

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.388 of 2016

Arising Out of PS.Case No. -61 Year- 1996 Thana -BARAHIYA District- LAKHISARAI

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Gopesh Singh @ Gopua @ Gopu Singh son of late Ram Swarup Singh resident of
village Chetan Tola Khutha P.S. –Barhiya District Lakhisarai.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Lakshmi Kant Sharma, Advocate

For the Respondent/s : Mr. D.K. Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE MADHURESH PRASAD)

Date: 15-09-2017

Challenge in this appeal is to the judgment of conviction dated 31.03.2016 recorded by the learned Trial Court in S.T. No. 149 of 1998 against the appellant under Section 302/149 IPC and awarding punishment to undergo R.I. for life and to pay fine in the sum of Rs. 5,000/- without any default clause.

2. That the informant (P.W. 4) lodged F.I.R. on 18.06.1996 at 17.15 hrs recorded by the Station House Officer of Barhiya Police Station (P.W.6) alleging that he along with his two brothers, P.W.-2 and the deceased, were loading wheat bags on the trolley owned by the deceased when co-accused Tuntun Singh arrived at his dalan and asked them to stop loading wheats and instructed to



go and meet co-accused Awadhi Singh. All the three brothers went to Awadhi Singh who directed them not to use the tractor and trolley for transporting wheat bags, otherwise they shall be killed. The three brothers came back to the Dalan and undeterred by such command continued with loading wheat bags. In the meanwhile, 18 named accused including the appellant arrived at the Dalan armed with various fire arms including semi automatic rifle and at the orders of co-accused Awadhi Singh, they all started indiscriminate firings. The three brothers ran from Dalan to save their lives. The deceased entered into the house of Narayan Singh and bolted himself inside whereas the two brothers (P.Ws. 4 and 2), however, managed to flee and hide in a different house. In the meantime, co-accused Bilayati Singh broke open the door of the house in which the deceased had entered and co-accused, Awadhi Singh, Shankar Singh and the appellant entered into the room and fired at the deceased. Having caused death of the deceased, they all escaped from the place of occurrence. The I.O., on recording the First Information Report, visited the room in which the deceased was shot at and found the dead body lying on the floor near the cot. The walls of the room were found spotted with blood stains. A death inquest proceeding was carried and prepared on 18.06.1996 at 17.45 hrs which was witnessed by P.W.1 and P.W.2. The dead body was dispatched for



autopsy. P.W.3 held the autopsy on 19.06.1996 at 9 a.m. and submitted the post-mortem report (Ext.1). In the meanwhile, the investigation was taken over by P.W.5 who, upon completion of investigation, laid the charge-sheet whereon cognizance was taken. The case, after commitment came for disposal on the file of the learned Trial Judge when charges were framed and explained to the appellant who abjured the guilt.

3. At the trial, the prosecution case has been principally supported by three eye witnesses i.e. P.Ws.1, 2 and 4. P.Ws. 2 and 4 are full brothers of the deceased. The Counsel for the appellant has, therefore, made submissions to discredit the evidence of P.Ws. 1, 2 and 4 on several counts. Counsel for the State has, however, supported the findings of guilt recorded by the learned Trial Court.

4. Before we deal the contentions of the appellant it is apposite to first notice the prosecution case as broadly supported by the three witnesses and the evidence of P.W.3. As per F.I.R., accused including the appellant, armed with fire arm, entered into the room in which the deceased had secured himself to save his life and fired at him. P.W.2 has said that three accused persons, including the appellant, had entered into the room with fire arm and the appellant and one co-accused Shankar had fired at the deceased. P.W.4 has stated differently. According to him, co-accused Awadhi Singh,



Shankar Singh, Arun Singh and Bilayati Singh had entered into the room and fired at the deceased. The doctor, (PW 3) after conducting autopsy, found the following ante-mortem injuries present on the deceased:-

“1. A LW of size 2 1/2” X 2” x chest cavity deep 4” below right nipple 2” away from middle over right side with blackening of margin- wound of entry

2. A LW of size 3 1/2” x 2 1/2” x bone deep over flexor aspect of lower half of right forearm with blackening of margin-wound of entry-communicating with wound of exit a LW of size of 6” x 3” x bone deep over external of lower third of right forearm 1” away from entry wound.

