

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 1046 of 2013

Against the judgment of conviction dated 28.10.2013 and order of sentence dated 31.10.2013 passed in Sessions Trial No. 32 of 2011 arising out of Bihiya P.S. Case No. 124 of 2010 corresponding of G.R. No. 03 of 2001 by Sri Mahendra Prasad, Ad hoc 2nd Additional Sessions Judge, Bhojpur, Ara

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Bhim Singh, Son of Sri Kamendra Singh, Resident of Village - Ossai, Police Station - Behea in the District of Bhojpur

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : Shri Shiv Shankar Sharma, Advocate
Shri Sunil Kumar, Advocate
Shri Sanjeev Kumar, Advocate

For the State : Shri Ajay Mishra, A.P.P.

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CORAM: HONOURABLE SHRI JUSTICE GOPAL PRASAD

and

HONOURABLE SHRI JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE ADITYA KUMAR TRIVEDI)

Date: 15-06-2016

Heard learned counsel for the appellant and learned Additional Public Prosecutor for the State.

2. Appellant, Bhim Singh, who has been found guilty for an offence punishable under Section 302/34 of the Indian Penal Code vide judgment of conviction dated 28.10.2013, sentenced to undergo rigorous imprisonment for life vide order dated 31.10.2013 by the Ad hoc 2nd Additional Sessions Judge, Bhojpur, Ara in Sessions Trial No. 32 of 2011 arising out of Bihiya P.S. Case No. 124 of 2010, has preferred instant appeal.

3. Jaynandan Singh (P.W.7) gave his *fardebayan* on 17.06.2010 at his house before the Station House Officer of Bihiya Police Station

disclosing therein, that he along with his brother Dhanlal Singh (deceased) happened to be engaged as labourer under Sunil Tent House. On 12.06.2010 at about 09:30 p.m. while they were erecting *Samiyana* at Sona Gachhi orchard, Akshay Pratap Singh, son of Kamindra Singh came and took away his brother Dhanlal Singh on the pretext of going to *Darwaza* and coming back soon thereafter. When Dhanlal Singh did not return till 11:00 p.m., then informant along with his uncle Rajnandan Singh (P.W.5) went in search of Dhanlal Singh and during course thereof, when they reached near orchard lying by the side of railway line, they saw Akshay Pratap Singh, Bhim Singh, Prahalad Singh having indulged in assaulting Dhanlal Singh after throwing him on ground and further, found pouncing upon him and during said course, they had pressed his chest as well as were also assaulted with butt of gun. When they arrived, all the three accused persons began to abuse and chased on account of which, they escaped therefrom in order to save their life. After sometime, they all left the scene putting Dhanlal in an injured condition. Thereafter, they lifted Dhanlal in unconscious, injured condition to Ara Hospital where he was privately examined. As he was referred to P.M.C.H., on 14.06.2010 at about 06:00 a.m. he was admitted at P.M.C.H. and during course of treatment he died in the morning. It has also been disclosed that at P.M.C.H. he had given his *fardbeyan*, but the same has not been received, on account thereof, he has given subsequent

statement. It is also evident from the *fardbeyan* that though the informant had not disclosed specifically the cause of assault but had disclosed the cause of occurrence might be on account of prevailing animosity. The aforesaid *fardbeyan* was recorded in presence of Ram Minat Singh, grand-father of informant who has not been examined during course of trial.

4. On the basis of the aforesaid *fardbeyan*, Bihiya P.S. Case No. 124 of 2010 was registered whereupon after completing investigation, charge-sheet was submitted against accused Prahalad Singh (since acquitted) as well as Bhim Singh (appellant), keeping the investigation pending against accused Akshay Pratap Singh whereupon, after taking cognizance, the trial commenced and concluded in a manner, which is subject matter of instant appeal.

5. The defence case, as is evident from the mode of cross-examination as well as from the statement recorded under Section 313 of the Cr.P.C., is that of false implication as well as complete denial of the occurrence as alleged. However, neither any defence witness nor any kind of document has been exhibited on behalf of defence.

