

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1099 of 2010
With
Criminal Appeal (DB) No. 1096 of 2010
With
Criminal Appeal (DB) No. 1116 of 2010
With
Criminal Appeal (DB) No. 1136 of 2010

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AGAINST THE JUDGMENT OF CONVICTION AND THE ORDER OF SENTENCE, DATED 31.08.2010, PASSED BY SHRI O. S. SHRIVASTAVA, ADDITIONAL SESSIONS JUDGE, FAST TRACK COURT NO. II, JAMUI, IN SESSIONS TRAIL NO. 83 OF 2010, ARISING OUT OF JAMUI POLICE STATION CASE NO. 134 OF 1998

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RAMNANDAN SINGH, SON OF TANO SINGH, RESIDENT OF VILLAGE DUNDO, POLICE STATION AND DISTRICT JAMUI

.... **APPELLANT (IN CR. APP. (DB) NO. 1099/2010)**

WITH

SANJAY SINGH, SON OF TANO SINGH, RESIDENT OF VILLAGE DUNDO, POLICE STATION AND DISTRICT JAMUI

.... **APPELLANT (IN CR. APP. (DB) NO. 1096/2010)**

WITH

BHAGIRATH SINGH, SON OF RAMANUGRAH SINGH, RESIDENT OF VILLAGE DUNDO, POLICE STATION AND DISTRICT JAMUI

.... **APPELLANT (IN CR. APP. (DB) NO. 1116/2010)**

WITH

MAHENDRA SINGH, SON OF LATE SWAROOP SINGH, RESIDENT OF VILLAGE DUNDO, POLICE STATION AND DISTRICT JAMUI

.... **APPELLANT (IN CR. APP. (DB) NO. 1136/2010)**

VERSUS

The State of Bihar

.... **RESPONDENT (IN ALL CASES)**

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Appearance :

(In CR. APP (DB) No.1099 of 2010)

For the Appellant : Mr. Ajay Kr. Thakur, Advocate
Mrs. Kiran Thakur, Advocate
Mr. Imteyaz Ahmad, Advocate

Mr. Ravi Ranjan, Advocate
Mr. Amit Kumar, Advocate
Mr. Shashank Shekhar, Advocate
For the State : Mr. Ajay Mishra, APP
For the Informant : Mr. Manish Kumar No. 2, Advocate

(In CR. APP (DB) No.1096 of 2010)

For the Appellant : Mr. R. S. Roy, Senior Advocate
Mr. Rajesh Kumar, Advocate
Mr. Tripurari Sharan, Advocate
For the State : Mr. A. Sharma, APP
For the Informant : Mr. Manish Kumar No. 2, Advocate

(In CR. APP (DB) No.1116 of 2010)

For the Appellant : Mr. Kumar L. P. Singh, Advocate
Mr. Bipin Bihari Prasad, Advocate
For the State : Mr. G. P. Jaiswal, APP
For the Informant : Mr. Manish Kumar No. 2, Advocate

(In CR. APP (DB) No.1136 of 2010)

For the Appellant : Mr. Mukesh Kumar, Advocate
Bijay Kumar Pandey, Advocate
For the State : Mr. Ajay Mishra, APP
For the Informant : Mr. Manish Kumar No. 2, Advocate

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**CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
AND
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

JUDGMENT AND ORDER
ORAL

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 26-05-2016

Under challenge, in the present appeals, is the judgment and order, dated 31.08.2010, passed, in Sessions Trial No. 83 of 2010, by learned Additional Sessions Judge, Fast Track Court No. II, Jamui, whereby the accused-appellants have been convicted and sentences have been

passed against the accused-appellants.

2. By the impugned judgment, learned trial Court has convicted the accused-appellants under Section 302 read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act, 1959. Following their conviction under Section 302 read with Section 34 of the Indian Penal Code, the accused-appellants have been sentenced to undergo life imprisonment. This apart, upon their conviction under Section 27 of the Arms Act, 1959, the accused appellants have been sentenced to undergo rigorous imprisonment for a period of three years and pay fine of Rs. 2,000/- each and, in default of payment of fine, to undergo rigorous imprisonment for a period of two months. Both the sentences have been directed to run concurrently.