3. A LW of 1 1/2”x 1 1/2” x bone deep over Rt side of neck just below mandible c blackening of margin-wound of entry communicating c wound of exit – a LW of size of 1 cm diameter over occipital region over Rt side with brain matter coming out.

On dissection liver was found lacerated with blood and blood clot present in parietal cavity. Diaphragm was found lacerated. There was fracture of sixth rib on right side. Blood and blood clot was present. Skin and subcutaneous tissue on all above injuries. Blood and blood clot was present in right pleural cavity. Right lungs was found lacerated. There was a bullet lodged broken into multiple pieces lodged in back muscle around 10th thoracic vertebral with its fracture which was sealed signed and sent. There was fracture of mandible and temporal Rt occipital parietal Rt. There was blood and blood clot in cranial cavity with laceration of brain.

Cause of Death- due to shock and haemorrhage caused by above injuries caused by fire arm. Time elapsed since death -12 to 24 hours. ”

5. The deceased, according to the doctor, had received three fire arm injuries inflicted from a close range. Those injuries



caused the death of the deceased.

6. Counsel for the appellant has submitted that the evidence of P.Ws.4 and 2 (two brothers) run counter to each other. According to P.W.4 (informant), while the three brothers were running to save their lives, only the deceased ran into the room of Narayan Singh whereas he himself along with P.W.2 took shelter in the nearby house of Ram Kripal Singh. The incident continued for 10-15 minutes. After the return of the accused persons, they could come out from the place of safety and then found that the deceased was done to death in the room where he had locked himself whereas P.W.2 has stated in the examination-in-chief that all the three brothers had taken shelter in the room of Narayan Singh which was hardly 100-150 yards away from Dalan of the informant when the accused persons after breaking open the door entered into the room and fired at the deceased causing his death. P.Ws.2 and 4 cannot be relied upon. They are not fully reliable.

7. It has also been urged that the prosecution is also not certain when and where the fardbeyan of the informant was recorded. The informant says that after retreat of the accused persons, he walked on foot to the Police Station and made his statement before the Police at around 1-1.30 p.m. whereafter he travelled back to the place of occurrence along with Investigating Officer (P.W.6) whereas



P.W.6 has stated about recording of the F.I.R. at his house. The fardbeyan, however, reveal that the F.I.R. was recorded at the Chetan Tola which is the place of residence of the informant.

8. Arguing further, it has been submitted that the evidence of the witnesses profusely indicate that several rounds of firing were made but the I.O. did not find any empty cartridges at the place of occurrence. Instead, he found three shells of the fired cartridges present near the dead body which were seized.

9. Lastly, he urged that some of the co-accused faced trial in S.T. No. 149A of 1998 (Subodh Singh versus State) and S.T. No. 149C/1998 (Tuntun Singh versus State). Wherein the Trial Court, considering the nature of evidence adduced at those trials, acquitted them of the charge vide judgment(s) of acquittal dated 22.11.2006 passed in S.T. No. 149A of 1998 and 15.03.2007 passed in S.T. No. 149C/1998.

10. Heard Mr. Ramakant Sharma learned Senior Counsel for the appellant and Mr. D.K. Sinha, APP for the State.

11. In support of his submission that the evidence of PWs 4 and 2 run counter to each other, the learned senior counsel has placed reliance on the case of **Ramanand Singh & Ors v. The State of Bihar** reported in **2017 (3) PLJR 377**. He has referred to paragraphs 33 and 34 to canvass that the evidence of these two PWs



cannot be accepted as reliable.

