

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.823 of 2015

Arising Out of PS.Case No. -119 Year- 2002 Thana -BHABHUA District- BHABHUA (KAIMUR)

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1. Sachidanand Singh S/o Late Birendra Singh, Resident of village- Marichaw,
P.S.- Bhabua, District- Kaimur

.... Appellant/s

Versus

1. The State of Bihar
2. Surybansh Singh S/o Late Ramcharitra Singh
3. Jamwant Singh S/o Sriram Singh
4. Satyendra Ram @ Mahendra Ram S/o Mahanth Ram
5. Sanjay Paswan S/o Bigau Paswan
6. Kamlesh Singh S/o Sriram Singh
7. Dina Ram S/o Late Sriram Singh, All resident of village- Marichaw, P.S.-
Bhabua, District- Kaimur

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Krishna Prasad Singh, Sr. Advocate

For the Respondent/s : Mr. S.B Verma, Additional Public Prosecutor

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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: 18-12-2015

The son of the deceased and informant of Bhabua P.S. Case No.119 of 2002 is the appellant in the present appeal against acquittal preferred under proviso to Section 370 of the Code of Criminal Procedure, 1973, being aggrieved by judgment and order, dated 20.07.2015, passed by learned Adhoc Additional Sessions Judge-III, Kaimur, at Bhabua. Respondent Nos. 2 to 7 were charged under Sections 120B, 302, 323 and 341 read with Section 34 of the Indian

Penal Code and Section 27 of the Arms Act, 1959, in Sessions Trial No. 132 of 2003/108 of 2013 arising out of the said Bhabua P.S. Case No. 119 of 2002.

2. From the impugned judgment and order, we find that the First Information Report drawn on the basis of the *fardbeyan* of the appellant was against unknown persons.

3. Briefly stated, according to the *fardbeyan*, while the appellant and his father, Birendra Singh, were on way back to their home, they were attacked by a group of unidentified persons after causing obstructions on the road with the help of brick stones. They are said to have hurled brick stones on the informant and the deceased. One, amongst the said crowd, is said to have opened fire on his father (deceased), who sustained gun-shot injuries. As the appellant lost balance of his motorcycle, he fell on the ground. He successfully feigned to be dead and the miscreants, believing him (the informant) as dead, left the place of occurrence.

4. At the trial, altogether five witnesses were examined, the appellant being P.W.1. P.W.5, Vijay Bahadur Singh, was declared hostile to the prosecution. The appellant, at the trial, narrated altogether a different story than that of the *fardbeyan*. He, in his evidence, gave the names of the miscreants as Suryabansh Singh (respondent No.2), Jitendra Singh, Kamlesh Singh (respondent No.6)



and Ganesh Singh, who had allegedly hurled brick stones upon him and his father, when they were passing on the motorcycle. He has deposed that Suryabansh Singh opened fire on his father, who sustained gun-shot injuries. He has also deposed that Kamlesh (respondent No.6), Jitendra and Ganesh had come and shut the mouth of his father and dragged the body of his father near the appellant, whom the miscreants considered to be dead. He has also deposed that after the miscreants had fled away and he was on the way to his village with his injured father on the motorcycle, he met Vijay Singh (P.W.5) and Lalji Singh (P.W.2) and narrated to them the entire occurrence to the effect that Suryabansh Singh (respondent No.2) had opened fire upon him. According to the evidence of appellant (P.W.1), the deceased told the said Vijay Singh and Lalji Singh that Suryabansh Singh (respondent No.2) and his men were knowing the programme of the deceased as they had sat together few hours before the occurrence had taken place. He has further deposed that the deceased was, first, brought to Bhabua Hospital, whereafter he was taken to Varanasi for treatment, but he was declared dead at the hospital. In his examination-in-chief itself, he has further deposed that he had given his statement to the police officer, put signature on a plain paper, but he did not have any knowledge as to what the police officer had written on the plain paper. He has deposed that he had

given his statement under Section 164 of the Code of Criminal Procedure before the Magistrate. He has also deposed that the police had not written the statement as given by him in his *fardbeyan*; rather, they wrote the statement as per their own will different from his *fardbeyan*.

5. P.W.2, Lalji Singh, who is the cousin of the appellant, supported the prosecution case to the extent that the appellant and the deceased had narrated the details of occurrence, when they were on way back to the village, after having sustained injuries. He has stated, in his evidence, that the appellant and the deceased had told him that respondent No.2 had opened fire. P.W.3, Birendra Singh supported the prosecution's case to the extent only that he had met the appellant and the deceased at the place of occurrence after hearing noise, whereupon the deceased told him that some *unknown persons* had opened fire upon him. He has also deposed that the deceased had told the villagers that some unidentified strangers had opened fire upon him. P.W.4 has deposed that when he heard the noise, he went to the place of occurrence and he was told that some unidentified criminals had opened fire upon the deceased.

6. Learned trial Court, upon considering the evidence on record, acquitted the respondents of the charges, giving them benefit of doubt.



7. What is evident from the above is that on the one hand, the informant, in the *fardbeyan*, did not disclose the names of the assailants. The contents of the *fardbeyan*, however, have not been accepted by the informant as the correct version of his statement. Apart from the informant, there is only one witness, i.e. P.W.2, who deposed that after the occurrence had taken place, the informant and the deceased both had told other witnesses that it was Suryabansh Singh (respondent No.2) who had opened fire. The other two prosecution witnesses, i.e. P.W.3 and P.W.4, have deposed that the informant and the deceased did not disclose the names of the unknown assailants; rather, claimed to have identified them with the help of head-light of the motorcycle.

8. The contradictions in the statement of prosecution witnesses are material inasmuch as, on the one hand, First Information Report does not contain the name of the any assailants, whereas the informant denies the contents of the First Information Report to be the correct version of his *fardbeyan*. He is said to have made a statement under Section 164 of the Code of Criminal Procedure before the Magistrate. The said statement has not been proved at the trial. P.W.2 is said to be own cousin of the informant, who has supported the prosecution's case as narrated by the informant/appellant, at the trial, by saying that informant and the deceased had told him that these



respondents were responsible for killing of the deceased and causing injuries to the informant. P.W.3 and P.W.4 have not supported the prosecution's version that the informant and the deceased had disclosed the names of these respondents as persons involved in the occurrence. They have, rather, supported the prosecution's case as contained in the *fardbeyan* which does not mention name of any persons, who had been involved in the occurrence.

9. Situated thus, it cannot be said that the view, taken by the learned trial Court, while recording acquittal of the appellant, by giving benefit of doubt to them, is perverse and not a possible view. Where the view taken by the learned trial Court is a reasonably possible view, this Court is not required to interfere on mere probability or possibility. Unless it is evident on the basis of evidence that conviction was the only possible view and no other view was possible, this Court is not required to interfere with the judgment and order of the learned trial Court recording acquittal.

10. After having gone through the records and reasoning assigned by the learned trial Court in the judgment under appeal, we find that the prosecution's evidence could not be said to be sufficient to reach to the one and only conclusion that the respondents were the perpetrators of the crime.

11. We do not find any reason to interfere with the impugned

judgment and order.

12. This appeal stands dismissed accordingly.

(I. A. Ansari, ACJ)

(Chakradhari Sharan Singh, J)

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