

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1091 of 2009

(Against the Judgment and order dated 26.11.2009 and sentenced dated 30.11.2009 passed by the learned Sri Bipin Bihari Lal, Additional District and Sessions Judge, Ist, Nawada in Sessions Trial No. 160 of 2003, arising out of Akbarpur P.S.Case No. 37 of 2001).

Abhimanu Singh @ Mannu Singh S/O Late Musafir Singh, resident of Village- Kuhila, P.S.- Akbarpur in the District of Nawada

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

Criminal Appeal (DB) No. 1058 of 2009

Arising Out of PS.Case No. -0 Year- null Thana -null District- NAWADA

Radha Krishna Singh @ Karu Singh S/O Late Mathura Singh Resident of Village- Kuhila, P.S. Akbarpur in the District of Nawada

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

Criminal Appeal (DB) No. 1067 of 2009

Arising Out of PS.Case No. -0 Year- null Thana -null District- NAWADA

- 1. Rajo Singh S/O Late Jato Singh R/O Vill.- Kuhila, P.S.- Akbarpur in the District of Nawada
- 2. Ram Swarup Singh S/O Late Jato Singh R/O Vill.- Kuhila, P.S.- Akbarpur in the District of Nawada
- 3. Mukesh Singh S/O Ram Swarup Singh R/O Vill.- Kuhila, P.S.- Akbarpur in the District of Nawada
- 4. Mithlesh Singh S/O Ramswarup Singh R/O Vill.- Kuhila, P.S.- Akbarpur in the District of Nawada

..... Appellants
Versus
The State of Bihar
..... Respondent



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Appearance :

(In all the Cr. Appeals)

For the Appellants : Mr. Ajay Kumar Thakur, Advocate.
Ms. Kiran Thakur, Advocate.
Mr. Amit Kumar, Advocate.
Mr. Imteyaz Ahmad, Advocate.
Mr. Nilesh Kumar, Advocate.
Mr. Ravi Ranjan, Advocate.
For the State : Mr. A.K.Sinha, A.P.P.
Mr. Dilip Kumar 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: 16-02-2017

All the six appellants have been convicted under Section 302/149 of the Indian Penal Code and 27 of the Arms Act by judgment, dated 26.11.2009 passed by Ist Additional District and Sessions Judge, Nawadah. For the offence under Section 302/149 I.P.C. all the accused have been sentenced to undergo imprisonment for life. The appellants Abhimanu Singh and Radha Krishna Singh @ Karu Singh have been additionally fined a sum of Rs.50,000/- each and in default to undergo S.I. for six months. For the offence under Section 27 of the Arms Act, the accused have been convicted to seven years R.I. All the sentences have been ordered to run concurrently.

The prosecution case in short as made out in the fardbeyan of Arvind Kumar @ Gorelal (P.W.6), son of Sri Karu Singh (P.W.3) of village Kuhila, P.S.- Akbarpur, District- Nawadah



recorded by A.S.I., S.K. Sharma of Akbarpur Police Station on 20.4.2001 at 9.45 A.M. at P.H.C., Akbarpur in short is as follows :-

The informant stated that at about 7.00 A.M. in the morning, he was sitting at the door of his house along with his father, the informant's younger brother Vijay Kumar was giving CHARA to his cattle in the open field not far off his door. In the meantime, Radha Krishna @ Karu Singh @ Abhimanu @ Mannu Singh armed with rifle. Rajo Singh, son of Charo Singh, Ramswarup Singh, son of Charo Singh, Mukesh Singh, all armed with gun, Mithlesh Singh armed with pistol came and accused him of having cast vote in favour of BAIGAN CHHAP. On the order of Karu Singh @ Radha Krishna Singh, Abhimanu @ Mannu Singh fired from his rifle which hit the chest of his younger brother Vijay Kumar, who immediately fell on the ground. Thereafter, his father lifted him in his lap, on account of which his 'Dhoti' got stained with blood. The informant's brother died instantly on the spot. On hearing hullah, people from the neighbouring area gathered at informant's place and carried his brother on Rikshaw to Akbarpur Hospital. The informant claims that the occurrence was witnessed by Fantoosh Singh (P.W.1), Nawal Singh (P.W.2) and others. The occurrence took place on account of dispute in the just held election. On the basis of fardbeyan of Arvind Kumar @ Gorelal Yadav, Akbarpur P.s. Case No.37 of 2001, dated



20.4.2001 was registered under Sections 147, 148, 149 and 302/504 I.P.C. and 27 of the Arms Act.

After institution of the F.I.R., P.W.8 Nagendra Mishra, who was the Officer-in-Charge of Akbarpur Police Station, started investigation of the case. In course of investigation, he immediately prepared inquest report of the deceased Vijay Kumar and took re-statement of the informant. He further took statement of other witnesses under Section 161 Cr.P.C. He inspected the place of occurrence as pointed out by the informant, which was the field of Shivbalak Singh. He found two mango trees and four 'khootas', near about which, some blood had fallen. He sent the dead body for postmortem and after obtaining the report submitted charge sheet against all the accused persons under Sections 302/149 I.P.C. and 27 of the Arms Act. The learned C.J.M. took cognizance and committed the case to the court of Sessions which ultimately came to the record of learned A.D.J.-I, Nawadah for disposal. Charge under Section 302 I.P.C. and 27 Arms Act was framed against accused Abhimanu Singh @ Mannu Singh of Cr. Appeal (DB) No.1091 of 2009, whereas the rest of the accused persons have charged under Sections 302/149 I.P.C. and 27 Arms Act.

