

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.296 of 2010

Arising out of PS.Case No. 166 Year-2008 Thana -Gopalganj District- GOPALGANJ

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Shahnawaz Khan @ T.Khan S/O Jamir Khan R/O Vill.- Khalispur, P.S.- Mufassil
Siwan, Distt.- Siwan.

.... Appellant

Versus

The State of Bihar

.... Respondent

with

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Criminal Appeal (DB) No. 365 of 2010

Arising out of PS.Case No. 166 Year-2008 Thana -Gopalganj District- GOPALGANJ

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Mintu Singh Son of Lalan Singh, Resident of Village-Chainpatti, P.S. & District-
Gopalganj.

.... Appellant

Versus

The State of Bihar

... Respondent

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Appearance :

For the Appellants : None

For the State : Sushri Shashi Bala Verma, 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: 20-05-2015

These two appeals arise out of the judgment of conviction dated 02.02.2010 and the order of sentence dated 08.02.2010 by which the two appellants, one in each of the two appeals, were held guilty of committing offences under Sections 302/34 and 307/34 of the Indian Penal Code and Section 27 of the Arms Act. After being heard on sentence under Section 235 Cr.P.C., both of them were directed to suffer rigorous



imprisonment for life and also to pay a fine of Rs. 5000/- else to suffer imprisonment for further period of one year under Section 302/34 of the Indian Penal Code, rigorous imprisonment for 10 years for being found guilty under Section 307/34 of the Indian Penal Code and rigorous imprisonment for three years as also to pay a fine of Rs. 2000/- else to suffer imprisonment for one year for having committed offence under Section 27 of the Arms Act. The sentences passed upon the appellants were directed to run concurrently.

2. Circle Inspector of Police, Mahesh Singh who was the Officer-in-Charge on 01.08.2008 of the town police station Gopalganj recorded his own statement at Sadar Hospital, Gopalganj stating that the Officer-in-Charge of Barauli police station had informed him that appellant Mintu Singh was informed by his mother about the execution of the attachment order against him and during that course the destruction of his house. It was stated that on receiving the information from his mother, the appellant was as upset as to start amassing arms with his companion criminal Maya Bhagat so as to staging a show down with the Gopalganj police. The informant claimed that he created different security groups of officers and constables and deputed them at Monia Chowk, Post Office Chowk, Ambedkar



Chowk, Basdila Mor and further deputed ASI Vijay Shankar Thakur (P.W.5) to keep a watch on the movements of the criminals in the township of Gopalganj. Subsequently, he was informed that criminals riding red coloured *Platina* and black coloured Splendor motorcycles were firing shots indiscriminately at Banjari Mor. P.W.6 claimed that by the time he reached there he found the huge crowd assembled and it was pointed out by them to him that it was Mintu Singh who had fired the shots and had moved towards West. Accordingly, P.W.6 also moved in that direction to get the same information that it was appellant Mintu Singh and Maya Bhagat who had indulged into indiscriminate firing. Some informations were received by P.W.6 near Maa Singhasini Petrol Pump where one of its employees P.W.2 Satyendra Kumar Yadav was found seriously injured. The informant moved towards the service centre and faced barrage of shots being fired by the criminals as a result of which constable Sunil Kumar Yadav (not examined) had been injured and it further appeared that Awadhesh Gupta had also been injured on account of firing shots by the criminals. As may appear from the self statement recorded by P.W.8, shots were fired at all important points of the township of Gopalganj and during that course Sunil Kumar Yadav, the constable of the home guard had lost his life

while Awadhesh Gupta who was running a jewellery shop had also received injuries.

3. On the basis of self statement of P.W.6, the First Information Report of the case was drawn up and the investigation was taken up by P.W.8 S.I. Uday Shankar. He stated that Shahnawaz Khan @ T. Khan was in custody in a case registered somewhere in the State of Uttar Pradesh and Mintu Singh had been arrested on that very day from a particular mufasil *ilaka* of the District. Arms were recovered from the possession of Mintu Singh and as appears from his evidence those were subject matters of specific substantive criminal case having been registered in that behalf. The two injured Awadhesh Gupta and Satyendra Kumar Yadav were examined by doctors out of whom Dr. S.K. Gupta (P.W.3) had issued Ext.1 after examining P.W.1 Awadhesh Gupta. Dr. A.K. Suman (P.W.4) had held post-mortem examination on the dead body of the deceased and had issued the post-mortem examination report Ext.2. After closing the investigation the two appellants were put on trial which ended in the impugned judgment.

