

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.929 of 2011

(Against the Judgment of conviction dated 17.08.2011 and Order of sentence dated 24.08.2011 passed by 2nd Additional District and Sessions Judge Saran at Chapra in Sessions Trial No. 368 of 2010).

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Raju Singh, S/O Ramdeo Singh, R/O Village - Tenua, P.S. Marhaura, Distt. Saran (Chapra).

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

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Criminal Appeal (DB) No. 935 of 2011

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Dablu Singh @ Vijay Kumar Singh, Son of Shaligram Singh, Resident of Village-Serpur, P.S.- Marhaurah, Distt.- Saran

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (DB) No.929 of 2011)

For the Appellant/s : Mr. Bindhyachal Singh, Advocate.
Mr. Kumar Madhvendra, Advocate.
Mr. Vipin Kumar Singh, Advocate.
For the State : Mr. A.K.Sinha, A.P.P.
Mr. S.C.Mishra, A.P.P.

(In CR. APP (DB) No.935 of 2011)

For the Appellant/s : Mr. S.N.P.Sinha, Sr. Advocate.
Mr. Mukesh Kumar Singh, Advocate.
Ms. Rashmi Bharti, Advocate.
Ms. Pragati Anand, Advocate.
Ms. Anamika Sinha, Advocate.
For the State : Mr. A.K.Sinha, A.P.P.
Mr. S.C.Mishra, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

and

HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 17-05-2017

Heard learned counsel for the parties.



2. Both the appeals have been preferred against judgment and conviction dated 17.08.2011 and order of sentence dated 24.08.2011 passed by Sri Vijay Shankar Pathak, 2nd Additional District and Sessions Judge, Saran at Chapra in Sessions Trial No. 368 of 2010, whereby both the appellants have been convicted and sentenced for life imprisonment under Section 302/34 of the Indian Penal Code along with a fine of Rs. 25,000/- each and in default of payment of fine amount, to undergo additional rigorous imprisonment for three years. Further for the offence under Section 307/34 of the Indian Penal Code, they have been sentenced to undergo rigorous imprisonment of 07 years and for the offence under Section 27 of the Arms Act 01 year rigorous imprisonment.

3. The prosecution case, as made out in the *fardbeyan* of the informant, namely, Birendra Singh (PW-7) of village Lerua Navardha Tola, P.S.- Marhowrah recorded by A.S.I. Chandreshwar Prasad Singh of Marhowrah P.S. on 13.12.2009 at about 4:00 A.M. at P.H.C. Marhowrah, in short, is as follows:

(a) The informant stated that he, along with his younger brother Harendra Singh as well as his nephew Gulshan Singh (PW-3), had gone to attend marriage ceremony of the daughter of Sawalia Tiwari in village Chanda. After dinner, they went to Chanda Primary School, where Orchestra was being played. While they were watching



the Orchestra at around 12 O'clock in the night, 06 persons, namely, Raju Singh, Abhimanyu Singh, Dablu Singh, Avinash Singh, Baijnath Singh and Raghunath Singh came there on two motorcycles armed with pistols in their hands. Immediately, on arrival, Raju Singh, Abhimanyu Singh and Dablu Singh fired 6-7 rounds at Harendra Singh with intention to kill him. Harendra Singh fell and shouted for informant and Gulshan for help. When the informant and Gulshan went near Harendra Singh, the 03 accused persons, holding pistols in their hands, fired on them also, in which the informant sustained firearm injury in his right thigh. However, Gulshan escaped narrowly from being injured. The informant ran home and informed his elder brother Ravindra Nath Singh (PW-4) about the incident. Thereafter, Ravindra Nath Singh took the informant along with Gulshan to Primary Health Centre Marhowrah for treatment. After sometime, his elder brother and other family members brought Harendra Singh to the Hospital on a Commander Jeep for treatment, where the doctor declared him dead. The informant further stated that he also came to learn that Bipin Singh of village- Chanda also sustained injury in the incident and is undergoing treatment in the same Hospital. He stated that the motive for the occurrence is land dispute, as some lands belonged to the uncle of the appellants, which was got registered two years back and being aggrieved, they have committed the crime.



(b) The informant claimed that the aforesaid 06 accused persons with common intention, armed with firearms, killed his brother and also injured him.