6. In order to substantiate its case, the prosecution had examined altogether ten prosecution witnesses out of whom P.W.1 is Vishwajeet Singh @ Vishwajeet Kumar, P.W.2 is Indrajeet Singh, P.W.3 is Shyamnandan Singh, P.W.4 is Madan Babu Singh, P.W.5 is

Rajnandan Singh, P.W.6 is Vijendra Singh, P.W.7 is Jaynandan Singh, P.W.8 Ram Ayodhya Singh, P.W.9 is Virendra Prasad Yadav and P.W.10 is Dr. Arun Kumar Singh. Side by side as also exhibited Ext.1, signature of informant over *fardbeyan*, Ext.2 *fardbeyan*, Ext.3 formal First Information Report, Ext.4 charge-sheet and Ext.5 post-mortem report.

7. After perusal of the judgment impugned as well as going through the evidences of respective prosecution witnesses, it is evident that status of prosecution witnesses more particularly, P.W.1, P.W.2, P.W.3, P.W.4, P.W.8 happen to be that of hear-say. They have not claimed to have witnessed the occurrence. P.W.6 has been declared hostile. Therefore, the case of the prosecution rests upon the shoulder of P.W.5 Rajnandan Singh as well as P.W.7 Jaynandan Singh along with P.W.9, the Investigating Officer and P.W.10 Dr. Arun Kumar Singh who had conducted post-mortem over the dead body of deceased Dhanlal Singh at P.M.C.H.

8. From the evidence of P.W.10 in consonance with the post-mortem report, Ext.5, it is apparent that deceased Dhanlal Singh died on account of ante-mortem injury and more particularly, the injuries having over abdominal portion of the body as well as head injuries have been found sufficient to cause death. Furthermore, from the post-mortem report, it is apparent that altogether 10 ante-mortem injuries were found,

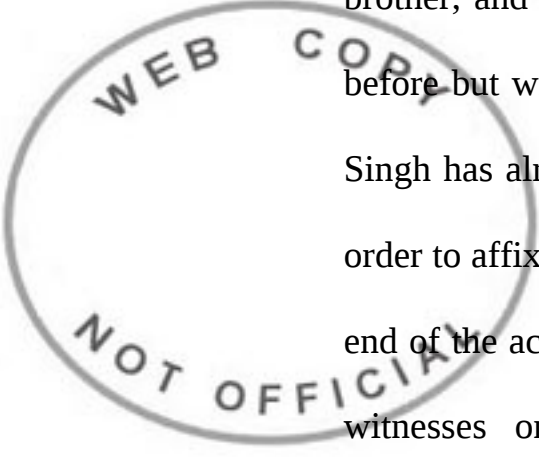
all caused by hard and blunt substance and that being so, there happens to be no controversy with regard to murder of deceased on account of assault having been made by means of hard and blunt substance.

9. Now, the only question remains to be answered whether the appellant happens to be responsible for causing the death along with others as alleged by the prosecution? As stated above, there happens to be specific disclosure in the *fardbeyan* that it was Akshay Pratap Singh who took away deceased at about 09:30 p.m. When deceased Dhanlal Singh did not return at about 11:00 p.m. then in that event the informant P.W.7 along with his uncle Rajnandan Singh P.W.5 proceeded in search of Dhanlal Singh and further, after making hectic search they lastly gone towards orchard lying by the side of railway line where they saw Akshay Pratap Singh, Bhim Singh, Prahalad Singh pouncing upon Dhanlal and were engaged in assaulting by means of toe as well as butt of a gun. From plain reading of the *fardbeyan*, it is evident that no source of identification has been shown in the *fardbeyan*. Apart from this, the other improbability, as is evident, is the time factor. Deceased was taken away by Akshay Pratap Singh at about 09:30 p.m. After more than one and half hour that means to say at 11:00 p.m. as deceased did not return, they proceeded in search and further, they have gone to other direction and then lastly gone towards railway line and then saw the occurrence. Had there been complicity, then in that event, during the aforesaid intervening

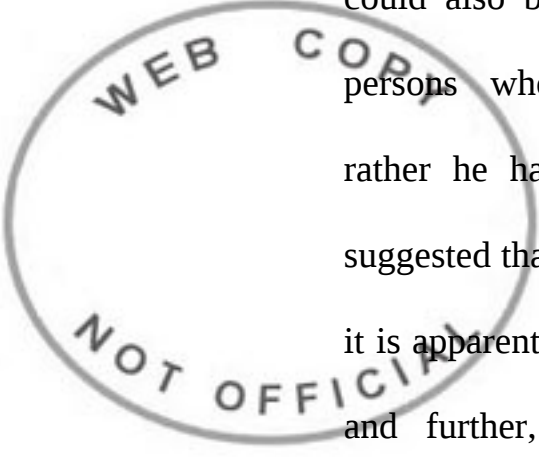
period of more than two hours could not have allowed the accused to continue with the assault and further, posed themselves vulnerable in getting their identification as claimed for.

