

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.482 of 2008

WITH

Criminal Appeal (DB) No. 848 of 2013

=====

AGASNT THE JUDGMENT OF CONVICTION AND THE ORDER OF SENTENCED, DATED 05TH MARCH, 2008, PASSED BY SHRI SAROJ KUMAR SHRIVASTAVA, ADDITIONAL SESSIONS JUDGE, FAST TRACK COURT NO. II, MADHEPURA, IN SESSIONS TRIAL NO. 58 OF 2003, ARISING OUT OF ALAMNAGAR (RATWARA) POLICE STATION CASE NO. 10 OF 2003

=====

SURESH SINGH, SON OF LATE MADAN SINGH @ MODAN SINGH,
RESIDENT OF VILLAGE KHAPUR, POLICE STATION AND POST OFFICE-
RATWARA, DISTRICT MADHEPURA

.... **APPELLANT (in both the appeals)**
VERSUS

THE STATE OF BIHAR

.... **RESPONDENT (in both the appeals)**

=====

Appearance :

(In CR. APP (DB) No. 482 of 2008)

For the Appellant : Mr. Sidhendra Narayan Singh, Advocate

For the Respondent : Mr. Ajay Mishra, A.P.P.

(In CR. APP (DB) No. 848 of 2013)

For the Respondent : Mr. A. K. Sinha, A.P.P.

**MR. SHYAMAKANT SINGH, ADVOCATE & MS. RINA SINHA,
ADVOCATE AS AMICUS CURIAE**

=====

CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

AND

HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)

Date: 13-03-2015

Under the judgment, dated 05.03.2008, passed,
in Sessions Trial No. 58 of 2003, by learned Additional
Sessions Judge, Fast Track Court No. II, Madhepura, the
appellant, Suresh Singh, stand convicted under Section 302 of
the Indian Penal Code and Section 27(2) of the Arms Act,
1951. Following his conviction under Section 302 of the Indian
Penal Code, the accused-appellant has been sentenced to
suffer imprisonment for life and, for his conviction under

Section 27 (2) of the Arms Act, 1951, the accused-appellant has been sentenced to undergo rigorous imprisonment for three years, both the sentences having been directed to run concurrently.

2. The case of the prosecution, as unfolded at the trial, may, in brief, be described as under:

(i) On 07.02.2003, at about 05:30 PM, when Bishun Singh, on his way to the doctor's clinic, reached the house of one Jai Hind Singh, accused Suresh Singh restrained Bishun Singh and shot him in his chest by means of a country-made pistol. Having sustained the bullet injury, Bishun Singh fell down on the ground and succumbed to the fire-arm injury sustained by him.

(ii) With regard to the above occurrence, oral information was given to the police at Alamnagar (Ratwara) Police Station, by Mantun Kumar Singh (PW 6), son of the deceased, alleging to the effect, *inter alia*, that his father, Bishun Singh, had been shot to death by accused Suresh Singh by means of a fire-arm.

(iii) The said oral information was reduced into writing and treating the same as the First Information Report, Alamnagar (Ratwara) Police Station Case No. 10 of 2003 was registered, under Section 302 of the Indian Penal Code read with Section 27 of the Arms Act, 1951, against accused Suresh

Singh.

(iv) During investigation, inquest was held over Bishun Singh's dead body, which was also subjected to *post mortem* examination, and, on completion of investigation, *charge sheet* was laid, under Section 302 of the Indian Penal Code and Section 27 of the Arms Act, 1951, against accused Suresh Singh.

3. At the trial, when *charges* were framed under Section 302 of the Indian Penal Code and Section 27 of the Arms Act, 1951, the accused pleaded not guilty thereto.

4. In support of their case, prosecution examined altogether 8 (eight) witnesses.

5. The accused was, then, examined under Section 313 (1) (b) of the Code of Criminal Procedure and, in his examination aforementioned, the accused denied that he had committed the offences, which were alleged to have been committed by him, the case of the defence being that of denial. No evidence was adduced by the defence.

6. Having, however, arrived at the finding that accused-appellant, Suresh Singh, had been proved guilty of the *charges* under Section 302 of the Indian Penal Code and Section 27 of the Arms Act, 1951, learned trial Court convicted him accordingly. Following the conviction, sentences have been passed against the convict, Suresh Singh, as mentioned

above.

7. Aggrieved by his conviction and the sentences passed against him, the convict, Suresh Singh, has preferred these appeals.

8. Since both the appeals have been preferred by the one and the same convicted person, namely, Suresh Singh, Criminal Appeal (DB) No. 848 of 2013 having been preferred from jail, we have heard both the appeals together and the same are being disposed of by this common judgment and order.

9. We have heard Mr. Sidhendra Narayan Singh, learned Counsel, appearing on behalf of the appellant, and Mr. Ajay Mishra, learned Additional Public Prosecutor, appearing on behalf of the State. We have also heard Ms. Rina Sinha, learned Counsel, appearing as Amicus Curiae, and Mr. A. K. Sinha, learned Additional Public Prosecutor, appearing on behalf of the State.

10. While considering the present appeals, let us, first, take note of the medical evidence on record. According to the evidence on record, the *post mortem* examination, conducted on the said dead body, on 09.02.2003, at about 07:10 AM, revealed as follows:

"(1) External examination:- Rigour mortis present in all four limbs, Mouth Closed, Eye closed, swelling of face and bleeding from

nose.

Wounds of Entry:- Circular 1" diameter with inverted and black margin seen on right side of chest 2½" medial to right nipple.

Wound of Exit:- Circular 2½" diameter everted and black margin posterior left lower region of back 3" lat. two spins.