4. On the basis of *fardbeyan* of the informant, the police registered Marhowrah P.S. Case No. 227 of 2009, dated 13.12.2009 under Sections 302 and 307/34 of the Indian Penal Code and Section 27 of the Arms Act against all the FIR named accused persons. The police, in course of investigation, prepared inquest report of the deceased, and inspected the place of occurrence. The police also took restatement of the informant as well as statements of other witnesses under Section 161 of the Cr.P.C. The police, after obtaining the postmortem report, submitted charge sheet only against two accused persons, namely, Raju Singh and Dablu Singh @ Vijay Kumar Singh, keeping the investigation pending against rest of the accused persons as they were absconding.

5. The learned Magistrate took cognizance of the offence and committed the case to the court of sessions for trial. The trial court framed charges under Sections 302/34 and 304/34 of the Indian Penal Code and 27 of the Arms Act against the aforesaid two appellants, to which they pleaded not guilty and claimed to be tried.

6. The prosecution, in support of its case, examined as many as 10 witnesses, namely, PW-1- Saroj Devi is the wife of the



deceased and an hearsay witness. PW- 2 Vipin Kumar Singh, an injured witness as well as an eye witness to the occurrence. PW-3 Gulshan Kumar Singh is the nephew of the informant and the deceased, and has claimed to be eye witness. PW-4 Rabindra Nath Singh is the elder brother of the informant and father of Gulshan Kumar Singh (PW-3), is the hearsay witness. PW-5 Munna Singh is the elder son of PW-4 Rabindra Nath Singh and nephew of the informant and the deceased, is a hearsay witness. PW-6 Krishna Tiwari is an independent witness, who has been declared hostile. PW-7 Birendra Singh is the informant of the case and brother of the deceased, has claimed to be an eye witness to the occurrence. He is also an injured witness and sustained injury on his thigh. PW-8 Dr. K.S.Vidarthi is the Medical Officer, who examined the injured. PW-9 Dr. Ravi Shankar Singh was the Medical Officer in Marhowrah P.H.C., who conducted the postmortem on the dead body of the deceased. PW-10 Sadendu Sharan is the Investigating Officer of the case.

7. The defence did not examine any witness nor adduce any documentary evidence. The case of the defence, as appearing from the mode of cross-examination and the statement recorded under Section 313 Cr.P.C., is one of false implication on account of land dispute.



8. The trial court, after considering the materials on record, convicted both the appellants under Sections 302/34 and 307/34 of the Indian Penal Code as well as Section 27 of the Arms Act.

9. As noticed earlier, out of 10 witness examined by the prosecution, PW-2 Vipin Kumar Singh, PW-3 Gulshan Kumar Singh and PW-7 Birendra Singh have claimed themselves to be eye witness of the occurrence. The informant (PW-7), in his evidence, has supported the prosecution case. He stated that on 12.12.2009 at about 12 O'clock in the night, he was watching Orchestra in Chanda Primary School on the occasion of marriage of the daughter of Sawalia Tiwari. His brother Harendra Singh and nephew Gulshan Kumar Singh were also with him. He stated that accused persons namely, Raju, Dablu, Abhimanyu and Avinash entered into altercation with his brother. Raghunath and Baijnath were also present there but they did not indulge in physical scuffle. The informant's brother called him and his nephew Gulshan Kumar for help. On call, the informant proceeded towards his brother. In the meantime, on the instigation of accused Raju, all the three accused persons, namely, Raju, Dablu and Abhimanyu fired from their pistols which did not hit anyone. Thereafter, his brother started fleeing, but accused chased him and opened fire, which hit the shoulder as well as back of Harendra Singh. The informant stated that he too sustained knife injury, but he



could not see as to who assaulted him. Firing was also made on Gulshan Kumar, but he escaped. He went home and woke up his brother Rabindra Nath Singh (PW-4) and informed him about the incident. The informant was taken to Marhowrah Government Hospital by Gulshan. After some time, his brother Harendra was also brought to Hospital on a Commander Zeep by his brother Rabindra as well as Saroj Devi (PW-1), wife of Harendra Singh. The informant learnt that his brother Harendra Singh has died.

