

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.908 of 2015

Arising Out of PS.Case No. -26 Year- 2012 Thana -BIKRAMGANJ District- SASARAM
(ROHTAS)

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1. Vikash Sharma S/o Late Vimal Sharma, R/o Village Raman Dihara, P.S.
Bikramganj, District- Rohtas

.... Appellant

Versus

1. The State of Bihar
2. Mahaveer Singh
3. Rameshwar Singh sons of Late Nizar Singh
4. Kishan Singh S/o Bhikhari Singh
5. Sonu Singh S/o Mahaveer Singh Respondent Nos. 2 to 5 are residents of village
Raman Dihara, P.s.- Bikramganj, Dist. Rohtas

.... Respondents

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Appearance :

For the Appellant : Mr. Rewati Kant Raman, Advocate
For the State : Mr. Ajay Mishra, A.P.P.
For Private Respondents : Mr. Aditya Narayan Singh No. 1, 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: 22-01-2016

The appellant herein has filed this application, under
Section 372 of the Code of Criminal Procedure, against the
acquittal of the private respondents herein by judgment and
order, dated 16.05.2015, passed, in Sessions Trial No. 320 of
2013, by learned *Adhoc* Additional Sessions Judge III, Rohtas
at Sasaram.

2. The case of the prosecution is, in brief, as follows:

(i) On 19.01.2012, Vimal Sharma (since deceased),
accompanied by his son, Vikash Sharma, who is the informant



of this case, proceeded from his *dalaan* (i.e., courtyard) to the living area, at about 06:30, in the evening to take his meal. On the way to the living area, accused persons, namely, Mahaveer Singh, Kisan Singh, Rameshwar Singh and Sonu Singh, armed with country-made pistols, suddenly, came there and they caught hold of the informant and his father. It is alleged that accused Mahaveer Singh said to Vimal Sharma that since he had not listened to him, he should face the result and, with this remark, accused Mahaveer Singh fired from his pistol on the temple of the deceased, who fell down and, thereafter, accused Rameshwar Singh fired from his pistol on the back of the informant's father and accused Sonu Singh fired and the bullet hit the informant's father just below his shoulder. It is also alleged that in the mean-while, the other accused persons, namely, Dharmendra Singh, Bheem Singh, Somaru Singh, Pawan Lal, Laxmi Singh, Amarendra Singh, Alok Singh, Karmu Singh, Gopal Singh, Laxman Singh, Ajay Singh and Uday Singh, too, arrived there and accused Bheem Singh asked his associates to kill the informant, but the informant shook off their hands and fled away in the dark and hid himself in the house. After sometime, police came and informant came out.

(ii) The genesis of the occurrence, as alleged in the *fardebayan* of the informant, is that the informant's brother, Rakesh Sharma, had taken away the daughter of accused

Mahaveer Singh with intention to marry her and a criminal case, being Bikramganj Police Station Case No. 115 of 2011 was, in this regard, registered and, out of grudge of this incident, the accused persons had killed the informant's father, Vimal Sharma.

(iii) On arrival of the police at the place of occurrence, the informant submitted, in writing, a description of the occurrence, in the form of *fardbayan*, and treating the said *fardbayan*, as the First Information Report, Bikramganj Police Station Case No. 26 of 2012 was registered, under Sections 147/148/341/323/447/307/302 of the Indian Penal Code and Sections 26(i)/27(i) of the Arms Act, 1959.

(iv) On completion of investigation, a *charge sheet* was laid, under Sections 147/148/341/323/447/302 of the Indian Penal Code and Sections 26(i)/27(i) of the Arms Act, 1959, against the accused.

3. At the trial, when charges, under Sections 147/148/341/323/447/302 of the Indian Penal Code and Sections 26(i)/27(i) of the Arms Act, 1959, were framed against the accused persons, they pleaded not guilty thereto.

4. In support of their case, prosecution examined as many as 8 witnesses. Accused were, then, examined under Section 313 (1) (b) of the Code of Criminal Procedure and, in their examinations aforementioned, all 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 the accused were falsely implicated due to previous enmity.

5. The learned trial Court, having reached the conclusion that the case, as against the accused aforementioned, had not been proved beyond reasonable doubt, acquitted them under benefit of doubt.

6. Being aggrieved by the judgment and order, dated 16.05.2015, acquitting thereunder the private respondents herein (i.e., the accused persons), the informant, as appellant, has, as indicated above, preferred this appeal.

