

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.736 of 2013

Arising Out of PS.Case No. -168 Year- 2009 Thana -GARKHA District- SARAN

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1. Vinod Singh Son Of Soncha Singh R/O Village - Rajjupur, P.S. - Bheldi, District - Saran At Chapra
 2. Satya Narayan Singh Son Of Soncha Singh R/O Village - Rajjupur, P.S. - Bheldi, District - Saran At Chapra

.... Appellant/s

Versus

The State Of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Basant Kumar Singh, Advocate

Mr. Deouind Kumar Singh, Advocate

For the Respondent/s : Mr. S.N. Prasad, 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: 02. 08. 2017

Both the appellants have been held guilty under Sections 302/34 of the Indian Penal Code and 27 of the Arms Act in a trial conducted by learned Adhoc Additional District and Sessions Judge, Saran at Chapra in Sessions Trial No. 777 of 2010 vide judgment of conviction dated 25.02.2013 and vide order of sentence dated 28.02.2013, sentenced them to suffer rigorous imprisonment for life with fine having default clause. Separate sentence of 03 years rigorous imprisonment was imposed under Section 27 of the Arms Act. The appellants taking exception to the said judgment of conviction and



order of sentence have filed the present appeal.

2. The factual background as unraveled at the trial, in brief, is that the victim Manoj Kumar was staying with the informant (P.W.9). On 17.09.2009, he had gone to village home. On 18.09.2009, when he was returning from the village home in the district of Saran on a motorcycle, accuseds riding on a motorcycle overtook him and fired at the victim. The victim, however, managed to reach the nearby bazar at a distance of nearly 500 yards where some of the witnesses were present and information was given to the informant about the incident. The victim was thereafter carried on vehicle and brought to P.M.C.H., Patna (for short 'the hospital') by P.W.-6 and one Subhash Singh. In the meantime, the informant also reached the hospital. The victim was given medical assistance inasmuch he was operated upon in the night of 18.09.2009. The following day, in the morning, the victim, however, succumbed to the injuries. P.W.12, on being instructed by P.W.11, the officer-in-charge of the Garkha Police Station, had reached the hospital in the night of 18.09.2009 itself. After the death of the victim, the fardbeyan of P.W.-9 (Ext.4) was recorded on 19.09.2009 at 10.30 a.m. in the hospital itself. The inquest proceeding was carried out in presence of P.Ws. 4 and 6. The dead body was dispatched for autopsy. P.W. 8 conducted the post mortem on the cadaver on 19.09.2009. The post-mortem report



submitted by him is Ext.3. P.W.12 after recording the fardbeyan and preparing the panchnama of the dead body of the victim came back to Garkha Police Station whereafter a formal F.I.R. (Ext.5) was drawn which ensued investigation. In course of investigation, P.W.11 visited the place of occurrence, recorded the C.D. statement of the witnesses and obtained the post-mortem report (Ext.3) and finding the accusations true, charge-sheet was laid by P.W.10, who had, by then, taken over as the Officer-in-charge of the Police Station. The case was committed to the Court of Session and, on transfer, the same came on the file of learned Trial Judge where charges were framed, read over and explained to the appellants to which they pleaded not guilty and claimed to be tried. The defence of the accuseds-appellants was complete denial of their complicity in the crime. They set up a plea of false implication due to old land dispute between them.

3. In order to bring home the guilt, the prosecution examined 12 P.Ws. P.W.1 (Shiv Shankar Singh) is a distant relative (father-in-law) of the informant. He was during the relevant time at the bazaar when the victim managed to reach there after having received fire arm injuries. P.W.2 (Manager Singh) is also one of the relatives of the informant who along with P.W.3 (Sushil Singh) (brother-in-law of the informant) were travelling to Chapra and had seen assault on the victim at the hands of the appellants. P.W.4



(Nagendra Singh) is uncle of the deceased and a hearsay witness. On hearing about the incident, he had gone to the hospital. He is also a witness to the inquest proceeding. P.W.5 (Krishna Singh) is another uncle of the deceased. He has given the hearsay account of the occurrence. P.W.6 Ram Nath Singh is another uncle of the deceased who, on getting information of the occurrence, reached the Chintawan Bazar and took the victim/injured to hospital with Subhash Singh (not examined). He is also one of the attesting witnesses to the recording of the fardbeyan by his brother (P.W.9). P.W.7 (Raj Nath Singh) is brother of the informant. He is also one of the attesting witnesses to the fardbeyan (Ext.4). P.W.8 (Dr. Anil Kumar) is the Autopsy Surgeon who conducted the post-mortem examination on the dead body of the victim on 19.09.2009 and proved the post-mortem report (Ext.3) P.W.9 (Devendra Prasad Singh) is the informant of the case who had reached the hospital in the evening of 18.09.2009 whereafter P.W.6 had arrived with the victim. He remained with the victim until he was declared dead. P.W.10 (Om Prakash) is the second Investigating Officer of the case who laid charge-sheet. P.W.11 (Mahesh Kumar) is the first Investigating Officer who had undertaken the investigation upon registration of the case. P.W.12 (Sriram Mishra) is Sub-Inspector of Police who was then posted at Garkha Police Station. On instruction from the Officer-in-charge, he had gone



