

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Against the judgment of conviction dated 19.06.2006 and order of sentence passed by Shri Shambhu Nath Mishra, learned Additional Sessions Judge, Fast Track Court-II, Bhagalpur in Sessions Trial No. 591 of 2001 / T.R. No. 133 of 2006, arising out of Bath P.S. Case No. 12 of 2000)

Criminal Appeal (DB) No.1016 of 2007

Maneet Bind, son of late Ram Bind
State of Bihar
Versus
With
Appellant/s
Respondent/s

Criminal Appeal (DB) No. 1038 of 2011

Angad Bind, son of Late Mani Bind, resident of Village-English Ratanpur, P.S.-
Bath, District- Bhagalpur
The State Of Bihar
Versus
With
Appellant/s
Respondent/s

Criminal Appeal (DB) No. 559 of 2007

Jogi Bind @ Jogo Bind, son of Rami Bind, resident of Village-English Ratanpur,
P.S.- Bath, District- Bhagalpur.
The State of Bihar
Versus
Appellant/s
Respondent/s

Appearance :
(In CR. APP (DB) No.1016 of 2007)
For the Appellant/s : Mr.
For the Respondent/s : Mr. A. K. Sinha, A.P.P.
(In CR. APP (DB) No.1038 of 2011)
For the Appellant/s : Mr.
For the Respondent/s : Mr. Dilip Kumar Sinha, A.P.P.
(In CR. APP (DB) No.559 of 2007)
For the Appellant/s : Mr. Shailendra Kumar Jha, Advocate
For the Respondent/s : Mrs. S. B. Verma, A.P.P

CORAM: HONOURABLE THE CHIEF JUSTICE



and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT
(Per: **HONOURABLE THE CHIEF JUSTICE**)
Date: 09-09-2017

All the three appeals have been filed by the appellants assailing the judgment of conviction, dated 19.06.2006, and order of sentence passed by learned Additional Sessions Judge, Fast Track Court-II, Bhagalpur in Sessions Trial No. 591 of 2001 / T.R. No. 133 of 2006, arising out of Bath P.S. Case No. 12 of 2000, by which all the appellants herein, namely, Maneet Bind, Jogi Bind @ Jogo Bind, and Angad Bind have been convicted under Sections 302/34 of the Indian Penal Code read with Section 27 of the Arms Act and sentenced to undergo imprisonment for life for the offence under Sections 302/34 of the Indian Penal Code and they have been further sentenced to undergo three years R.I. for the offence under Section 27 of the Arms Act. However, both the sentenced have been directed to run concurrently.

2. It is the prosecution case that on 25.05.2000 at 9.00 P.M. when Damodar Bind was present at the Chakki Mill in village English Ratanpur, Police Station Bath, District- Bhagalpur Jogo Bind appellant in Cr. Appeal (DB) No. 559 of 2007 along with other appellants, namely, Angad Bind appellant in Cr. Appeal (DB) No. 1038 of 2011, Jai Hind Bind, Umesh Bind arrived with fire arms,



surrounded the informant, namely, Damodar Bind (the deceased), assaulted him and when in the meantime Sobhi Bind, Binod Bind and Maneet Bind came to the spot and raised hue and cry Jogo Bind, who was armed with gun, fired upon the informant-deceased Damodar Bind causing injury on his armpit, right Panjra (shoulder) right buttock and left thigh. It is said that some people came to the spot seeing the commotion that was created the accused ran away and it is the case of the prosecution that motive for committing the offence is that Damodar Bind was informing about the activities of the group. The deceased/informant Damodar Bind was immediately brought to Jawahar Lal Nehru Medical College and Hospital, Bhagalpur, where his statement was recorded at 10.30 A.M. on 26.05.2000 on the basis of which the fardebayn was recorded and the prosecution initiated. However, the deceased Damodar Bind succumbed to the injuries after a period of more than 15 days in the night intervening 11/12.06.2000.

3. Initially, the case was registered against all the accused persons for the offence under Sections 147, 148, 341, 323, 504 read with Section 307 of the Indian Penal Code and Section 27 of the Arms Act. However, subsequently, the charges were framed, they were only charged for the offence under Sections 302/34 of the Indian Penal Code and Section 27 of the Arms Act.