10. Furthermore, when the evidence of P.W.5 has been gone through, from his examination-in-chief, it is apparent that it was Akshay Pratap Singh who had come to the place and took away Dhanlal Singh while from the evidence of P.W.7, informant, it is evident that at that very moment presence of Bhim Singh and Prahalad Singh have also been shown which, the initial version of prosecution, *fardbeyan*, lacks. That means to say there happens to be inconsistency in the evidence of P.W.5 as well as P.W.7 over presence of Prahalad Singh and Bhim Singh at the first instance and further, after going through the entire evidence of the respective witnesses, it is apparent that the same has purposely been introduced to ward-off any kind of apprehension over identification of the accused as, the prosecution was well aware that there was lack of source of identification and so, identification of accused was not at all possible.

11. Admittedly, First Information Report should not to be treated as an encyclopedia covering minute to minute detail but, its importance, reliability is to be perceived in consonance with the subsequent development coming out from the mouth of witnesses during course of trial and on that very score, the prosecution version is to be



tested. Because of the fact that all the three accused happens to be full-brother, and as presence of Akshay Pratap Singh has been shown since before but with regard to remaining two accused out of whom Prahalad Singh has already been acquitted, the prosecution developed its story in order to affix their presence. At the present moment, the deficiency at the end of the accused have also been perceived by not cross-examining the witnesses on that very score which, at least, would have been contradiction for which P.W.9, Investigating Officer would have been tested but, having the presumption of innocence in favour of accused as well as carrying the burden to prove its case beyond reasonable doubt by the prosecution, it happens to be obligation on the part of the prosecution to substantiate its case beyond reasonable doubt and for that, the source of identification, so far present facts and circumstances of the case attracts, should have been properly substantiated. Neither P.W.5 nor P.W.7 have stated that they produced torch before the Investigating Officer to claim the source of identification nor the Investigating Officer P.W.9 had deposed that either P.W.5 or P.W.7 had produced torch, the source of identification and so, in the background of aforesaid eventuality identification of accused in dead of night that too near an orchard lying by the side of railway line, appears to be doubtful. The aforesaid event is found further exposed during course of evidence of P.W.7, informant who, in paragraph 3 of his examination-in-chief had



stated that Prem Singh and Prahalad Singh are present in Court. Absentee could also be identified by him. He had not stated that the accused persons who are in dock are being identified by him as an assailant rather he had identified the accused in dock by name and further suggested that they are present and further, from the aforesaid evidences, it is apparent that he had identified Prem Singh only, not as Bhim Singh and further, the persons having been engaged during course of occurrence. Apart from this, from the *fardbeyan*, it is apparent that informant had already disclosed that his statement was recorded at previously at the P.M.C.H. That means to say earliest version regarding occurrence relating to cognizable offence had already been acknowledged by the police official and then in that event, instead of recording instant *fardbeyan* as First Information Report which, in the facts and circumstances of the case, happens to be subsequent event, is found hit by Section 162 of the Cr.P.C. in the background of the fact that during course of evidence P.W.9, the Investigating Officer had stated that he had received *fardbeyan*, inquest report, post-mortem report from Pirbahore Police Station. Presence of inquest report as well as post-mortem happen to be an outcome of an investigation which could be on the basis of the *fardbeyan* having been at the instance of P.W.7. Apart from this, when *fardbeyan* of P.W.7 having been recorded at the end of Pirbahore Police Station on 15.06.2010, had already been received at the

end of P.W.9 during course of investigation and even though considering for a moment that after registration of instant case on the basis of present *fardbeyan*, the same has lost its legal identify and happens to be mere a statement under Section 161 of the Cr.P.C., even then it was an earliest version which could have surfaced on the record to suggest the earliest prosecution version and further identifying the status of the accused persons.

12. That being so, the cumulative effect of analysis of the evidences available on the record as well as the circumstances visualizing therefrom, did not inspire confidence to concur with the finding recorded by the learned lower Court consequent thereupon, the judgment of conviction and sentence recorded by the learned lower Court is set aside. Appeal is allowed. The appellant is under custody, hence, is directed to be released forthwith, if not wanted in any other case.

(Gopal Prasad, J.)

(Aditya Kumar Trivedi, J.)

Kundan Sharma

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	
Transmission Date	