to the hospital in the evening of 18.09.2009 and had recorded the fardbeyan of the informant at the hospital and also prepared panchnama. On a critical analysis of the evidence, the learned Trial Court held the appellants guilty of the charge. They were convicted and sentenced in the manner stated above.

4. We have heard Mr. Basant Kumar Singh who appeared in support of the appeal as well as Mr. S.N. Prasad, APP for the State.

5. One of the submissions made on behalf of the appellants is that there is no independent witness to support the case. He submits that P.Ws 1,7 and 9 are family members. He also submits that P.W. 1,2 and 3 are witnesses by chance.

6. Per contra, the learned APP appearing on behalf of the State submits that P.W. 1 who is the father-in-law of the informant had come to the tea shop at Chintaman Bazar and was present at the Bazar when the victim came thereafter, having received the firearm injuries.

7. As regards P.W. 1 it may be relevant to point out that in fact he had informed the P.W. 6 on phone about the victim having sustained firearm injuries. In his deposition he has clearly stated that while he was on his way to Digawara, he had stopped at Chintaman Bazar for having tea. P.W. 1 has deposed that when he had finished



½ of his tea, then the victim arrived there riding his motor cycle. He has further deposed that in fact the victim had informed him about the incident. He also deposed that upon his information P.W.6 Ram Nath Singh (Uncle) and one Subhash Singh (who has not been examined), arrived the place on a vehicle (Bolero) and took the victim Manoj to PMCH. In his deposition P.W. 1 has also stated that victim Manoj after sustaining the firearm injuries, when he was sitting on the motor cycle at Chintaman Bazar, had disclosed to him about the incident of firing upon him by the appellants Binod Singh and Satyanarayan Singh.

8. P.Ws. 2 and 3 have deposed as eye-witnesses. It is their consistent statement that they were riding on motorcycle from their home to Chapra and P.W. 3 was driving the motor cycle, and when they reached about 500 meters east of Chintaman Bazar then they saw appellants Satyanarayan Singh and Binod Singh over taking the motorcycle of Manoj Singh and tried to stop the Motorcycle of the victim. While the victim Manoj Singh was still sitting on the motorcycle, both Satyanarayan Singh and Binod Singh fired on the victim Manoj Singh with their country made pistols. Further the consistent deposition of P.Ws. 2 and 3 is to the effect that on seeing them (P.Ws. 2 and 3) the accused Binod Singh (one of the appellants) threatened to shoot Sushil Singh, P.W. 3. On receiving



such threat Sushil Singh P.W. 3 who was driving the motor cycle and his pillion, Manager Singh P.W. 2 both became nervous and drove away on the motor cycle to their homes. In their deposition(s) they have further stated that later on they enquired about the victim Manoj Singh who was by then shifted to the hospital. On the next day, i.e. on 19.09.2009 they went to PMCH where they learnt that the victim had passed away. Thereafter, both P.Ws. 2 and 3 informed the family members of Manoj (victim) about the assault by fire arm on the victim by the appellants. Both P.Ws. 2 and 3 met the Investigating Officer at PMCH who asked them for having their statements recorded after the last rites of Manoj was completed. P.W. 2 has specifically deposed that both Satyanarayan Singh and Binod Singh fired one shot each upon the victim from a distance of 3-4 feet. He also identified the accuseds. P.W. 3 has also stated to have identified the assailant (accused persons) as he has been visiting the village of the informant for last 15 years.

9. From the above, it is quite obvious that the evidence of P.Ws 2 and 3, who are eye-witnesses, is substantially consistent and supports the prosecution case of the accuseds Binod Singh and Satyanarayan Singh having caused the fatal firearm injuries. Their deposition of fleeing away from the place of occurrence on becoming nervous due to threat held out by the two armed assailants (accused



persons), appears to be natural and consistent with normal human conduct. From their deposition, it is quite evident that after having regained their composure they went to the hospital and informed the family members. They subsequently got their statements recorded 3-4 days later on. Their deposition(s) leave no doubt on the factum of chasing the victim by the appellants and inflicting firearm injuries upon him which caused his death.