7. We have heard Mr. Rewati Kant Raman, learned Counsel for the appellant, and Mr. Aditya Narayan Singh No.I, for the private respondents. We have also heard Mr. Ajay Mishra, learned Additional Public Prosecution, for the State.

8. It has been submitted by Mr. Rewati Kant Raman, learned Counsel, for the appellant, that the finding, reached by the learned trial Court, leading to the acquittal of the accused-respondents, is perverse inasmuch as the learned trial Court has not, according to Mr. Raman, correctly appreciated the evidence available on record. On the other hand, it is the submission of Mr. Aditya Narayan Singh No. 1, learned Counsel, appearing on behalf of the accused-respondents, and Mr. Ajay Kumar, learned Additional Public Prosecutor,

appearing for the State, that the learned trial Court has assigned good and sufficient reasons for coming to the conclusion that the charges against the accused-respondents could not be proved and, therefore, warranted their acquittal.

9. As regards the evidence of PW 1 and PW 2, both of whom are co-villagers of the deceased, it may be noted, while considering the rival submissions made before us, that PW 1 and PW 2 have clearly deposed that they do not know anything about the occurrence and they have been accordingly declared hostile. PW 3 has merely proved the First Information Report, which he had written on the instructions of the informant.

10. The case of the prosecution, therefore, came to rest on the evidence of PW 4 (Anand Sharma), a son of the deceased, PW 5 (Vikash Sharma), another son of the deceased and the informant of this case, and PW 6 (Kunti Devi), widow of the deceased.

11. As far as PW 6 is concerned, it is her evidence that on the day of the occurrence, at about 06:30 PM, her son, Vikash Sharma (PW 5), i.e., the informant, came running and said that bullet has been fired on his father by Mahaveer Singh, Rameshwar Singh and Sonu Singh. According to the evidence of PW 6, police came at the place of occurrence and found her husband lying dead. It is clearly deposed by PW 6 that after about 15-20 minutes of her having heard the sound of firing,

Vikash Sharma (PW 5) came to the house and informed her (PW 6) about the occurrence.

12. Clearly, thus, PW 6, too, is not an eye-witness to the occurrence.

13. Coming to the evidence of PW 4, we notice that according to his evidence, at about 06:30 PM, on the day of the occurrence, he heard the sound of firing taking place outside his house and when he came out, he found his father lying on road in a pool of blood and when he raised alarm, his brother, Vikash Sharma (PW 5) ,came there and told him that accused Mahaveer Singh had fired at his father on the latter's temple, accused Sonu Singh fired just below his father's waist and accused Kisan Singh fired at the back of his father.

14. From the evidence of PW 4, it becomes clear that though PW 4 cannot be regarded as an eye-witness, his evidence shows that he was the first one, who had seen the dead body of his father, and after he found his father lying on the road in a pool of blood, he raised alarm, whereupon PW 5 came there.

15. In the light of the evidence so given by PW 4, when we peruse the evidence of PW 5, we notice that according to him, while he was proceeding towards the house with his father, accused Rameshwar Singh, Mahaveer Singh, Sonu Singh and Kisan Singh came. Describing the occurrence, PW 5



has also deposed that while his father (i.e., the deceased) was proceeding towards his house, he (PW 5) himself was 10 steps behind his father and when they reached near the house of Dinesh Yadav, accused persons caught hold of his father, accused Mahaveer Singh, by putting a pistol on the temple of the deceased, fired at his temple, accused Rameshwar Singh also fired at the temple of the deceased; whereas accused Sonu Singh fired on the upper portion of the waist of the deceased.

16. What is, however, necessary to note is that the informant (PW 5), nowhere, claims, in his evidence, that the accused had caught hold of him too; rather, his evidence is that his father was 10 steps ahead of him and the accused persons caught hold of his father; whereas, the version of the occurrence, given by the informant in his *fardbayan*, is that both, he (informant) and also his father, were caught hold by the accused persons.

17. It is the assertion of PW 5, in his *fardbayan*, that by putting a pistol on the temple of the deceased, accused Mahaveer Singh fired, accused Rameshwar Singh fired at the back of the deceased and accused Sonu Singh fired just below the shoulder of the deceased, but his (PW 5's) evidence is that accused Mahaveer Singh and Rameshwar Singh had fired at the temple of the deceased and accused Sonu Singh had shot at

the upper portion of the waist of the deceased.

18. Thus, the description of the occurrence by PW 5, on every aspect, lacked consistency and, therefore, did not inspire confidence.

