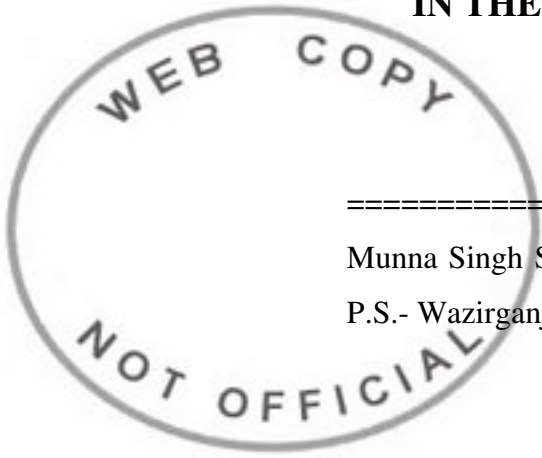




IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 286 of 2010

Arising Out of PS.Case No. -28 Year-1998 Thana -Wazirganj District- GAYA

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Munna Singh Son of Late Janardan Singh, resident of Village- Sakardas Nawada,
P.S.- Wazirganj, District- Gaya.

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : Mr. Rana Pratap Singh, Sr. Advocate.
Mr. Aaruni Singh &
Mr. Pramod Kumar, Advocates.

For the State : Mr. Dilip Kumar Sinha, A.P.P.

For the Informant : Mr. Arun Kumar Singh No. 4.

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CORAM: HONOURABLE MR. JUSTICE DHARNIDHAR JHA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 9 -07-2015

The present appeal by appellant Munna Singh is directed against the judgment of conviction dated 18.02.2010 and order of sentence dated 23.02.2010 passed by the Additional District and Sessions Judge, F.T.C.- III, Gaya in Sessions Trial No.



305 of 2009/466 of 1998 (S.J.) by which the appellant has been convicted under Sections 302 and 307 of the Indian Penal Code and 27 of the Arms Act and sentenced to suffer imprisonment for life and fine of Rs. 1000/- under Section 302 of the Indian Penal Code, 10 years imprisonment and fine of Rs. 1000/- under Section 307 of the Indian Penal Code and imprisonment for three years and fine of Rs. 1000/- under Section 27 of the Arms Act with all the sentences directed to run concurrently. However, no sentence has been passed in the event the appellant fails to pay the fine.

2. The fardbeyan of Satyendra Singh son of late Bigan Singh of village Sakardas Nawadah, P.S.- Wazirganj, District-Gaya was recorded by S.I. L.N. Gupta, Officer Incharge Wazirganj P.S. on 15.03.1998 at 12.30 A.M. at his door in the village. According to the fardbeyan, on 14.03.1998 at about 4.30 P.M., the younger brother of the informant namely, Balendra Singh who was eating betel at the kiosk of Jai Kumar Singh at Nonihar tola of the village, the appellant was also having betel. Near the said kiosk Balendra Singh and the appellant had an argument and also some physical altercation with their hands. The neighbours had then separated them. It is stated that the informant had also gone to the betel kiosk on hearing the noise where the appellant had threatened the brother of the informant that he would shoot him to death. Upon this the informant went to Janardan Singh, father of the informant to inform him and Janardan Singh is said to have stated that if there had been



physical fight between the two then the appellant would definitely shoot him. The informant then returned to his home. At about 7.30 P.M. Pravesh Singh had come to the house of the informant and had asked his younger brother Balendra Singh to come near the Government well Deshahari where Pramod Singh, Pappu Singh, Munna Singh (appellant) and Janardan Singh had called him for patching up the matter. Hearing this, the father of the informant had said that he would get the matter sorted out tomorrow but Pravesh Singh became adamant and angry and said that if Balendra Singh did not go then they would come and attack the house of the informant. Due to this Balendra Singh started going towards the Government well which was at a distance of about 50 yards from the house of the informant. It is stated that the father of the informant also started going behind Balendra Singh and seeing this, his mother also started going and then the informant also followed. It is said that when the informant and his mother reached near the Government well Deshahari, they saw Pravesh Singh and Janardan Singh of the same village holding Balendra Singh and the appellant fired on the brother of the informant from the pistol he was holding in his hand. It is alleged that at the same time Pramod Singh also fired from the pistol in his hand on the father of the informant and subsequently Pappu Singh also fired on Balendra Singh. It is stated that due to bullet injury, the father and brother of the informant died at the spot itself. It is alleged that when the



mother of the informant went to save the brother and father of the informant then the appellant again fired on the mother of the informant with the intention to kill due to which the bullet hit her in the side of the head causing injury. The informant started running towards his house when Pramod Singh is said to have fired upon him due to which the informant was thrown away resulting in injury on both the knees. The informant then got up and ran towards his house shouting. It is stated that upon his shout and sound of firing, the family of the informant and neighbours with lantern and torch ran towards the Government well Deshahari and saw the appellant, Janardan Singh, Pramod Singh, Pappu Singh and Pravesh Singh, all residents of village Sakardas Nawadah, P.S.- Wazirganj, District-Gaya going from the Government well Deshahari towards their home. The appellant, Pramod Singh and Munna Singh had pistol in their hand which was seen by the family members and villagers of the informant in the light of torch and lantern. In the incident two persons namely Bigan Singh and Satyendra Singh, father and brother of the informant were killed.