The prosecution examined eight witnesses in support of its case, out of which P.W.1, Fantoosh Singh, P.W.2, Nawal Singh,



P.W.3, Karu Singh, father of the deceased, P.W.5, Manoj Singh and P.W.6, Arvind Kumar @ Gorelal, the informant and brother of the deceased, have claimed to the eye witnesses of the occurrence.

P.W.4, Dr. Shiv Dayal Das conducted postmortem on the dead body of the deceased at 3.40 P.M. on 20th April, 2001. According to the Doctor, the death was caused by fire arm injury on the chest. He also found black charged margin around the entry wound. According to the doctor, such injury is possible only if the firing is made from a distance of 5-10 yards. He also found rigor mortis all over the dead body.

The defence did not examine any witness nor adduced any document in support of its case. However, the case of the defence appearing from the mode of cross examination and statement under Section 313 of Cr.P.C. is of false implication in the case. According to the defence, the occurrence took place in the field of one Sidheshwar Singh which is far away from the door of the informant and none had seen the occurrence.

The trial court relying upon the evidence of the eye witnesses convicted the appellant as mentioned in the earlier paragraphs.

Mr. Ajay Kumar Thakur, learned counsel appearing on behalf of the appellants submits that the prosecution has not been able



to establish the place of occurrence. As per the fardbeyan, the place of occurrence indicated by the informant was near his Darwaza. However, during trial, all the witnesses had shifted the place of occurrence to the field of Shivbalak Singh, which is at least 100 feet from the door of the informant. He next submits that initially the prosecution case was that the accused shot him near his Darwaza whereas during trial, they stated that the firing was made from Basethi (Bamboo Clump) which would be at least 70 ft. from the door. It is further submitted that on account of location of Goshala as well as the Varandah of the informant, it would not be possible to witness an accused, if firing is made from the Basethi of bamboo clump. This apart, all the witnesses are family members and interested persons and no independent witness has come to support the prosecution case. He submits that they have been falsely implicated on account of enmity which has also been admitted by the prosecution. The prosecution side has criminal history which has been admitted by their witnesses. However, as per the prosecution case itself as developed during the trial, the distance from which the firing was made would be 60-75 feet. He further submits that there was complete rigor mortis all over the body which occurs after 12 hours, as the occurrence has taken place in the month of April. The time of death of the deceased would shift back to a time much prior to 7.00 A.M. in the morning. Besides



this, no blood stained clay or blood stained dhoti of the father of the deceased was sent for forensic examination. Counsel for the defence submits that as per prosecution case, the deceased was feeding cattle. However, no cattle sustained any fire arms injuries, which would be very improbable in the situation. The appellants assert that they have been falsely implicated on account of admitted enmity.

On the other hand, counsel for the State has defended the judgment and order and sentence imposed against the appellants. Learned counsel submits that the postmortem report supports the prosecution case that the deceased was shot by fire arm which was the cause of death. He submits that evidence of a witness cannot be discarded only because they are the family members or related to the deceased, if the evidence is otherwise satisfactory and their presence in the village, cannot be doubted. He submits that the enmity cut both ways and on account of political dispute, the instant crime has been committed.

We have heard counsel for the parties and perused the materials on record. In view of the postmortem report, there cannot be any dispute that the deceased died on account of fire arm injury. One of the main points urged by the defence is that the prosecution has shifted the place of occurrence from his door to the field of Shivbalak Singh. Furthermore, it would appear from the evidence of the



prosecution that the accused had fired from the Basethi which would be at least more than 75 feet from the place where deceased is said to be giving 'Gaut' to his cattle. It is the case of the defence that the injury as found on the person of the deceased would not be possible if the firing is made from Basethi which was at least 20 yards away from the place where the deceased is said to have been giving fodder to the cattles.

In order to examine issues, it would be relevant to notice the evidence of the witnesses. Fantoosh Singh stated that on 20.4.2001 at about 7.00 A.M., he was going to his field, and while he was passing from the door of the informant, he saw P.W.1 and P.W.6 sitting at their Darwaza. The deceased Vijay Kumar was feeding the cattle. In the meantime, the accused persons came near bamboo clump, which is situated north to the pyne and opened fire on the deceased Vijay Kumar, who fell and died. The firing was opened by Abhimanu Singh @ Mannu Singh at the instigation of Radha Krishna Singh @ Karu Singh. The deceased father rushed towards his son and lifted him in his lap on account of which clothes got stained with blood. In paragraph-9 of his cross examination, this witness stated that the Baithka of the informant has western opening and there are rooms on both sides of the Baithka with varandah in between, which is used as a passage. The house is east to west in length measuring two Bans.