3. The case of the prosecution, as unfolded at the trial, may, in brief, be described thus:

(i) On 12.07.1998, at about 10:15 AM, when Subodh Singh (PW 7), accompanied by Sanjay Singh (since deceased), was returning home from the house of Sanjay Singh's maternal uncle and reached near the agricultural field, situated between village Mircha and village Narmada, then, all of a sudden, accused Ramnandan Singh and accused Sanjay Singh appeared before them. Accused Ramnandan Singh, pointing a pistol towards Sanjay Singh (since deceased), told



Sanjay Singh that he (Sanjay Singh) was becoming a hero. Having made this remark, accused Ramnandan Singh fired with his pistol on the chest of Sanjay Singh, who fell down. Thereafter, accused Mahendra Singh and accused Bhagirath Singh came out from the ridge of the field and all of them lifted Sanjay Singh's body by holding his hands and legs and took the body to the field of Shiva Manjhi and threw him on the ground. While accused Ramnandan Singh, accused Mahendra Singh and accused Bhagirath Singh were holding the hands and legs of Sanjay Singh (deceased), accused Sanjay Singh took out a *chura* (i.e., knife) from his waist and cut the neck of Sanjay Singh (deceased) and, having separated the head from his body, left, with deceased Sanjay Singh's head, along with his associates.

(ii) Having seen the ghastly occurrence of the killing of Sanjay Singh, when Subodh Singh (PW 7) raised *hulla*, accused Ramnandan Singh fired at PW 7 by his pistol, but PW 7, somehow, escaped. It was the sound of firing and of the *hulla* raised by PW 7 that the people, who were working in the nearby fields, came running. Among those persons, who had so come running to the place of occurrence, were present Nawal Kishore Singh (PW 3) and Birendra Singh (PW 4).

(iii) The motive for the occurrence was that the

accused persons used to collect money from the businessmen, who were carrying cattle and they used to have quarrel with deceased Sanjay Singh, who was trying to save the businessmen from being harassed and pressurized to pay money to the accused.

(iv) Treating the *fardbayan* of PW 7 (Subodh Singh) as *First Information Report*, Jamui Police Station Case No. 134 of 1998, under Sections 302/34 of the Indian Penal Code read with Section 27 of the Arms Act, 1959, was registered against the present accused-appellants, namely, Ramnandan Singh, Sanjay Singh, Mahendra Singh and Bhagirath Singh.

(v) The police arrived at the place of occurrence and *inquest* was held over Sanjay Singh's dead body, which was also subjected to *post mortem* examination, and, on completion of investigation, *charge sheet* was laid, under Sections 302/307/34 of the Indian Penal Code read with Section 27 of the Arms Act, 1959, against the accused-appellants, namely, Ramnandan Singh, Sanjay Singh, Mahendra Singh and Bhagirath Singh.

4. At the trial, when charges, under Section 302 read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act, 1959, were framed against the accused aforementioned, they pleaded not guilty thereto.



5. In support of their case, prosecution examined altogether 7 (seven) witnesses including the doctor. The prosecution failed to examine Investigating Officer in the present case. The accused were, then, examined under Section 313 (1) (b) of the Code of Criminal Procedure and, in their examinations aforementioned, the accused denied that they had committed the offences, which were alleged to have been committed by them, the case of the defence being that of denial and false implication.

6. Having, however, reached the finding that the accused-appellants were proved guilty of the offences as indicated above, learned trial Court has convicted them accordingly and, consequent thereupon, sentences have been passed against the accused-appellants as have been mentioned above.

7. Aggrieved by their conviction and the sentences, which have been passed against them, all the four accused aforementioned, as convicted persons, have preferred these appeals.

