

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.117 of 1994

Against the judgment and order dated 05.02.1994 passed by the
Additional Sessions Judge XII, Patna, in Sessions Trial No. 620
of 1992

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Sanjay Singh, Son of Bithila Prasad Singh, resident of Village Akhtiyarpur, Police
Station Bikram, District Patna

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ranbir Singh, Advocate

For the Respondent/s : Mr. Ajay Mishra, APP

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 14-10-2017

Challenging his conviction vide judgment dated
05.02.1994 passed by the court of Additional Sessions Judge XII,
Patna, in Sessions Trial No. 620 of 1992 and convicting him to
undergo life imprisonment for offence punishable under Section
302/34 of the Indian Penal Code and rigorous imprisonment for



three years under Section 394 IPC, this appeal has been filed by the appellant.

It is the case of the prosecution that on 31.03.1992 the informant PW 4 Devi Dayal Singh recorded a *fardi* to the effect that in the night of 31.03.1992 at about 7 PM, when he was ready to leave for Majhauri Bazar for his village, he saw Binod son of Girija Prasad of his village getting down from a bus he called Binod, and all of them decided to go home together. After sometime when they proceeded in the dim light of a torch, three persons approached them. They identified one of them to be the accused Sanjay Singh son of a Master Saheb of the village. It is said that the other two persons were unknown and could not be identified. According to the informant, Devi Dayal Singh demanded money from him. He replied that he is a poor man and does not have anything. On this, Sanjay threw him on the ground and tried to assault him with fist and blow. It is said that at the same time the associates of Sanjay, attacked Binod, started beating and at that point of time Sanjay Singh left the informant and joined his associates in assaulting Binod, then Sanjay is said to have fired on Binod and injured him on the right shoulder. Binod fell down screaming. It is said that from the person of the informant, 75 rupees was taken away by the



accused persons and while leaving and in commotion noise was created they ran away snatching the wrist watch from Binod. Binod was taken to the hospital and succumbed to the injury.

The other two accused persons who were with the appellant Sanjay were never identified. They were never caught and were not prosecuted. It was only Sanjay Singh who later on arrested from the village and prosecuted.

The prosecution examined seven witnesses in all. They were PW 1 Dinesh Kumar, PW 2 Rajeshwar Prasad, PW 3 Girija Prasad, PW 4 Devi Dayal Singh, PW 5 Akhilanand Singh, PW 6 Dr. Bharat Prasad, PW 7 Bishwanath Sharma, the Investigating Officer. Statement of the accused was also recorded under Section 313, Cr.P.C. Based on the evidence that has come on record conviction has been ordered.

As far as the evidence and the statement of the witnesses are concerned, it is only the informant PW 4 who is the eye-witness to the entire incident and he is also the author of the FIR/fardi Ext. 1. In the FIR recorded by him he speaks of Sanjay demanded money from him and thereafter assaulting him and the other two unknown persons attacking Binod and in between Sanjay Singh the appellant left PW 4 and tried to assault the deceased Binod. In his *fardi* or FIR



Ext.1 he does not say anything about his seeing Sanjay firing on the deceased Binod. He states this for the first time in the court and he does not explain this vital omission. P.W 2 Rajeshwar Prasad does not say anything about the incident. He only says that he came to the spot hearing the commotion and the sound of fire armand he only found the injured in a critical condition and he was taken to the hospital. The statement of PW 3 is also on similar line. PW 4 Akhilanand Prasad also speaks about the going to the spot and taking Binod to the hospital. Admittedly, there is no seizure of any weapon or the cloth or the torch from the appellant. PW 4 nowhere in his evidence says that he has seen Sanjay carrying fire arm in his possession. He only speaks about Sanjay carrying a torch with him. He also admits that the two other assailants have not been identified.

From the aforesaid, it is clear that there is no specific evidence available on record to hold that it is the appellant who had fired and caused injury on the person of the deceased. Except for the fact that Devi Dayal PW 4 the informant speaks about the appellant being present, the prosecution has not been able to prove commission of the offence beyond reasonable doubt, there is no seizure of any fire arms from the appellant, no **forensic** evidence or evidence to identify the appellants.



