was stated that about a week prior to the occurrence, appellant Ramashray Singh had grazed his standing *Jenera* crop on account of which there had been some quarrel between the deceased Kamlesh Prasad and the appellant Ramashray Singh who had held threats to the deceased Kamlesh Prasad of teaching him a lesson and that threat had fructified into the killing of the deceased.

As appears from the evidence of PW 8 S.I. Suresh Chandra Mishra, after he had recorded the FIR (Ext-2), he recorded the further statements of the informant and his accompanying witnesses and then came to the place of occurrence to inspect the same. During that course, he found the dead body lying there at the place of occurrence which was a lane passing from north to south and was in front of the house of appellant Sidheshwar Singh. The investigating officer had held inquest upon the dead body and also seized the copious blood which had fallen there along with a pair of half shoes which were lying there. Inquest report prepared after holding inquest has been marked Ext-4 while the seizure memo in

respect of blood and a pair of shoes was marked Ext-5. He recorded the statement of other witnesses and then sent the dead body for postmortem examination and after closing the investigation, sent up the accused persons for their trial.

5. The defence of the appellants was of false implication on account of the admitted dispute which has arisen between the parties and it was further pleaded that the deceased Kamlesh Prasad was a man of criminal antecedent and he might have been killed by any of his enemies.

6. Eight witnesses were examined by the prosecution, out of whom, PW 1 Gopal Saran Prasad, PW 2 Chandreshwar Prasad who were named in the FIR as also PW 3 Nandlal Prasad along with the mother of the deceased Lalti Devi supported the prosecution story as also the evidence of PW 5 Narendra Kumar, the informant of the case. PW 6 Chandradeep Kumar was a witness of formal character and he appears unnecessarily examined as the investigating officer who had recorded the FIR had himself brought on record Ext-2 as having been recorded by him when the information was lodged by PW 5 Narendra Kumar. PW 7 Dr. Ravi Ranjan Rajesh had held postmortem examination on the dead body of deceased Kamlesh Prasad and had prepared the postmortem examination report (Ext-3). We have already noted that the case had been investigated into by PW 8 S.I. Suresh Chandra Mishra.

7. The defence did not examine any witness.

8. By taking us through the evidence of witnesses, it was contended by Shri Ajay Kumar Thakur, the learned counsel appearing on behalf of the appellants that there had also been a report lodged by the mother of the deceased PW 4 Lalti Devi and that report had been suppressed by the prosecution. It was contended that the two appellants Sidheshwar Singh and Ramashray Singh are said to have fired one shot each from their respective rifles but there was only one shot which had hit the deceased Kamlesh Prasad and, as such, it was a case of extending benefit of doubt to the two appellants, namely, Ramashray Singh and Sidheshwar Singh and, thus, a fit case for acquitting them. As regards the other two appellants, it was contended that the witnesses had consistently stated that accused persons other than Sidheshwar Singh and Ramashray Singh, had given innumerable blows with *lathi* to the deceased so much so that he had fallen down on the ground, but the two abrasions which were recorded by PW 7 Dr. Ravi Ranjan Rajesh on the dead body do not appear supporting that part of the prosecution story and were rather disproving the charge. On these premises, Shri Thakur submitted that the two appeals merited to be allowed and the appellants deserve to be acquitted.

9. Sushri Shashi Bala Verma, the learned Additional Public Prosecutor had contested the contentions tooth and nail by submitting that the cross-examination of the witnesses to their



previous statement was not as per law and those questions put to the witnesses were inadmissible and misleading. Submission was that consistency in the evidence as regards the firing of shots was as clear as to find out the personal liability of the appellants and as regards appellant Ramashray Singh, he did not appear having any escape from his personal criminal liability. So far as the conviction of other appellants was concerned, Sushri Verma was a bit lukewarm in arguing before the Court that the evidence does not appear as strict as to uphold the judgment of conviction and order of sentence.