3. On behalf of the prosecution 7 witnesses have been examined. P.W.1, Tapeshwari Devi is the mother of the informant; P.W.2 is Dr. Arbind Prasad who conducted the post mortem on the body of the deceased Bigan Singh; P.W.3, Satyendra Singh is the informant; P.W.4, Shiv Raj Singh is the cousin brother of the informant; P.W.5, Gag Raj Singh is also

relative of the informant; P.W.6, Bhupendra Kumar Singh is co-villager and P.W.7, Birendra Singh is a formal witness.

4. According to P.W.1, Tapeshwari Devi, who claims to be an eye witness and is mother of deceased Balendra Singh and wife of another deceased Maheshwar Singh @ Bikan Singh the departure from the version in the fardbeyan is that she claims to have gone to the place of occurrence with lantern. In her cross examination at paragraph-3 she has stated that the well was at a distance of 100-150 yards which also does not tally with the version in the fardbeyan of the informant, who is also the son of P.W.1, that the well was at a distance of about 50 yards. In the same paragraph she has also stated that after Balendra Singh had gone she and others had followed after 10 minutes, though in the fardbeyan the others are said to have followed Balendra Singh as soon as he had left the house. She has further stated that after she and others had reached then fighting had started and she had kept the lamp on the ground and that Balendra Singh was shot from close range. This is at variance with the finding in the post mortem report of Balendra Singh, which though not proved by the doctor who performed the post mortem but made Exhibit 1/1 and is on record, which does not indicate any charring or blackening. She has further stated that blood had not come out from her body. In paragraph-5 she had denied the suggestion that her husband and son had been injured on the day of '*Holika Dahan*' in another village. In paragraph-7 she had stated that

she did not remember whether she had told the police about carrying lantern. At paragraph-8 she had also stated that nobody had informed her with regard to any fight at the betel kiosk.

5. P.W.3, Satyendra Singh is the informant who claims to be a witness and also injured in the incident. Making a departure from the fardbeyan he has stated that his brother Balendra Singh had gone to eat betel at the kiosk where the appellant started abusing him and there was also fight and when there was shouting in the village, he also reached there and had separated the appellant and his brother. He has also stated that the appellant had fired on his father which is contrary to the statement made by him in the fardbeyan and by P.W.1, his mother, that Pramod Singh had fired on her husband i.e., father of the informant. He has further stated that due to pellets burning the hair and saree of his mother, the lantern in her hand fell down. This is contrary to what has been stated by the mother (P.W.1) herself that she had kept the lantern on the ground. In the cross-examination at paragraph-4 he has stated that two persons had fired upon his brother Balendra Singh and they were holding him from the back and the brother was facing north and earlier in the examination-in-chief he had stated that Ram Pravesh Singh and Janardan Singh had caught hold of Balendra Singh and the appellant had fired. This appears to be improbable inasmuch as if two persons are holding someone from back and the third person fires then there is risk that the bullet may also

hit the person who is holding that victim as it can pass through him and thus the said description of two persons holding the victim from the back and the appellant firing on the victim appears improbable. In his cross-examination he has also not been able to give the position, location and direction of the accused during the occurrence which is indicative of the possibility of him not being present there at the relevant time.

6. P.W.4, Shiv Raj Singh is cousin of the informant and has been declared hostile.

7. P.W.5, Gag Raj Singh is also co-villager and is not a witness to the incident and has heard about the sequence of events from P.W.1. At paragraph- 3 of the cross-examination he has admitted that he and other witnesses were agnates of the deceased and that for 10-15 years, he had worked in the Court as an Advocate Clerk.

8. P.W.6, Bhupendra Kumar Singh is also not an eye-witness to the incident and in the cross examination at paragraph- 2, he had stated that prior to him being examined before the Court on that day, his statement had not been taken anywhere earlier.

9. P.W.7, Birendra Singh is a formal witness who is an Advocate clerk and has proved the writing of the scribe of the fardbeyan namely, Laxmi Narayan Gupta as also that of the Officer Incharge who has drawn up the F.I.R. He had also proved the injury report given by Dr. R.K. Singh of Wazirganj

Government hospital relating to the injury. However, in the cross examination at paragraph-2, he had stated that the said were neither written in front of him nor he had worked with any of the said persons.