4. We have gone through the evidence of witnesses and what we find is that P.W.1 Awadhesh Kumar Gupta himself and the injured witness did not identify anyone in court



nor did they name anyone on account of having identified him during the course of the occurrence. Satyendra Kumar Yadav (P.W.2) was the sales man of the petrol pump and he was also injured in the firing made allegedly by the criminals. In his evidence, P.W.2 also did not identify anyone in court nor did he name anyone on account of having been identified by him during the course of the incident. S.I. Vijay Shankar Thakur (P.W.5) had claimed the identification of appellant Mintu Singh during the course of the occurrence but in his cross-examination in paragraphs 6 and 7, the witness stated that it was about 6 or 6.30 P.M. and he had identified the appellant Mintu Singh while chasing the criminals and the distance between him and the criminals who had been chased by him was somewhere around 150 yards. He had seen the criminals from their back and they were riding two motorcycles, two out of them were occupying one of the two motorcycles. P.W.5 further stated in paragraph-8 that he did not see any of the criminals firing shots and had only seen them running away.

At a time when it was evening, the identification of the accused from a distance of 150 yards and that too by seeing them from their back to us appears an improbability.

5. P.W.5 had admitted that he knew appellant

Mintu Singh from before the occurrence and only because he had visited Chainpatti he could know that it was Mintu Singh, but he did never had any talk or dialogue with Mintu Singh. The claim of P.W.5 that he had identified Mintu Singh in our opinion does not appear acceptable.

6. Mahesh Singh (P.W.6) the informant of the case had also claimed to have identified appellant Mintu Singh but his claim appears bogus and unacceptable in the light of the answers he had given questions put to him in the cross-examination. It appears from paragraph-13 of his evidence that he had arrived at the first scene of firing five minutes after the firing and he had stated in his cross-examination in paragraphs 17, 18 and finally 19 that he could never have the opportunity of seeing any of the criminals so as to claiming that he had identified them. While perusing the evidence of Mahesh Singh (P.W.6), what we could find was that the officer was probably evading to face the criminal and was purposefully had delayed his departure from the police station so as to allow the criminals to run away from the scene of occurrence. He was moving from one place to another only to give chance to the criminals to escape. If indeed such serious occurrence had taken place in the heart in the township of Gopalganj and if it was the conduct of P.W.6 as finds



recorded or appearing from his evidence, then we do not have any hesitation to hold that P.W.6 was shirking in performance of his official duties of maintaining law and tranquility in the township of Gopalganj. From his evidence he appears to us a thoroughly incompetent officer who was not mindful of his duties as a police man and appears deliberately to have avoided confronting the criminals who had succeeded in killing one of the constables of the home guard, namely, Sunil Kumar Yadav. His conduct shocks us and we direct the copy of this judgment to be forwarded to the Director General of Police for initiating an action against the officer, if he is still continuing in service and report the initiation of the action to this Court.

7. As regards the evidence of S.I. Shardendu Sarat (P.W.7) he had only made the entries after receiving the information from Barauli police station. P.W.8 S.I. Uday Shankar, as we have noted, had investigated the case and he was not a witness to the occurrence. P.W. 9 ASI Pankaj Kumar Singh had prepared the inquest report after inquest was held on the dead body of constable Sunil Kumar Yadav of home guards and P.W.10 SI Silvester Kalko had produced the material exhibits from the police station *Malkhana* into the Court room.

8. After having considered the evidence of the



witnesses what we could find was that the conviction of the two appellants was based on the ipsi-dixit of the learned Judge who passed the judgment. There was no tangible, admissible and acceptable material to hold that indeed appellant Shahnawaz Khan @ T. Khan and appellant Mintu Singh had been found participating in commission of the offence they had been held guilty of. The evidence was too little and insufficient to raise inferences which were drawn by the learned trial judge and they were as insufficient as not even to raise a doubt about the participation of the two appellants. In fact, the implication of Shahnawaz Khan @ T. Khan to us appears quite mala fide as he had not even been named in the First Information Report especially if he had been identified by the mob of persons and that identification had been put into the knowledge of P.W.6 Mahesh Singh who had drawn his self statement quite sometimes after the incident at 9.00 P.M. on 01.08.2008. The prosecution of appellant Shahnawaz Khan @ T. Khan appears not only malicious but appears sufficient enough to shake the confidence of innocent persons in the system of imparting justice.

9. In view of the evidence which is available to us on the record of the case, we find that there was no reason for holding the two appellants guilty of committing any offence and

they were wrongly convicted and sentenced as pointed out at the very outset of the present judgment. The two appeals, as such, are hereby allowed by setting aside the judgment of conviction and order of sentence passed upon the two appellants. Appellant Shahnawaz Khan @ T. Khan is on bail. He is discharged from the liabilities of his bail bonds. Appellant Mintu Singh is in custody. He is directed to be released forthwith, if not wanted in any other case.

(Dharnidhar Jha, J.)

(Ahsanuddin Amanullah, J.)

P.Kumar/Sanjay/NAFR

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