10. We want to take up the first submission addressed to us by Shri Thakur on the lodging of the report also by PW 4 Lalti Devi. The witness Lalti Devi did not state in her examination-in-chief that she had gone to the police station and had given her statement before the police so as to initiating the prosecution by lodging the report. What appears stated in the last line of her examination-in-chief in paragraph-5 is that the police had reached the place of occurrence and she had given her statement to it there. However, the first question which was put to her in cross-examination had elicited an answer from PW 4 Lalti Devi as if she had initiated the prosecution by reporting the case to the police. That line of evidence brought on record through cross-examination of PW 4 in paragraph-6 appears to us a statement which is not borne out from some official records. The FIR is a document which was prepared by PW 8 S.I. Suresh Chandra



Mishra in discharg of his official duties when a report was made to him about the killing of deceased Kamlesh Prasad by the accused persons. This document records that the statement was given by PW 5 Narendra Kumar to PW 8 S.I. Suresh Chandra Mishra on 20.09.1993 at 21 hours, i.e., 9 P.M. The same document indicates that the investigation of the case had been taken over by PW 8 and as we have already noted with reference to the evidence of the investigating officer after taking over the investigation himself, the officer had started from the police station and had reached the place of occurrence village. He had inspected the place of occurrence and during that course, he had found the dead body of deceased Kamlesh Prasad. PW 8, thereafter, held inquest upon the dead body and prepared Ext-4 the inquest report in presence of witnesses at 23 hours, i.e., about 11 P.M. There is no evidence coming from PW 4 Lalti Devi that she had at all moved from her house or the village to go to the police station for lodging the report. There is no such suggestion to her either by the defence which appears to us not challenging the fact that she had remained at the village till PW 8 arrived there to investigate the case. The evidence of other witnesses indicates as if they had sent PW 5 Narendra Kumar to the police for lodging the report and that fact gets corroborated from the evidence of PW 8 who stated that Narendra Kumar had reached the police station and had lodged report. The distance between the place of occurrence and the police station was 8



K.Ms. and considering the steps in an investigation which were taken by PW 8 S.I. Suresh Chandra Mishra after his arrival at the village does not leave us in any doubt that he must have arrived at the village some times around 23 hours or 11 P.M. to investigate the case and to hold the inquest upon the dead body. Thus, that particular fact which had come on record in paragraph-6 of PW 4 Lalti Devi appears to us as innocuous as to be ignored as a fact which was stated by her on account of her ignorance to the question as regards the same being replied by her and probably also by the circumstance of being in a witness box in a Court room to which she could not normally be accustomed with. The sequence of events which we have just noticed as regards the discharge of official duties of PW 8 S.I. Suresh Chandra Mishra in discharging his official public functions leave us in no doubt that the first information report had been lodged only by PW 5 and there is no room left in the evidence even to doubt that that report could have been a subsequent record created or could have been succeeded by any previous record brought into existence legally under Section 154 Cr.P.C.

11. While we were being taken through the evidence of the witnesses, we came across one common feature in their evidence that they did not bear any animosity with any of the accused persons who were named in the FIR or who were ultimately left on the trial on account of the death of a couple of them. PW 1 Gopal



Saran Prasad and PW 2 Chandeshwar Prasad and others have very honestly admitted that they were related to the deceased Kamlesh Prasad and the genealogy of the family was given by PW 1 very much during his cross-examination by the defence which appears in paragraph-6 of the evidence of PW 1. Out of three brothers, Jehar was the grand-father of the deceased and the witness had further stated that other witness, like, PW 2 Chandeshwar Prasad, was his full brother. The mother of the deceased, we have already noted was one of the witnesses and her name appeared from that particular paragraph-6 of PW 1. This particular witness appeared related to him. However, as we have just noted that none of the witnesses was carrying any ill-will towards the accused persons. There was some probing questions put to the witness as to whether the deceased had filed or had faced any criminal case from the accused persons and there was a categorical denial to that probing question and what we further found is that the defence did not bring on record of the case any evidence indicating as if the witnesses were inimically disposed towards the appellants. Their interestedness could not be gathered merely from the fact that they were related to the deceased Kamlesh Prasad unless we had some convincing clinching evidence indicating that they had a particular motive or purpose in deposing against the appellants and that particular motive or purpose was that the accused should be convicted and sentenced. We did not find it appearing from the record.



