

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.595 of 1994

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1. Raj Kishore Singh
 2. Kaushal Kishore Singh, both sons of Musafir Singh
 3. Rajib Singh
 4. Sanjay Kumar Singh,
 5. Sanjib Kumar @ Batahu, sons of Amrendra Singh
 6. Hira Singh, son of Deep Narayan Singh, all are resident of village Hariharpur Tola Fulwaria, P.S. Pupri, District- Sitamarhi

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with
Criminal Appeal (DB) No. 4 of 1995

Ramakant Singh, son of Sri Raj Kishore Singh, resident of village Hariharpur Tola Fulwaria, P.S. Pupri, District- Sitamarhi

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Akhileshwar Prasad Singh, Sr. Advocate Mr. Amish Kumar , Advocate
For the Respondent/s	:	Mr. Shivesh Chandra Mishra, APP

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY)

Date : 25-11-2017

Both the appeals arise out of the judgment of conviction dated 12.12.1994 and order of sentence dated 13.12.1994 passed by the 1st Additional Sessions Judge, Sitamarhi in Sessions Trial



No. 124 of 1993 arising out of G.R. case No. 679 of 1992, Tr. No. 1012/1993, whereby the trial court has convicted the sole appellant Ramakant Singh of Cr. Appeal No. 4 of 1995 and appellant No. 2 Kaushal Kishore Singh of Cr. Appeal No. 595 of 1994 under Section 302 IPC and rest of the appellants of Cr. Appeal No. 595 of 1994 under Section 302/149, appellant Ramakant Singh was further held guilty under Section 147 IPC and Section 27 of the Arms Act, Appellant Rajib Singh and Kaushal Kishore Singh were further held guilty under Section 148 IPC, Appellant Raj Kishore Singh, Sanjay Kumar Singh, Sanjib Kumar alias Batahu Singh and Hira Singh were further held guilty under Section 147 and accordingly, appellant Ramakant Singh and Kaushal Kishore Singh were sentenced for life imprisonment under Section 302 IPC and appellants Raj Kishore Singh, Rajib Singh, Sanjay Kumar Singh, Sanjib Kumar alias Batahu Singh and Hira Singh were sentenced to undergo life imprisonment under Section 302/149 IPC. Appellant Ramakant Singh is further sentenced to undergo R.I. for one year under Section 147 IPC and five years under Section 27 of the Arms Act. Appellant Rajib Singh, Kaushal Kishore Singh are further sentenced to undergo R.I. for one year under Section 148 IPC and appellant Raj Kishore Singh, Sanjay Kumar Singh, Sanjib Kumar alias Batahu Singh and Hira Singh



are further sentenced to undergo R.I. for one year under Section 147 IPC. All the sentences were directed to run concurrently.

2. The prosecution case, in short, is that on 13.10.1992 at about 8 A.M informant's brother Randhir Kumar had gone to see his field where an altercation took place between Randhir Kumar and accused Abhay Kumar Singh as there was enmity between the family of the informant and that of Abhay Kumar Singh. Further the case of the informant is that at about 10.30 A.M. the informant, his brother Randhir Kumar Singh, his father Nawal Kishore Singh, one Sachchidanand Singh and Maya Shankar Singh were standing on the bank of the pond and his uncle Ragho Singh was returning after easing from Banswari and accused Ramakant Singh and his family members were standing at the village road South of the pond and started abusing. The informant and his brother Randhir Kumar Singh asked not to abuse but they did not listen and the informant side had also begun to abuse them. On this accused Ramakant Singh armed with country made gun, Santosh Kumar Singh armed with gun, Raj Kishore Singh armed with pistol, Abhay Singh armed with pistol, Rajib Singh armed with Bhala, Amarendra Singh armed with Garansa, Kaushal Kishore Singh armed with pharsa, Sakal Singh armed with Bhala, Sanjay Kumar Singh armed with lathi, Ramakant Singh armed with Bhala, Hira



Singh and Sanjib Kumar alias Satahu armed with lathi forming an unlawful assembly and abusing came towards east of the pond and accused Raj Kishore Singh ordered to kill on which Ramakant Singh opened fire from his gun causing injury to Ragho Singh, Ragho Singh fell down and then accused Kaushal Kishore Singh gave *pharsa* blow to Ragho Singh on his right hand above Gassa. Then the informant and other persons wanted to save Ragho Singh then accused Rajib Singh gave *Bhala* blow on the informant's head. Kaushal Kishore Singh assaulted the informant with Pasi portion of *Pharsa* on his back and accused Sanjay Kumar Singh gave *lathi* blow on his right leg. Accused Sanjay Kumar Singh, Sanjib Kumar alias Satahu and Hira Singh assaulted the informant's brother Randhir Kumar Singh with lathis. The witnesses saw the occurrence and while they were taking Ragho Singh on a cot to Pupri Hospital for treatment, on the way he died near Hariharpur Khadi Bhandar.

