

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.259 of 2013

Arising Out of P.S.Case No. -194 Year- 2001 Thana -UDWANTNAGAR District- BHOJPUR

Kamta Singh S/O Late Ram Chandar Singh Resident Of Village- Kasap, Police Station- Udwantnagar, District- Bhojpur

..... Appellant
Versus
The State Of Bihar
..... Respondent
with

Criminal Appeal (DB) No. 293 of 2013

Arising Out of P.S.Case No. -194 Year- 2001 Thana -UDWANTNAGAR District- BHOJPUR

Rakesh Singh S/O Late Umesh Singh Resident Of Village Kushialpur, Police Station-Ara Mufassil in The District Of Bhojpur.

..... Appellant
Versus
The State Of Bihar
..... Respondent

Appearance :
(In CR. APP (DB) No. 259 of 2013)

For the Appellant : Mr. Ashhar Mustafa, Advocate
Mr. Murad Ashrafi, Advocate
Mr. Falakyar Askari, Advocate
For the State Mr. S.N. Prasad, APP
For the Informant Mr. Binod Kumar Singh, Advocate
Mr. S.P. Singh, Advocate

(In CR. APP (DB) No. 293 of 2013)

For the Appellant : Mr. Akhileshwar Pd. Singh Sr. Advocate
Mr. Amrit Anunay, Advocate
For the State Ms. Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
and
HONOURABLE MR. JUSTICE SANJAY KUMAR
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE SANJAY KUMAR)
Date: 12-05-2017



Both the appeals each filed by one appellant arise out of the judgment and order of conviction dated 08.03.2013 and 12.03.2013 passed by the learned 1st Additional Sessions Judge, Bhojpur, Ara in S.T. No. 74 of 2005 (arising out of Udwantnagar P.S. Case No. 194 of 2001), whereby the appellants have been held guilty under section 302/34 IPC and sentenced to undergo R.I. for life besides imposition of fine with default clause.

2. The factual profile of the case, as disclosed in the Fardbayan lodged by informant Bimal Kumar Singh (P.W.7) on which his signature has been marked as Ext.2, in brief, is that on the morning of 13.10.2001, at about 6.30 A.M., his brother Vijay Kumar Singh (deceased) left the village home to participate in a seminar to be held in Patna along with Umakant Singh (P.W.4) and two other persons. The informant later also decided to go to Ara and he, too, left the house. All of them sat on the jeep which was heading towards Ara. The deceased, along with his three companions, who earlier left the house, sat on the rooftop of the jeep/vehicle whereas the informant sat inside the jeep. As soon as the jeep reached near Bibiganj bridge at about 8.00 A.M., three accused persons riding on a motorcycle overtook the jeep. The informant identified the appellant Rakesh Singh driving the said motorcycle and two others accused persons namely Ram Krishna



Singh and Bir Bahadur Singh (brother-in-law of Ram Krishna Singh) were the pillion riders. The motorcycle quickly intercepted the jeep. All the three accused persons caught the victim who was sitting on the rooftop of the jeep and co-accused Ram Krishana Singh assaulted him on his temple with a country made pistol. The co-accused Bir Bahadur Singh also opened fire at the deceased with his pistol. Quickly thereafter, all the accused persons escaped from the scene on the motorcycle. The informant, with the help of others, carried the injured to the Sadar Hospital Ara where, in course of treatment, the injured died. The informant has imputed the land dispute as the motive for commission of crime. The appellant Rakesh Singh was fighting a litigation pending in court. The lodging of the case ensued the investigation wherein the dead body was dispatched for holding the autopsy and the statements of the witnesses were recorded. Upon conclusion of investigation, the charge-sheet was filed against the present appellants. The police, it appears, on the basis of the investigation, found that Bir Bahadur Singh is actually the appellant Kamta Singh, being full brother of Bir Bahadur Singh. In the FIR, Bir Bahadur Singh has been described as the son of Kamta Singh. The learned Magistrate took cognizance of the offence and committed the case to the court of sessions. On commitment, the case came on the file of the learned



trial court where the charges were framed and read over/explained to the accused appellants who pleaded their innocence.