10. The prosecution has examined Vipin Kumar Singh (PW-2) as an eye witness. He stated that he too was watching Orchestra in Chanda Primary School in the night of 12.12.2009. He stated that some altercation took place over the issue of playing of song by Orchestra. In the meantime, Satya Narain Singh, Satrugan Singh, Raju Upadhyay, Ajay Singh, Arun Singh, Jai Prakash Singh and Raju Kumar @ Painter made firing in the air. Two groups indulged into fighting. Satya Narain Singh and Shtrughan Singh were also stabbed with knife. In course of firing by above named accused persons, deceased Harendra Singh sustained firearm injury and died. He further stated that he was also hit by knife. PW-3 Gulshan Singh too supported the prosecution case as stated by the informant in his evidence. PW-1 Saroj Devi, wife of the deceased and PW-4 Rabindra Nath Singh are not the eye witnesses of the occurrence. They stated



that on being informed by the informant, they went to the place of occurrence. Both claimed that the deceased disclosed the names of persons, who had fired at him. PW-1 stated that her husband disclosed that Raju, Dablu, Arun and Avinash opened fire at him. PW-4 stated that the deceased revealed that Raju, Dablu, Avinash, Abhimanyu as well as other two persons shot at him. As such PW-4 is not eye witness and has not supported the prosecution case. PW-8 Dr. K.S.Vidyarthi found sharp cutting injuries on the thigh of the informant and Vipin Kumar Singh (PW-2). PW-9 Dr. Ravi Shankar Singh, who conducted post-mortem on the dead body of the deceased found two firearm injuries on the shoulder and back of the deceased. This witness has found "On dissection- lacerated wound 1" in diameter over right lungs upper lobe and metallic bullet taken out from the right lung. He stated that another metallic bullet was taken out from lower side of infraumbilical region. He further stated that both chamber of heart were empty. He however opined that the cause of death was shock and hemorrhage due to above metallic antemortem injury caused by firearms.

11. Mr. S.N.P.Sinha, learned senior counsel appears on behalf of the appellant Dablu Singh and Mr. Vindhyachal Singh, learned counsel appears on behalf of the appellant Raju Singh. They have assailed the impugned judgment of conviction and order of



sentence on a number of grounds. They submit that the informant (PW-7), along with PWs-2 and 3, who have claimed to be eye witness, is unreliable as they have given a go-by to the manner of occurrence and place of occurrence as stated in the FIR during their evidence in the court. Furthermore, in view of his own evidence, it will be more than clear that PW-3 was not present at the place of occurrence and he is not an eye witness to the occurrence. They next submit that the third eye witness PW-2 has not supported the prosecution case with regard to manner of occurrence. He stated that it is not the appellants but one Arun Singh and Jai Prakash Singh, who shot at the deceased. About 5-6 other persons opened fire in the air as there was some dispute with respect to playing songs by Orchestra party and this witness has not been declared hostile by the prosecution. Besides this, learned counsels submit that the prosecution has not been able to establish the place of occurrence. They next submit that the appellants have been implicated on account of admitted land dispute. They lastly submit that the appellants have remained in custody for more than 06 years for no fault on their part.

12. Mr. S.N.P.Sinha, learned senior counsel further submits that no witness has stated, even assuming the prosecution case to be true, that the appellant Dablu Singh shot at the deceased. He further submits that the story of PW-1 and 4 that the deceased



disclosed the names of persons, who opened fire at him, is an after thought, as the aforesaid fact has not been narrated in the FIR, though PW-4 is a witness to the same. He submits that besides this, there are material discrepancies in the version of PW-1 and PW-4 with respect to the place of occurrence.

13. Conversely, Mr. Ashwini Kumar Singh, learned A.P.P. appearing for the State has defended the judgment of conviction and order of sentence against the appellants. He submits that PW-7 (informant) was present at the time of occurrence, along with his deceased brother and nephew, and was watching Orchestra being played in Chanda Primary School. He states that the appellants entered into the school and opened fire at Harendra Singh as well as on the informant. However, Harendra Singh luckily escaped and began to flee, but one of the accused, namely, Raju Singh chased him and opened fire at him causing injury on his shoulder and the back. He further states that the deceased disclosed the names of the assailants to his wife (PW-1), PW-4 and PW-5 as such trial court has rightly convicted the appellants under Sections 302/34, 307/34 of the Indian Penal Code and Section 27 of the Arms Act.