3. On the basis of the aforesaid fardbeyan the police registered Pupri P.S. Case No. 91 of 1992 dated 13.10.1992 under Sections 147, 148, 149, 323, 324, 307, 302 IPC and Section 27 of the arms Act. The police after investigation submitted charge sheet against 12 accused persons. The case was committed to the court of Sessions and on committal the charges under Sections 147, 148,



149 and 302 of the Indian Penal Code and sections 27 of the Arms Act were framed against the accused. They pleaded not guilty and as such the accused persons were put on trial.

4. On behalf of the prosecution altogether 17 witnesses were examined. They are –

- P.W.1 - Randhir Kumar,
- P.W.2 Masya Shankar Singh
- P.W.3 Bipat Mukhiya,
- P.W.4 Budhan Mukhiya,
- P.W.5 Sachhidanand Singh,
- P.W.6 Pandav Singh,
- P.W.7 Janak Kishori Devi,
- P.W.8 Chandra Devi
- P.W.9 Vijai Kumar Singh
- P.W.10 Ranjit Kumar (informant)
- P.W.11 Dr. Yogesh (Doctor)
- P.W.12 Dr. dharmadeo Singh
- P.W.13 Nand Kishore Choube (IO)
- P.W.14 Kaushalya Nand Choudhary
- P.W.15 Nawal Kishore Singh
- P.W.16 Dharmadeo Narayan Singh, and
- P.W.17 Ramashish Baitha.

5. Mr. Akhileshwar Prasad Singh, Sr. Advocate assisted by Mr. Amish Kumar, appearing on behalf of the appellants at the outset submitted that the appellant Nos. 5 and 6 of Cr. Appeal No. 595 of



1994 have died during the pendency of this appeal and as such the appeal on their behalf stands abated.

6. Mr. Singh submitted that in the instant case out of the 12 accused persons sent up for trial, the trial court acquitted five on the basis of same material which was basis of conviction of the appellants. He submitted that in Cr. Appeal No.595/1994 the allegation is against appellant No.2 and the sole appellant of Cr. Appeal No.4/1995, whereas there is no specific allegation of any overt act against rest of the appellants.

7. Mr. Singh has submitted that there are many infirmities in the decision of the trial court. He submitted that witnesses are at variance on various points relating to the manner of occurrence and the allegation against the appellants in the commission of crime. He also submitted that in the instant case all the witnesses are interested. The prosecution has not been able to prove the motive. There are no independent witnesses to support the prosecution case and to crown it all the prosecution has not been able to explain the injury sustained by appellant Nos.1,2 & 9 and one Santosh Kumar Singh and non-explanation of the injuries caused to the accused persons renders the prosecution case under serious doubts.

8. In the instant case P.Ws.3,5,6 and 10 have claimed to be the eye witnesses, out of which P.W.6 has been tendered. He submitted



that mother of the deceased P.W.7 and wife of the deceased P.W.8 and in addition to P.W.6, P.W.4 was tendered. So, the conviction on the basis of the highly interested witnesses, who are the family member, is unsafe in view of the fact that even the close family members like mother and wife were tendered in the instant case.

9. Mr. Singh submitted that the findings of the trial court is perverse. He also submitted that there was admitted previous enmity between the parties and the occurrence took place as a counter blast on the informant side opposing the accused side from abusing them and thereafter exchange of abuse between the parties. On the factual situation, he submitted that as per prosecution the sole appellant in Cr. Appeal No.4/1995, namely, Ramakant Singh equipped with country made gun, Santosh Kumar Singh, armed with gun, Rajkishor Singh armed with pistol Abhay Singh armed with pistol, Rajeev Singh armed with bhala, Amrendra Singh armed with Garansa, Kaushal Kishor Singh armed with pharsa, Sakal Singh armed with bhala, Sanjay kumar Singh armed with lathi, Ramakant Singh armed with bhala, Hira Singh and Sanjeev Kumar alias Satahu (now dead) equipped with lathi reached the place of occurrence and on the order of Raj Kishore Singh appellant Ramakant Singh opened fire on Ragho Singh who fall down and thereafter Kaushal Kishore Singh gave pharsa blow and



caused injury on the upper part of the right hand and when the informant and others moved to rescue him then appellant Rajeev Singh give bhala blow, Kaushal Kishore Singh give pharsa blow, accused Sanjay Kumar Singh give lathi blow on leg of the informant who sustained injury. The deceased Ragho Singh succumbed to the injuries on way to Pupri Hospital.

10. Mr. Singh has drawn the attention of court to the post mortem report and submitted that post mortem was conducted on 14.10.1994 at 12:00 Noon and in the post mortem report rigor mortise are absent which falsifies the allegation of commission of crime in the manner suggested by the prosecution. He submitted that in the instant case the doctor has found gun shot injury and incised wound. The cause of death is alleged to be the fire arm injury.

11. Referring to the examination of the accused under section 313 Cr.P.C Mr. Singh submitted that the trial court has not meticulously followed the requirement of Section 313 Cr.P.C as the accused where not confronted with each and every adverse circumstances. He submitted that in the instant case the materials does not indicate conviction of the appellants under section 302 or 302/149 of the I.P.C.



