

IN THE HIGH COURT OF JUDICATURE AT PATNA
Govt. Appeal (DB) No.9 of 1994

The State of Bihar

... .. Appellant

Versus

1. Dasrath Jha @ Laddu Jha
2. Surya Kant Jha
3. Ganesh Jha,

All are sons of Sri Nand Jha,

All are residents of village- Athari, P.S. Runisaidpur, District- Sitamarhi

... .. Respondents

Appearance :

For the Appellant/s : Mr. Barun Kumar Choudhary, Adv.
Smt. Kshem Sharma, Adv.

For the Respondent/s : Mr. Ajay Mishra, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 03-11-2017

Heard Sri Ajay Mishra, learned Addl. Public Prosecutor and
Sri Barun Kumar Choudhary, learned counsel for the Respondents.

2. The present appeal has been preferred by the State of Bihar against the Judgment of acquittal dated 10.06.1993 passed by learned 2nd Addl. Sessions Judge, Sitamarhi in Sessions Trial No.55 of 1992/61 of 1992 and 191 of 1992/86 of 1992. By the said Judgment, the learned 2nd Addl. Sessions Judge, Sitamarhi has acquitted three respondents from the charge under Section 302 read with Section 34 of the Indian Penal Code and further Respondent no.1, Dasrath Jha @ Laddu Jha was acquitted from the



charge under Section 307 of the Indian Penal Code and Section 27 of the Arms Act and also acquitted respondent no.2, Surya Kant Jha from the charge under Section 307 read with Section 109 of the Indian Penal Code.

3. Short fact of the case is that on 27.07.1991 at about 11.05 P.M., the Sub-Inspector of Police Sri Rajbali Sharma, Officer Incharge of Runnisaidpur Police Station recorded fardbeyan of Rajiv Prasad Singh (P.W.8) in village Athari near Thakur Chowk. In the fardbeyan, Rajiv Prasad Singh (P.W.8) stated that his villager Kaushal Kishore Singh (deceased) was contractor of Athari Bazar and in the same night at about 9.00 P.M. after concluding accountancy in respect of market earning, he along with Kaushal Kishore Singh(deceased), Pramod Kumar Singh, Chandeshwar Singh and Vijay Shankar Thakur, while talking among themselves, were returning towards Thakur Chowk through main pitch road for dropping Vijay Shankar Thakur to his house. After dropping Vijay Shankar Thakur to his house, while they were returning back on foot, Chandeshwar Singh in the way itself went for participation in a "Satsang". At bout 9.15 P.M. while the informant with two persons moved from northern side of Thakur Chowk towards main pitch road and reached near a pulia(culvert), suddenly from a distance of about 5-6 yards in the northern side,



(i) Dasrath Jha @ Laddu Jha (respondent no.1) carrying a pistol in his hand (ii) Surya Kant Jha (respondent no.2) carrying bomb in his hand and (iii) Ganesh Jha (respondent no.3), who had hung dagger on his shoulder, along with two unknown persons came out and reached on the pitch road. The informant stated that Laddu Jha (Dasrath Jha), respondent no.1 put pistol on occipital region of Kaushal Kishore Singh and from very close range, he fired on the back side, whereupon Kaushal Kishore Singh fell down on the western side of the road. The informant wanted to flee away, however Surya Kant Jha (respondent no.2) said that he will become a witness and, as such, he may also be killed. Thereafter, Ganesh Jha (respondent no.3) caught the waist of the informant and, thereafter, Laddu Jha opened second fire on him, but bullet shot missed him and bullet had gone from the side of the informant. Anyhow, the informant got rid of the catch of the accused persons and fled away raising *hulla* that Kaushal Kishore Singh was shot dead. In the fardbeyan, the informant further stated that he informed Chowkidar and along with a cot they reached to the place of occurrence, then he noticed that due to fire arm injury, Kaushal Kishore Singh had already died. He stated that after the occurrence, accused persons ran to some distance towards northern side and, thereafter, they fled towards western side. The motive of



the occurrence was alleged that Laddu Jha (respondent no.2) was indulged in black-marketing of the petrol near Thakur Chowk and 7-8 days prior to the occurrence, there was some dispute in between Kaushal Kishore Singh and Laddu Jha regarding filling of diesel in the tractor of Kaushal Kishore Singh and Kaushal Kishore Singh had threatened that he will implicate him in a case regarding black-marketing of diesel/petrol. The informant said that due to the said animosity, accused persons had killed Kaushal Kishore Singh. After recording fardbeyan, which was recorded at 11.05 P.M. in the night of 27.07.1991, in the next morning at 6.30 A.M. i.e. 28.07.1991, a formal F.I.R. vide Runnisaidpur P.S. Case no.155 of 1991 was registered against three respondents and two unknown accused persons for the offence under Sections 302/34/307 of the Indian Penal Code and Section 27(iii) of the Arms Act. During investigation, the accusation was found true against three respondents and after obtaining prosecution sanction, chargesheet was submitted on 15.12.1991, on which cognizance order was passed by the learned Magistrate on 24.03.1992. After supply of police paper and completing other formalities, the case was committed to the court of Sessions on 20.04.1992 and, thereafter, charges were framed in the year 1992 itself.



4. Since respondents denied the charges and claimed to be tried, the prosecution to establish its case examined altogether 11 (eleven) witnesses. However, out of eleven witnesses, only two witnesses were examined claiming to be eye witness, who were Pramod Kumar Singh (P.W.6) and Rajiv Prasad Singh (P.W.8), who is the informant of the present case. The father of the deceased, namely Mithilesh Nandan Singh was examined as P.W.7, whereas brother of the informant of the case, namely, Mukul Prasad Singh was examined as P.W.5. Besides this, Dr. Sarnasray Prasad, who had conducted postmortem examination on the dead body of the deceased, was examined as P.W.9 and Satish Chandra Prasad, who was the Investigating Officer, was examined as P.W.11.