10. P.W.2, Dr. Arbind Prasad is the doctor who had conducted the post mortem examination on the body of Bigan Singh (deceased) in which he has found one wound of entry of $1\frac{1}{4}$ " x $1\frac{1}{2}$ " bone deep over lateral aspect of right arm at the junction of upper $\frac{1}{3}$ rd and lower $\frac{2}{3}$ rd directly horizontally to the left side with wound of exit at middle side of shaft of right humerus exposed bone deep, fracture of right humerus, abrasion at the entry wound with inverted margin and everted margin at the exit wound. One wound of entry without any blackening or tattooing was found on the same level of exit wound of arm (right) over lateral aspect of the anterior chest wall in the right by the inter costal space with inverted margin of size $\frac{3}{4}$ " x 1" bone deep directing horizontally backward and to the left to the inner table of left chest with one metallic bullet in the middle lodged under the skin over left 5th rib. Fracture of 5th rib was found and metallic bullet was found just underneath fractured 5th rib. Both lungs and heart found lacerated along with the soft tissues of the chest cavity. He has opined that both the injuries were caused by firearms and death was caused due to shock and haemorrhage as a result of injury to the chest. He has also proved the handwriting of Dr. M.K. Sinha who conducted the post mortem

examination of the body of Balendra Singh.

11. On going through the evidence of the witnesses and the version as propounded by the prosecution, of the incident taking place at night near a Government well, it has not been satisfactorily shown that there was any kind of light so as to identify the accused, including the appellant, at the place of occurrence and also with regard to him having fired on the deceased Balendra Singh or P.W.1. Further, neither the doctor who examined P.W.1 had been produced for examination nor any injury report of the informant has been brought on record before the Court. Even the doctor conducting the post mortem on the body of Balendra Singh had not been examined. It is also worthwhile to note that the Investigating Officer who could have said whether there was blood near the Government well and could also have elaborated upon the place of occurrence has also not been examined and further there are no independent witnesses. The informant, P.W.3, has also not been able to describe his position vis-à-vis the accused persons and his brother as to in which direction and where they were standing, as has come in paragraph-4 of the cross examination. Thus, his presence at the place of occurrence itself becomes doubtful. The position emerging from the discussions made hereinabove, the genesis of the occurrence and accordingly the evidence of the witnesses is also not free from doubt. The informant, P.W.3 in the fardbeyan had stated that after hot talk and altercation



between his brother Balendra Singh and the appellant and upon the neighbours having separated the two, he had reached the betel kiosk but in his deposition in the examination-in-chief he has stated that he had separated his brother and the appellant after reaching the betel kiosk upon hearing the shout. Thus, he has changed the sequence of events as stated by him in the fardbeyan and lateron narrated before the Court during his deposition which is another circumstance against him to show that he has not been truthful and therefore he can very well be placed in the category of an unreliable witness. The story of neighbours disengaging his brother and the appellant from their fight appears purposely given up during trial so that the Court had not insisted upon production of those independent neighbours as witnesses.

12. As we have found that the presence of the prosecution witnesses at the scene of occurrence has not been satisfactorily established, their version with regard to either seeing the occurrence or even seeing the accused persons running away, that too in the middle of the night without any source of light as also when the fact that the witnesses are related among each other and also to the deceased making them interested in getting the accused persons convicted and sentenced, moreso when P.Ws. 4, 5 and 6 have stated that they saw the appellant along with others running away also makes their testimony unreliable for the simple reason that they



themselves said that after hearing the noise of firing they had rushed to the place of occurrence and were informed about the incident either by P.W.1 or P.W.3 and thus it cannot be believed that they could have seen the accused persons, including the appellant, running away after such a long time especially when they have not stated that they had any source of light with them and even according to their version there was a lantern at the Government well making it obvious that the accused including the appellant must have definitely moved away quite a distance when the said witnesses had come and where the identification could not have been possible in the normal course of events even if it is accepted that there was a lantern kept on the ground at the Government well which was not the place where the accused were seen running away. The witnesses being related by itself would not necessarily disprove or weaken the prosecution case but in the present case in view of there being no reliable evidence regarding there being any light for proper identification and despite it being claimed in the fardbeyan that villagers had come and seen the accused in the light of torch and lantern brought by them and none of them being examined, we are persuaded to give benefit of doubt to the appellant.

13. Having considered the matter in its entirety, we are not able to uphold the judgment of conviction and order of sentence against the appellant as the prosecution has not been able to bring home the charges beyond reasonable doubt.

Accordingly, we allow this appeal and set aside the impugned judgment and order convicting the appellant giving him the benefit of doubt. The appeal stands allowed.

14. The appellant is in custody. He shall be released forthwith if not wanted in any other case.

(Ahsanuddin Amanullah, J.)

Dharnidhar Jha, J. :- I agree.

(Dharnidhar Jha, J.)

P. Kumar/NAFR

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