

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.368 of 2015

[Against the judgment of conviction dated 18th February, 2015 and order of sentence dated 24th February, 2015, passed by the 1st Additional Sessions Judge, Danapur, Patna, in Sessions Trial No.338 of 2008 arising out of Naubatpur P.S. Case No.11 of 2006]

1. Jai Prakash Singh, son of Sri Suresh Singh, resident of village-Jafra Bhagwanpur, P.S. Naubatpur, District – Patna

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

Criminal Appeal (DB) No. 378 of 2015

[Against the judgment of conviction dated 18th February, 2015 and order of sentence dated 24th February, 2015, passed by the 1st Additional Sessions Judge, Danapur, Patna, in Sessions Trial No.338 of 2008 arising out of Naubatpur P.S. Case No.11 of 2006]

1. Nanda Singh @ Nand Kishore Singh, son of late Ramayan Singh, resident of village- Sambhupura, P.S.- Naubatpur, District- Patna
2. Kunal Kumar @ Sethi, Son of Sri Nanda Singh @ Nand Kishore Singh, resident of village- Sambhupura, P.S.- Naubatpur, District- Patna

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance:

(In CR. APP (DB) No.368 of 2015)

For the Appellant/s : Mr. Bindhya Keshri Kumar Singh, Sr. Advocate with
Mr. Neeraj Kumar @ Sanidh, Advocate
Mr. Satyendra Narain Singh, Advocate

For the Respondent/s : Mr. S. C. Mishra, APP

(In CR. APP (DB) No.378 of 2015)

For the Appellant/s : Mr. Ravindra Kumar, Advocate
Mr. Gyanendra Kumar Singh, Advocate
For the Respondent/s : Mr. Abhimanyu Sharma, APP

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH
&
HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 11-05-2016



All the three Appellants have been convicted under Section 302/34 Indian Penal Code and Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for life with fine of ₹5,000/- and in default of payment of fine further imprisonment for one month under Section 302 Indian Penal Code and one year simple imprisonment under Section 27 of the Arms Act by judgment of conviction dated 18th February, 2015 and order of sentence dated 24th February, 2015, passed by the 1st Additional Sessions Judge, Danapur, Patna, in Sessions Trial No.338 of 2008 arising out of Naubatpur P.S. Case No.11 of 2006. Both the sentences were ordered to run concurrently.

2. The case of the Informant, Umeshwar Singh, PW 3 is that on 17.01.2006 while he was sitting at his *Dalan* at about 4.30 PM and his son, Vikash Kumar, was playing with his grandchild, four accused persons including the present Appellants came armed with gun and rifles. As soon as they came, accused, Manoj Singh, remarked as to where the deceased would now escape and then fired with his rifle which hit him on the face and came out of his head. Second firing was resorted to by the Appellant, Kunal Kumar @ Sethi, with his rifle which hit him on the left of the neck. Thereafter, Appellant, Nanda Singh @ Nand Kishore Singh fired

with his gun which hit the deceased on right of his chest. The deceased fell down screaming. Appellant, Jai Prakash Singh, who was also along with rest of the accused persons, indiscriminately started firing and they all run away.

This occurrence was witnessed by Chunnu Singh (PW 1), Tuntun Kumar etc. and the reason for the occurrence was an old dispute in regard to contract. The *fard-e-bayan* was given by the Informant at his door on the same day at 8.00 PM.

3. During trial, the prosecution examined seven witnesses.

4. On going through the evidence, we feel it is a fit case where conviction of Appellants, Nanda Singh and Kunal Kumar @ Sethi should be maintained the reason for which will be revealed in the manner we discuss the evidence of the witnesses.