8. Since all these appeals having arisen out of one impugned judgment of conviction and the impugned order of sentence, dated 31.08.2010, these appeals have been heard together and are being disposed of by this common judgment and order.

9. We have heard Mr. R. S. Roy, learned Senior Counsel, Mr. Ajay Kumar Thakur, learned Counsel, Mr. Kumar Laliteshwar Prasad Singh, learned Counsel and Mr. Mukesh Kumar, learned Counsel for the appellants, in all the four appeals. We have also heard Mr. Ajay Mishra, Mr. A. Sharma and Mr. G. P. Jaiswal, learned Additional Public Prosecutors, for the State and Mr. Manish Kumar No. 2, learned Counsel, appearing on behalf of the informant.

10. What needs to be borne in mind, while considering the present appeal, is that the informant, in the present case (Subodh Singh (PW 7)) has turned hostile inasmuch as his evidence is merely to the effect that on hearing *hulla*, he rushed to the agricultural field and saw there the dead body of Sanjay Singh lying and he gave, thus, no evidence indicating that he had seen the occurrence of assault on, and killing of, Sanjay Singh. Though he was put to cross-examination by the prosecution, nothing could be elicited from the prosecution to show that PW 7 was an eye-witness to the occurrence. The contradictions, between the evidence of PW 7 given at the trial, and his statement, recorded by the police, which have been brought on record, though impeach his credibility as a reliable witness, it does not prove, as a corollary, that what he had stated before the police by PW 7 was the truth.

11. No wonder, therefore, the previous statement of PW 7 can, at best, be used for contradicting him and not as substantive evidence. His substantive evidence does not, admittedly, show that he was an eye-witness to the occurrence.

12. Situated thus, it becomes abundantly clear that the prosecution derives no benefit from the evidence of PW 7, who was, according to the prosecution, an eyewitness to the occurrence of assault on, and killing of, Sanjay Singh.

13. What is, now, of paramount importance to note is that the prosecution, in the case at hand, relied on the testimonies of PW 3 and PW 4, too, to sustain the charges framed against the accused-appellants.

14. Before we deal with the veracity of the evidence of PW 3 and PW 4, what needs to be point out is that in the case at hand, prosecution failed, and failed miserably, to prove as to what the initial or first information given to the police was inasmuch as it is the evidence of PW 3 (Nawal Kishore Singh) that having seen Sanjay Singh being shot dead by accused Ramnandan Singh and his associates and taking away the head of the said deceased leaving torso behind, they sent information to the police, though he (PW 3) admits that he himself had not gone to the Police Station. It is, however, his evidence that when the police came to the

place of occurrence, he gave his statement and it was on the basis of his statement that the case against the accused came to be instituted. It is curious to note that it is the assertion of PW 3 that the statement of no other person was recorded.

15. From the evidence of PW 3, which we have depicted above, it becomes clear that an information, with regard to the occurrence, was sent to the police from the place of occurrence; but who carried the information to the police station is, now, the question, which confronts this Court?

16. Our quest for an answer to the above question brings us to the evidence of PW 4, who, too, has claimed to be an eye-witness to the occurrence. It is the evidence of PW 4 that it was he (PW 4), who had gone to give information to the police and, in fact, given the information to the Police Officer and, along with Police Officer, he (PW 4) came back to the place of occurrence at about 11:00 AM and, during this period, no other villager came to the Police Station. It is also the evidence of PW 4 that the Police Officer came on a jeep to the place, where dead body was lying.

17. It is, however, the clear evidence of PW 4 that after preparing the document, police took the dead body on a tractor to Jamui.

18. The question, now, is as to what was the



information, which had been given by PW 4 to the Police? In this regard, the evidence on record, adduced by the prosecution, is completely silent. Was any information revealing the names of the assailants of Sanjay Singh had been given to the Police by PW 4 or not, remains, thus, a mystery. As a matter of fact, what was the initial information, which the Police had received and what brought them to the place of occurrence from the Police Station, remains also a mystery inasmuch as the Investigating Officer has not been examined and the initial information, which has been treated as the First Information Report, was, in the light of the evidence, which we have discussed above, not the *First Information Report*.