4. The prosecution examined as many as 9 witnesses,



namely: Doman Bind (P.W.1), Sipahi Bind (P.W.2), Sadanand Bind (P.W.4), Manoj Bind (P.W.5), Tikulee Devi (P.W.5), Manager Bind (P.W.6), Ganesh Bind (P.W.7), Manik Chand Bind (P.W.8) Dr. Sandeep Prasad Lal (P.W.9) and Md. Sakur (P.W.10) and various documents were also exhibited and during the pendency of the trial one of the accused, namely, Shobhi Bind, died and therefore his name was expunged from the array of accused person on 21.07.2003. The defence also examined five witnesses, namely, D.W.1 is Sarda Mandal, D.W.2 is Jagesh Prasad Singh, D.W. 3 is Sarju Singh, D.W.4 is Haro Bind and D.W.5 is Sada Nand Singh.

5. Based on the evidence and materials on record, by the impugned judgment, the learned trial court found the accused persons guilty of the offence under Section 302 of the Indian Penal Code, read with Section 27 of the Arms Act and sentenced them to imprisonment for life under Section 302 of the Indian Penal Code and R.I. for three years under Section 27 of the Arms Act. However, both the sentences have been directed to run concurrently.

6. Challenging the same, these appeals have been filed. Learned counsel for the appellants took us the statement of witnesses and tried to argue that the prosecution has miserably failed to establish the case and therefore the conviction is unsustainable. They argue in alternative that even if the entire story of the



prosecution is accepted in its totality and if the statement of P.W.9 Dr. Sandeep Prasad Lal is taken note of and if it is evaluated in the backdrop of the injuries caused on the deceased, as is evident from the post-mortem report (Ext.2), the conviction of the appellants cannot be sustained.

7. Learned counsel argue that at best the only allegation is said to have been proved as that the appellant Jogo Bind had fired on the deceased Damodar Bind and caused injuries on the non-vital parts of the body and therefore conviction under Section 302 of the Indian Penal Code is not sustainable and at best even the entire evidence of the prosecution including the statement of P.W.9 Dr. Sandeep Prasad Lal is admitted in its totality, the conviction of the appellants for the offence under Section 302 of the Indian Penal Code is not sustainable. Learned counsel for the appellants also invites our attention to the cross-examination of P.W.9 Dr. Sandeep Prasad Lal and the statement made by him in para 8 and 9 thereof wherein he says that no definite opinion with regard to the cause of the death and as to whether the injury caused by firing from back or front cannot be intimated with certainty. It is stated that even the contention that the gun shot caused by Jogo Bind by firing from front portion is also not established.

8. Learned counsel, therefore, argue that now in the



facts and circumstances of the case when all the accused persons have remained in custody for a period of 11 years, it is a fit case where the conviction, even if, to be approved, should be reduced to one under Section 304 Part II of the Indian Penal Code and the appellant be released now, as he has already undergone sentence for more than 11 years.

9. Learned counsel for the State Mrs. S. B. Verma, however, refuting the aforesaid contention submits that all the accused with common intention came to the spot and assaulted the deceased Damodar Bind and subsequently when they found that on the basis of commotion and plea for help raised by Damodar, they fired on the deceased and ran away, which ultimately resulted into death of the deceased and it is an appropriate case where the conviction under Section 302/34 of the Indian Penal Code should be upheld and the appeal should be dismissed.

10. We have heard the learned counsel for the parties and have also perused the record. The happening of the incident, as has been narrated herein above, while discussing the case of the prosecution, it has been established from the statement of witnesses available on record and we find that even though there is no eye witness to the incident, but Damodar Bind, while he was injured and was admitted to the hospital in question, his statement was recorded



by the investigating officer at 10.30 A.M. on 26.05.2000 i.e. next day after the incident and the same has been proved from the statement of the other witnesses. There is no reason to disbelieve the statement of the deceased, which was recorded on 26.05.2000, even though the doctor (P.W.9) in para 8 and 9 of his deposition agrees to a suggestion put to him that the possibility of the injury being caused by fire arm from behind cannot be ruled out, we are of the considered view that there is no reason for disbelieving the statement of the deceased Damodar Bind, which was recorded immediately after the incident and the post-mortem report submitted by the doctor indicates the five injuries caused on the person of the deceased which are as under:

(i) One wound of entry with inverted margin of size $\frac{1}{4}$ " x $\frac{1}{4}$ " present in right axilla, on doing dissection projectile was found to pierce apex of right lung and one metallic pellet recovered from myocardium of heart. There was blood and blood clot in chest cavity in small quantity.