12. Mr. Singh refers to various judgment of the Supreme Court including the judgment in the case of **Nagarathinam and Ors. Vs State represented by Inspector of Police: AIR 2006 SC 1736** where the Apex Court has discussed the effect of failure of the prosecution to explain the injury on the person of the accused.

13. Mr. Shivesh Chandra Mishra, A.P.P, appearing on behalf of the State, on the other hand, submitted that looking at the entirety of the case the conviction of the appellant is well founded and based on proper appreciation of evidence available on the record. He submitted with reference to post mortem report that the cause of death is fire arm injury as per the post mortem report. Referring to the submission of the appellant as to rigor mortise he submitted that medical jurisprudence furnishes explanation for absence of rigor mortise after 24 hrs of death. Referring to the statements of the prosecution witnesses who were tendered, He submitted that the number of witnesses is immaterial, it is quality of evidence that is material for conviction. Referring to the deposition of P.Ws.3,5 and 10, he submitted that these three witnesses are eye witnesses of the occurrence and on appreciation of their deposition the trial court has rightly convicted them. He submitted that these appellants were confronted with the adverse materials while



examining the witnesses under section 313 C.R.P.C and as such there is no infirmities in finding of the trial court.

14. We have gone through the entire materials on record. On evaluation of the deposition of P.Ws. 3,5 and 6 it is seen that they are consistent on the point of commission of the offence and identification of the assailant in the commission of the crime. The accused were confronted with the adverse circumstances while being examined under Section 313 Cr.P.C. and as such it cannot be said that the appellants have suffered any prejudice on account of not confronted with every adverse material meticulously. In the instant case the medical report and the evidence of the witnesses are consistent on the point of manner of commission of the crime and the identification of the real assailant, namely, the Appellant No. 2 in Cr. Appeal No. 595 of 1994, namely, Kaushal Kishore Singh who gave Farsa blow and corresponding injury was found in the post mortem report and the fire arm injury attributed to the sole appellant in Cr. Appeal No. 4 of 1995, namely, Ramakant Singh. So far as the submission of the appellants as to non-explanation of the injury on the accused persons for which the appellants have placed heavy reliance on the judgment of the Apex Court in the case of **Nagarathinam** (supra), we find that the aforesaid judgment is inapplicable in the present fact scenario. The Apex



Court in the case on which the appellants have placed reliance, has discussed the principle in detail. The issue of non-explanation of the injury on the accused persons are relevant in a case of exercise of right of private defence where the prosecution is under obligation to prove the injury and not in every case. In the instant case there is no case of right of private defence and as such the non-explanation of the injury on the accused side is not vital and cannot be a ground to disbelieve the prosecution case. However, looking at the totality of the fact situation, there was exchange of abuse between the parties and in the aforesaid circumstances, the appellants side is aggressor for assaulting the deceased which cause death. Thus, considering the entire fact and circumstances of the case, we are of the view that the conviction of the sole appellant in Cr. Appeal No. 4 of 1995, namely, Ramakant Singh and the appellant No.2 in Cr. Appeal No. 595 of 1994, namely, Kaushal Kishore Singh under Section 302 is unsustainable particularly in view of the background of the case and the fact that there was no repetition of either firing or the Farsa blow and as such in totality of the situation, we are of the view that their conviction is fit to be converted into Section 304 Part-II IPC treating the present case falling in the category of exception 4 of Section 300 IPC and accordingly, their sentences are reduced to 10



years rigorous imprisonment. So far as the other appellants are concerned, there is no material to show that they have actually participated in the assault and caused injury to the deceased and in that background, we are of the view that their conviction and sentences are required to be converted and reduced to the fine to be paid to the family of the deceased.

15. Accordingly, we partly allow both the appeals and convert the conviction of the appellant No. 2, Kaushal Kishore Singh of Cr. Appeal 595 of 1994 and sole appellant, Ramakant Singh of Cr. Appeal No. 4 of 1995 under Section 304 Part-II and sentence them to undergo rigorous imprisonment for ten years. So far as the other appellants are concerned, considering the fact that the incident is dated 13.10.1992, i.e. 25 years have passed by now and also considering the fact that they have not played any role in the commission of the crime, while upholding their conviction under Section 304 Part-II, IPC they are sentenced to a fine of Rs. 20,000/- each only. They are accordingly, directed to pay fine of Rs. 20,000/- each to the family of the victim within a period of three months. The bail bonds of the appellants Ramakant Singh and Kaushal Kishore Singh are cancelled and they are directed to surrender to serve the remaining part of the sentences after deducting the pre-trial and after trial period. So far as the other



appellants are concerned they shall be discharged from the liability of the bail bonds only after depositing the amount of fine within a period of three months.

16. With the aforesaid modification in the judgment of conviction and order of sentence, the appeals are partly allowed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

spandey/-

AFR/NAFR	NAFR
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