

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Appeal (SJ) No. 257 of 2006**

Arising out of P.S. Case No. -33 Year- 1998 Thana –Buxar  
G.R.P. District- BHOJPUR

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Sachindra Yadav, Son of Late Dukhi Prasad Yadav, Resident of  
Village-Shuram, P.S.-Gobiri, District-Khagaria.

.... .... Appellant/s

Versus

The State of Bihar.

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Dr. Indihar Kumari, Adv.

For the Respondent/s: Mr. APP.

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**CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH**

ORAL JUDGMENT

**Date: 12-05-2016**

01. The Appellant has been convicted under Section 304 of the Indian Penal Code and sentenced to R.I. for ten years and fine of Rs. 1,000/- in default of which S.I. for three months by a judgment of conviction and order of sentence dated 05/10.04.2006 by the 1<sup>st</sup> Additional Sessions Judge, Bhojpur at Ara in Sessions Trial No. 64 of 1999.

02. The case of the prosecution is that on 28.09.2008 the T.T.E. in-charge of the Coach S-5 of Magadh Express heard that somebody had been shot at in the train. When he went there he found one Constable was standing there and the people stated that he had fired at the injured/deceased.

03. The Appellant was charged under Section 302 IPC and 27 of the Arms Act and put on trial in which the

prosecution examined ten witnesses.

04. P.W. 1, Binay Kumar Singh stated that on 28.09.1998 while he was traveling in the same bogey where the occurrence took place, he saw one Constable with a rifle was checking the tickets. When he reached near his berth an altercation started between him and a passenger at which he shot at the passenger. The said "Sipahi" was caught red handed who disclosed his name as Sachindra Yadav i.e. Appellant. Later, he found out that the dead passenger was Dadan Singh. He identified the Appellant in Court and explained that the Appellant boarded the train at Arrah. An altercation and grappling had taken place between the deceased and the Appellant but the deceased had not tried to snatch the rifle of the Appellant. He further stated that the deceased was sitting on the upper berth and that the Appellant had fired at once. He himself was examined at the Buxar station.

On recall, he stated that he did not know the deceased from before and he had learnt the name of the Appellant later on. There is nothing else which is of note in his cross-examination.

05. P.W. 2, Ashok Kumar Singh has also stated that he was traveling in the same bogey when the "Sipahi" started altercating with the deceased and when the deceased resisted that he would not give any illegal money he fired at him on

account of which he died. He disclosed the name of "Sipahi" as Sachindra Yadav i.e. Appellant.

In cross-examination, he stated that the altercation started because the deceased who was sitting on the upper berth to give him money. He kept explaining to the "Sipahi" that since he had no luggage he was not required to give him any money. Also that the accused was asking everyone for money. Some gave whereas some did not.

He further explained as to why he had boarded the Magadh Express and corroborated the statement of P.W. 1 that the deceased had not tried to snatch the rifle of the Appellant. He explained that after he had boarded the train the "Sipahi" had come to ask him for the ticket and also searched his pocket and that of the others. He did not altercate with anyone and started checking the tickets. He asserted that the deceased had shown his ticket to the Appellant but he started asking for illegal gratification and then an altercation started. He has subjected to a lengthy cross-examination on irrelevant details of the travelling which does not have any bearing on the present case.

The trend of cross-examination indicates that the defence of the Appellant in fact the deceased was an ticketless passenger whom the Appellant had attempted to get deboarded from the reserved to the general bogey.

06. P.W. 3, Gopal Singh was the father of the

deceased who supported the factum of his son i.e. deceased having taken the train and of an altercation between the Appellant and him at which he was shot dead by the Appellant. When he received information he went to Buxar and met the GRP Officials who showed him the blood-stained clothes. He learnt the name of the Appellant from the officials present there. He identified the Appellant in Court.

He was also subjected to a lengthy cross-examination as to the circumstances under which the deceased had been shot at by the Appellant but since he is not an eye-witness, in my opinion, it has no relevance.

07. P.W. 4, Sanjay Kumar Singh, the Sub-Inspector, RPF Post, Buxar stated that when Magadh Express reached Buxar Station at about 9 P.M. suddenly there was a commotion. He learnt that some passenger had been shot dead and then he found the Appellant standing and it was pointed out to him that it was he who had shot at the deceased when the deceased started altercation with the Appellant. The dead body was blood-stained. Immediately, the Doctor was called who declared him dead. He identified the Appellant in Court. He proved the seizure-list of the articles of the deceased which is (Exhibit-1). He also proved the seizure-list of the rifle of the Appellant and the cartridges which is marked as (Exhibit-2).