19. The doctor (PW 8) has found three bullet injuries with wound of entry and wound of exit on the person of the deceased; out of the injuries so sustained by the deceased, first wound of entry was found below right ear and injury No. 2 was wound of exit of injury No. 1, injury No. 3 was found below the left scapula (i.e., back portion of the body) and injury No. 4 was the wound of exit of injury No. 3, injury No. 5 was the wound of entry at right side below the ribcage (i.e., upper portion of waist) and injury No. 6 was the wound of exit of injury No. 5.

20. It is clear from the findings of the doctor (PW 8) that three bullet injuries were sustained by the deceased; one on his temple, second on his back portion of the body and the third on the upper portion of the waist.

21. If the ocular evidence given by PW 5 is treated as true, then, there would have been two bullet injuries on the temple of the deceased; whereas the medical evidence revealed only one injury on the temple. This apart, had PW 5 being telling the truth, there could not have been any injury on the back of the deceased inasmuch as PW 5, in his evidence, at



the trial, nowhere, deposed that any of the accused had fired at the back of the deceased or below the shoulder of the deceased; whereas the medical evidence found a bullet injury on the back of the deceased. In his *fardbayan*, PW 5 has alleged that it was accused Rameshwar Singh, who had fired below the shoulder of the deceased; whereas he (PW 5) claims, now, in his evidence, that accused Rameshwar Singh had fired at the temple of the deceased.

22. Similarly, while in his evidence, PW 5 claims that accused Kisan Singh has told his associates that the informant was fleeing and, therefore, he shall be killed, the informant, in his *fardbayan*, had stated that it was Bheem Singh, who had shouted instigating others to kill him.

23. Further, in his *fardbayan*, the informant had claimed that he, somehow, freed himself from the clutches of the accused and fled away in the darkness; whereas the informant's evidence, in the Court, is that he was 10 steps behind his father, when he fled away and he never mentions, at the trial, that he had been caught hold of by the accused and/or he had freed himself from the clutches of the accused and, then, fled away.

24. From the above discussion of the evidence of the informant, it becomes abundantly clear that the informant has contradicted himself on material aspects of his evidence. In

other words, with every passing moment, the informant transpires to be more and more unreliable witness. His evidence does not, therefore, inspire implicit confidence of the Court. At any rate, the informant (PW 4) cannot be regarded as a wholly reliable witness.

25. In the face of the medical evidence on record, when the evidence of PW 4 and PW 5 is considered, one cannot avoid, but conclude that the description of the occurrence, given by PW 5, is not safe to place reliance upon. This apart, when the evidence of PW 4 is considered in the light of the evidence of PW 5, it further transpires that it was PW 4 and not PW 5, who had seen the dead body first.

26. Hence, the evidence of PW 5 is nothing, but admixture of half-truth and untruth. Moreover, the half-truth and untruth are so inextricably mixed with each other that it has become impossible to disengage the truth from falsehood.

27. In the circumstances indicated above, it becomes abundantly clear that the sole eye-witness (PW 5) cannot be treated or held to be *wholly reliable*. Even if his (PW 5) evidence is not rejected by the Court as *wholly unreliable*, his evidence would fall, at best, in the category of those witnesses, who are *neither wholly reliable nor wholly unreliable*.

28. 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.

29. The evidence of the sole eye-witness, 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. However, no credible corroboration is received by PW 5 from any evidence, direct or circumstantial. Far from this, the evidence of PW 5 is belied by the medical evidence on record.

30. In such circumstances, as indicated above, the view, taken by the learned trial Court recording acquittal of the private respondents, cannot be said to be not a reasonably possible view requiring interference by this Court in exercise of its appellate jurisdiction under the proviso to Section 372 of the

Code.

31. It is well settled that acquittal by trial Court strengthens the presumption of innocence of an accused. The appellate court in an appeal against acquittal is required to interfere only if the evidence adduced at the trial conclusively prove and definitely indicate commission of offence by the accused persons. We have not been shown any evidence on record by learned counsel appearing on behalf of the appellant so clinching on the basis of which it can be said that conviction of the private respondents could be the only possible conclusion and no other view was possible. It is well established that no interference is required by the appellate court in an appeal against acquittal on the ground that a view other than the view taken by the trial court may also be a reasonably possible view.

32. This appeal does not merit admission and is accordingly dismissed.

(I. A. Ansari, ACJ.)

Prabhakar
Anand/-

(Chakradhari Sharan Singh, J.)

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