

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.781 of 2011

[Against the judgment of conviction dated 18.05.2011 and order of sentence dated 26.05.2011, passed by the 3rd Additional Sessions Judge, Bhojpur at Ara, in Sessions Trial No.777 of 2007 arising out of Piro (Hasan Bazar) P.S. Case No.162 of 2006]

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1. Rabindra Singh, son of Jawahar Singh @ Bindeshwari Singh,
 2. Ashok Singh, son of Sheopujan Singh, both resident of village-Manjhion, P.S.- Hassan Bazar, Dist.-Bhojpur

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Vikram Deo Singh, Advocate
 Mr. Dharmendra Kuamr Singh, Advocate
 Mr. Sada Nand Roy, Advocate
For the Respondent/s : Mr. Ajay Mishra, APP

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

&

HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 28-03-2016

1. Both the Appellants have been convicted under Section(s) 302/34 Indian Penal Code and Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for life under Section(s) 302/34 Indian Penal Code with fine of ₹10,000/- each and in default of payment of fine simple imprisonment for one year as also seven years rigorous imprisonment under Section 27 of the Arms Act, by judgment of conviction dated 18.05.2011 and order of sentence dated 26.05.2011, passed by the 3rd Additional Sessions

Judge, Bhojpur at Ara, in Sessions Trial No.777 of 2007 arising out of Piro (Hasan Bazar) P.S. Case No.162 of 2006.

2. The case of the prosecution, according to the Informant, Arvind Kumar Singh, (PW 3) is that on 27.11.2006, his father, Vakil Chandra Singh, had gone to Hassan Bazar to buy some goods. A relative had come to meet his father. As his father was delayed, he proceeded towards Hasan Bazar along with uncle, Binod Singh, (not examined) and when he reached near the railway line around 4.30 PM, he found his father coming on the motor cycle, who was surrounded by the two Appellants. However, when his father attempted to flee away, the two Appellants fired at him on account of which he fell down dead. Number of persons including one Kedar Teli (not examined) gathered and saw the occurrence. He alleged that the occurrence had taken place on account of dispute over possession of certain piece of land which his father had purchased and the present Appellants were obstructing the possession.

3. During trial, the prosecution examined seven witnesses. PW 1, Digambar Yadav, PW 2, Chandeshwar Singh, and PW 3, Arvind Kumar Singh, are the three eye witnesses, whereas, PW 5, Umesh Singh, and PW 7, Saryu Pandey, are formal witnesses. PW 4, Dr. Madan Kumar Pandey, performed the Post Mortem

Examination and PW 6, Subodh Kumar Thakur, is the Investigating Officer of the case.

4. PW 1, Digambar Yadav, is the son of the deceased, who stated that while he was playing Cricket near the area where the occurrence took place, he heard shots of fire and then he reached to see as to what was happening, he saw the Appellants firing at the deceased. He stated that motive was some land dispute between them.

During cross-examination, he conceded he was examined one day later and that the place from where he had heard the sounds of gun fire was about one kilometer away. In such circumstances, evidently the story that after he heard the gun shots he reached the place of occurrence and saw the firing appears highly doubtful and hence, we do not rely on his eye witness account.

5. PW 2, Chandeshwar Singh, brother of the deceased, is the resident of village Sakri. He stated that on the date of occurrence he had gone towards the place of occurrence where occurrence had taken place and had seen his brother being fired at by the Appellants. He was a seizure list witness to the blood stained earth. He proved his signature as Ext.1 and the signature of Pintu Singh as Ext.2.

His attention was drawn to the earlier statement that in



his statement recorded under Section 161 Cr. P. C. he had not stated that he was an eye witness but he denied such suggestion. However, we find from the evidence of PW 6, the Investigating Officer, that, in fact, in his earlier statement he was not an eye witness to the occurrence. In such circumstances, we reject his eye witness account as well.

6. We are now left with the sole eye witness, namely, Arvind Kumar Singh, PW 3, who is the Informant of the present case as also son of the deceased. He stated that on the date of occurrence his father had gone to Hassan Bazar to bring some household articles but when he was delayed in his return, he along with his uncle, Binod Singh, went in search of him and near the railway line he found the Appellants and 4-5 unknown persons having surrounded him. They then assaulted the deceased with Katta, a sharp cutting weapon, on the hand and the two Appellants indiscriminately fired at him which hit him on his chest, stomach etc. He stated that Raj Kumari Devi (not examined), Chandeshwar Singh (PW 2), Digambar Yadav (PW 1), and Binod Singh (not examined) had witnessed the occurrence. He further stated that his *fard-e-bayan* was recorded at the place of occurrence itself and he proved the same as Ext.2, his signature on the same as Ext.2/1 and signature of witness Sunil Kumar (not examined) as Ext.2/2. He also

stated that he had filed a Protest Petition which is Ext.3. He proved the signature of Advocate as Ext. 3/1 as also his signature as Ext.3/2.

He was cross-examined on the point of place of occurrence and the contents of the Protest Petition which is of no relevance for the purpose of present case.

7. It is notable that he developed the manner of assault and now says Appellant, Ashok Singh, had assaulted the deceased with Katta, and thereafter firing was resorted to. He also gave full details of the motor cycle of the deceased that it had fallen near him.

8. PW 4, Dr. Madan Kumar Pandey, conducted autopsy on the dead body of the deceased and found following injuries on the person of the deceased.