In cross-examination, he explained that after the

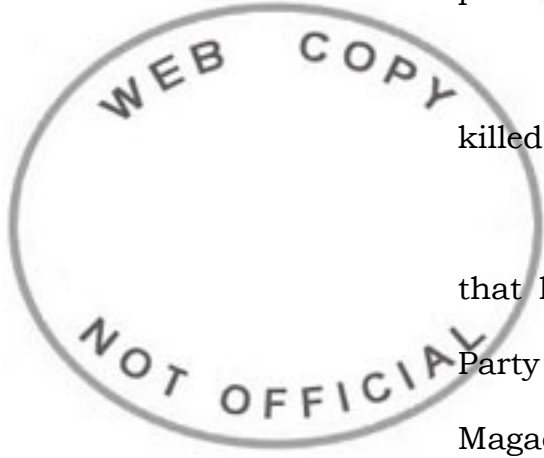
train reached the Station he learnt about occurrence from the passengers.

There was no talk that in fact the deceased had been killed when he tried to snatch the rifle of the Appellant.

08. P.W. 5, Hawaldar Baleshwar Thakur also stated that he was posted at Patna G.R.P. and traveling as Escort Party on the date of occurrence along with some others. When Magadh Express reached Buxar he heard somebody had fired in one of the bogies so he reached there and saw the passenger lying dead. He was aged about 30-32 years. He met the Appellant who stated that four persons were snatching his rifle so he had fired. He was taken out of the train to RPF Police Station. He claimed to identify the Appellant who was not present on the said date.

In cross-examination, he stated that the Appellant had disclosed that four persons sitting on the upper berth had tried to snatch the rifle and that it was in self-defence he had fired and he asserted he had given similar statement before the Police.

09. P.W. 6, Awadhesh Kumar Singh was one of the members of the Escort Party along with P.W. 5, Hawaldar Baleshwar Thakur and some others and stated that at Buxar Station suddenly there was a commotion and then he saw the Appellant standing with a rifle. When he was asked he explained that four persons were trying to snatch his rifle so



he fired and then he saw the deceased in blood-stained cloths.

In cross-examination, he stated that so long as he was investigating, the Appellant never give any report about snatching of his rifle.

10. P.W. 7, Ashok Kumar was TTE on the said train and on information that somebody had been killed in S-5 he reached there and saw a person aged about 30-32 years lying in a pool of blood. When he asked the people standing there, they said the Constable who was standing outside had in fact killed the boy. So he was caught and taken to the RPF where he disclosed his name as Sachindra Yadav (Appellnat). When he was questioned he stated that since the deceased was trying to snatch the rifle he had fired at him. He further stated that the Doctor declared him dead and it was on his submission that the fardbeyan was recorded which he proves as Ext.-3 and his signature on the Inquest Report as Ext.-4.

In cross-examination, he stated that the occurrence did not take place in front of him. He denied to have stated he had learnt that the firing had taken place in course of snatching of rifle. He asserted that the Appellant had stated the aforesaid in conversation with the Police.

11. P.W. 8, Dr. Ashok Kumar Shrivastava conducted the Post-mortem and found the following injuries on his person:-

*“External Examination:  
Eyes-partially opened.  
Mouth-closed.*



*Other natural orifices-NAD.*

*Rigor mortis present on all the four limbs.*

*Ante mortem injuries-fire arm entrance wound afffront ½" diameter x chest cavity deep with contuse and lacerated margin over right side of the chest laterally placed. margin of the wound was inverted. Wound of exit about 2" diameter near 6<sup>th</sup> thorasic vertebra over the back of the chest wound was lacerated and the margin inverted. Track-the entrance wound communicate with the exit wound tearing the right-lung and back of the chest wall remedial.*

*On Internal Examination:-*

*Head, skull-NAD*

*Braing and maninges-NAD*

*Neck-Tracea and esophagea-pale.*

*Chest-Lungs right-side supported and lacerated left side lung-pale.*

*Chest cavity blood about ½" Heart empty.*

*Abdomen: stomach digested food.*

*Small intestine-digested food.*

*Large intestine-gas and ticka matters.*

*Liver, Spleen and Kidney-Pale.*

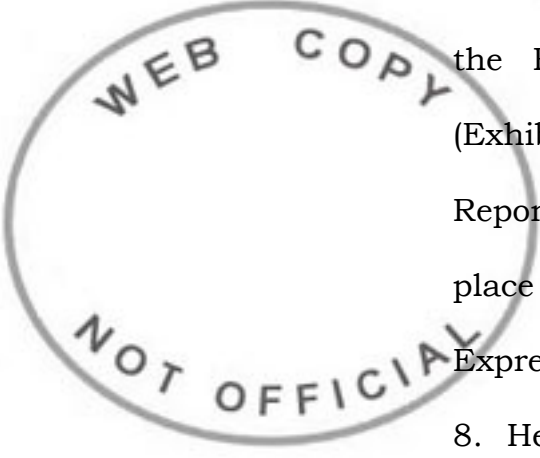
*Urinary bladder-full.*

*Cause of death-shock and haemmorrhage as a result of fire-arm injury."*

It appears from his cross-examination that the defence has tried to adduce that in fact that the manner in which the occurrence is said to have taken place could not have caused such an injury.

