

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.382 of 2016

Arising Out of PS.Case No. -708 Year- 2013 Thana -SASARAM MUFFSIL District- SASARAM (ROHTAS)

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1. Ranjan Singh son of Bageshwari Singh, Resident of village- Kanhaipur, P.S.- Sasaram (Mufasil), District- Rohtash

.... Appellant/s

Versus

1. The State of Bihar
2. Bijay Singh, son of Saryu Singh, Resident of village- Kanhaipur, P.S.- Sasaram (Mufasil), District- Rohtash

.... Respondent/s

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Appearance :

For the Appellant/s : Mrs. Soni Shrivastava, Advocate

For the Respondent/s : Mr. A.K.Sinha, APP

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 07-09-2016

This is an appeal under proviso to Section 372 of the Code of Criminal Procedure, 1973, against the judgment and order, dated 29.02.2016, passed by learned 7th Additional Sessions Judge, Sasaram, Rohtas, in Session Trial No. 650 of 2013, whereby the learned Court below has recorded acquittal of Respondent No.2. In the said trial, Respondent No.2 stood charged with the offences punishable under Section 302 read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act.

2. We have heard learned counsel for the appellant

and learned Additional Public Prosecutor appearing on behalf of the State.

2. The informant of Sasaram (Muffasil) P.S. Case No. 708 of 2013, which gave rise to the said Session Trial No. 650 of 2013, is the appellant in the present appeal.

3. According to the case of the prosecution as unfolded in his *fardbeyan* before Sub-Inspector of Police of Dehri (T) Police Station, appellant's younger brother, Ranjeet Kumar Singh (deceased), was sitting at *dallan* (sitting place) of one Shyam Bihari Singh of the same village, at 11.45 A.M., on 02.07.2013, when Respondent No.2 (Bijay Singh), Bhola Singh and Mukesh Singh, came armed with pistol. It was alleged in the *fardbeyan* that they had asked the deceased as to why was he sitting there and threatened him of his life if he did not flee away. Simultaneously, Respondent No.2 shot at the deceased, which hit in his chest. The informant raised alarm, whereafter people came. The appellant took the deceased to the Hospital in presence of Shiv Shankar Singh and Sonu Kumar Singh for treatment, where the deceased succumbed to his injuries.

4. The police, upon completion of investigation, submitted charge-sheet, on 23.09.2013, against Respondent No.2 keeping the investigation pending against other accused persons. Learned Chief Judicial Magistrate took cognizance of

the offences punishable under Section 302 read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act. The case was committed to the Court of Sessions on 29.10.2013, whereafter, on 03.05.2014, charges were framed against Respondent No.2 for commission of offences punishable under Section 302 of the Indian Penal Code and Section 27 of the Arms Act.

5. The doctor (P.W.5), who had examined the deceased, being Medical Officer Sadar Hospital, Sasaram, proved following the injuries found on the body of the deceased on *post mortem* conducted on 02.07.2013:-

"EXTERNAL EXAMINATION"

1. Face-pale
2. Lacerated wound one inch in diameter x cavity deep, margin inverted and charring of skin around the wound right lateral side of chest (wound of entry)
3. Lacerated wound two inch in diameter margin inverted into cavity deep over left arm pit (wound of exit)

Note- On proving injury no.2 and 3 are communicating each other, hence injury no.2 is wound of entry and 3 is wound of exit.

INTERNAL EXAMINATION

1. Skull-Skull vault intact, brain and meninges intact and pale.
2. Chest and neck-Trachea larynx intact in normal structure. 8 and 9 ribs right side fractured. 2 and 3 ribs fractured in left side. Right lung lacerated, heart intact and place. Both chamber of heart empty. Blood clots found in plural cavity. 3. Abdomen-Stomach empty, liver lacerated, both kidney intact and pale, spleen intact and place. Small intestine contains fluid and gas. Large intestine contains fickle matter and gas. Urinary bladder contains about 200 ml. Of urine. Blood clots found in abdominal cavity.

Cause of death- Shock and hemorrhage due to above noted injuries, which was caused by fire arm.

Time elapse since death till postmortem done-06 to 24 hours approximately.

This postmortem Report is prepared by this witness in presence of both the members of the team. He

identified his own signature and the signature of team members on postmortem and bears his signature. Postmortem Report which is marked as ext.2.