12. There was a thread of consistency running through the evidence of witnesses. The witnesses stated that while the deceased Kamlesh Prasad was returning after attending to the call of nature and had reached in that course, in front of the *Dalan* of appellant Sidheshwar Singh, he was waylaid by the accused persons who were armed with *lathi* so much so that he fell down on the ground. While being assaulted with *lathi* he was also shouting for help and that had attracted the witnesses and when he attempted to get up and run away from there, remonstrations were given by appellant Basudeo Singh upon which appellants Sidheshwar Singh and Ramashray Singh fired the two shots. The shot fired by Ramashray Singh had hit the target while that fired by Sidheshwar Singh missed to hit the deceased. The deceased fell down on the ground and died.

13. By drawing our attention towards the evidence of the witnesses and also to the evidence of PW 8 S.I. Suresh Chandra Mishra, it was contended by Shri Thakur that the witnesses had not made any statement that appellant Ramashray Singh had fired the shot and that hit the deceased. We did find that the investigating officer was also stating that no individual witness had stated to him that appellant Ramashray Singh had fired the shot which had hit the deceased.

Firstly, what we point out that on scrutiny of the statements of witnesses in order to verifying the submission of Shri



Thakur, what we find is that each and every witness who was examined by the police had stated that appellants Ramashray Singh and Sidheshwar Singh had fired shots and the deceased was hit and had fallen on the ground. In the Court, the witnesses had stated that the first shot was fired by appellant Sidheshwar Singh which had missed the target and the next shot fired by appellant Ramashray Singh had hit the deceased and had killed him. The mode of bringing contradiction on the record, in our opinion, was something which can not be approved by us. If the learned counsel who was drawing the attention of the witnesses to any fact which could have contradicted them and thus wanted to discredit the reliability of the evidence, then it was pertinent for the counsel to put a very affirmative question suggesting to him that the witness had stated that the shot fired by appellant Ramashray Singh had not hit the deceased and after obtaining an answer in the negative, the witness should have been confronted by suggesting to him that it was never his statement that the shot fired by appellant Ramashray Singh had hit the deceased and had killed him. This is what has been laid down in the case of *Tahsildar Singh v. State of U.P.*(AIR 1959 SC 1012) and this is what the consistent view of all the Courts is. The same view appeared reiterated by the Supreme Court in the case of *Binay Kumar Singh v. State of Bihar* [1997 (1) PLJR (SC) 159]. What we find is that a similar question was put to each and every witness that he had not

stated that appellant Ramashray Singh had fired the shot which hit the deceased. We find the basic flaw in the question inasmuch as the witnesses had stated that appellant Ramashray Singh had fired the shot but what was not stated by them was that the shot had hit the deceased. So, even if we could treat it as anything which could be covered by Sections 145 or 157 of the Indian Evidence Act, 1872, we may note that it was a mere omission and was not a contradiction, because the basic fact that the appellant Ramashray Singh had fired the shot was already stated by each and every witness before the Court. Thus, the submission of Shri Thakur that the witnesses should be viewed with ample doubt as they had faltered in making the statement before the police and then giving evidence in that connection before the Court and that should be treated as an important contradiction by way of improvisation made by the prosecution with purposeful attempt of assigning a particular role of being the assailant of deceased to appellant Ramashray Singh, we are not convinced with as we have just demonstrated. What appears to us from the evidence is that the same is acceptable to us as regards the individual role of firing shots and while appellant Sidheshwar Singh's shot appears not hitting the target that fired by appellant Ramashray Singh appears hitting the target and killing the deceased. From perusal of the evidence of the witnesses, they appear to us trustworthy eye witnesses to the occurrence. We find that the fatal shot was fired by appellant

Ramashray Singh.

14. The above findings of ours as regards the individual role played by appellant Ramashray Singh appears getting due corroboration from the evidence of PW 7 Dr. Ravi Ranjan Rajesh. PW 7 had found the following ante-mortem injuries on the dead body of deceased Kamlesh Prasad:-

(i) One lacerated wound with black and inverted margin oval in shape measuring $\frac{1}{4}$ " x $\frac{1}{4}$ " x upper chest cavity deep found over the left upper chest just below the clavicle in second inter costal space, which was the wound of entry.