12. P.W. 9, Krush Maithus Kerketta was also a member of the Escort Party on Magadh Express along with the others mentioned earlier and had leant that a person had been killed. He has been declared hostile.

13. P.W. 10, Mahendra Prasad Singh is the



Investigating Officer who stated that on 28.09.1998 he recorded the fardbeyan of Ashok Kumar on the basis of which the First Information Report was instituted marked as (Exhibit-7). He further stated that he prepared the Inquest Report which was marked as (Exhibit-8) and inspected the place of occurrence which was Bogey No. S-5 in Magadh Express, Sleeper Coach. He found the dead body on Berth No. 8. He examined independent witnesses and prepared the inquest report which was marked as (Exhibit-4), Death Certificate (Exhibit-8). He also prepared seizure-list of the articles found on the person of the deceased. He questioned the Appellant as also the Escort Party whereafter he submitted charge-sheet against the Appellant.

In cross-examination, an attempt was made by the defence to confuse him on the time of preparation of the documents. His attention was drawn only to the earlier statement of Gopal Singh, P.W. 3, father of the deceased but such contradiction has to be excluded since he was not an eye-witness.

14. The defence also examined one witness namely Gorakh Nath Tiwari who stated that on 28.09.1998 while he was on duty at Danapur he learnt about the occurrence that a G.R.P. personnel had shot dead a passenger. He stated to a query by the prosecution that he did not identify the person who had committed the murder. He had learnt about his

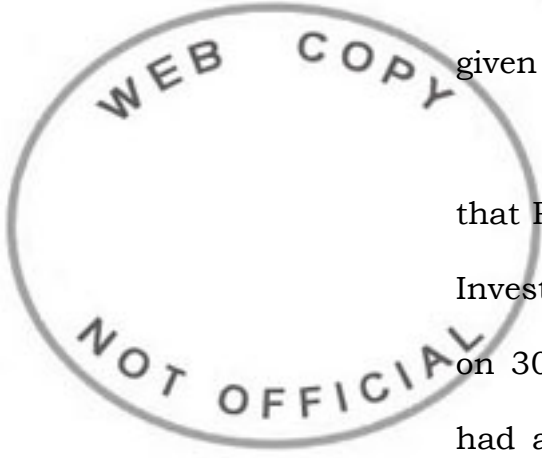
name and that the G.R.P. officials had surrounded him.

In cross-examination, he stated that he had not given any statement earlier.

15. It has been submitted on behalf of the Appellant that P.W. 1 and P. W. 2 were not actually eye-witnesses since Investigating Officer has admitted that it was for the first time on 30.09.1998 i.e. two days later the father of the deceased had appeared and given a joint statement along with them. Secondly, no evidence was produced by the prosecution to show that the deceased was a bona fide passenger.

16. On going through the evidence on record, I find that the Informant, Ashok Kumar has tried to develop the prosecution story by stating that the Appellant had taken the plea that it was while the deceased and some others were attempting to snatch his rifle he had been shot dead. On the contrary, the Appellant had at no earlier point taken this plea before any authority and has thus failed to discharge his liability and onus in terms of Evidence Act.

17. I, also, find that the evidence of P.W. 1, Binay Kumar Singh and P.W. 2, Ashok Kumar Singh is very natural and convincing that the Appellant had shot dead the deceased for ulterior reasons. The fact that these two witnesses were examined two days later shows the ineptness of the Investigating Agency and would have no bearing on their credibility. The Appellant was seen at the spot of the crime by



several prosecution witnesses with a rifle which was used for killing the deceased which further corroborates the prosecution case on material particulars. The Doctor also found supporting firearm injury on the person of the deceased which further fortifies the manner of occurrence. The place of occurrence is also well proved, hence, in view of such direct evidence against the Appellant, I find no merit in the Appeal, the same is dismissed.

18. The Trial Court is directed to ensure arrest of the Appellant if he does not surrender within a period of four weeks from the date of receipt of this judgment.

**(Anjana Prakash, J.)**

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| CAV DATE          | X          |
| Uploading Date    | 26.05.2016 |
| Transmission Date | 26.05.2016 |