5. PW 1 (Chunnu Singh) is named in the First Information Report as one of the witnesses, who stated that he was also sitting with the Informant at his *Dalan* along with Tuntun Singh, Amit Kumar (PW 2), Pawan Singh (not examined) and the deceased Vikash Singh. The deceased was playing with his children. Just then accused persons came armed with rifle and gun and Manoj Singh pointed his rifle upon his neck commenting as to where he would escape now and fired at him which hit him on the face. Thereafter, Appellant Kunal Kumar @ Sethi fired with his rifle

which hit him on the left of the neck. Third firing was made by the Appellant, Nanda Singh @ Nand Kishore Singh, which hit him on the right of the chest. Thereafter, Appellant, Jai Prakash Singh, indiscriminately fired and ran away. He stated that the reason for the occurrence was a dispute over old contract matter.

He stated that Inquest Report was prepared in his presence upon which he and Tuntun Kumar signed. From the evidence of this witness, we find that the Informant and the deceased and PW 2 all belonged to the same family.

In cross-examination, it was suggested to him that he had not stated that Amit Kumar (PW 2) and Pawan Singh (not examined) were sitting along with them and the deceased was playing with the child or that Manoj Singh had come with rifle and pointed to him saying that as to where he would escape now. He denied such suggestion. He explained the manner of occurrence in which the deceased had obtained some contract and that occurrence had taken place within five minutes.

6. Learned counsel for the Appellants points out that in his cross-examination he merely states without naming anyone as to who had fired first, second and third and hence, this part of the evidence completely disqualifies his statement in examination-in-chief, wherein, he has named the Appellants but we do not think it is of any consequence because in cross-examination, the answers are

noted by the Trial Court in the manner questions are posed.

7. PW 2 (Amit Kumar), who happens to be the nephew of the deceased, stated that he along with rest of the persons including the deceased and the Informant was sitting in the *Dalan* when the accused persons came there variously armed with rifle and gun and fired one after another on the deceased as stated by the PW 1. He then stated that the police came after the occurrence and recovered eight rifle bullet and three empty cartridges of which it made a seizure list on which he also signed.

In cross-examination, he asserted that he had stated in his earlier statement that he was seated in the *Dalan* of the Informant where rest of the witnesses were also present and had narrated the entire occurrence to the police. He further stated that there was no enmity between the deceased and Manoj Singh and they were on talking terms. It was suggested to him that, in fact, the deceased was unpopular because of his activities. He further stated that Investigating Officer arrived in the village at 7.30 PM and stayed overnight and denied the suggestion that the wife of Manoj Singh had instituted a case against his father. He conceded that Tuntun Kumar had recently been released from jail but he did not know the full details of the case.

8. We, thus, find that there is absolutely no variation in narrating the manner of occurrence by these two witnesses.

9. Learned counsel for the Appellants submit that this witness directly contradicted PW 1, inasmuch as, he says that there was no enmity between the parties and they all were on talking terms as also that only eight bullets and three cartridges were recovered, whereas, that was not the case of the prosecution.

10. PW 3 (Umeshwar Singh), the Informant repeated his version given in the *fard-e-bayan* and that at about 4.30 PM on 17.01.2006 he along with rest of his family members was sitting at the Dalan where the deceased was playing with his child when the accused persons came variously armed with rifle and gun. Accused Manoj Singh commented as to where the deceased would now escape and fired which hit him on the face, Appellant, Kunal Kumar @ Sethi, fired which hit him on the neck and the third firing on the chest was made by the Appellant, Nanda Singh @ Nand Kishore Singh. Rest of the accused generally fired and ran away. He stated that as soon as this occurrence took place he rushed and informed the Chaukidar, who informed the police at which *Daroga* came to his door at 8.00PM. He proved his signature on the *fard-e-bayan* as Ext. 1 and that of Chandrika Prasad as Ext. 1/1. He also stated that he showed the place of occurrence to the Investigating Officer. He further stated that the witness Tuntun was his son, who was murdered by the accused persons later on.

