

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.921 of 2013

(Against the Judgment of conviction dated 06.08.2013 and Order of sentence dated 21.08.2013 passed by the Adhoc Additional Sessions Judge-I, Bhabhua, in Sessions Trial No.330 of 1998).

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Birendra Singh, son of Late Lal Saheb Singh, resident of village- Pajraon, Police Station- Novan (Ramgarh), In the District of Kaimur (Bhabhua).

.... Appellant.

Versus

The State of Bihar

.... Respondent.

with

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Criminal Appeal (DB) No. 844 of 2013

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Balwant Singh, son of Late Nasib Narayan Singh, resident of village - Pajrawn, P.S. - Nuaow, District - Kaimur (Bhabua).

.... Appellant.

Versus

The State of Bihar

.... Respondent.

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Appearance :

(In CR. APP (DB) No. 921 of 2013):

For the Appellant : Mr. Akhileshwar Prasad Singh, Senior Advocate & Smt. Anita Kumari Singh, Advocate.

For the State : M/s. Ashwini Kumar Singh and D.K. Singh, A.P.Ps.

(In CR. APP (DB) No. 844 of 2013):

For the Appellant : Mr. Krishna Prasad Singh, Senior Advocate and Mrs. Meena Singh, Advocate.

For the State : M/s. Ashwini Kumar Singh and D.K. Singh, Advocates.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 01-04-2016

The Appellant Birendra Singh has been convicted under



Section 148 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for one year, under Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for seven years and fine of Rs.25000/- and Section 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life and fine of Rs.1,00,000, in default of payment of fine of total Rs.1,25,000/-, to further undergo rigorous imprisonment for three years whereas Appellant Balwant Singh has been convicted under Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for seven years and fine of Rs.25000/-, in default of payment of fine, to undergo further rigorous imprisonment for one year vide Judgment of conviction dated 06.08.2013 and Order of sentence dated 21.08.2013 passed by the Adhoc Additional Sessions Judge-I, Bhabhua, in Sessions Trial No.330 of 1998.

2. The case of the prosecution, according to the Fardbeyan of the Informant Dhanji Singh (P.W.6), is that on 13.11.1996 at about 08.00 A.M., while he alongwith the deceased Prabhakar Singh and Om Prakash Singh (not examined) was standing at the door, suddenly, Santosh Singh (P.W.1) came running and entered his house. In the meanwhile chasing him, the present Appellants and some five others variously armed came there. They started to assault which was sought to be pacified by P.W.3 Ramakant Singh, P.W.5 Shivmurat Singh and

some others, who have not been examined. In the meanwhile, suddenly, Appellant Birendra Singh took the gun of Appellant Balwant Singh and fired at his brother Prabhakar Singh on account of which he fell down dead. This information was given soon after the occurrence at 10.00 A.M. at the Police Station-Nuaon.

3. During trial, the prosecution examined altogether eleven witnesses whereas defence examined three witnesses.

4. P.W.1 Santosh Singh was the person, who is mentioned in the First Information Report as having been chased by the accused persons on account of which he entered the house of his cousin brother Prabhakar Singh. He stated that when the accused persons were chasing him, the deceased Prabhakar Singh, Thanedar Singh alias Onkar Singh (P.W.4), Dhanji Singh (P.W.6), Ashok Kumar Singh (P.W.7) were standing there, who were assaulted by the accused persons. In this course, the rifle, which was in possession of Appellant Balwant Singh, who was standing nearby, was taken by Appellant Birendra Singh and he fired at the deceased Prabhakar Singh on account of which he fell down dead. He further stated that a day earlier, the Appellants had assaulted him and he had gone out, so they thought that he had gone to report to the police and, hence, the present occurrence of assault took place. He explained his relationship with P.W.6 Dhanji Singh, the Informant, the deceased

Prabhakar Singh and P.W.4 Thanedar Singh saying that they were his uncles and P.W.7 Ashok Kumar Singh was his brother.

In cross examination, he admitted that the Appellant Birendra Singh had instituted a case against them and this case was concocted to take a defence, however, he denied any injury having been sustained by the accused persons in the same transaction. This witness was examined twice but there is no difference in both the statements.

5. P.W.2 Angad Singh is not named in the First Information Report but deposes as an eye witness saying that he had seen the accused persons chasing P.W.1 Santosh Singh who hid in the house of the deceased Prabhakar Singh. The accused persons started to assault the persons, namely, Thanedar Singh (P.W.4), Ashok Kumar Singh (P.W.7) and Dhanji Singh (P.W.6). He further stated that the Appellant Birendra Singh snatched the rifle from the Appellant Balwant Singh and shot at the deceased on account of which he fell down dead.

