

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.421 of 2015

Arising Out of PS.Case No. -37 Year- 2006 Thana -GIRIYAK District- NALANDA
(BIHARSHARIFF)

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1. Nirbhay Singh alias Nirbhay Narain Singh son of Brijnandan Singh @ Arun Singh, resident of Village + Post- Katauna, P.S.- Katrisarai Dist- Nalanda.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Chittaranjan Sinha, Sr. Advocate
Mr. Anirban Kundu, Advocate
Mr. Sudish Kumar, Advocate
Mr. Ramesh Kr. Singh, Advocate

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

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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: 01-07-2016

Appellant Nirbhay Singh alias Nirbhay Narain Singh has been convicted and sentenced to R.I. for life under Section 302 I.P.C. and R.I. for three years under Section 27 of the Arms Act, by judgment dated 16.5.2015 and 19.5.2015 respectively passed by the 4th Additional Sessions Judge, Nalanda at Biharsharif in Sessions Trial No.1044 of 2006.

2. The case of the Informant Naveen Kumar (P.W.4) is that on 16.03.2006 at about 9 P.M. the Appellant and acquitted five accused came towards his door variously armed and started to abuse him and asked him to come out of the house. Fearing danger he ran to



the house of his neighbour Umeshwar Prasad Singh and hid in a room in his Dalan and started to look from the window. He saw the accused following him. In the meanwhile his mother came out also screaming looking for him and when she reached in front of the house of his neighbour Umeshwar Prasad Singh two more accused persons including some other persons, he could not identify, also variously armed surrounded his mother and asked as to where Naveen Kumar i.e. the Informant had gone. Thereafter Appellant Nirbhay Narain Singh fired at the deceased on her head, on account of which she fell down dead. The accused then started to look for him and variously firing departed. He stated that he had seen and identified the accused persons in the electricity and moon light. This statement was recorded at the door of Umeshwar Prasad Singh (P.W.8) at 1 A.M. by the Officer Incharge of Katrisarai Police Station, who has not been examined.

3. During trial, the prosecution examined ten witnesses. P.W.10 Naresh Prasad is a formal witness, who proved the signature on the fard beyan and the First Information Report as Exhibits 5 and 5/1. The forwarding report on endorsement has been marked as Exhibit 5/2 and the Inquest report as Exhibit 6, Seizure list as Exhibit 7 and the case diary as Exhibit 8.

4. P.W.9 Dr. Jai Prakash Gupta conducted the postmortem on the dead body of Arjun Devi and found the following

injuries on her person :

(i) Lacerated wound on anterior scalp measuring about 3"x2" cranial deep with inverted margin. Brain tissue exposed, protruding and some what lost with blood and blood clot (i.e. wound of entry).

On dissection :

(i) Multiple communicated fracture of under line skull bones, namely, parital and frontal bone. A metallic foreign body resembling bullet disrused, lodged in the occipital bone under the scalp on the back. Blood and blood in the cranial cavity was present.

Metallic foreign body (bullet) sealed and preserved, for police to collect it.

Chest – lungs – pale

Heart – both chambers – empty

Abdomen – viscera – pale

Stomach – contained digested meal of four ounce.

Urinary bladder – empty

Uterus - small

Death was caused due to shock and haemorrhage.

The above mentioned injuries were caused by fire arms.

Time lapsed since death within 24 hours.

He proved the postmortem examination report as Exhibit

4.

In cross examination he clarified that there was no blackening or charring on the entrance wound, which reveals that the

assailant was at a distance from the target.

5, P.W.1 Pramod Kumar @ Madhu Singh, who is the son of P.W.8 Umeshwar Prasad Singh, has been declared hostile on the point of complicity of three persons named in the First Information Report. He confirmed that the Appellant had fired at the deceased.

