

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.675 of 2011

(Against the Judgment of conviction dated 30.03.2011 and Order of sentence dated 31.03.2011 passed by the Additional Sessions Judge, Fast Track Court-III, Jamui, in Sessions Trial No.146 of 1997).

Om Prakash Singh, son of Raj Kumar Singh, resident of Dinari, P.S. Khaira District Jamui.

Versus

The State of Bihar

with

Respondent.

Criminal Appeal (DB) No. 310 of 2011

Ram Prakash Singh, son of Raj Kumar Singh, resident of Dinari, P.S. Khaira, District-Jamui.

Versus

The State of Bihar

Respondent.

Appearance :

(In CR. APP (DB) No. 675 of 2011):

For the Appellant : M/s. Vikram Deo Singh, Sadan Nand Roy and Rajesh Kumar, Advocates.

For the State : M/s. A.K. Sinha and A. Sharma, A.P.Ps.

(In CR. APP (DB) No. 310 of 2011):

For the Appellant : M/s. Vikram Deo Singh, Sadan Nand Roy and Rajesh Kumar, Advocates.

For the State : M/s. A.K. Sinha and A. Sharma, A.P.Ps.

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 27-04-2016

The Appellants have been convicted under Sections 302/34 of the Indian Penal Code, Section 27 of the Arms Act and Sections 3/4 of

the Explosive Substance Act. The Appellant Om Prakash Singh has been sentenced to undergo rigorous imprisonment for life under Section 302 of the Indian Penal Code and fine of Rs.1000/-, in default of which, to undergo further simple imprisonment for three months whereas he has further been sentenced to undergo rigorous imprisonment for three years under Section 27 of the Arms Act and fine of Rs.500/-, in default of which, to undergo further simple imprisonment for one month and the Appellant Ram Prakash Singh has been sentenced to undergo rigorous imprisonment for life under Section 302/34 of the Indian Penal Code and fine of Rs.1000/-, in default of which, to undergo further simple imprisonment for three months whereas he has further been sentenced for seven years under Sections 3/4 of the Explosive Substance Act and fine of Rs.500/-, in default of which, to undergo further simple imprisonment for three months vide Judgment of conviction dated 30.03.2011 and Order of sentenced dated 31.03.2011 passed by the Additional Sessions Judge, Fast Track Court-III, Jamui, in Sessions Trial No.146 of 1997.

2. The case of the Informant Tripurari Singh (P.W.4) is that on 25.08.1995 at about 04.00 P.M. when he was returning alongwith his deceased father Singheshwar Singh, suddenly, five accused persons including the present Appellants Om Prakash Singh armed with pistol and Ram Prakash Singh armed with sword surrounded them. Thereafter, accused Raj Kishore Singh abused his father threatening him to withdraw

the case that was pending between them. His father replied that he would not do so and the court would decide the fate of the case. At this, the accused Raj Kishore Singh ordered that he be killed saying that if he was killed, no one would remain to litigate the case. Hearing this, the Informant tried to intervene but he was also threatened. Thereafter, Appellant Om Prakash Singh fired with pistol on the stomach of the deceased due to which he fell down. Then the accused Jai Prakash Singh, Subash Singh and Raj Kishore Singh assaulted him variously with sword and 'Saif' whereas Appellant Ram Prakash Singh came with bomb and threw on his father's stomach. They then fled away. On hearing about the occurrence, Chandra Shekhar Singh (P.W.6), Lalan Singh (P.W.5) and his sister Savitri Devi (P.W.7) also came and saw the accused persons fleeing away.

3. During trial, the prosecution examined altogether 9 witnesses whereas the defence examined two witnesses.

4. P.W.1 is Dr. Anjani Kumar Sinha, who conducted the Post-Mortem Examination of the dead body of the deceased and found the following injuries on his person:

Rigor mortis fully developed without any sign of putrefaction and with following findings:-

A (i) Incised wound over upper eye lid 1 ½" x 1/2" x 1/2" with blood clot over it.

