

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 391 of 2010

Arising out of PS.Case No. -07 Year- 1994 Thana – Ekma District- SARAN

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Alakh Narayan Singh @ Alakhdeo Rai, Son of Late Kapildeo Rai, resident of
Village- Hariharpur, P.O.- Parsagarh, P.S. Ekma, District- Saran (Chapra).

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : Shri Kanhaiya Prasad Singh, Sr. Advocate.
Dr. Rajesh Kumar Singh, Advocate.
Shri Anant Kumar Bhaskar, Advocate.
Shri Sanjay Kumar Jha, Advocate.

For the State : Shri Dilip Kumar Sinha, 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: 23-06-2015

The appellant was tried after being charged with the commission of offence under Section 302 of the Indian Penal Code and Section 27 of the Arms Act along with Kanhaiya Rai, Satyadeo Rai and Kapildeo Rai in Sessions Trial No. 851 of 1994. By judgment dated 06.03.2010, the appellant was held guilty of committing the two offences. He was heard under Section 235 Cr.P.C. and was directed to suffer rigorous imprisonment for life under Section 302 of the Indian Penal Code and rigorous imprisonment for four years under Section 27 of the Arms Act. The sentences were directed to run concurrently. The appellant has preferred the present appeal to challenge the correctness of the

findings of guilt as also the order of sentence passed upon him.

2. The prosecution case as contained in Ext.4, the *fardbeyan* of Santosh Kumar Rai (P.W.4), the son of the deceased Saraswati Devi, was that the accused persons were uprooting the unripe mustard crop from the field of Nag Narayan Singh (P.W.1). P.W.4 Santosh Kumar Rai, the informant protested to the uprooting by telling the accused persons as to why they were uprooting the crop. He was chased by the accused persons on lodging the protest up to his house wherein he hid himself. Just thereafter this appellant Alakh Narayan Singh @ Alakhdeo Rai, who had been named in the First Information Report as Alakh Singh, is said to have come with a DBBL gun to the *Darwaza* of the informant with other accused, namely, Satyadeo Rai, Kapildeo Rai and Kanhaiya Rai and further entered inside the *Aangan* of the house. At the orders of accused Kapildeo Rai, it was alleged that this appellant fired a shot but that hit the deceased Saraswati Devi, i.e., the mother of the informant who had come in front of the informant to save her son. Saraswati Devi the deceased was hit in her right rib cage and she died instantaneously there at the very door of the house.

3. The incident which had occurred on 20.01.1994 as per the *fardbeyan* was witnessed by Nandji Rai (P.W.5), Bachcha Singh (not examined), Nag Narayan Singh (P.W.1), Kameshwar Singh (P.W.6) and others of village Ekma.



4. The informant stated that the reason behind the occurrence was that his grand father Rajendra Rai had mortgaged his 1½ Katha area of land to accused Kapildeo Rai for Rs. 85/- only and the mortgage had been redeemed only 4-5 months ago. However, while in possession of the land, accused Kapildeo Rai had dug it up to create a ditch and it was promised by accused Kapildeo Rai that he would fill the ditch with soil, but in spite of repeated requests he did not do so which had created some sort of animosity between the two sides. The informant stated in his *fardbeyan* that the accused persons were his agnatic relatives and further stated that the DBBL gun belonged to Ram Nath Singh (D.W.3) who was the elder brother of this appellant and who had come from Siwan for settling the marriage of his daughter and the same gun was used in committing the murder.

5. The investigating officer has not been examined. We, as such, are deprived of the benefit of knowing as to how the investigation had proceeded after registration of the First Information Report (Ext.4) on the basis of Ext.3, the *fardbeyan*. But, what appears from the records is that the inquest was held by the investigating officer in presence of P.W.6 Kameshwar Singh and Santosh Kumar Rai (P.W.4) the informant of the case and the dead body was sent for postmortem examination which was held by Dr. Saligram Mishra (P.W.7) who prepared the postmortem examination



report (Ext.2). The signatures on the inquest report of the witnesses had been marked as Exts. 1/1 and 1/2. It further appears from the record that after close of the investigation, the accused persons were charged together for being tried for the offences. However, what appears from the record is that except this appellant, the three remaining accused Kanhaiya Rai, Kapildeo Rai and Satyadeo Rai died during the pendency of the trial and the judgment, as such, was rendered only in respect of the present appellant.

