

IN THE HIGH COURT OF JUDICATURE AT PATNA

Govt. Appeal (DB) No.8 of 2015

Arising Out of P.S. Case No. - 271 Year - 2012 Thana - Daudnagar District - Aurangabad

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The State of Bihar, through the Collector, Aurangabad.

.... Appellant

Versus

1. Umesh Yadav @ Umesh Prasad Singh, Son of Late Ram Bilash Singh, resident of village - Bhakharu More, P.S. - Daud Nagar, District - Aurangabad.

2. Ravindra Yadav @ Ravindra Singh, Son of Manoranjan Singh, resident of Mohalla - Daud Nagar near Suraj Mandir, P.S. - Daud Nagar, District - Aurangabad.

.... Respondents

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Appearance :

For the Appellant : Mr. Satya Narayan Prasad, Advocate

For the Respondents :

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 17-08-2015

The State of Bihar has preferred this appeal under Section 378 (1) (3) of the Code of Criminal Procedure, 1973, aggrieved by the judgment of learned Additional Sessions Judge - III, Aurangabad, dated 23/01/2015, passed in Sessions Trial Nos. 66 of 2013 / 28 of 2014, whereby he has recorded acquittal

of the respondent Nos. 1 and 2. The respondent No. 1 was put on trial for the charge under Section 302 of the Indian Penal Code and Section 27 of the Arms Act, whereas respondent No. 2 was charged for the offences punishable under Sections 307 and 302/34 of the Indian Penal Code and Section 27 of the Arms Act.

2. The *fardbeyan* of the informant, namely, Pramod Kumar Singh (P.W.-6), was recorded by the Circle Inspector of police, Daudnagar, in the district of Aurangabad, on 04/10/2012, on the basis of which, Daudnagar P.S. Case No. 271 of 2012 came to be instituted, disclosing offence under Sections 302/34 of the Indian Penal Code and Section 27 of the Arms Act, 1959. The respondents were named in the First Information Report as assailants. As per the *fardbeyan*, the informant claimed that while he was pouring fertilizer in his field, situated near N.H. - 98, he saw his uncle, namely, Sudesh Kumar Singh, riding a motorcycle with one Janeshwar Singh, a pillion rider. Suddenly, respondent No. 1 with his brother-in-law and respondent No. 2, alongwith another person (not known to the informant), riding in a motorcycle, overtook the motorcycle of the informant's uncle and intercepted him from the front. Respondent No. 1 is said to have got down from the motorcycle and fired two shots upon said Sudesh Kumar Singh (the deceased), who resultantly failed



down. Having seen this, the informant (P.W.-6) raised alarm upon which the respondent No. 1 threatened him of the same fate, as his uncle had. The informant further alleged that respondent No. 2 also took out a pistol from his waist and fired one shot upon him, but he saved himself by falling on the ground and when the villagers rushed towards the place of occurrence, the miscreants fled away towards Obra. The injured was brought to Daudnagar hospital, where he died.

The genesis of the occurrence has been described as avenge by the respondent No. 1, as he had contested an election, for Beyapar Mandal, against the deceased and had lost to him. It was alleged that after having lost the said election, the respondent No. 1 had threatened the deceased of dire consequences and had earlier also made an attempt on the life of the deceased.

3. After completion of investigation, the police had submitted *chargesheet*, on 31/12/2012, against the respondents for the offences punishable under Sections 302/34 of the Indian Penal Code and Section 27 of the Arms Act. The investigation, so far as the other unidentified person was concerned, was kept open by the police.

4. Learned Sub-Divisional Judicial Magistrate,



Daudnagar took cognizance of the offences and sent the case to the Court of learned Judicial Magistrate, Ist Class, Daudnagar for commitment. The respondents were, accordingly, committed to the Court of Sessions and they were put on trial as they pleaded not guilty, after having been charged for the offences punishable under Sections 302/34 of the Indian Penal Code and Section 27 of the Arms Act. The trial commenced as the respondents denied the charge, as framed against them.

5. From the petition of appeal and the judgment of acquittal under challenge, it appears that altogether thirteen prosecution witnesses were examined at the trial; out of whom, P.W.-9, namely, Kaushalendra Singh (seizure list witness), P.W.-10, namely, Vivek Kumar (witness of inquest report) and P.W.-11, namely, Dr. Vikas Kumar Sinha (doctor) were formal witnesses. Apart from P.W.-6, namely, Pramod Kumar Singh, all the witnesses, other than formal witnesses, were hearsay witnesses. P.W.-1, namely, Umesh Singh, was the own cousin of the deceased, who identified his signature on the *fardbeyan*, which was marked as Exhibit - 1. Similar was the case with P.W.-2, namely, Rakesh Kumar, brother of the informant. P.W.-3, namely, Ramkewal Singh, was also a hearsay witness and own brother of P.W.-1 and cousin of the deceased. P.W.-4, namely,



Birendra Kumar Singh, the younger brother of the deceased, was another hearsay witness, who identified his signature on the seizure list. P.W.-5, namely, Jagdish Narain Singh, was another hearsay witness, happened to be the father of the informant and full brother of the deceased. P.W.-7, namely, Nawal Kishore Singh, was also a hearsay witness, described as co-villager and closely related with the deceased. P.W.-8, namely, Chandan Kumar, son of the deceased is another hearsay witness. P.W.-13, namely, Ashok Kumar, was the Investigating Officer of the case, who proved the First Information Report, inquest report and the seizure list. P.W.-11 and P.W.-12, namely, Dr. Vikas Kumar Sinha and Dr. Arun Kumar Sinha, were the doctors, who had conducted the *postmortem* examination of the dead body.