14. We have heard learned counsel for the parties and perused the materials on record. The issue for consideration before us is whether the prosecution has been able to bring home the charges



against the aforesaid two appellants beyond all reasonable doubt. Learned counsels for the appellants had argued that the evidence of the informant is not trustworthy as he has given a different version about the manner of occurrence in his evidence. We find that PW-7 in his *fardbeyan* stated that he, along with his brother Harendra Singh and Nephew Gulshan Singh, were watching Orchestra in Chandra Primary School at about 12 O'clock in the night. In the meantime, Raju Singh, Abhimanyu Singh and Dablu Singh came and fired 06-07 rounds at Harendra Singh with intention to kill. On account of firing, Harendra Singh got injured, who called informant and Gulshan Kumar Singh (PW-3). However, in his evidence, the informant has given a different version of the manner of occurrence. He stated that around that time Raju Singh, Abhimanyu Singh and Avinash Singh arrived in the school at the place, where the Orchestra was being played. Few of the accused, namely Raju Singh, Abhimanyu Singh entered into scuffle with his brother. His brother called him for help. In the meantime, Raju Singh exhorted others to fire upon him and he also opened fire at Harendra Singh along with others. However, no one was injured by firing. His brother Harendra Singh began to flee, whereupon Raju Singh chased and opened fire at him which hit his shoulder as well as the back.

15. Apart from this, we find that in the FIR, the informant



stated that someone fired at him at his thigh, whereas in his deposition he stated that he sustained knife injury on his thigh. As per the FIR, the occurrence took place within the school campus which is at the eastern side gate. Orchestra was being played at the south-eastern side of the campus, whereas the informant and his brother were sitting in front of the stage where his brother Harendra Singh was fired upon. However, blood mark found on the wall of the school which was situated towards north in the campus itself. Subsequently, it has come in the evidence that the dead body was said to be found in a potato field outside the school campus.

16. We, thus, find that there is material discrepancies in the evidence of the informant in the court and the one which he had narrated in the FIR with respect to the manner of occurrence with regard to killing of the deceased Harendra Singh as well as injury caused on the person of the informant as well. Furthermore, the informant is the own brother of the deceased and there is land dispute between the parties.

17. The prosecution has examined PW-3 Gulshan Kumar Singh as an eye witness to the occurrence. PW-3 too stated that he was present at the place of occurrence and was watching Orchestra along with the informant and the deceased brother. He was sitting at some distance and was not injured in fleeing. He stated that after the



incident, he ran home and informed the inmates of the house about the incident. Thereafter, he stated that he along with PW-4 (Rabindra Nath Singh) and PW-5 (Munna Singh) went to the place of occurrence and returned again.

18. It is nowhere the prosecution case that it is Gulshan Kumar, who informed PW-4 and PW-6 about the incident and thereafter he went along with them to the place of occurrence. He nowhere stated that Harendra Singh was alive at the time he disclosed the names of the assailants. In this view of the matter, it is difficult to accept the prosecution case that this witness was present at the place of occurrence.

19. Furthermore, the informant in the FIR stated that he sustained knife injury on his thigh but in his evidence, he stated that he sustained gun shot injury on his thigh. It appears that the informant subsequently changed his version as the injury report shows gun shot injury on his thigh. Besides this, PW-2 stated that there was a scuffle over playing of songs by Orchestra party and six persons, namely, Raju Singh, Abhimanyu Singh, Dablu Singh, Avinash Singh, Baijnath Singh and Raghunath Singh, opened firing in the air from their arms in the school. He too was assaulted by knife, and Harendra Singh was shot at by Arun and Jai Prakash and the informant sustained knife injury. He further stated that though Raju Singh was unknown to him



and they have not participated in the occurrence. This witness has not been declared hostile. As such we find that the informant has given a go-bye to his earlier version in respect of manner of occurrence and hence, we do not find it safe to sustain conviction on his evidence.

20. The other point argued by learned A.P.P. is that the deceased before the death has disclosed the names of the assailants to his wife (PW-1), his brothers (PW-4) and PW-5, that it is Raju Singh who fired at him. On the other hand, learned counsel for the appellants submit that again there are material discrepancies in the evidence of these witnesses as such in absence of the recorded version of the deceased by any independent witness or by the police, it would not be safe to place reliance on the evidence. We find that the appellants have argued that the occurrence took place at about 12 O'clock in the night in Chanda Primary School, where Orchestra was being played. The distance from the house of the informant to the school is one kilometer. The informant is said to have rushed for his house after the occurrence in injured condition. Thereafter, he woke up his brother PW-4 and Saroj Devi (wife of the deceased), who were sleeping around that time. Thereafter they are said to have proceeded for the place of occurrence. However, it is stated that the deceased, who was grievously injured, disclosed the names of the assailants as Raju Singh, Abinash Singh and Dablu



Singh. On the other hand, PW-4 stated that the deceased uttered the names of Raju, Dablu, Abinash and Abhimanyu as assailants. He also named two other persons, namely, Raghunath and Baijnath. Whereas PW-5 stated that the deceased took the names of three persons, namely, Raju Singh, Abinash and Dablu Singh.