5. After examining the entire evidence, the learned trial judge was of the opinion that it was a case of false implication and also the prosecution had not established its case beyond all reasonable doubt and, as such, by the impugned Judgment, the learned trial judge has acquitted all the three respondents from the charges as indicated above.

6. Sri Ajay Mishra, learned Addl. Public Prosecutor after referring to the entire evidences has argued that the evidence of P.W.6 and P.W.8 was sufficient to held the respondents guilt, but



the learned trial Judge only on the basis of minor contradictions has passed the Judgement of acquittal, which requires interference. He submit that P.W.6 and P.W.8 in their evidence have said on the point as to how at the time of occurrence, the deceased was fired by respondent no.1 through his pistol from very close range. He submits that the deceased was shot from very close range and injuries were corroborated by the post-mortem examination report. He submits that once there were at least two eye witnesses of the occurrence and the case was also established by the medical evidence, the learned trial Judge was required to examine the entire evidence in its right perspective. He has argued that in the present case, though cogent evidence was brought on record, the learned trial Judge, in illegal manner, has passed the Judgment of acquittal, which requires interference.

7. Sri Barun Kumar Chaudhary, learned counsel, who has appeared on behalf of three respondents, who were put on trial and got acquittal order, has argued that the evidences, which have been brought on record, categorically suggest that it was a case of false implication. He submits that this was the reason that the father of the deceased, who was examined as P.W.7, even during investigation had raised suspicion against one Rabindra Singh, against whom there was recent land dispute, which was purchase



for an amount of Rs.2-3 lakhs. However, the Investigating Agency had not investigated the case in its right perspective. He further submits that though it was consistent case of the prosecution that the deceased was fired by small pistol, but recovery of cartridge, which was recovered about 15 yards away from the dead body of the deceased, also creates serious doubt on the prosecution case. He submits that recovered cartridge was about three inch long, which is used in a long weapon/ fire-arm i.e. rifle, however in the present case, small pistol was allegedly used by respondent no.1 and, as such, recovery of cartridge itself, which is used in rifle, creates serious doubt on the prosecution case. It was submitted by learned counsel for the respondents that the injury part, which was found on the back side of the head of the deceased, also does not support the prosecution case. Had it been a shot fired from a very close range, the diameter of the wound of entry would have been smaller, but during post-mortem examination, the same was found bigger, which suggests that firing was made on the deceased from some distance that too by a high velocity weapon, not through a small pistol. He has further argued that presence of P.W.6 and P.W.8, who had claimed to be present at the place of occurrence, appears to be doubtful in view of evidence of P.W.5. P.W.5, brother of the informant, in his evidence has said that after hearing



two sounds of firing from Thakur Chowk, he came out from the house and he noticed that Kaushal Kishore Singh was shot dead and his dead body was lying near the main pitch road. Subsequently, his brother Rajiv Prasad Singh (respondent no.8) arrived and informed about the occurrence. The evidence of P.W.6 and P.W.8 during trial was inconsistent to the facts disclosed in the fardbeyan. In the fardbeyan i.e. F.I.R. the informant has said that immediately after the occurrence, he informed the Chowkidar, but in his deposition before the trial court, he had not stated that he had immediately informed the Chowkidar and he came out with a new story that immediately after the occurrence, he fled away and reached a Panchayat Bhawan, where the Mukhiya was playing cards at Panchayat Bhawan along with (i) Sarpanch Kanhaiya Prasad Singh (ii) Dr.N.P.Mishra, son-in-law of the Sarpanch and (iii) Prof Upendra Prasad. However, the prosecution, to the reasons best known to it, has withheld all the said witnesses, who would have said that the informant as well as P.W.6 had immediately informed about the occurrence to the Mukhiya and, thereafter, they returned back to the place of occurrence, which suggests that the informant as well as P.W.6 had given a false picture regarding informing Mukhiya at Panchayat Bhawan. It is a fact that in this case, none of those persons, who were playing cards, were



examined during trial, which certainly creates doubt on the prosecution case. It has also been argued by Sri Barun Kumar Choudhary, learned counsel for the respondents that in a case of acquittal, this Court is required to interfere with the Judgment only if the Judgment of acquittal is perverse. In the present case, the learned trial Judge has examined and appreciated the entire evidence and had come to the conclusion that there was possibility of false implication and, thereafter, the Judgment of acquittal was passed. Accordingly, the judgment impugned requires no interference.

8. Besides hearing learned counsel for the parties, we have also perused the material available on record. Fact remains that injury, which was found on the person of the deceased during post-mortem examination, does not corroborate the allegation of the prosecution. It is also evident that immediately after the occurrence P.W.5 had arrived at the place of occurrence and at that very time P.W.6 and P.W.8 were not present and subsequently they came to the place of occurrence and took plea as if they were present at the place of occurrence and informed about the occurrence regarding death of the deceased.

9. After going through the entire evidence and the Judgment impugned, the Court is of the considered opinion that there is no



perversity in the Judgment warranting interference by this Court. Accordingly, there is no reason for interference with the same and, as such, the appeal against acquittal stands dismissed.

10. While admitting the appeal, aailable warrant of arrest was issued to the respondents and since then, respondents are on bail.

11. Since the appeal against the acquittal has been dismissed, the respondents are discharged from the liability of their bail bonds.

(Rakesh Kumar, J)

(Mohit Kumar Shah, J)

nawalkrs/-

AFR/NAFR	A.F.R.
CAV DATE	N/A
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