6. There is a very important eye-witness, who has been examined as eye-witness to the occurrence and has also been examined as a Court witness, namely, Janeshwar Singh. As has been noted above, while referring to the prosecution case, as narrated by the informant (P.W.-6) in his *fardbeyan*, Janeshwar Singh (Janeshwar Yadav) was the one, who was the pillion rider with the deceased at the time of the occurrence. In course of his evidence before the Court, he has deposed that he, alongwith the deceased, was coming on the motorcycle on the fateful day,

when the occurrence had taken place. We will be dealing with his evidence after dealing with the evidence of other prosecution witnesses.

7. From the judgment under appeal and the petition of appeal, we find that all the prosecution witnesses, except the formal witnesses, who had deposed at the trial, were closely related to the deceased. All such prosecution witnesses, except P.W.-6 (the informant), were hearsay witnesses. Animosity between the deceased and respondent No. 1, as they had contested election from Beyapar Mandal, has been described as the genesis for the said occurrence by the prosecution. It is in this background that the judgment of acquittal of trial Court under appeal is required to be considered in the present proceeding as to whether the view taken by the learned trial Court is such that no reasonable person could have arrived at such conclusion.

8. From the trial Court judgment, we find that the learned trial Court was conscious of the legal position that the evidence of prosecution witnesses could not be discarded only on the ground of their being related to the deceased and, therefore, interested witnesses. The trial Court was mindful of the fact that there being single eye-witness to support accusation

against the respondents, he be closely related to the deceased and knowing well that the deceased had animus with respondent No. 1, his evidence was required to be considered with some degree of caution and circumspection.

9. The learned trial Court, while arriving at his conclusion, has taken into account the fact that the agricultural plot, which belonged to the informant, was nearly half-a-kilometer away from the place of occurrence. He, therefore, came to a conclusion that it was highly improbable that he would have listened to the conversation between the deceased and the accused persons. The learned trial Court also took into account the fact that there was nothing to prove that the informant was, in fact, pouring fertilizer in his agricultural field at the time of occurrence.

10. The Court witness, namely, Janeshwar Singh, was examined and his evidence has been discussed in paragraph No. 17 of the trial Court judgment. In his evidence, he has deposed that on the fateful evening, he was returning from Daudnagar on the motorcycle with the deceased and the moment they reached ahead temple of Taran Baba, they were overtaken by two persons, riding another motorcycle. The one, who was driving the motorcycle, was wearing a helmet and there were two



persons sitting behind him with their faces concealed by long cloth (Gamchha). The person, who was sitting in the middle on the said motorcycle, shot at the deceased. The third person also opened fire thereafter. He said that he could not recognize the miscreants. He had also said in his evidence that the informant was not seen, when the occurrence had taken place and he was seen for the first time at the hospital, to which the deceased was taken.

11. Learned trial Court, upon close analysis and scrutiny of the evidence, adduced at the trial, doubted presence of P.W.-6 (the informant) at the place from where he could see the occurrence taking place and, accordingly, doubted the manner of occurrence, as narrated by him. The learned trial Court found apparent contradiction between the *fardbeyan* of the informant and his statement made at the trial. In the *fardbeyan*, the informant had said that respondent No. 1, the assailant, got down of his motorcycle and shot at the deceased, while he was sitting on his motorcycle, whereas at the trial, he said that respondent No. 1 told the deceased to get down from his motorcycle and he opened fire after the deceased got down from his motorcycle. Having considered this, learned trial Court considered the *postmortem* report, which supported the manner of occurrence,



as described by the Court witness. As per the statement of the informant, the bullet ought to have hit the deceased on his front side of the body, but the injury was, in fact, found by the doctors on the right side below the armpit, which suggested that the deceased was hit from his right side which was corroborated by the evidence of the Court witness, who had stated that the deceased was hit by the miscreants, who were sitting on the motorcycle and the motorcycle of the deceased was intercepted first and shots were opened thereafter.

12. In our considered view, the conclusion arrived at by the learned trial Court cannot be said to be a view, which could not have been possibly taken. The view taken by learned trial Court cannot be said to be suffering from manifest illegality, requiring Court's interference, exercising appellate jurisdiction under Section 378 of the Code of Criminal Procedure, 1973. We do not find any compelling circumstance or substantial reason on the basis of the grounds taken in the petition of appeal, on the basis of which, it could be argued on behalf of the appellant-State of Bihar that there were sufficient material to hold the respondents guilty of the alleged offence on the basis of evidence on record.

13. It is well settled that the appellate Court in an appeal

against acquittal, is required to be slow and unless findings of the trial Court are unreasonable and perverse, the High Court is not required to interfere with the judgment of acquittal of a trial Court.

14. In our opinion, the appellant has failed to make out a case, in the present appeal, that there is sufficient grounds for interfering with the findings arrived at by the learned trial Court. It has been held and reiterated by the Supreme Court that where two views are reasonably possible on the same evidence, the prosecution cannot be said to have proved its case beyond reasonable doubt. Reference can be made to the judicial pronouncement in this regard in case of “*T. Subramanian Versus State of Tamil Nadu*” reported in “(2006) 1 Supreme Court Cases 401”. The conclusion arrived at by the learned trial Court, cannot be said to be perverse. We, therefore, not inclined to grant leave and admit this appeal.

15. This appeal is, accordingly, dismissed.

(I. A. Ansari, ACJ.)

(Chakradhari Sharan Singh, J.)

Praveen-II/-

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