3. In order to bring home the guilt, the prosecution examined as many as 10 prosecution witnesses. P.W. 1 Vinod Singh, P.W. 2 Bhola Singh @ Shree Bhagwan Singh, P.W. 4 Umakant Singh, P.W. 5 Shivjee Singh, and P.W. 7 Vimal Kumar Singh (informant) were projected as the eye-witnesses to the occurrence. P.W. 3 is the father of the deceased who has given the hearsay account. He rushed directly to the hospital on receiving the news of assault on his son P.W. 5 was declared hostile by the Prosecution. P.W. 8 Ramashankar Singh and P.W. 9 Mohan Mahto were also not relied upon by the prosecution as they were also declared hostile. P.W.10 Dr. Uday Kumar Singh is the autopsy surgeon who held the post mortem on the dead body of the deceased and proved the post mortem report (Ext.3). The I.O. of the case could not be examined. On close appraisal of the evidence, the learned trial court held that the charges were proved against the appellants and they were convicted and sentenced in the manner narrated above. These two appeals are directed against the said judgment of conviction and order of sentence.

4. We have heard Mr. Ashhar Mustafa and Mr. Akhileshwar Prasad Singh in support of Cr. Appeal nos. 259 of



2013 and 293 of 2013 respectively and the learned APP for the State. We also heard Mr. Binod Kumar Singh for the informant.

5. Mr. Akhileshwar Prasad Singh has submitted that the prosecution has not been able to establish the case beyond shadow of reasonable doubts. It is next submitted that the victim was travelling according to the FIR with P.Ws 4, 5 & 6. In course of trial, P.Ws 5 and 6 have not supported the prosecution case. Although, the prosecution got P.W.5 declared hostile but relied on the evidence of P.W. 6 who has not supported the prosecution case. He referred to the testimony of P.W. 6 where he did not identify the appellant in the dock. He next submits that there is several inner contradictions in the evidence of the prosecution witnesses who has given the ocular account. He has, however, denied the fact that there was any hostility between the appellant Rakesh Singh and the prosecution owing to any land dispute as has been alleged in the Fardbayan.

6. Mr. Mustafa, while arguing in support of Cr. Appeal No. 259 of 2013, has submitted that the appellant was not named in the FIR. One Bir Bahadur Singh, being the son of Kamta Singh, was disclosed as an accused in the FIR. At a very belated stage, through the evidence of the informant (P.W.7), the prosecution has tried to demonstrate that Kamta Singh, being the brother of Bir



Bahadur Singh, was the accused. He has also drawn our attention to the inconsistency with regard to the manner of occurrence and the participation of the accused(s) which crystallize in evidence of P.Ws 1,2, 3 & 4. He next submits that on reading the relevant evidence, it would appear that the informant was not travelling in the jeep in question with the victim on the relevant date. He was, therefore, not the eye-witness to the occurrence. Our attention, in particular, has been drawn to the evidence of P.Ws. 4,5 & 6 who have not stated in their respective examinations-in-chief about the presence of the informant inside the vehicle/jeep on which the victim was travelling on the rooftop. The manner of occurrence as projected at the trial has also not been proved. He relied in this regard on the evidence of the doctor (P.W.10) who found only one injury caused by fire arm on his person. The evidence adduced by the prosecution completely falls short of proving the case against the appellants beyond shadow of doubt.

7. Counsel(s) for the informant as well as the State, on the other hand, supported the impugned judgment. It is contended that the prosecution case has been fully proved through the evidence of P.Ws. 1,2, 4 & the informant (P.W.7). It is submitted that P.W. 4 is also an attesting witness to the recording of the Fardbayan. P.W. 4 is a common relative of both sides. His evidence fully establish the



complicity of the appellants in the crime as well as the motive, as propounded by the prosecution for commission of crime. To some extent, P.W. 6 has also supported the prosecution case insofar as the time, place and the manner of occurrence is concerned.