21. Learned counsel for the appellants argued that the deceased sustained two bullets injuries, one of which pierced the lung. With reference to Modi jurisprudence, learned counsels submitted that in view of severity of two firearms injuries which the deceased sustained, it would be difficult for him to survive for half an hour, which was the minimum time that may have elapsed before PWs 1, 4 and 5 could have reached the place of occurrence.

22. We find from the postmortem report that the lung was penetrated by one of the bullets and in such situation, it would have been difficult for the deceased to have survived for half an hour, when injury is 1" in diameter is causing haemorrhage. The relevant extract from Modi's medical jurisprudence and Toxicology is quoted hereinbelow for easy reference:

“Lungs:

Wounds of the lungs may be immediately fatal from profuse haemorrhage, or from suffocation due to respiratory embarrassment on account of the presence of blood in the pleural cavity or in the air-passages, or may result in death subsequently from septic pneumonia. They



may be produced by penetrating wounds of the chest caused by a cutting or stabling instrument, by the sharp fragments of a fractured rib, or by a projectile from a firearm. The haemorrhage is recognized by the escape of bright red and frothy blood from the mouth, and from an external wound, if present. Subcutaneous emphysema may result if the parietal pleura is also torn with the lung and shows typical crepitus of air on tissues of the face, neck and chest, also seen in the oesophageal tear or rupture associated with infected mediastinum.

Contusions or lacerations of the lungs may be produced by blows from a blunt weapon or by compression of the chest even without fracturing the ribs or showing marks of external injury. They may be caused by severe grinding force of a car wheel running over the chest of a young person. These may cause instantaneous death or may result in pleurisy, traumatic pneumonia, haemothorax, or air embolism. Pneumothorax or haemopneumothorax may occur due to a rupture of the pleura of the lung. A bullae may burst following slight trauma and cause pneumothorax. A spontaneous pneumothorax can result due to spontaneous rupture of the emphysematous bullae of the lung.

The postmortem of a body of a woman found lying near a railway line showed a bruise, 3" x 1", obliquely across the left side of the chest three inches below the left collar bone, but no fracture of any ribs. The right lung was lacerated in front one inch below the apex and a contusion, 2" x 2", was found on the base of the left lung. These appeared to have been caused by a compression of the chest.

Postmortem examinations of young man who



was crushed under a machinery in a workshop did not show any marks of external violence on the chest or fracture of the ribs. The chest cavity contained blood, and the right lung had four contusions on its anterior aspect, while the left lung showed a contusion of its root and a tear, 2 ½” long, over its lower lobe. There was also dislocation of the fourth cervical vertebra.

A boy, aged eight, who was knocked down by a heavy card and was supposed to have been run over, did not show the slightest trace of abrasion or bruising of the chest, or behind the ribs and sternum. The upper lobe of the right lung, however, had been completely cut off from its root, and it floated freely in a pleura filled with blood.”

23. Besides this, PW-1 stated that the deceased was found lying dead in a potato field. PW-4 states that the deceased was found lying in the maize field. Besides this, there is one more fatal aspect. PW-4 is a signatory to the FIR, which was lodged by his younger brother PW-7. However, in the FIR, this most vital information that the deceased disclosed the names of the assailants to his wife (PW-1) as well as PW-4, is missing in the FIR. All these create doubt whether in fact the deceased was alive when PW-1, PW- 4 and PW-5 reached the place of occurrence, after they were informed by the informant. The informant nowhere states that the deceased disclosed the name of any of the appellants, as according to him, he was present when the



occurrence took place. In such circumstances, the trial court at least ought to have given benefit of doubt to the appellants as there was no sufficient material on record to convict the appellants for the aforesaid charge.

24. In the result, both the criminal appeals are allowed. the judgment of conviction dated 17.08.2011 and order of sentence dated 24.08.2011 passed by Sri Vijay Shankar Pathak, 2nd Additional District & Sessions Judge, Saran at Chapra in Sessions Trial No. 368 of 2010 (arising out of Marhowrrah P.S.Case No. 227 of 2009) are set aside. The appellant, namely, Raju Singh, in Cr. Appeal (D.B.) No. 929 of 2011, who is in jail, is directed to be released forthwith, if not wanted in any other case. As the appellant Dablu Singh @ Vijay Kumar Singh, in Cr. Appeal (D.B.) No. 935 of 2011, is on bail, so he is discharged from the liability of his bail bonds.

(Samarendra Pratap Singh, J)

(Arun Kumar, J)

Sujit/-

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