- I. One lacerated wound with margin inverted, stained over left side of abdomen 1" below the coasal margin in left hypochondrium 1"x ¼"x cavity deep.
- II. One lacerated wound with margin inverted stained over left hypochondrium 1" below the Injury No. I- ½" x ½" cavity deep.
- III. One lacerated wound with margin stained inverted over left cheek obliquely directed ½" x ¼" x cavity deep. Hard palate lacerated.
- IV. One lacerated wound with margin everted over top of head. 1" x ½" x cavity deep. There is loss of a part of bone.
- V. One lacerated wound with margin

inverted stained over lower part of right retromandibular region $\frac{1}{2}$ " below the ear root $\frac{1}{2}$ " x $\frac{1}{4}$ " x muscle deep. There is tattooing over whole of right side of cheek, face and neck.

- VI. One lacerated wound over right zygomatic region 1" x 1" x muscle deep with margin everted.
- VII. One lacerated wound over back of abdomen left para-vertebral region 2" x 1" x cavity deep.
- VIII. One lacerated wound over left fore arm 2" x 1" x muscle deep.

Medial part of wound has stained, inverted margin while lateral end has got everted margin.

Dissection:

- (i) Skull- Brain lacerated. Injury No. III communicates with Injury No. IV
- (ii) Face: Rt. V communicates with VI
- (iii) Chest: Both lungs pale, heart pale, empty.
- (iv) Abdomen: Liver pale, spleen, omentum, intestine lacerated. Abdominal cavity full of blood. Injury No. II communicates with Injury No. VIII. Bladder- 200 ml. of urine, stomach contained 200 ml. of partially digested food.
- (v) A bullet recovered from right side of outer part of abdomen from abdominal wall. Injury No. I can be traced to the site of lodging of bullet. Bullet sealed, marked, handed over to the accompanying police with exhibit.
- (vi) All the injuries were due to fire arm.

From the evidence of instant witness, we find that Injury No. I, II, III, V are on the front, whereas, Injury No. VIII on the arm was also caused by fire arm.

9. PW 5, Umesh Singh, is a formal witness, who proved the Information Petition Ext.6, whereas, PW 7, Saryu Pandey, proved the Sale Deed to show that there was motive for the Appellants, to have committed this occurrence.

10. PW 6, Subodh Kumar Thakur, is the Investigating Officer, who stated that on the date of occurrence at about 4.50 PM he heard a rumour that a murder had taken place, so, he recorded Sanha No.435 and proceeded to the place of occurrence. He recorded the *fard-e-bayan*. He has proved his signature on the *fard-e-bayan* as Ext.7 and the First Information Report as Ext.8. He prepared the Inquest Report (Ext.9) and recovered the incriminating articles such as blood stained earth and some money from the person of the deceased of which he made seizure which he proved as Ext. 10. He thereafter submitted charge-sheet against the accused persons.

In cross-examination, he explained that on 27.11.2006 at about 4.50 PM he had heard a rumour and reached at the place of occurrence at 5.00 PM. He also stated that it was on his dictation that *fard-e-bayan* was recorded and that he could not remember as to whether he had seen the son of the deceased when he reached the place of occurrence. He corroborated the fact that PW 1, Digambar Yadav, had been examined a day later and that PW 2, Chandeshwar

Singh, had not given an eye witness account before him.

11. The two defence witnesses i.e. DW 1, Kashi Das Giri, and DW 2, Anant Choudhary, are on the point of plea of *alibi* and that the deceased had been killed by unknown assailants, but since they were not examined during investigation, we do not find their evidence worth reliance.

12. After having gone through the evidence of the prosecution witnesses, we take note of the fact that the case is based on the eye witness account of only PW 3, Arvind Kumar Singh.

13. Since the principle of law is well settled on the point of appreciation of evidence of the solitary evidence, we proceed to test the case on such principle.

14. Starting with the First Information Report, we find that the Informant stated therein that he along with his uncle, Binod Singh, had gone to the place of occurrence which he repeated in his evidence. However, the said Binod Singh has not been examined. Nor has Kedar Teli, who was another eye witness named in the First Information Report, been examined to corroborate the presence of the Informant. Surprisingly, he does not speak of the presence of PW 1, Digambar Yadav, his own brother or PW 2, Chandeshwar Singh, his uncle, who deposed as eye witnesses in the Court. Had he been at the place of occurrence, he would have naturally mentioned

their presence. And had they been present they would have been mentioned as such by the Informant. Either way it casts a doubt over their truthfulness.

15. We also note that it is the case of the prosecution that the deceased was assaulted on the hand with a sharp cutting weapon but no such injury was found on his person. Also his evidence is that the deceased had been shot at from the back but all the injuries found on him by the Doctor are on the front which totally contradicts the version of the solitary witness.

16. What further creates a doubt about the manner of occurrence is the fact that the deceased had gone for shopping on the motorcycle is not corroborated by the Investigating Officer, who neither found any article of grocery nor did he find his motorcycle at the place of occurrence.

17. In such circumstances, we are inclined to hold that the solitary eye witness account of PW 3, Arvind Kumar Singh, is not of a quality upon which the conviction can be maintained.

18. Hence, the Appeal is allowed and the Appellants are acquitted of their respective charges giving them benefit of doubt and the impugned judgment of conviction dated 18.05.2011 and order of sentence dated 26.05.2011, passed by the 3rd Additional Sessions Judge, Bhojpur at Ara, in Sessions Trial No.777 of 2007

arising out of Piro (Hasan Bazar) P.S. Case No.162 of 2006, is hereby set aside.

19. Both the Appellants, who are in jail, are directed to be released forthwith, if not required in any other case.

20. In the result, the appeal is **allowed**.

(Hemant Gupta, J)

(Anjana Prakash, J)

NAFR
J.Alam/-

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