In cross-examination, he admitted that the, deceased



Vikash Kumar and Tuntun Kumar were accused in one case each. He explained that the Chaukidar was of Jafra Bhagwanpur village which was about 500-700 yards away from his village whom he told about the occurrence at about 5.30 PM. He then informed the police on phone of Ram Rekha Singh. He further stated that the occurrence barely took a minute. Once again, he stated about the sequence of firing by three persons of which the Appellants tried to take advantage and submits that in view of the witness not disclosing any names in the cross-examination while describing the sequence of firing his statement in examination-in-chief should be disbelieved naming the accused.

His attention was drawn to the earlier statement but there is nothing which is notable. He conceded that one Jai Prakash Singh belongs to village Bhagwanpur where he had gone running to inform the Chaukidar.

It was suggested to him that, in fact, at that point in time Mukhiya had suggested that Appellant, Jai Prakash Singh, be also named as an accused which he had done.

11. PW 4 (Sheo Pujan Singh) is the Investigating Officer, who stated that on 17.01.2006 at about 7.00 PM the Officer-in-Charge, Ram Chandra Prasad, received information that one Vikash Kumar had been killed in the village Shambhupura. He recorded Sanha No.386 of 2006 in this regard and then he was told

to proceed to the place of occurrence. When he reached the place of occurrence, he found family of the deceased crying around him. The *fard-e-bayan* of the Informant was recorded by PW 5, Ram Chandra Prasad Yadav, which he proved as Ext. 2. He further stated that Inquest Report was prepared by PW 5 himself. Thereafter, a seizure list was prepared for recovery of eight bullets of .315 bore and three cartridges of 12 bore gun by PW 5, who thereafter handed over investigation to him. He recorded further statement of the Informant as also the statement of the witnesses including PW 1 and 2.

On inspection of the place of occurrence, he found the same to be within the village Shambhupura in front of *Dalan* of the Informant on the north of which was a residential house and a road in south. He sent the dead body for Post Mortem Examination and searched for the accused but they were not found.

He proved the endorsement of the Officer-in-Charge, PW 5, on the *fard-e-bayan* as Ext.3, and on the formal First Information Report as Ext.4. He further stated that the allegation against Ashok Kumar was found false and, therefore, charge-sheet was submitted only against Kunal Kumar @ Sethi, Nanda Singh, Jai Prakash, and co-accused Manoj Kumar.

In cross-examination, he stated that he had done part investigation in the same night but he had not mentioned about the same in the document and also that no independent witness appeared

there, so, he did not record their statement. He confirmed that the witnesses showed him the place where the deceased had been shot dead. He confirmed that PW 1 had not stated that he was sitting along with Amit Kumar (PW 2) and Pawan Singh (not examined). He has also not stated anything about firing as also about the accused persons firing and fleeing away.

PW 2 (Amit Kumar) had also not stated that Tuntun, Chunnu, Pawan and the Informant (PW 3) were sitting at the door when the accused persons came from east and Manoj remarked as to where the deceased would now escape and fired at him. His attention was drawn to the whole paragraph and hence, it is not clear as to what was exactly the contradiction, if at all. There is nothing else which is of note in his cross-examination.

12. PW 5 (Ram Chandra Prasad Yadav) is the Officer-in-Charge of Naubatpur P.S., who received information on telephone in regard to murder of one Vikash Kumar at Shambhupura. He then made a *Sanha* entry. He reached the village along with rest of the police force. He proved his signature on the *fard-e-bayan* as Ext.1/2, Inquest Report as Ext.5 and Dead Body Challan as Ext.6. Seizure list was marked X for identification. There is nothing which is of note in his cross-examination.

13. PW 6 (Dr. Ram Niwas Prasad) was one of the members of the Medical Board along with Dr. Deepak Tandon (PW

7), who merely stated about the preparation of the Post Mortem Examination Report.