6. Eight witnesses were examined by the prosecution out of whom Bhola Rai (P.W.2), Meena Devi (P.W.3) and Nandji Rai (P.W.5) who was also named in the First Information Report, did not support the prosecution story and gave a single line of evidence that they did not know anything about the incident resulting in these witnesses being declared hostile. Nag Narayan Singh (P.W.1) and Kameshwar Singh (P.W.6) also do not appear having seen the incident right from the stage of uprooting of the mustard crop and lodging of protest by the informant as appears stated in the First Information Report rather the two witnesses P.Ws. 1 and 6 appear witnesses of the occurrence from the stage they had seen P.W.4 being chased by the accused persons and further of seeing P.W.4 entering inside his house who was chased down up to that place where the incident had taken place. Thus, what appears is that Santosh Kumar Rai (P.W.4) was the only witness of the entire



occurrence. Saligram Mishra (P.W.7), we have already pointed out, was the doctor who had held postmortem examination. Sanjay Kumar Mishra (P.W.8) had brought on record the *fardbeyan* and the formal First Information Report after giving evidence of being acquainted with the writings of S.I. Lalan Prasad Srivastava, the then Officer-in-Charge of Ekma police station and had also tendered in evidence paragraph-4 of the case diary by giving the same evidence of being acquainted with the writings of the investigating officer.

7. As against the above, the defence examined as many as five witnesses. Bipin Bihari Singh (D.W.1) and Gyanti Devi (D.W.2) deposed on appellant Alakh Narayan Singh @ Alakhdeo Rai being employed and his plea of alibi by stating that on the day of occurrence he was not present at the scene of occurrence rather he was serving his organization he had been employed in. Ram Nath Singh (D.W.3) was an accused named in the First Information Report whose DBBL gun had been used as per the prosecution story while firing the shot by the present appellant by which deceased Saraswati Devi was killed. This witness has also given evidence on the plea of alibi of the present appellant. Kashi Nath Singh (D.W.4) tendered in evidence paragraph-21 of the case diary which was in the hand of S.I. Lalan Prasad Srivastava. Alakh Narayan Singh (D.W.5) was the appellant who examined himself under Section 314 Cr.P.C. and had deposed on his plea of alibi.

8. After considering the evidence both of the prosecution and the defence, the impugned judgment was passed by the learned Presiding Officer of Fast Track Court No. I, Saran at Chapra.

9. Sri Kanhaiya Prasad Singh, the learned senior counsel appearing on behalf of the appellant took us through the evidence of three eye witnesses, namely, Nag Narayan Singh (P.W.1), Santosh Kumar Rai (P.W.4) and Kameshwar Singh (P.W.6) and submitted that in the First Information Report there was no mention that the informant had any interest either in the field or the crop which had been raised thereon. But, during the course of the trial, the informant had claimed that he was a share cropper and the field indeed belonged to Nag Narayan Singh (P.W.1) which fact was also supported by Nag Narayan Singh (P.W.1). Submission was that P.W.1 and P.W.6 were brothers and as such, they were holding some interest in the prosecution case. It was next contended that there was no story in the First Information Report that any accused was carrying any weapon, but while deposing in court Santosh Kumar Rai (P.W.4) stated that not only the three deceased accused persons were carrying weapons, like, *Bhala*, *Talwar* and country made gun, they had also assaulted him as badly as to cause bleeding injury to him. Paragraph-6 of the evidence of P.W.4 had been referred to us in the above connection. Submission was that the above evidence of



P.W.4 was supported by Nag Narayan Singh (P.W.1) as well and this serious improvement in the prosecution case renders the evidence of both P.Ws. 1 and 4 unsafe to act. The third contention of Shri Singh was that the evidence of P.W.4 indicates as if his mother had covered him fully so much so that she was lying on the informant which was never his story in the initial version, contained in the First Information Report. By referring to the evidence of P.W.6, Kameshwar Singh in paragraph-4, it was submitted that the distance between the deceased and the present appellant was somewhere around 20 yards, but the doctor had found charring injuries on the dead body which also makes it unsafe to place reliance upon the evidence of P.W.6. On these submissions it was contended that the evidence of P.W.4 and for that matter that of P.W.1 and others, could not be said to be trustworthy as a result of which the present appellant deserves to be acquitted. Some of the witnesses named in the First Information Report had not been examined or if examined they had turned hostile and the court should draw adverse inference to it.