(ii) one wound of entry with everted margin of size $\frac{1}{4}$ " x $\frac{1}{4}$ " and one wound of entry of size $\frac{1}{4}$ " x $\frac{1}{4}$ " situated in the back of lumbar region of right side. On doing dissection there was blood and blood clot in the abdominal cavity. Two metallic pellets recovered from mesentery and small intestine.

(iii) one wound of entry of very small size found over



the right arm guttural region on doing dissection one metallic pellet found from guttural muscle.

(iv) One wound of entry of very small size found over the right arm deltoid region. One pellet found in the deltoid muscle and right arm.

(v) One wound of entry of size $\frac{1}{4}$ " x $\frac{1}{4}$ " present over the lateral aspect of left thigh. On doing dissection one pellet found in superficial layer of thigh muscle.

11. If that be so, it is a case where the occurrence of the instant case is proved by the prosecution and if the statement of the deceased Damodar Bind, which now becomes a dying declaration after his death is accepted in its totality, the case of the prosecution as presented in trial has to be accepted. We see no reason to disbelieve the statement given by the deceased Damodar Bind, even though as learned counsel for the appellants tried to argue that there is no eye witness to the incident. All the witnesses have narrated the story based on the information given to them by Damodar, while he was alive and admitted in the hospital during the period he was under treatment i.e. from 26.05.2000 up to 11/12.06.2000. Once we are convinced that the statement of Damodar Bind was recorded on 26.05.2000 immediately on the next day at 10.30 A.M. after the incident is a reliable piece of evidence in the form of dying declaration, we see no reason to hold



that the incident at all did not occur at the instance of the appellants. On the contrary, the statement of Damodar Bind recorded and available inspires much confidence on us and if that be so the case of the prosecution has to be accepted. After holding so if we analyze the statement of doctor (P.W.9) and the injuries sustained by the deceased as is indicated herein above, it would be seen that all the injuries were caused on the non-vital part of the body, even though the accused persons came to the spot initially, they facilitate in assaulting the deceased, but the same was only when the commotion was created after fighting that took place and all the facts are evaluated in the backdrop of the injuries caused, it would be seen that the injuries are all on the non-vital parts of the body and the injured (Damodar) died in the hospital while undergoing treatment after a period of more than 15 days. That being so, it is a case where the offence would come under Section 304 Part II of the Indian Penal Code i.e. culpable homicidal not amounting to murder and once we hold so and take note of the fact that the appellants have already undergone for more than 11 years, it is a case where treating the appellant to have committed an offence under Section 304 Part II of the Indian Penal Code, we have allowed the appeal in part, and convert the conviction from under Section 302/34 of the Indian Penal Code read with Section 27 of the Arms Act to under Section 304 Part II/34 of the Indian Penal Code



read with Section 27 of the Arms Act and sentence them for punishment of 10 years imprisonment.

12. Adverting to the case of appellant Jogi Bind @ Jogo Bind in Criminal Appeal (DB) No. 559 of 2007, he has remained in jail for more than 8 ½ years. Against him there was allegation of causing injury in non-vital part of the deceased, considering the fact that he has served imprisonment for more than 8 ½ years, we modify the sentence of life imprisonment to the period undergone in view of our finding that the instant case falls in the category of Section 304 Part II of the Indian Penal Code and not under Section 302 of the Indian Penal Code and considering the fact that in 2000 he was aged about 50 years.

13. So far as appellant Angad Bind in Criminal Appeal (DB) No. 1038 of 2011 is concerned, in his case he was convicted in S.T. No. 591 of 2001 / Tr. No. 133 of 2006 in separate trial, as he was not tried with the other co-accused on account of the fact that he was engaged in a labour job in Delhi and he returned back in September 2011 he was taken to custody and convicted by the court below. Against the appellant Angad Bind there is no specific allegation of any overt act and he was only found as associate of the assailant present on the spot and fleeing away from the spot. Considering the aforesaid facts and circumstances and the fact that the



instant case is of the year 2000 and the case was initially registered under Sections 147, 148, 341, 323, 504 and 307 of the Indian Penal Code and Section 27 of the Arms Act. Considering the fact that he has no criminal antecedent, we persuaded to modify the order of the learned Additional Sessions Judge, F.T.C.-II, Bhagalpur and allow the appeal to the extent that conviction is sustained, however, the sentence is modified to the extent of period undergone.

14. So far as appellant Mannet Bind in Criminal Appeal (DB) No. 1016 of 2007 is concerned, he has remained in jail for 11 years, we direct the appellant to set at liberty forth with, if not wanted in any other case.

15. With the aforesaid, all these appeals stands allowed in part.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
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