In cross examination he stated that his boundary wall was about 5 feet high in which about eight of his agnates were living together and the Dalan was like a Verandah with only a pillar in front. He further explained that Tanik Manjhi was the present Mukhiya and one Bharat Bhushan @ Pappu was the previous Mukhiya, whereas Ramdahin Singh, one of the acquitted accused, had contested the elections for member of Panchayat Samiti. As against him Ranbir Singh had won the elections but he did not know whether this Ranbir Singh belonged to the group of Bharat Bhushan. However he conceded that all the accused persons were opposed to Bharat Bhushan in the Mukhiya elections, whereas he, the Informant all were supporters of Bharat Bhushan.

In further cross examination he stated that he was in the Dalan when he heard the sounds of firing upon which he immediately came out and then he saw the deceased having fallen near the coconut tree.

We thus find that this witness has exonerated the complicity of three accused persons, who were very much named by

him in the First Information Report and he himself in a way conceded that he was not an eye witness and had come out on sounds of firing and then had seen the deceased fallen dead. We are under these circumstances inclined to reject his testimony as an eye witness.

6. P.W.2 Ramkrishan Prasad Singh has stated that on the night of occurrence he saw Naveen Singh running towards the room of Umeshwar Prasad Singh (P.W.8) whereafter the deceased came screaming for help, at which the accused persons came towards the house of the Informant and started to ask her as to where Naveen was. Then the Appellant fired at the deceased, on account of which she immediately died. The accused persons then assaulted the deceased with the butt of their guns.

In cross examination his attention was drawn to the earlier statement as per which he had not given an eye witness account before the police which he denied. He admitted that Munchun Singh was his son but denied the suggestion that during investigation it had transpired that in fact it was Munchun Singh's firing which had accidentally caused the death of the deceased. Surprisingly in his cross examination he stated that none of the accused persons asked for the whereabouts of the Informant nor anyone take pains to inform the police.

In such circumstances, when this witness had not given an eye witness account before the police at the earliest instance and

non-examination of the Investigating Officer on such a vital point has caused prejudice to the Appellant, we would hold it against the prosecution.

It is also notable that in the present case the A.P.P. has argued that it was on account of transfer of malice that the deceased was killed. However as per the evidence of this witness, there was no question of transfer of malice since the accused persons did not enquire about the Informant before causing the death of his mother.

7. P.W.3 Rajeev Kumar alias Babloo stated that on the night of occurrence he was at the Dalan of P.W.8 Umeshwar Prasad Singh when he saw the accused persons armed with guns coming to the door of Naveen Singh, Informant, and abusing him. Naveen Singh then ran and entered the Dalan of Umeshwar Prasad Singh and hid himself inside a room. The accused persons started to chase him. In the meanwhile the deceased came screaming for help looking for the son, at which the accused persons asked him as to where Naveen Singh was and then the Appellant shot her dead.

He has admitted that he was examined three months after the occurrence and it appears that he had earlier not stated then that he was sitting on the Dalan of Umeshwar Prasad Singh and had seen the occurrence from there or had seen the accused persons or had identified them in the moon light or the Appellant fired at the deceased. In such circumstances, evidently the evidence of this

witness has also to be rejected.

8. P.W.4 Naveen Kumar, the Informant, has given an eye witness account of the manner of occurrence and stated that at 9 P.M. the accused persons including the Appellant and the acquitted accused came variously armed to his door and started abusing and firing and asked him to come out. However, he hid himself in the Dalan of Umeshwar Prasad Singh, his neighbour, whereafter his mother came out but she was surrounded by the accused persons and then the Appellant fired at her for killing her. He proves his signature on the fard beyan as Exhibit 1/1 and that of the witnesses as Exhibit ½ and fard beyan as Exhibit 2.

In cross examination he stated that he could see the place of occurrence from the Dalan of Umeshwar Prasad Singh and he was sitting on his own Dalan with his mother and others, whereas on the Dalan of Umeshwar Prasad Singh others including Bharat Bhushan, the Mukhiya, was also sitting. He stated that the route from coming out for the Dalan was from the east and it was when the accused persons came inside his boundary wall that he saw them. The boundary wall was about 80 feet east and west, 65 feet north and south. He further stated that the accused persons had come on the Dalan while firing and he had run away towards south which was open. However he was chased and fired at and behind him his mother followed him. He described that the accused persons, who were

standing in front of the Dalan, caught his mother while he ran inside while the rest of the witnesses kept standing in the Dalan.