In cross examination, he stated that Santosh Singh, the deceased and, evidently, rest of the witnesses were his relatives. He also stated that there was no previous enmity between the deceased Prabhakar Singh and the accused persons and that there was an altercation from both the sides. He also stated that in course of

altercation, the firing had been resorted to. He reiterated the counter version.

From his cross examination, it is evident that he is the cousin brother of the deceased.

6. P.W.3 Ramakant Singh is merely on the point of having seen the accused persons fleeing away from the place of occurrence with arms and the Inquest Report, which he proves as Ext.1. It also appears that he is the cousin brother of the Informant Dhanji Singh (P.W.6).

7. P.W.4 Thanedar Singh alias Onkar Singh is one of the persons, who was standing at the door with the deceased, and having been named in the First Information Report, he supports the fact that on the date of occurrence, Santosh Singh had come running and hidden in the house of the deceased Prabhakar Singh while he was being chased by the accused persons. He asked them as to what is the matter, then they started to assault everyone including himself. In course of fight, the Appellant Balwant Singh gave the rifle to Appellant Birendra Singh and accused Hriday Narain Singh ordered to kill at which he fired at Prabhakar Singh on account of which he fell down dead.

In cross examination, he explains the manner in which he and others had been assaulted by the accused persons. It was

suggested to him that, in fact, this case was false and it was the case, instituted by the Appellant Birendra Singh, which was the true version but he denied the same. He also denied that Appellant Birendra Singh and his brother Bijay Bahadur Singh had sustained grievous injuries in this transaction and it was they who had assaulted them with lethal weapons.

8. P.W.5 Shivmurat Singh, the next eye witness, stated that while he was sitting at his door, he suddenly saw Santosh Singh hiding in the house of Prabhakar Singh. The rest accused were allegedly chasing, who assaulted Dhanji Singh (P.W.6), Onkar Singh (P.W.4) and Ashok Kumar Singh (P.W.7) with whom there was an altercation. Appellant Birendra Singh allegedly took the rifle from the Appellant Balwant Singh and fired at Prabhakar Singh on account of which he fell down dead.

In cross examination, he denied the suggestion that, in fact, he and others surrounded the Appellant Birendra Singh and seriously injured him and, in fact, somebody from the side of Prabhakar Singh had fired which had hit the deceased.

9. P.W.6 Dhanji Singh, the Informant, stated that on 13.11.1996, in the morning, while he was standing at his door, Santosh Singh (P.W.1) came running and hid in the house. The accused were allegedly chasing him. They started assaulting Santosh

Singh (P.W.1) and all of them, who were standing there. At this time, Appellant Balwant Singh having a rifle while the accused Hriday Narain alias Anmol Singh having a 'lathi' were standing there. Appellant Birendra Singh snatched the rifle from Appellant Balwant Singh and fired at his brother on account of which he fell down dead. He proves his signature on the Fardbeyan as Ext.1/1.

Surprisingly, in cross examination, he stated that he had no relationship with P.W.1 Santosh Singh even though P.W.1 Santosh Singh has stated that he was his uncle. In cross examination, he also conceded that he is not an eye witness to the occurrence as when he came out of the house, he saw his deceased brother dead, which means he is not an eye witness to the occurrence. It was suggested to him that on the same day, Appellant Birendra Singh had instituted a case in which he and his family were accused which he admitted. Earlier, there was no fight with him, P.W.1 Santosh Singh and Appellant Birendra Singh. It was suggested to him that, in fact, it was their firing who had hit Prabhakar Singh and scared the accused persons.

10. P.W.7 Ashok Kumar Singh was also standing at the door alongwith the deceased and the Informant when Santosh Singh (P.W.1) came running and hid in the house and, thereafter, they were assaulted as also his brother Prabhakar Singh was shot at by Appellant

Birendra Singh, who was given the gun by the Appellant Balwant Singh.

In cross examination, he stated that in course of assault with lathi, the firing had taken place. He also conceded that Appellant Birendra Singh had instituted a case against him and his family for the occurrence on the same day, which was pending. It was suggested to him that, in fact, on that day, Appellant Birendra Singh had been assaulted mercilessly on account of which his hand was fractured and it was their party who had fired on account of which accused had fled away but Prabhakar Singh had sustained injuries due to which he died.

11. P.W.8 Dr. Dau Prasad Singh conducted the Post-Mortem of the deceased Prabhakar Singh on 13.11.1996 and found the following injuries on his person:

Average built, mouth was partially open, eyes were partially open, fist open and empty, scalp hair was black and rigor mortis was present.

During examination of dead body, he found the following external injuries:

- (I) Lacerated wound 1/2" in diameter situated just by the side of right ear lobe.
- (II) Lacerated wound 1" in diameter on occipital region.

On external examination, he found the following:-

On opening the skull the brain substances were seen mixed with dark fluid blood. One bullet and one pellet were recovered from skull cavity which were sealed, labeled and sent for needful.