12. The said submission of the learned senior counsel discrediting the evidence of PW 4 and PW 2 has to be viewed in the attending background of the case. The evidence of PW 4 and PW 2 is based on recollection of facts which they have witnessed long before their evidence in court. In the midst of cross firings by 18 persons by firearms including the semi automatic rifles. The Court, in the circumstances, cannot expect from all the PWs to narrate the incident in detail with precisions consistency in all respects. The Court while considering the evidence of PW. 1, PW 2 and PW 4 would see whether their evidence is so inconsistent that it demolishes the entire case of the prosecution. If a few details are missing, and not matching here and there then the prosecution story cannot be thrown out as being doubtful and unreliable. The three eye-witnesses have been consistent insofar as the manner of occurrence is concerned since they all have stated that the 18 named accused persons had come with firearms and semi automatic rifles and indulged in indiscriminate firings and the fact that they fled away and the deceased took shelter in the house of Narayan Singh and bolted himself inside the room. Co-accused Bilayati Singh had broken open the door whereafter Awadhi Singh, Shankar Singh son of Ramanandan Singh and the present appellant Gopesh Singh son



of Ram Swarup Singh entered the house of Narayan Singh and fired at the deceased, causing his death. The occurrence to this extent has consistently been supported by P.W. 1 P.W. 2 and P.W. 4. If they have not stated the occurrence in minute details regarding the direction in which they were fleeing, place where they had taken shelter during on going indiscriminate firing which continued for 10-15 minutes, the same, in the opinion of this Court, cannot be treated as being fatal to the prosecution story and/or leading to a conclusion that the said three witnesses are unreliable. Witnessing a murder of ones own brother while nurturing a fear of ones own life in the midst of indiscriminate firings resorted by a large number of accuseds presents a circumstance in which a grasp of minute details of occurrence would naturally be some what impaired. We may in this regard usefully rely on **Nand Kumar vs. Sate of Chattisgarh (2015 (1) PLJR SC 47 SC)**.

13. P.W 1 has fully supported the prosecution case as projected at the trial. His evidence supports the prosecution case on all core issues i.e., the time and place of occurrence, the manner of occurrence and the complicity of the appellant in the crime. The defence has not been able to elicit any material contradiction in his evidence.

14. The evidence of the eye-witnesses (PW 1, PW 2 and



PW 4) is also supported by the medical evidence i.e., the post mortem report (Ext. 1). The post-mortem report records presence of three injuries caused by firearm and from close range. The cause of death has been recorded as due to shock and hemorrhage caused by those firearms injuries. The estimated time elapsed since the death has been recorded as 12-24 hours. The post-mortem was done on 19.06.1996 at 9 a.m. Thus, the post-mortem report fully supports the manner and time of occurrence. It would be relevant to mention here that the alleged occurrence, as per the prosecution case, has taken place on 18.06.1996 at about 1 a.m. The evidence of the autopsy Surgeon (PW 3) lends assurance to the Court on the guilt of the appellant.

15. P.W. 6, Chandeshwar Prasad Singh, the Investigating Officer of the case, in his deposition has described the place of occurrence as the house of Narayan Singh situated at "Chetan Tola." He has given the descriptive details of the room where the body of the deceased was found lying on the floor. He inspected the place of occurrence soon after recording the first information report. He has given the details regarding the blood smear on the walls of the room (place of occurrence). He has also seized three empty shells of the bullet which caused the death. The I.O inspected the dead body and prepared the inquest report at the place of occurrence itself on 18.06.1996. All of this has been done at the place of occurrence which



is the same as stated by PW 1, P.W 2 and P.W 4 in their evidence.

16. As discussed above, the evidence of PWs 1,2 and 4 suffer from some discrepancies but the circumstance discussed above regarding the severe circumstances under which these PWs have observed the occurrence; and the fact that considerable time had lapsed before they had come to give their evidence in Court cannot be overlooked. Furthermore whatever discrepancy were there was only in respect of some minute details, which even if excluded, would not be fatal to the prosecution case. They do not improprialise the prosecution case. The medical evidence as also the evidence of the Investigating Officer (PW 6) also corroborates the prosecution story regarding the homicidal death of the deceased in the manner narrated by PWs 1,2 and 4. There is nothing on record brought by the defence to show even remotely any reason for the PWs 1,2 and 4 to falsely implicate the appellant leaving the real culprit. Thus, in the opinion of this Court reliance placed on the case of **Ramanand Singh** (supra) to discredit the evidence of PWs 1,2 and 4 is not held tenable.