(ii) One lacerated wound with regular everted margin measuring $\frac{1}{2}$ " x $\frac{1}{4}$ " x chest cavity deep, on the right side of back of chest 1" lateral to the fifth thoracic vertebra. It was a wound of exit.

On dissection of the above wounds, clotted blood was found present around the wound as well as underneath the tissues and the second rib on front of left chest as well as fourth and fifth thoracic vertebrae were found fractured.

(iii) Injury nos. (i) and (ii) were communicating to each other. Thus, those were the results of a single shot.

Besides the above injuries, PW 7 found one abrasion measuring $\frac{1}{2}$ " x $\frac{1}{2}$ " on the middle of chin with blood clot. There was another abrasion of the size $\frac{1}{2}$ " x $\frac{1}{2}$ " on the front of upper arm.

On further dissection, PW 7 had found laceration of right atrium as well as the other part of the lung and right lung with fracture of second rib on front of left chest. In the opinion of PW 7, the fire arm injury was cause of death which had caused the shock and haemorrhage and had been caused within 12 to 24 hours of holding the post mortem examination.

15. While criticizing the evidence of PW 7, Shri Thakur had pointed out that the opinion of the doctor was that the wound was downwards and upwards as appears from paragraph-5 of



his evidence. However, in the very next line, PW 7 has stated that the injury no.1 could have been resulted if the assailant and the deceased had been face to face each other. The track being downwards does not appear telling any other story than which had been told by the prosecution witnesses. The witnesses have stated that after the deceased had fallen down on the ground, he attempted to get up and to run away from there and in that process, he was shot and, as such, there was no wonder that he was hit in some crouching position so as to receive the shot. Taking an over all view of the medical evidence, what we find is that the finding of the fire arm injury which was also found to be sufficient in ordinary course of nature to cause death by PW 7 in paragraph-6 of his evidence lends credible support to the oral testimony of the witnesses.

16. However, the prosecution case was that after being remonstrated appellant Sidheshwar Singh had fired the shot which did not hit the deceased while that fired by appellant Ramashray Singh had hit the deceased and killed him. Before that the deceased had been given innumerable blows with *lathi* by other accused persons which were numbering five. The evidence also suggested as if the deceased had been beaten up so much so as to be felled on to the ground. The manner of occurrence as regards the giving blows with *lathi* does suggest that there ought to have been a huge number of injuries which could have been caused by a weapon, like, *lathi*. But what we found



was that there were two simple abrasions, one on the arm and the other on the chin which were not resulting in his death nor that could be cumulatively causing the death of the deceased. The injuries appear as innocuous as could be caused even by fall or on account of attempt of the deceased to get up from the ground and during that course being hit by a *lathi*. This medical opinion regarding the finding of the two abrasions on the dead body does not get specific support from oral evidence as to who could be the person who had caused those injuries. We have already noted that there were five accused persons who had given incessant number of blows with *lathi* to the deceased, which evidence and allegation does not get support from the medical evidence and considering that as also that the shot fired by appellant Sidheshwar Singh had undisputedly not hit the deceased, we find the evidence not sufficient to uphold the conviction of the three appellants except appellant Ramashray Singh. The evidence in respect of appellant Ramashray Singh is clinching while the same as regards the remaining three appellants appears not convincing and sufficient so as to upholding their conviction.

17. In the result, Cr. Appeal (DB) No.997 of 2009 filed by appellant Ramashray Singh is hereby dismissed. As regards the other Cr. Appeal (DB) No. 875 of 2009, the same is allowed. The three appellants of that appeal, namely, Sidheshwar Singh, Basudeo Singh and Brajesh Singh @ Brijesh Singh are acquitted by giving

benefit of doubt of the charges they had been held guilty of by setting aside the judgment of conviction and order of sentence. The three appellants of Cr. Appeal (DB) No. 875 of 2009 are on bail; each of them shall stand discharged from the liabilities of his respective bail bond.

(Dharnidhar Jha, J)

(Gopal Prasad, J)

mrl./-Brajesh kr.

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