On opening the chest both chambers of heart were empty and pale. Both lungs were pale and in position.

On opening the abdomen liver, spleen, both kidneys and gall bladder were pale and in position. Stomach was empty. Intestine contained faecal matters and gas. Bladder contained about 50 C.C. urine.

In his opinion, both the injuries were antemortem and caused by firearm which may be rifle. Both injuries were grievous and fatal. In his opinion, the death was due to shock and haemorrhage as a result of abovementioned injuries leading to cardio-respiratory failure.

Time elapsed between death and autopsy was approximately within 12 hours. Both the injuries were sufficient to cause death in ordinary course of nature.

He proves the Post-Mortem Examination Report as Ext.2.

12. P.W.9 Ramyash Singh has been declared hostile whereas P.W.10 B. Kujur is the Investigating Officer of the case. He stated that on 13.11.1996 at about 09.00 A.M., he heard a rumour that

occurrence of murder had taken place at village Panjraon. Thereafter, he proceeded to the village and recorded the Fardbeyan, which he proves as Ext.3. He stated that, thereafter, he prepared the Inquest Report, which is Ext.4 and sent the dead body for Post-Mortem Examination and collected the blood stained earth which he proves as Ext.5 as also the injuries of the witnesses vide Ext.6 and the medical reports of the witnesses as Ext.7 and the formal First Information Report as Ext.8.

In cross examination, he describes the place of occurrence as Government land. His attention was drawn to the previous statements of the witnesses but none of them appears to be of much relevance.

13. P.W.11 Gopal Sinha is a seizure list witness. He proves his signature on the seizure list (Ext.5) as Ext.9.

14. Out of the three defence witnesses, we find that D.W.1 Bhupendra Singh and D.W.2 Ravindra Kumar Singh are on the point of injuries having been sustained by the Appellant Birendra Singh and his brother Bijay Bahadur Singh.

15. D.W.3 Dr. Rajendra Prakash Thakur examined the Appellant Birendra Singh and his brother Bijay Bahadur Singh on the same day on 24.11.1996.

He found the following injuries on the person of Bijay

Bahadur Singh:

(I) Fracture of middle portion of both bones of right forearm within lincier over dorsal surface 2" x 1".

(II) One abrasion on mid of scalp 1" x 1/8" .

Injury No.I was grievous in nature and Injury No.II was simple. Both were caused by hard and blunt substance.

He found the following injuries on the person of Appellant

Birendra Singh:

(I) Multiple blackish bruise of different dimension extending from right shoulder to deltoid region 3" x 2", 2 1/2" x 1", 1" x 1", 4 x 1" and 3" x 2 1/2" .

(II) One blackish bruise on back of right knee joint 3" x 1/2"

All injuries were simple and caused by hard and blunt substance.

16. On going through the evidence of the prosecution witnesses, we find that all the prosecution witnesses belong to the same family. Even though the occurrence is said to have taken place in the morning in full public view, there is no support by any independent witnesses. We further find that the prosecution witnesses have denied the factum of having seen the injuries on the person of the Appellant Birendra Singh but admitted the fact of institution of



counter case by him. We also find the injuries sustained by Appellant Birendra Singh was on a visible part of the body and, therefore, its non explanation by the prosecution witnesses is a serious lacuna casting a doubt on the manner of occurrence depicted by the witnesses. It also appears from the evidence of the prosecution witnesses that there was a free fight in course of which firing had taken place and it does not appear it was for intention of causing death of the deceased that the firing, if at all, was resorted to by the Appellant Birendra Singh.

17. In the aforesaid circumstances, we are inclined to convert the conviction of the Appellant Birendra Singh from one under Section 302 of Indian Penal Code into one under Section 304 Part-I of the Indian Penal Code and reduce his sentence to the period he has already undergone.

18. With the aforesaid modification in the Judgment of conviction and Order of sentence passed against the Appellant Birendra Singh, Criminal Appeal (DB) No.921 of 2013 filed by the Appellant Birendra Singh stands dismissed.

19. As for Appellant Balwant Singh {in Criminal Appeal (DB) No.844 of 2013}, we find that there is very weak nature of evidence against him inasmuch as the witnesses have merely stated that he was standing with a rifle near the place of occurrence.

Whether the rifle was licensed or not is not known by anyone. In such circumstances, it is difficult for us to sustain the conviction of the Appellant under Section 27 of the Arms Act.

20. Under the aforesaid facts and circumstances, Criminal Appeal (DB) No.844 of 2013 filed by the Appellant Balwant Paswant is allowed. The Judgment of conviction and Order of sentence passed against him is set aside. He is acquitted of the charge. He is on bail. Therefore, he is discharged from the liabilities of his bail bonds.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

**A.B. Bhardwaj/Pradeep Srivastava/
A.F.R.**

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