19. Learned Counsel for the appellants has, therefore, great substance in his submission that the prosecution has failed to prove in this case that the names of the appellants had been disclosed to the police at the earliest point of time as the assailant of the deceased Sanjay Singh.

20. Coupled with the above, while describing the occurrence, PW 3 and PW 4 have deposed, broadly in tune with each other, that when Sanjay Singh (deceased), accompanied by Subodh Singh (PW 7), was going on the day of the occurrence at about 10:00 AM, accused Ramnandan Singh and his associates, namely, Sanjay Singh, Mahendra



Singh and Bhagirath Singh, had kept themselves concealed by the side of the ridge. They appeared in front of Sanjay Singh (deceased). Accused Ramnandan Singh was armed with a pistol. Having taunted Sanjay Singh (deceased) by telling him that he (deceased Sanjay Singh) was becoming a hero, accused Ramnandan Singh fired from his pistol on the chest of Sanjay Singh (deceased) and Sanjay Singh fell down. Thereafter, accused Ramnandan Singh, accompanied by his associates, carried the body of Sanjay Singh (deceased) to some distance and, then, while accused Ramnandan Singh, accused Bhagirath Singh and accused Mahendra Singh were holding the hands and legs of Sanjay Singh, accused Sanjay Singh cut the neck of Sanjay Singh (deceased) by means of a knife and separated the head, whereupon accused Mahendra Singh, holding in his hand a flock of hair of the head of deceased Sanjay Singh, carried away the head of Sanjay Singh from the place of occurrence.

21. The evidence adduced by the prosecution also shows that deceased Sanjay Singh's head was found lying in a drain located by the side of a canal.

22. If the descriptions of the occurrence, as have been given by PW 3 and PW 4, were true, deceased Sanjay Singh would have been found to have sustained firearm injury on the front of his chest. There is no evidence given by either

PW 3 or PW 4 that any bullet was fired by any of the assailants on the head of Sanjay Singh. If, therefore, any bullet injury was found on the head of Sanjay Singh, it ought to have been *post mortem* injury and could not have been *ante mortem* injury.

23. Bearing the above noticeable features of the present case in mind, when we turn to the medical evidence on record, we notice that according to the doctor (PW 6), on 12.07.1998, at about 05:10 PM, he (PW 6) had conducted *post mortem* examination on the headless dead body of Sanjay Singh and found as follows:

"(i) *One oval lacerated wound about 1/2" in diameter in third inter coastal space in the back of chest on right side with inverted, blackened margin and blood clot over it (deep to chest cavity);*

(ii) One lacerated wound over left hypochondria region of abdomen 3/4" x 1/2" x up to chest cavity with everted margin and blood clot over it;

(iii) One penetrating wound over epigastria region 1" x 1/2" x 1" with blood clot over it;

(iv) one penetrating wound over left forearm 1/2" x 1/2" x 3/4" below elbow interiorly with blood clot over it; and

(v) One incised wound over neck just above 6th cervical vertebra,

cutting the whole structure of the neck without any blood clot over the cut surface of neck.

On further dissection, there was laceration of skin subcutaneous tissues, muscles, fracture of right third rib, laceration of pleura and lung underneath the injury no. 1, with blood clot present over it. There was laceration of pericardium and both vertical of heart, lower lob of left lung and pleura, diaphragm and muscles of skin. There was about 1.5 litre of blood present inside the chest cavity. Injury no. (i) wound of entry was found to be communicating to injury no. (ii) wound of exit. Injury Nos. (i) and (ii) are caused by fire arm, injury Nos. (iii) and (iv) by sharp pointing substance and injury no. (v) by sharp cutting substance. Injury Nos. (i), (ii), (iii) and (iv) are ante mortem in nature and injury No. 5 post mortem in nature.