14. PW 7 (Dr. Deepak Tandon) has proved the Post Mortem Examination Report as Ext.7. The deceased, according to him, had sustained the following injuries:

“External examination: Face pale, eye partially open, mouth partially open, Rigor Mortis present:

External injuries as below:

- (i) Lacerated wound of about 10” x 6” x skull cavity exposed, Grey matter and part of all lobes of right side brushed out, bone fracture, everted and brain matter protruding.
- (ii) Lacerated wound of about 1½” x 1” x communicating to Injury No.(i) Margin inverted blackened on left side of neck.
- (iii) Lacerated wound of about 1¼” x 1” inverted blackened margin communicating to injury no.(i) near left angle of mouth involving lower lip.
- (iv) Lacerated wound of about ½” x ½” at the level of 11th rib in mid auxiliary line margin blackened inverted right side of chest.
- (v) Lacerated wound of about 1” x 1” everted near and anterior auxiliary line at the level of 9th rib left side chest.

On dissection: All viscera pale, Chest cavity full of blood. Lungs lacerated. Heart empty, stomach few ounces of digested food.

Time elapsed since death- within 6 to 36 hours.

Opinion- Cause of death- due to shock and haemorrhage due to above mentioned injuries caused by fire arm weapon.”

In cross-examination, he stated that after the deceased had sustained injury no.(i), he would not have been in a position to



stand, rather, he would have fallen down. The movement of ammunition in injury no. (ii) was from downwards to upwards but he could not say that such injury is possible in sleeping position. The movement of ammunition in injury no. (iii) was from downwards to upwards and the injury no.(v) was exit of injury no.(iv). There is nothing else which is of note in his cross-examination.

15. In the statement recorded under Section 313 Cr. P. C., Appellant Nanda Singh @ Nand Kishore Singh has pleaded plea of *alibi* but he had not brought any thing on record to prove the plea of *alibi* which was required of him in terms of the Evidence Act.

16. Counsel for the Appellants submits that PW 1 and 2 have given contradictory statement in regard to motive as also contradicted about the duration of the occurrence. Whereas one witness said it took one minute, other witness said it took five minutes. The Investigating Officer found only eleven bullets/cartridges at the place of occurrence which is not in conformity with the prosecution case. Further, accused Ashok Singh, against whom also there was allegation of firing, has not been sent up for trial which shows that the prosecution had tried to falsely implicate some persons and so, the witnesses should be disbelieved on the complicity of the Appellants as well.



17. It is a well known principle of law that when direct evidence is available, the Court need not to go into the motive of the occurrence. Further, we find that contradiction in statements of the witnesses are so minor that they are immaterial. The difference in description of duration of the occurrence is also insignificant and would not materially affect the veracity of the prosecution case.

18. We also find that bullets/cartridges were recovered from the place of occurrence which, in our opinion, confirms the prosecution case as far as the place of occurrence and manner of the same is concerned and it does not contradict it. Three corroborative injuries were found on the person of the deceased which further fortifies the prosecution story. We, thus, do not find any scope to interfere with the conviction of Appellants Nanda Singh @ Nand Kishore Singh and Kunal Kumar @ Sethi.

19. Accordingly, Cr. Appeal (DB) No.378 of 2015 is hereby dismissed and the impugned judgment of conviction and order of sentence is upheld as regards the Appellants Nanda Singh @ Nand Kishore Singh and Kunal Kumar @ Sethi are concerned.

20. As for Cr. Appeal (DB) No.368 of 2015, filed on behalf of Appellant, Jai Prakash Singh, we find that he is said to have been a member of the mob and generally firing which appears highly doubtful in the circumstances of the case which we have

discussed above. In view of such, we are inclined to give benefit of doubt to him. Appellant, Jai Prakash Singh, is, therefore, acquitted of the charges leveled against him. The impugned judgment of conviction and order of sentence as against the Appellant, Jai Prakash Singh, is hereby set aside. The Appellant, Jai Prakash Singh, who is in custody, is directed to be released forthwith if not required in any other case.

21. In the result, Cr. Appeal (DB) No.378 of 2015 is dismissed and Cr. Appeal (DB) No.368 of 2015 is allowed.

(Anjana Prakash, J)

J.Alam/-

(Rajendra Kumar Mishra, J)

AFR/NAFR	
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