8. The death of the victim occurred in the occurrence is not seriously disputed. As per the prosecution case, the injured was immediately carried to the Ara Sadar Hospital where, in course of treatment, he died. P.W. 10, who was then posted as Medical Officer, Sadar Hospital Ara, held the post mortem on 13.10.2001 on the same day at 12.52 P.M. and found two following ante mortem injuries:-

- (I) Lacerated wound $\frac{1}{4}$ "x $\frac{1}{4}$ " on right cheek 3" away from upper lip margin inverted, blackening surrounding wound (wound of entry).
- (II) Lacerated wound $\frac{1}{2}$ "x $\frac{1}{4}$ " on parietal region of scalp left side margin inverted charring."

9. P.Ws.1, 2 and 4 are the witnesses who had accompanied the victim to the hospital. On going through their evidence(s), in the light of the evidence of the Doctor (P.W.10), the homicidal death having been caused to the victim by fire-arms on the relevant date and time of occurrence is established.

10. Having said so, we now proceed to consider the oral evidence adduced by the prosecution in the light of the submissions of the parties. Before we do so, we may clarify that on going



through the evidence of PW-2 as well as PW-6, it is established that the appellant Rakesh Singh is related to the informant and the deceased as cousin. It further manifests that there was animosity between them owing to on going land dispute. PW-4 who was travelling with the deceased on the jeep on the relevant date is also related to the appellant Rakesh Singh as well as the deceased/informant.

11. The counsels appearing in both the appeals have attacked the prosecution case on several counts. The first contention is that the evidence of witnesses explicitly demonstrate that the informant (PW-7) was neither travelling in the jeep with the deceased nor is an eye witness to the occurrence. He is also not a person who carried the victim to the Arrah Sadar Hospital for providing immediate medical care. In view of the aforesaid contention, we have carefully examined the evidence of PWs-1, 2, 4, 5, 6 and 7. It shall be appropriate to classify these PWs. PWs-1 and 2 are the witnesses who claimed travelling on a jeep which was following the jeep on which the deceased was travelling. PWs-4,5, 6 and 7 as per their respective examination-in-chief were travelling in the jeep with the deceased. Out of them, PWs-4, 5 and 6 have claimed in their evidence that they were going along with the deceased in the jeep to Patna to attend the conference of Amway (



business group) and a seminar was scheduled on the same day in Patna. We analyzed their evidence closely and it is found that PW-4 Umakant Singh was sitting inside the vehicle whereas PWs-5 and 6 were sitting on the roof of the said vehicle with the deceased. Surprisingly, PW-6 claims that only PW-5 and two others were on the roof. Giving a serious jolt to the prosecution case, none of these three PWs (PW-4, 6 and 6) whispered about the presence of the informant (PW-7) in the jeep or at the place of occurrence or as the person who carried the victim to the Arrah Sadar Hospital after the incident. We then turn to the second set of evidence of the witnesses who were travelling in the jeep which was following the jeep on which the deceased was sitting. They are PWs-1 and 2. These witnesses have claimed that they boarded another vehicle at Bibiganj which proceeded towards the place of occurrence and was running behind the vehicle boarded by the deceased. Surprisingly, none of them say about the presence of the informant PW-7 either in the vehicle occupied by the deceased or say about the presence of PWs-4, 5 and 6 in the said vehicle or at the place of occurrence. It may be noted here that these PWs are also resident of said village and appeared to be well acquainted with the family of the deceased/informant. In a bid to know whether the occupants of the jeep on which the deceased was travelling had said about the



presence of PWs-1 and 2, we examined their evidence. Curiously enough, on appraisal, it is seen that PWs-4, 5 and 6 do not talk of the presence of PWs-1 and 2 at the scene of occurrence or as the persons who helped PWs-4, 5 and 6 in carrying the victim to the hospital although from their respective depositions, it appears that they were also the persons who accompanied or carried the victim to the Arrah Sadar Hospital. As noted above these PWs (PWs-1 and 2) have not said about the presence of the informant PW-7 in the jeep which was intercepted to attack the deceased. If we peruse the fardbeyan (Ext-2) and the deposition of PW-7, it was the informant who carried the injured to the hospital. PW-4 has different story to tell. On going through his evidence particularly the statement made in paragraphs-13 and 16, it is evident that the informant had not accompanied him (the injured) to the hospital and he had actually reached the hospital directly. These evidence clearly demonstrate that the informant of the case was not travelling in the said vehicle. He has wrongly projected himself as an eye witness to the occurrence and also made himself as the person who carried the victim to the hospital. The prosecution case narrated by him as the first version in the fardbeyan completely loses its credibility. The base on which the prosecution case is structured is completely shaken.