24. In the opinion of the doctor (PW 6), cause of death was hemorrhage and shock due to cardio-respiratory failure.

25. Similarly, Dr. Jawahar Prasad (not examined), who had conducted the post mortem of the skull and face of deceased Sanjay Singh, found as follows:

“(i) One circular (of 1/2” diameter) lacerated wound with inverted

black margins in left parietal area of skull;

(ii) One circular (of 2" diameter) lacerated wound with everted margins in right parietal area of skull;

(iii) One circular (of 1½" diameter) lacerated wound with black margins in the mid of upper portion of skull;

(iv) One circular (of 2½" diameter) lacerated wound with everted margins near the angle of left mandible;

(v) One circular (of ½" diameter) lacerated wound with inverted black margins in left occipital area;

(vi) One circular (of 3" diameter) lacerated wound with everted margins with extrusion of right eye in right orbit.

All above injuries were caused by fire arm, ante mortem in nature, injury Nos. 1 and 2 being the wound of entrance and exit, 3 and 4 being the entrance and exit and 5 and 6 being the entrance and exit respectively.

On dissection, wound of entrance and exit were inter communicating, lacerating, the brain tissue massively.

The head was decapitated at the level of cervical 6th vertebra, which was post mortem in nature and was caused by sharp cutting substance. Death was instantaneous to the fire arm injury."

26. In the opinion of Dr. Jawahar Prasad, cause of death was due to injuries caused to the brain, leading to cardio-respiratory failure.

27. Neither the findings of the doctors nor their opinion, with regard to the cause of death of the said deceased and/or their opinion with regard to the nature of weapons, which might have been used, for causing the death of the said deceased, were disputed by the prosecution or by the defence. This apart, we, too, do not notice anything inherently incorrect or improbable in the findings recorded by the doctors.

28. So situated, it becomes clear that Sanjay Singh's death was homicidal in nature.

29. What is, however, of immense importance to note from the evidence of the doctor (PW 6) is that, according to the medical evidence on record, the said deceased had sustained not only an *ante mortem* bullet injury on the back of the chest, but also an *ante mortem* bullet injury on his head. This apart, the deceased had received one penetrating wound on the epigastria region and one penetrating wound on the left forearm. How penetrating wounds were caused is not explained by the prosecution nor is there any explanation discernible, in this regard, from the evidence on record.

30. More-over, from the evidence of the doctor (PW



6), what becomes abundantly clear is that the bullet was fired at the back of Sanjay Singh, because the wound of entry of the bullet were found, in the *post mortem* examination, at the back meaning thereby that the evidence, given by PW 3 and PW 4, in tune with each other, that they had witnessed that accused Ramnandan Singh had fired on the frontal part of the chest of the deceased Sanjay Singh by his pistol is a complete lie. This, in turn, constrains us to hold that PW 3 and PW 4 were not truthful before the Court and they could not have been regarded, and ought not to be regarded, as eye witnesses to the alleged occurrence.

31. Coupled with the above, the deceased Sanjay Singh had sustained bullet injury, according to the *post mortem* report, on his head, which, if the evidence of PW 3 and PW 4 were true, could not have been found, because no bullet was fired on Sanjay Singh's head before his neck was removed from the rest of his body. This is another aspect of the case, which compels the Court to completely reject the evidence of PW 3 and PW 4 as evidence of wholly unreliable witnesses.

32. In the absence of any other evidence, supporting the description of the occurrence given by the eye-witnesses, one has no option, but to hold, and we do hold, that none of these witnesses, who have claimed themselves

to be eye-witnesses, can be treated or held to be *wholly reliable*. Even if their evidence is not rejected by the Court as *wholly unreliable*, their evidence would fall, at best, in the category of those witnesses, who are *neither wholly reliable nor wholly unreliable*.