In his cross examination he has also stated that whenever any injury caused by front side then it will not cause an injury on panjari. Whenever any injury caused by front side on chest then wound of exit in back, not in armpit. He has also stated that he has not mentioned in his postmortem report that injuries on the person of the deceased sufficient to cause death. He has not found any sign of treatment in dead body. He has also stated that if fire arm used in close range then gun powder will be found in wound and he did not found it from the wound. He has not mentioned the direction of the wound. He has not mentioned the wearing cloths of the deceased. He has not found any sign of oozing of the blood. He has denied that his p.m. report is not scientific."

6. Upon closure of the evidence of the prosecution on 10.04.2015, statement of P.W.2 was recorded under Section 313 of the Code of Criminal Procedure, 1973, wherein he denied the allegation made against him.

7. At the trial, the prosecution examined seven witnesses including the doctor as P.W.5 and Investigating Officer as P.W.6. One Shiv Shankar Singh was examined as Court witness.

8. It is noteworthy that despite there being specific case of the prosecution, in the First Information Report, that Shiv Shankar Singh and Sonu Kumar Singh were eye-witnesses of the occurrence, they were not produced by the prosecution as witnesses. However, Shiv Shankar Singh was subsequently examined as Court witness. It is evident from the First Information Report that the informant did not claim himself to

be an eye-witness inasmuch as he had said, in his *fardbeyan*, that after the deceased had sustained injuries, he (the deceased) raised deep cry upon which several villagers including the informant came there and by that time, all the three accused persons had fled away. In his deposition at the trial, however, the informant claimed himself to be an eye-witness, who was present at the place of occurrence. P.W.1 (Sanjeet Singh) has also claimed, in his deposition, that he was also sitting in the *Dallan* of Shyam Bihari Singh, where the occurrence had taken place and he also claimed to be an eye-witness. In the *fardbeyan* of the informant, there is no mention of the fact that P.W.1 (Sanjeet Singh) was also present at the place of occurrence, nor is it there in the deposition of the informant at the trial. P.W.2 (Amit Kumar Singh) has also claimed to be an eye-witness, who was sitting in the *Dallan* of the said Shyam Bihari Singh. P.W.3 (Jai Mala Devi), in her deposition, has said that she was sitting with her husband in her house. She is *mousee* (*aunt*) of the deceased and she has also claimed, at the trial, to be an eye-witness. Though P. W. 3, in her deposition, specifically said that her husband, Shiv Shankar Singh, was also there with her, the said Shiv Shankar Singh was examined as Court Witness No.1, who did not say anything about the manner of occurrence in his deposition. Further, P.W.3 deposed that when the

occurrence took place, she went to the place of occurrence, i.e., *Dallan* of Shyam Bihari Singh, but no one was there and the miscreants had fled away. Her deposition is in apparent contradiction with the evidence of other witnesses, who claimed that they were there at the place of occurrence, when the occurrence had taken place.

9. Shyam Bihari Singh, in his deposition, as P.W.7 did not claim to be an eye-witness and his evidence is only to the effect that he was having his meal, when he heard the sound of firing and when he went, after having finished his meal, to his *Dallan*, there was none, at his *Dallan*, as by that time, the deceased had already taken away by others for treatment.

10. Further, it transpires that the doctor, in his *post mortem report*, has opined the time elapsed since death or as six hours to 24 hours. *Post mortem* was done at 3.30P.M. According to the evidence of prosecution, the occurrence had taken place at 11.45 P.M., i.e., less than four hours from the time, when *post mortem* was done.

11. According to the evidence of the prosecution, bullet was fired from a distance of 7-8 feet on the chest of the deceased. Learned trial Court, in the impugned judgment and order, has considered a significant aspect that had it been so, wound of exit would have been on the back of the deceased,

whereas the wound of exit has been found to be over left armpit.

12. In the background of what have been mentioned above, if the learned trial Court came to the conclusion that there were irreconcilable contradiction in the evidence of witnesses and their deposition could not be relied on for recording conviction of Respondent No.2, we do not find any infirmity in the findings so arrived at by the learned trial Court.

13. It is evident from the evidence and other materials on record that there are apparent material contradictions in the contents of the *fardbeyan* and the deposition of the prosecution witnesses. Further, the medical evidence does not fully support the time and manner of the occurrence.

14. We, accordingly, do not find any circumstance warranting our interference with the judgment and order of acquittal under appeal.

15. This appeal does not deserve admission and is accordingly dismissed.

(I. A. Ansari, CJ)

(Chakradhari Sharan Singh, J)

ArunKumar/-c

AFR/NAFR	
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