- (ii) Two incised wound on back of left side of neck-
2" x 1/2" x 1" and 3" x 1/2" x 1" with blood clot
overt it.
- (iii) One incised wound over right navel region- 3" x
1/2" x 1/2" with blood clot over it.
- (iv) One oval lacerated wound 1" x 3/4" in diameter
with blacken inverted margin over right side of
abdomen at about 7" to the right of umbilicus
(wound of entry) .
- (v) An irregular lacerated wound with everted margin
was present over left side of chest in sixth and
seventh intercostal space. This was wound of exit.
Size 1 1/2".
- (vi) An irregular lacerated wound with everted margin
4" x 5" x up to muscle was present over right side
of abdomen at about 1" to the right umbilicus.

(B) On dissection Injury No. iv and v were
communicating each other and there was
laceration of muscles, peritoneum, mesentery,
spleen, diaphragm, left pleura, left lower of lung
muscles of left lower chest with communicated
fracture of 6th and 7th rib, extending from injury

no. iv and v. There was about 3 litres of blood in the peritoneal cavity and about 500 ml of blood in left plural cavity.

- (C) All the above injuries were anti mortem in nature.
- (D) Injury No. i and iii were caused by sharp cutting weapon and injury no. iv, v were caused by firearm. Injury No. iv being wound of entry and v being wound of exit. The direction of wound being right to left and slightly upwards. Injury No. vi was caused by explosive substance.
- (E) Cause of death was due to hemorrhage and shock, leading to cardio respiratory failure.
- (F) Time since death till holding Post Mortem examination 12 to 24 hours.

He proves the Post-Mortem Report as Ext.1.

We, thus, find that the injuries sustained by the deceased are fully in consonance with the story of the Informant.

5. P.W.2 Uma Kant Singh stated that on the date of occurrence, when he was going to ease himself, he saw the accused persons variously armed surrounding the deceased and Appellant Om Prakash Singh firing on the deceased who fell down and, thereafter, accused Jai Prakash Singh, Raj Kishore Singh and Subas Singh assaulted

him with sword and 'Saif' and the Appellant Ram Prakash Singh threw a bomb on him. He had seen Murari Singh (not examined) as also Viveka Singh (P.W.3), who had also seen the occurrence as also Chandra Shekhar Singh (P.W.7), the Informant (P.W.4) and others, who took the deceased to the hospital. He proves his signature as well as of the witness on the Inquest Report as Exts.2 and 2/1.

In cross examination, he explained the relationship inter se the accused persons and the prosecution. On suggestion, he stated that, in fact, the deceased was a veteran criminal. He further stated that he saw the blood stains and remains of bombs at the place of occurrence as also the deceased having sustained bomb injuries. He further stated that he had talked to the deceased as also speaks of the presence of the Informant who was not injured because he was standing at a little distance. He further stated that he had gone to the police station alongwith others when the deceased died. His attention was drawn to the earlier statement that, in fact, he had not seen the occurrence.

6. P.W.3 Ramanand Singh alias Vivekanand Singh is another son of the deceased, who stated that he saw the accused persons fleeing away with arms and the deceased having disclosed the complicity of the present Appellants. He stated that P.W.4 Tripurari Singh, the Informant, Murari Singh (not examined) P.W.6 Chandra Shekhar Singh, Shital Singh (not examined) and Lalan Prasad Singh (P.W.5), all came whereafter he

was taken to the hospital but he died so they went to the police station where his brother gave Fardbeyan.

In cross examination, he explained the relationships between the prosecution witnesses.

His attention was drawn to the earlier statement that he had stated that he had seen the accused persons fleeing away with arms but no attention has been drawn in respect to the oral dying declaration given by the deceased.

Since the Investigating Officer has not been examined, we are inclined to ignore his evidence to the extent of dying declaration.

7. P.W.4 Tripurari Singh, the Informant, repeated the statement as given in the Fardbeyan saying that while he was returning alongwith his father at about 06.15 P.M., five accused persons surrounded his father and, thereafter, the accused Raj Kishore Singh threatened him and demanded that the deceased should withdraw the case pending between them to which he did not agree so he ordered his killing. Thereafter, Appellant Om Prakash Singh fired with pistol on his father's stomach due to which he fell down and the rest accused persons assaulted him with sword and 'Saif' as also the Appellant threw a bomb on his stomach. He stated that on his 'hulla' P.W.3 Viveka alias Ramanand Singh, P.W.6 Chandra Shekhar Singh, P.W.7 Savitri Devi and P.W.5 Lalan Singh came there. He proves the Fardbeyan as Ext.3 and his

signature on the same as Ext.3/1. He also stated that the accused were threatening the witnesses on account of which the witnesses were afraid to depose.