33. It is trite that the witnesses, ordinarily, fall into three distinct categories, namely, **(i)** wholly reliable, **(ii)** wholly unreliable and **(iii)** neither wholly reliable nor wholly unreliable. If the witness is *wholly reliable*, his evidence can be implicitly relied upon and such a witness's testimony can be made basis for conviction of an accused. Similarly, when a witness is found to be *wholly unreliable*, no reliance can at all be placed on his evidence and his evidence has to be rejected outright. When, however, a witness is found to be *neither wholly reliable, nor wholly unreliable*, his evidence cannot be accepted as true unless his evidence is found to have been corroborated by some credible independent evidence, direct or circumstantial.

34. The evidence of the eye-witnesses, which the prosecution has adduced in the present case, cannot be safely relied upon unless the same is found to have been corroborated by some credible independent evidence, direct or circumstantial.

35. It is also an undisputed proposition of law that



one *infirm witness* cannot be treated to have corroborated the evidence of another *infirm witness* meaning thereby that witnesses of same brand cannot be taken to have corroborated each other. Thus, when a witness is *neither wholly reliable nor wholly unreliable*, his evidence cannot be taken to have been corroborated by a witness of the same brand, namely, a witness, who is *neither wholly reliable nor wholly unreliable*, for, evidence is not to be counted, but weighed. It is not the number of the witnesses, which determines the outcome of a trial; rather, it is the inherent falsity or truth of the evidence given by the witness, which decides the outcome of trial. If each one of a large number of witnesses is found to be *wholly unreliable*, their evidence cannot become acceptable as true merely because a large number of similar brand of witnesses has corroborated each other.

36. A reference, with regard to the above position of law, may be made to the case of **Muluwa, S/o Binda and others Vs. The State of Madhya Pradesh, (AIR 1976 SC 989)**, wherein the Supreme Court has observed as follows :

"It is elementary that the evidence of an infirm witness does not become reliable merely because it has been corroborated by a number of witnesses of the same brand; for, evidence is to be weighed not

counted. Since the evidence of P.Ws. 5 and 6 suffered from the same infirmities as that of Smt. Jugatia, it cannot be said that the trial Judge had no basis, whatsoever, for stigmatising it as unreliable.”

(Emphasis is added)

37. Situated thus, it is clear that merely because some persons, claiming themselves to be eye-witnesses, have given evidence describing the occurrence, their evidence cannot be made basis for holding them truthful witnesses, when their evidence is belied by the medical evidence on record unless their evidence is found to have been corroborated by credible independent evidence, direct or circumstantial.

38. What follows from the above discussion is that the witnesses, whom the prosecution had examined at the trial, did not give reliable evidence. Moreover, the learned trial Court has also, as the impugned judgment reflects, not even taken notice of the fact that the ocular description of the occurrence, as given by the witnesses aforementioned, is not supported by the medical evidence on record; rather, the medical evidence on record belied the description of the occurrence, which the witnesses had given claiming themselves to be eye-witnesses.

39. When we reject the evidence of PW 3 and PW 4

as wholly unreliable for the reasons, which we have discussed above, the prosecution is, admittedly left with no other evidence, direct or circumstantial, which can fasten the accused-appellants with the charges framed against them.

40. Because of what has been discussed and pointed out above, we have no hesitation in holding that the prosecution has failed to prove its case beyond reasonable doubt against the accused-appellants and they ought to have been acquitted by the learned trial Court by according, at least, benefit of doubt.

41. In the result, and for the reasons discussed above, these appeals stand allowed. The impugned conviction of the accused-appellants and the sentences passed against them by the judgment and order, under appeal, shall accordingly stand set aside. The accused-appellants are held not guilty of the offences, which they were charged with, and they are acquitted of the same under benefit of doubt.

42. Let accused-appellant, Ramnandan Singh, be set at liberty, forthwith, unless they are required to be detained in connection with any other case.

43. So far as accused-appellants, namely, Sanjay Singh, Mahendra Singh and Bhagirath Singh, are concerned, they are already on bail. Their bail bonds are hereby cancelled and their sureties shall stand discharged

44. The Registry shall, forthwith, send a copy of this judgment and order to the learned trial Court along with the Lower Courts Record.

(I. A. Ansari, ACJ.)

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

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