That apart, learned counsel has vehemently argued that in this case there has been a lacuna of trial conducted and the entire trial stands vitiated on account of non-compliance with the provisions of Section 311, Cr.P.C. in the matter of examination of the accused persons. Learned counsel invites our attention to a judgment of the Supreme Court in the case of **Sukhjit Singh vs. State of Punjab [(2014) 10 SCC 270]** and argued that in this case the following principles have been laid down by the Hon'ble Supreme Court with regard to compliance of Section 311, Cr.P.C. :-

“10. On a studied scrutiny of the questions put under Section 313 CrPC in entirety, we find that no incriminating material has been brought to the notice of the accused while putting questions. Mr. Talwar has submitted that the requirement as engrafted under Section 313 CrPC is not an empty formality. To buttress the aforesaid submission, he has drawn inspiration from the authority in *Ranvir Yadav v. State of Bihar*. Relying upon the same, he would contend that when the incriminating materials have not been put to the accused under Section 313 CrPC it tantamounts to serious lapse on the part of the trial court making the conviction vitiated in law.

11. In this context, we may profitably refer to a four-judge Bench decision in *Tara Singh v. State* wherein, Bose, J. explaining the significance of the faithful and



fair compliance with Section 342 of the Code as it stood then, opined thus : (AIR pp.445-46,para 30).

“30. I cannot stress too strongly the importance of observing faithfully and fairly the provisions of Section 342 of the Criminal Procedure Code. It is not a proper compliance to read out a long string of questions and answers made in the committal court and ask whether the statement is correct. A question of that kind is misleading. It may mean either than the questioner wants to know whether the recording is correct, or whether the answers given are true, or whether there is some mistake or misunderstanding despite the accurate recording. In the next place, it is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each material circumstance which is intended to be used against him. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him. The questioning must therefore be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused person is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. He is therefore in no fit position to understand the significance of a complex question. Fairness therefore requires that each material circumstance should be put simply and



separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand. I do not suggest that every error or omission in this behalf would necessarily vitiate a trial because I am of opinion that errors of this type fall within the category of curable irregularities. Therefore, the question in each case depends upon the degree of the error and upon whether prejudice has been occasioned or is likely to have been occasioned. In my opinion, the disregard of the provisions of Section 342 of the Criminal Procedure Code, is so gross in this case that I feel there is grave likelihood of prejudice.”

“12. In *Hate Singh Bhagat Singh v. State of Madhya Bharat*, Bose, J. speaking for a three-Judge Bench highlighting the importance of recording of the statement of the accused under the Code expressed thus: [AIR 00.469-70, para 8]

“8, Now the statements of an accused person recorded under Sections 208, 209 and 342 Criminal Procedure Code are among the most important matters to be considered at the trial. It has to be remembered that in this country as accused person is not allowed to enter the box and speak on oath in his own defence. This may operate for the protection of the accused in some cases but experience elsewhere has shown that it can also be a powerful and impressive weapon of defence in the hands of an innocent man. The statements of the



accused recorded by the Committing Magistrate and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way in the witness box.

“13. The aforesaid principle has been reiterated in *Ajay Singh v. State of Maharashtra* in following terms (SCC pp.347-38, para 14)

“14. The word “generally” in sub-section (1)(b) does not limit the nature of the questioning tone or more questions of a general nature relating to the case, but it means that the question should relate to the whole case generally and should also be limited to any particular part or parts of it. The question must be framed in such a way as to enable the accused to know what he is to explain, what are the circumstances which are against him and for which an explanation is needed. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. A conviction based on the accused’s failure to explain what he was never asked to explain is bad in law. The whole object of enacting Section 313 of the Code was that the attention of the accused should be drawn to the specific points in the charge and in the



evidence on which the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give.”

He takes me through the statement of the accused recorded and points out that only two questions were put to accused appellant. One, on the evidence that has come on record, what he has to say about the incident taking place on 31.03.1992 and he is not guilty for the offence, based on the evidence that has come on record, except for these two questions nothing having been put to the witnesses. The circumstance and the evidence available against him have not been put to him with the incriminating materials and an opportunity granted to explain the materials or circumstances. That being so, it is a case where apart from the fact that the case of the prosecution has not been proved beyond reasonable doubt even the requirement of law for conducting the trial and meeting the requirement of Section 313, CrPC is not fulfilled. This vitiates the trial as laid down by the Supreme Court in the case discussed hereinabove.

From the materials that has come on record and the evidence, commission of offence by the present appellant under



Section 302/34 IPC has not been properly proved beyond reasonable doubt. That being so, it is a fit case where the benefit of doubt has to be granted to the appellant primarily in view of the discrepancy serious in nature in the case of *fardi* lodged by PW 4 and the statement made by him in the court.

Taking note of the totality of the circumstances, the appeal is allowed. The appellant is acquitted of all the charges. He is on bail. His bail bonds are discharged.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

mr1./-

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