(2) On Dissection :-

Skull – NAD

Neck – NAD

Rt. 4 and 5th rib interiorly and Lt. 11th rib posteriorly

Chest – Thoracic cavity full of blood.

Heart empty

Rt. Lung torn and ruptured.

Lt. lower lob of lung ruptured.

Abdomen – Stomach – digested food material

Intestine – NAD

Liver – NAD

Spleen – NAD

Bladder - empty"

11. In the opinion of the doctor, the death was caused, because of shock and hemorrhage, which resulted from the gun-shot injury sustained on his chest by the said deceased.

12. The findings of the doctor and/or his opinion with regard to the nature of the injury, which had been found on the said dead body, and the cause of death has not been

disputed by the prosecution or the defence. We, too, do not find anything inherently incorrect or improbable in the *post mortem* report.

13. From the medical evidence on record, therefore, what becomes clear is that Bishun Singh had been shot at by means of a fire-arm on the front of his chest and the said deceased suffered a bullet injury on the front of his chest and the bullet exited from the back of his chest resulting into his death.

14. Bearing in mind the medical evidence on record, let us, now, turn to the evidence of the informant, namely, Mantun Kumar Singh (PW 6), who, we find, has turned hostile and deposed nothing incriminating against the accused-appellant except saying that his father had gone to the market to purchase medicine and, at that time, he was shot at and upon hearing the sound of firing, he went and found his father lying dead.

15. Though PW 6 was put to cross-examination by the prosecution by treating him as a hostile witness and his previous statement, which had been made by him (PW 6) before the police has been brought on record, wherein he is shown to have implicated the accused-appellant as the assailant of his father, the fact remains that the previous statement of the informant could not have been treated as



substantive evidence and the same could have been used only for the purpose of contradicting the evidence of PW 6 or to show that he is a witness, who cannot be relied upon. The fact, however, remains that since PW 6 has given no substantive evidence, which proves incriminating against the accused-appellant, his evidence could not have, admittedly fasten the accused-appellant with the charges brought against him.

16. Bearing in mind what we have indicated above, let us, now, turn to the evidence of PW 1, who has claimed himself to be an eye-witness. His evidence is that the accused-appellant had shot Bishun Singh by means of a pistol from behind on the back of the chest of the said deceased.

17. Apart from the fact that the evidence of PW 1 shows that he came to the place of occurrence in about 4 to 5 minutes from the moment the bullet was shot making him thereby difficult to believe that he had witnessed the alleged occurrence, what is noticeable is that his claim that the accused-appellant had shot the said deceased by means of a pistol on the latter's back of the chest is completely belied by the medical evidence on record inasmuch as the medical evidence on record shows that the bullet injury had been sustained by the said deceased on the front of his chest and the bullet had exited through the back of his chest.

18. Considering the fact that PW 1 was, admittedly, not present near the said deceased at the time, when he was shot dead and when he concedes that he reached the place of occurrence in about 4 to 5 minutes of the shot being fired, we do not find that his evidence can be implicitly relied upon, when contradicted by the medical evidence on record.

19. Though there is no bar in convicting an accused on the basis of ocular evidence even if the medical evidence points to the contrary, this principle of criminal jurisprudence is subject to the rider that the ocular evidence has to be such, which is unimpeachable and wholly reliable and must induce confidence of the Court that the evidence so given can be safely relied upon.

20. Because of the nature of inherent discrepancy with which suffers the evidence of PW 1, we consider it wholly unsafe to place reliance on his evidence by rejecting the medical evidence on record, which points to the contrary.

21. In the backdrop of the nature of the evidence, which we have discussed above, when we turn to the evidence of PW 2 and PW 3, we find that though both these witnesses have deposed that Bishun Singh had been shot at by the accused-appellant by means of a pistol, the fact



remains that their evidence do not indicate that they were present at the scene of occurrence or were witnesses to the occurrence. This apart, as far as PW 2 is concerned, he, admittedly, reached the place of occurrence after about 5 minutes of the arrival of PW 1 at the place of occurrence inasmuch as PW 1 has claimed that he was the first one to have reached the place of occurrence and PW 2 arrived there after 5 minutes of the occurrence and so far as PW 3 is concerned, he has not even claimed, as already indicated above, that he had witnessed the occurrence. **22.** Thus, the evidence of PW 1, PW 2 and PW 3 cannot be safely held to have fastened the accused-appellant with the charges framed against him. So far as the remaining witnesses of the prosecution are concerned, they have all turned hostile including the informant, who is the son of the deceased.

23. Situated thus, it becomes clear that the prosecution is left with no convincing, credible and/or reliable evidence, which could have made the foundation of conviction of the accused-appellant.

24. At any rate, in the light of the nature of the evidence on record, the prosecution could not have been held, and ought not to have been held, to have proved their case beyond reasonable doubt against the accused-appellant. Consequently, the accused-appellant deserves to be accorded,

at least, benefit of doubt.

25. Situated thus, we are clearly of the view that the present one is a case, where the accused-appellant ought to be accorded benefit of doubt.

26. In the result and for the foregoing reasons, we allow both these appeals. The impugned conviction of the accused-appellant and the sentences passed against him by the judgment and order, under appeal, are hereby set aside. The accused-appellant is held not guilty of the offences, which he stands convicted of, and he is hereby acquitted of the same under benefit of doubt.

27. Since the accused-appellant is in custody, he is directed to be released forthwith if not required to be detained in connection with any other case.

28. Let the Amicus Curiae be paid a fee of Rs.5,000/- each.

29. Registry shall, forthwith, send a copy of this judgment and order to the learned trial Court along with the Lower Court Records.

(I. A. Ansari, J.)

Prabhakar Anand/-

(Gopal Prasad, J.)

U	✓	T	X
---	---	---	---