12. In order to find out whether the manner of occurrence has been proved by the prosecution, we have examined carefully the evidence of PWs-4, 5 and 6 who claimed occupants of the vehicle/jeep in which the deceased was travelling. We shall purposely not refer to the manner of occurrence spelt out by the informant PW-7 in the fardbeyan as we found him not an eye witness to the occurrence.

13. PW-4 was the only person sitting inside the vehicle. PWs-5 and 6 were sitting on the roof of the vehicle with the deceased. According to PW-4, all the three accused persons riding on one motorcycle overtook the jeep, got down and fired shot in air. Thereafter shot fire on the deceased and escaped on the motorcycle. Amongst them PW-4 identified only the appellant Rakesh Singh who was present at the place of occurrence. He has refused to identify the appellant Kamta Singh as one amongst the accuseds. As against this PW-1 at para-2 says that all the three accused got down from the motorcycle and out of them Ramkrishna Singh fired on the deceased and escaped from the place of occurrence. PW-5 and 6 have refused to identify any of the accused who shot fire on the deceased. Out of them PW-5 was declared hostile.

14. PWs.1 and 2 who are another set of witnesses have spoken about the manner of occurrence which do not fall in line



with the manner of occurrence as projected by PW-4 who was definitely sitting on the vehicle on which the deceased was travelling. On critically analyzing the evidence of PWs.4,5 and 6, it is difficult for us to accept the presence of PWs.1 and 2 at the scene of occurrence at or immediately after the shooting.

15. On appraisal of the evidence of PWs.4, 5 and 6, this much is evident that the deceased was fired at twice by the accused persons. The doctor PW-10 found a solitary injury on the frontal part of the face of the deceased. We can reasonably infer and conclude that the medical evidence is also at variance which creates a serious doubt on the veracity of the prosecution case in addition to the fact that the first version of the prosecution case was given out by a person who was not even present at the place of occurrence but in his evidence he professed an eye witness to the occurrence.

16. These contradictions in the prosecution case which have emerged distinctly lead us to conclude that the prosecution has failed to prove its case beyond periphery of doubt both with respect to the manner of occurrence as well as the complicity of the appellants in the crime. The appellants are entitled to be given the benefit of doubt.

17. The prosecution has asserted land dispute between appellant Rakesh Singh and the deceased as motive to commit the



crime. Both are descendants of common ancestor. It is alleged that a land dispute is going on between the family of Rakesh Singh and the informant. P.W.7 at paragraph-6 has stated that a land dispute was prevailing between deceased and appellant Rakesh Singh. The informant is full brother of deceased but in cross-examination (at paragraph-10) has not disclosed about the nature of dispute and description of land although, he asserts that the case is pending in civil court which is being looked after by him but in same paragraph he says that he has no paper to support his contention. Thus, we hold that the prosecution has also failed to prove the motive on account of land dispute.

18 Having noticed these inner contradictions in the evidences of PW-1, 2, 4, 5 and 6 on the manner of occurrence and also the participation of the appellant in the crime, in our view, non-examination of the investigating officer has also caused serious prejudice to the appellants without there being any reasonable explanation for his non-examination.

19. Considering the evidence as discussed above, we find and hold that the prosecution has failed to establish the guilt of appellants beyond reasonable shadow of doubt and as such the finding of court below are not fit to be sustained.

20. In the result, the conviction and sentence passed by the



court below is set aside and both the appeals are allowed. The appellants be set at liberty, if not required in any other case.

(Sanjay Kumar, J)

Kishore Kumar Mandal,J

Brajesh .kr./ ajaypd./-

(Kishore Kumar Mandal, J)

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