Even though he did not state in his examination-in-chief of having seen from the room in which he had locked himself, he admitted that he had closed the door from inside and it was from inside the room that he had heard the sounds of firing for about four minutes. No one asked him to come out of the room and he came out on his own volition later. He also admitted that Ramkrishan Prasad Singh, who had already been examined as P.W.2 and Bharat Bhusan both had come to the Court along with him. Thus indicating his political alignment. He also denied about him having any dispute with the accused persons.

In the nature of evidence of the Informant, we are inclined to hold that even he could not be an eye-witness to the actual occurrence and direct complicity of the Appellant.

9. P.W.5 Balmiki Prasad Singh is the husband of the deceased and the father of the Informant, who stated that on 18.3.2006 the accused persons came to his door variously armed, at which his son ran away and hid himself in the Dalan of Umeshwar Prasad Singh. Looking for him the accused persons started firing and on account of the firing of the Appellant his wife died.

In cross examination he conceded that he could not see or hear properly.

In his further cross examination he stated that it was he, who had went to inform his son, the Informant, upon which he came out and he was the first person who reached the place where his wife had fallen dead. So even he excludes the eye-witness account of his son, the Informant.

10. P.W.6 Bobby Kumari is the wife of the Informant and daughter-in-law of the deceased, who stated that on the date of occurrence while they were inside the house the accused persons variously armed came and asked for her husband, at which her husband ran and saved himself by hiding in the Dalan of Umeshwar Prasad Singh. When her mother-in-law came out she was surrounded by the accused and then the Appellant fired, on account of which she died.

In cross examination she stated that she had come out on sounds of firing and that the accused persons had only surrounded her mother-in-law as also that she had been assaulted with butts of guns. Evidently she was not an eye-witness and her story of all accused assaulting the deceased with butts of guns is also not corroborated by the independent evidence of the Doctor.

11. P.W.7 Parmeshwar Singh and P.W.8 Umeshwar Prasad Singh, who is the uncle of the Informant, in whose house the Informant had hidden himself, did not support the case of the prosecution and were declared hostile.

12. We find that the defence has examined two witnesses, namely, D.W.1 Sunil Kumar and D.W.2 Binod Kumar but they are irrelevant for the present because they are on the point of alibi of acquitted accused Ramdahin.

13. Apart from discussion, which we have noted about witnesses, we also find that the prosecution case is highly improbable. The Informant has stated that while he was at home the accused persons came variously armed and started to abuse him and asked him to come out of his house. Then the Informant ran and hid himself in the neighbour's Dalan till where the accused persons chased him. The deceased had came out looking for her son, meaning thereby that while the Informant was ahead of the accused persons the deceased was following them. In such circumstances, instead of targeting the Informant, who had hidden himself in their full view, the accused did not target him and instead turned around and killed the deceased. This could not have been the sequence of the events.

Also in these circumstances the deceased would have necessarily sustained injuries having charred and blackening margins. However, in the opinion of the Doctor the firing was done from a distance, meaning thereby that the deceased was not shot at close range which belies the prosecution case.

Importantly the Investigating Officer has not been examined who could have leant objective assurance to the prosecution

case. Also in view of substantial improvement by witnesses during trial we would hold that prejudice has been caused to the Appellant on account of his non-examination.

14. Under such circumstances, we are inclined to acquit the Appellant giving him benefit of doubt.

15. In the result, the above noted appeal is allowed and the judgment of conviction and order of sentence dated 16.5.2015 and 19.5.2015 respectively passed by the 4th Additional Sessions Judge, Nalanda at Biharsharif in Sessions Trial No.1044 of 2006 is hereby set aside. Appellant Nirbhay Singh alias Nirbhay Narain Singh, who is in custody, be released forthwith, if not wanted in any other case.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

Narendra/-

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