10. Shri D. K. Sinha, the learned Additional Public Prosecutor appearing on behalf of the State, was submitting that may be that the story as regards accused persons other than the present appellant having arms was not stated in the First Information Report, but this particular fact, which was appearing in the evidence either of



P.W.1 or that of P.W.4, could not be said to be an improvement as the defence had not drawn attention of those witnesses to suggest that they had never made those statements before the investigating officer. It was contended that the evidence of P.W.4 in paragraph-2 that his mother fully covered him by lying over him could not be the right interpretation of the evidence of P.W.4 because it was not the case of the prosecution that the informant had fallen down or had been felled by the accused persons and as such, his mother had lied down over him to cover her son, rather it appears that the informant was standing all along the incident and his mother had stood to cover his son to save him from the wrath of the accused persons. Submission was that the manner of assault was supported by the witnesses and the same got support from the medical evidence.

11. Indeed the courts have recognized the importance of the First Information Report by pointing out that in spite of the fact that it may not be the treasure of all information, it still is the most potent weapon in the hands of the defence which could very well point out to the court as to how and for what reasons the prosecution had deviated from its initial version. A few judgments of the Supreme Court have pointed out that it is the most important document to be considered to find out as to what was the initial version of the prosecution, what was the manner of occurrence narrated in it and who were the persons cited as witnesses by the



prosecution. But, those observations, in our opinion, could be material or relevant only when the defence has convincing case of showing to the court a meaningful departure made by the prosecution from its initial story by leading evidence so as to achieving a particular purpose during the trial. Here in the present case, the accused persons other than the appellant who were named in the First Information Report and who were also put on trial, were duly named in the First Information Report, but they were indeed not assigned any role of being armed with any particular weapon. The mere statement in the First Information Report was that when the informant had protested to the uprooting of the unripe mustard crop, they all started chasing him down up to his house, when he entered inside it. There was no story either in the First Information Report that while chasing him, any of the accused persons than this appellant were carrying any weapons or that he was assaulted either before or after he was chased. To that extent Shri Singh was justified in criticizing the prosecution evidence. But the point is as to whether it was that it appears and improvement as material as to lessen the credibility of the evidence of P.W.4, the informant of this case. On considering his submission in the light of the evidence we initially found the submission borne out from the record, but what we find is that that particular statement made by P.W.4 in paragraph-6 of his evidence was not the solitary statement which could be said made



purposely so as to arraigning the accused persons for the first time in Court. Those accused persons were already named in the First Information Report sans the allegation that they were carrying any weapon. They also carried weapons was pointed out to the trial court by Nag Narayan Singh (P.W.1) and Santosh Kumar Rai (P.W.4) during their individual evidences. In order to testing that those statements were purposeful improvement we examined the evidence of the two witnesses and what we found was that they were never suggested that they had not made that statement prior to deposing in court before the investigating officer or any other authority who had the occasion of recording their statements. Thus we find it very difficult to accept the submission of Shri Singh that it could be a purposeful material contradiction or improvement which could be going to the root of the merits of the evidence of P.Ws. 1 and 4. We find that the incident had occurred in broad day light at 3.30 P.M. on 20.01.1994 and the *fardbeyan* had been lodged somewhat at 5 P.M., i.e., just after 1½ hours of the incident. The informant was chased down up to his house where he had hidden himself to secure himself. His mother as appears from the First Information Report and from the evidence also had come forward and had stood in between the accused and her son and as appears from the evidence she was shot and killed. If we could imagine the situation which could be presented by the facts narrated by P.Ws. 1,



4 and 6 we could very well appreciate the mental state of a son who was the target of being shot dead, but who could find that he had lost his mother in the incident instead. It could not have been such a calm and cool temperament of the informant that he could put down every part of the incident while giving his statement to the officer who recorded Ext.4. What appears is that he was probably concerned more about giving the reason as to how the occurrence had generated and how it had culminated into the killing of his mother which were the central material facts of the prosecution story and in the disturbed state of his mind, it was no wonder, that he had missed to point out the fact that other accused persons were carrying weapons individually and that he was also assaulted by them.

12. It is true that the story of the informant being assaulted by the accused persons as badly as to bleed from his injuries was also not appearing in the First Information Report and it is also true that the informant does not appear sent to any doctor for medical examination, but again those omissions to us appear not taking away the importance of the facts which were narrated by him as regards the manner in which his mother was killed. Being chased and being forced to hid himself into his house were facts elementarily attached to the central prosecution story as to how his mother was killed and if the informant had also not initially stated those facts or had stated some facts later during trial, we cannot

refuse to read his evidence as regards the manner in which his mother was killed.