17. The alleged doubt in recording of the place and time of the fardbeyan is another submission of learned senior counsel appearing on behalf of the appellant which is noted, only to be rejected. The fardbeyan (Ext. 2), itself reveals that the same was recorded at the house of the informant at Chetan Tola at 17.15 hours



(05.15 pm). P.W. 6 in his evidence has also stated about recording of the FIR at the house of the deceased, which is the same house as that of the informant, as they both are own brothers. Thus, there is no doubt that the fard beyan was recorded at the house of the deceased at Chetan Tola. The 3rd submission of the learned senior counsel for the appellant is that though the evidence points to indiscriminate firing of several rounds but the I.O., has seized only three shells of cartridges from near the dead body. During cross-examination, the I.O., has stated that he had not prepared seizure of the empty cartridges and not sent the same for examination by experts and that he had also not recorded the dimensions of the empty cartridges recovered from the place of occurrence. This was a mere laxity in proper investigation. In view of the overwhelming and reliable ocular evidence of PW 1, P.W. 2 and P.W. 4, the medical evidence lending full credence to the description of the ocular account and the evidence of I.O., (PW 6) supporting the manner, place and time of occurrence, a minor lapse committed by the I.O., in not seizing all the empty cartridges and not sending the same for expert's examination in the instant case, would not be fatal to the prosecution case. The statement of the I.O., only highlights the lapse of "not seizing" and "not sending" for expert's examination. The said statement would not prove for sure the non presence of more than three empty cartridges/shells at the place of



occurrence. In fact, the said statement coupled with the fact that he had seized three shells of cartridges from near the dead body, is suggestive of the fact that shells were present, but had neither been seized nor sent for examination by the expert.

18. The last submission made by the learned senior counsel is that some other co-accuseds who were facing trial in two other cases arising out of the same incident on similar evidence have been acquitted. He relies on judgment in case of **Suresh Chaudhary v. State of Bihar** reported in **2003 (4) SCC 128**. By the said judgment the Apex Court has extended the benefit of acquittal to non-appealing accused before the Supreme Court namely, Sona @ Sonwa Choudhary, who was the first accused before the Sessions Court in Sessions Trial No. 417 of 1993 as also the first appellant before the High Court in the Cr. Appeal No. 88 of 1995. It may be pertinent to consider that in the said case four accused persons had been charged for committing offence punishable under Section 302 IPC and Section 27 of the Arms Act for having committed triple murder of Shivnandan Mahto, Chamru Chaudhary and Rajendra Choudhary. Out of four accused, one Saryu Paswan was absconding and his trial was separated from the other accused persons. The other three accused persons, being the two appellants before the Supreme Court as also one Sona @ Sonwa Choudhary were held guilty after trial by the



Sessions Court. Against the judgment of conviction, the appellants had preferred the appeal before the High Court which was also dismissed and their convictions and sentence upheld. Before the Supreme Court out of the three accuseds convicted in one sessions trial, only two had appealed. The 3rd accused Sona @ Sonwa Choudhary, though convicted in the same sessions trial, had not appealed before the Supreme Court against the order passed by the High Court in appeal.

19. The other judgment relied upon by the counsel for the appellant is that of **Md. Sajjad vs. State of West Bengal** reported in **2017 (2) PLJR SC 19**. In that case also the benefit of acquittal was extended to the non-appealing accused who had been convicted in the same sessions trial by the same judgment dated 19.12.1996.

20. In the instant case the submission of the learned senior counsel is to extend the benefit of acquittal recorded in another sessions trial against other accused persons, tried separately, to the case of instant appellant. The present case, on facts, is not covered by the said judgments delivered in the case of **Suresh Chaudhary** (supra) and **Md. Sajjad** (supra)

21. The Court shall examine the evidence produced at the trial. Which of the PWs stated what in another trial, although arising out of the same case, cannot be legally looked into. The law on this



point is well settled. Considering, thus, the court finds no substance in the submission of the counsel for the defence.

22. In the light of discussions made above the Court is unable to find legal flaw in the conclusion(s) of guilt recorded by the trial Court against the appellant.

23. The appeal fails and is accordingly, dismissed.

(Madhuresh Prasad, J)

I agree

(Kishore Kumar Mandal, J)

Prakash/-

AFR/NAFR	
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