In cross examination, it was suggested to him that his father was a veteran criminal but he denied the same.

Apart from such suggestion, we find that there is no contradiction in his statement.

8. P.W.5 Lalan Prasad Singh, who is named as an eye witness, stated that he had seen the occurrence and the deceased in an injured condition and on his asking, he disclosed that the Appellant Om Prakash Singh and accused Jai Prakash had assaulted him.

In cross examination, his attention was drawn to the fact of the oral dying declaration.

Since the Investigating Officer has not been examined, we are inclined to ignore his evidence to the extent of deceased giving a dying declaration.

9. P.W.6 Chandra Shekhar Singh, another witness, stated that on 'hulla' he went to the place of occurrence and he saw the deceased in an injured condition and on his asking, he disclosed that the Appellants had assaulted him. While he was being taken to the hospital, he died in the way and there was litigation in between them. He was a signatory to the Inquest which was not previously exhibited.

His attention was drawn to his earlier statement in respect to the oral dying declaration and, therefore, we ignore his evidence as well to this extent.

10. P.W.7 Savitri Devi, the daughter of the deceased, stated that on the date of occurrence while she was sitting in the courtyard alongwith her mother, she heard the sound of firing outside the house and the cry of her brother and screams of her father so she reached the place of occurrence and saw the accused persons including the Appellants fleeing away and her father in an injured condition.

She has been cross examined about her two marriages but it is not relevant. It was suggested to her that her father was a veteran criminal but she denied the same.

11. P.W.8 Vijay Kumar Sinha proves the formal F.I.R. as Ext.4 whereas P.W.9 Ram Swaroop Paswan proves the sanction order with regard to the prosecution of the accused under the provisions of Explosive Substance Act which is Ext.6.

12. The defence has examined two witnesses.

13. D.W.1 Umakant Singh stated that the deceased was a veteran criminal and there were some cases against him under Section 110 of the Code of Criminal Procedure. He further stated that the Informant was in his in-laws' house on the date of occurrence.

14. D.W.2 Jay Kant Singh is one of the persons who was the

member of the Panchayat and he proves the 'Panchnama' as Ext.C.

15. On going through the evidence of the witnesses, discussed above, we find that P.W.2 Uma Kant Singh is said to have come on 'hulla' and, therefore, he can be termed only as a corroborative witness to the extent of the occurrence.

P.W.3 Ramanand Singh alias Vivekanand Singh, another son of the deceased, even though was sought to be disbelieved with regard to seeing the accused persons fleeing away from the place of occurrence by drawing attention to his statement recorded under Section 161 Cr.P.C. but we find that no attention was drawn to the alleged oral dying declaration. In such circumstances, we are left to accept his evidence so far as the oral dying declaration and the complicity of the present Appellants is concerned.

P.W.4 Tripurari Singh, the Informant, has fully supported the manner of occurrence and complicity of the Appellants and we do not find any discrepancy in his evidence, which would lead us to doubt the same.

P.W.5 Lalan Prasad Singh and P.W.6 Chandra Shekhar Singh who have attempted to corroborate the case stating that the deceased had disclosed the complicity of the accused persons including the Appellants have to be disbelieved because they had not given such statements earlier during investigation. Since the Investigating Officer has not been

examined in this case, we are inclined to reject their submissions. We would do so, to prevent prejudice to the Appellants.

P.W.7 Savitri Devi is a corroborative witness on the point of seeing the accused persons fleeing away from the place of occurrence. She had stated the same facts before the Investigating Officer.

16. In such circumstances, we find that the prosecution has succeeded in proving its case beyond all reasonable doubt through the evidence of three witnesses, discussed above, who have either given eye witness account or corroborative account which is further fortified by the evidence of the Doctor (P.W.1) who found corresponding injuries on the person of the deceased. No doubt, the counsel for the Appellants urged that the First Information Report has been received in Court after three days of the occurrence but when direct and reliable evidence is available such a procedural lapse by the Investigating Officer would not affect veracity of the prosecution case on this count.

17. In the result, finding no merit in these appeals, the same are dismissed.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

A.B. Bhardwaj/Pradeep Srivastava.

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