13. The First Information Report does not really state that the informant was holding any interest in the land over which the mustard crop had been raised but we find from his evidence in court that he was a share cropper and had grown the crop. The land indeed belonged to P.W.1 Nag Narayan Singh. That evidence has come from paragraph-4 also that it was the field of Nag Narayan Singh and he had grown the crop as appears from paragraph-2 of P.W.4. The fact that Nag Narayan Singh (P.W.1) was the proprietor of the land appears also from his evidence when he was cross-examined at some length on that fact in paragraph-7 of his deposition. P.W.1 had very categorically stated that P.W.4 did not have any concern with the land and that the land belonged to him as appears from page 14 of the paper book. P.W.1 had stated that the occurrence has generated on account of the dispute of uprooting the mustard crop from the field which act of the accused was objected to by P.W.4 Santosh Kumar Rai (P.W.1, paragraph-1). In the whole of his evidence P.W.1 does not appear claiming that he had shown the crop. Thus, we have to accept that in spite of the field belonging to P.W.1 Nag Narayan Singh the mustard crop had been grown by P.W.4 and if it was such as we find from the evidence, then we do not find it unlawful that P.W.4 Santosh Kumar Rai had objected to

the uprooting of the crop. It is true that the evidence of the investigating officer would have thrown some more light on the uprooting of the crop if he had come to depose as he must have the occasion of visiting the place of occurrence and the mustard field, but while perusing the evidence of the witnesses we do not find that even a suggestion was given to any of the witnesses that no mustard crop was uprooted by the accused persons and there was no protest coming from P.W.4 to the said act and as such, the very genesis of the prosecution story was false and wrong. Coming to the next contention of Shri Singh, we find indeed stated in the First Information Report that while narrating the story the informant had stated that when the accused persons reached at his *Darwaza*, at the orders of accused Kapildeo Rai this appellant had fired targeting him but his mother had come ahead to save him. While deposing in court P.W.4 had stated in paragraph-2 that when this appellant had fired the shot his mother had covered him. The word which appears in the relevant line of evidence recorded by the learned trial judge reads "अलखदेव ने बंदूक चलाया, पर मेरी माँ छाप ली तो उसे चोटें आई थी, वह मर गई।" Shri Singh was attempting to convince us that the words "छाप ली" could be interpreted only the one way that the deceased had laid herself down on the person of the informant in order to saving his son and the shot was fired while she was lying in such a position. On considering the evidence of the witnesses and the initial



prosecution version, we could not find any line of evidence or statement suggesting to us that the informant Santosh Kumar Rai had either fallen down on the ground or he had been felled by the accused persons. He had run into his house and had hidden himself there. It appears from the evidence of witnesses that his mother had come on to the door of that particular house to stand her ground so as to entreat or implore the accused persons to spare her son and not to fire at him. If we interpret the words "छाय ली" the way Shri Singh was suggesting us to do, then it will be doing violence to the real words spoken by P.W.4 and recorded by the court and would lead to misappreciation of evidence. In fact that particular line conveys to us that the deceased had come in between her son and the accused persons and had obstructed them from entering inside the house to kill her son and in that position she was fired at by the present appellant.

14. The above was the reason that the doctor who had held postmortem examination on her dead body i.e., P.W.7 had found charred injuries surrounding in an area of 3" diameter around the oval wound of 1" diameter with lacerated inverted margins. The evidence and the situation presented by it does indicate that the distance between the deceased and the accused persons was very close. It is true that Kameshwar Singh (P.W.6) has stated in his evidence in paragraph-4 that the distance between the assailed and



the assailant was somewhere around 20 yards i.e., about 60 feet, but should not we remind ourselves that the sense of rural people regarding time and distance is very lethargic and notorious which could not be attached much importance. Moreover, the medical evidence which suggests firing from close range could not be discarded because the situation presented to us by the evidence so meticulously probabalizes the situation that it was a shot fired from a very close range.

15. Shri Singh in the above context was also pointing out to us that P.Ws. 1 and 6 were never eye witnesses, because P.W.1 was stating in his evidence that he was very much inside his house when the incident had occurred. While P.W.6 does not say that any incident had occurred inside the house. The evidence of the two witnesses pointed out to us by Shri Singh do point out the above two facts, but then, if the other facts fully proved the manner of occurrence to the satisfaction of the court, then some errors in giving evidence for any particular reason could not be considered to reject the evidence otherwise of reliable witnesses.

16. After having considered the evidence of the witnesses in the light of the submissions of the learned counsel of both the sides specially Shri Singh, the learned senior counsel appearing on behalf of the solitary appellant, we find that the participation of the appellant in firing the shot to kill the deceased

has been established beyond any shadow of reasonable doubt as a result of which the judgment impugned does not require any interference by this Court.

17. The appeal appears of no merit and the same is dismissed.

(Dharnidhar Jha, J.)

(Ahsanuddin Amanullah, J.)

Anand Kr./Sanjay/NAFR

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