East to the house is Bhola Sao. South to house is a road running east to west. West to the house is vacant land of Shivbalak Singh. North to Baithka is pyne and further north is bamboo clump of Sanjay Singh, from where the firing is said to have been resorted.

P.W.2 in paragraph-6 stated that on the western side of the house of the informant, there is Goshala and on the north side, there is pyne. In paragraph-7, he stated that he saw the accused persons near the bamboo clump from where the firing was made.

P.W.3 in paragraph-1 stated that he was sitting in front of his Darwaza, where the deceased was giving 'gaut' to the cattle. In paragraph-2, he stated that the accused Abhimanu Singh shot at deceased from the Basethi on the order of Radha Krishna @ Karu Singh @ Abhimanu, who fell on the ground. In paragraph-14 of the cross examination, he stated that the distance of Basethi from the field, where blood was found, was 20-25 bamboos (Bans). South to Basethi (Bamboo Clumps) lies a pyne.

It is relevant to state here that P.W.5, Manoj Singh and the P.W.6, the informant have clarified that one bamboo would be equal to 5 & ½ to 6 & ½ arms in length. P.W.5, Manoj Singh stated that the place of occurrence is parti land of Shivbalak Singh. In paragraph-6, he stated that the Goshala of the informant is north to south. There is long Goshala east to the said varandah. He saw blood



in the field of Shivbalak Singh, which lies west to the door of the informant. In paragraph-8 of the cross examination, he stated that the accused persons were standing at a distance of 20 yards north from the place of occurrence from where they are alleged to have opened fire at the deceased. He has denied the suggestion that in statement under Section 161 Cr.P.C., he had stated that the occurrence took place in the field of Sidheshwar Singh. In paragraph-9 of the cross examination, he has denied that in his statement under Section 161 Cr.P.C. to the police, he stated that brick batting and firing was being made from the house of one Hriday Singh. However, P.W.8, the I.O. in paragraph-15 stated that P.W.5, Manoj Singh stated before him during investigation, that brick batting and firing was being made from the side of the house of Hriday Singh and from that firing, Vijay Kumar sustained injury and died.

Furthermore, P.W.8, the I.O. in paragraph-16 has stated that the Chaukidar (P.W.7) has stated that the occurrence took place in the field of Sidheshwar Singh. P.W.6, who is the informant and brother of the deceased stated that he along with his father was sitting at his Darwaza and his deceased brother Vijay Kumar was giving 'Gaut' to the cattle. In paragraph-1 of his evidence, he stated that the accused persons came near Basethi from where firing was resorted too. In paragraph-12, he stated that the accused persons were standing



near Basethi which is 30-40 yards from the place of occurrence. In his evidence, he stated that his Khaliyan is situated west to his house and further west is the parti land of Shivbalak Singh. The I.O. who has been examined as P.W.8 stated that the place of occurrence as pointed out by the informant was the vacant land of Shivbalak Singh and there were two mango trees just east to it. He further stated that north to the place of occurrence, there exists a pyne and bamboo clump at a distance of 20 yards.

P.W.8 in paragraph-17 stated that P.W.3 did not state before him during investigation that he was sitting along with his son at the time of occurrence at his Darwaza.

From the critical analysis of the evidence of the witnesses, it would appear that they have given go bye to the place of occurrence, as stated in the fardbeyan.

As per the informant, his deceased brother was giving fodder just in front of his door to the cattle. At about 7.00 A.M., the accused persons came and shot at him. However, during trial, none of the witnesses had stated that accused persons came near the Darwaza from where they fired on the deceased rather they have tried to make out a case that the accused persons came near bamboo clump which is situated north to the pyne and opened fire at the deceased, who died in the field of Shivbalak Singh which is 20-25 yards at least from the



Basethi. It is the admitted case of the defence that the pyne is situated north to their house and the width of the pyne is 10-12 yards and the bamboo clump is situated further north to the pyne. As such, it would thus appear that the place from where the accused had fired upon the deceased has been shifted from the door of the informant to bamboo clump which would be 20 yards apart.

Besides this, as per the doctor, the injury sustained on the person of deceased would be possible if firing is made from a distance of 5-10 yards. In the instant case, as per the prosecution case, the bamboo clump from where the accused are said to have opened fire is more than 20 yards. The injury on person of deceased would not be possible, if firing is made from the bamboo clump as projected by the prosecution during trial.

Situated thus, we are of the considered view that in light of vacillating stand of the prosecution, the trial court ought to have given benefit of doubt to the accused and acquitted them of the charge.

In the result, the Criminal Appeals succeed. The judgment of conviction and sentence passed against the appellants are set aside. Appellant no.1, Abhimanu Singh @ Mannu Singh of Cr. Appeal No.1091 of 2009, who is in custody, is set at liberty, if not wanted in any other case. The other appellants of Cr. Appeal No.1058



of 2009 and Cr. Appeal No.1067 of 2009 are on bail and as such are discharged from the liability of their bail bonds.

(Samarendra Pratap Singh, J)

(Arun Kumar, J)

N.H./-

AFR/NAFR	NAFR
CAV DATE	NA
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