10. P.W. 5, the uncle of the deceased, in his deposition has identified the accused persons in Court as they were his neighbours. On coming to know about the incident he reached Chintaman Bazar on a motorcycle along with one Mukesh. He says that he saw Manoj in an injured condition and on enquiry Manoj stated that the appellants Satyanarayan Singh and Binod Singh had shot at him. This witness corroborates the fact that Subhash Singh and Ram Nath Singh were also present there and that they had taken Manoj Singh to PMCH on Bolero vehicle. Nothing tangible has been elicited by defence in his cross-examination.

11. The deposition of P.W 7, brother of the informant and uncle of the victim, discloses that while he was at Dhanbad when his brother (informant) informed him on his mobile that victim Manoj had sustained firearm injuries and that he had been taken to PMCH for treatment. He further deposed that in the same night he reached



PMCH where the victim was undergoing treatment. It is at PMCH that P.W. 7 was informed that the appellants Satyanarayan Singh and Binod Singh had caused firearm injuries. Information to this effect was given by his brothers at PMCH. He has also deposed that Investigating Officer of Garkha P.S. was there and had recorded the fardbeyan of P.W. 9 on which informant P.W. 9, P.W. 6 as well as P.W. 7 had put their signatures. P.W. 7 has proved his own signature as attesting witness on the fardbeyan as Ext. 2/2

12. P.W. 9 is the informant whose fardbeyan (Ext. 4) was recorded on 19.09.2009 about 10.30 a.m. at the hospital. On the basis of the said fardbeyan a formal FIR (Ext 5) was drawn up on 20.09.2009. He is the uncle of the deceased (victim). In his deposition he has stated that the victim Manoj Kumar used to live with him near Rajapur in Patna for pursuing his study. He has further stated that the accused persons are residents of his village Rajupoor with whom he does not have good relation. Cases are pending between them. On 17.09.2009 his nephew (victim) had come to Rajupoor from Patna. He also deposed that on 17.09.2009 itself he had received information that Binod Singh (one of the accused) resorted to firing at his door and threatened to commit murder. He has deposed that P.W. 6, his elder brother, informed him on 18.09.2009 at about 01.30 p.m in the day that Manoj Kumar while traveling to Patna on motorcycle was shot



and that he is at Chintaman Bazar. He instructed him to reach PMCH where they were taking Manoj (victim) on a Bolero vehicle. On receiving such information P.W. 9 reached PMCH whereafter between 3 - 3:30 afternoon his brother Ram Nath Singh and Subhash Singh reached there with Manoj in the Bolero vehicle. He has further stated that at PMCH he had a talk with Manoj Kumar (victim) who told him that Satya Narayan Singh and Binod Singh of their village had inflicted on him the firearm injuries. The victim, as per the deposition of P.W. 9, had narrated the entire incident to him, that while he was about 500 meters east at Chintaman Bazar, appellants Binod Singh and Satyanarayan Singh over took him on a motor cycle, stopped him and fired shots at him. He further told him that a 3rd person of short stature was driving the motor cycle of the assailants. After shooting him they fled towards west (Chintaman Bazar). It is his deposition that the victim Manoj was taken to PMCH for treatment, and was operated upon where after he survived till the next morning when he finally succumbed to his injuries at 07.05 in the morning of 19.09.2009. He has also deposed that he had given the information regarding the incident to the Investigating Officer of Garkha P.S (P.W. 12) who had reached at PMCH. The fardbeyan was read over to him and on finding the same to be correct, he had put his signature. His brothers Ramnath Singh and Rajnath Singh had also put



their signature on the aforesaid fardbeyan as the attesting witnesses. He proved his own signature as well as that of his brothers Ram Nath Singh and Rajnath Singh which are Exts. 2, 2/1 and 2/2. He has stated that his fardbeyan was recorded by the I.O of Garkha P.S. namely, Shri Ram Mishra P.W. 12.

13. From the deposition of the aforesaid P.Ws. 1, 2, 3, 7 and 9 there emerges a consistent chain of events. All give credence to the prosecution story of the accused persons assaulting the victim Manoj by fire arm after over taking and stopping him at about 500 yards east of Chintaman Bazar. The ocular evidence of P.Ws. 2 and 3 fully supports the case propounded by the prosecution as eye-witness. Their testimony further establish arrival of P.W. 9 and P.W. 7 at PMCH, the talk of the victim with P.W. 9 before being taken for treatment/operation wherein he had disclosed/narrated the entire incident and death of the victim Manoj as a result of firearm injuries caused by the accused persons during the course of his treatment at PMCH next morning at about 07.05 a.m. This entire incident is supported by the ocular evidence as well as by the information given out by the victim himself to P.W. 9 in the afternoon about 3-4 hours after the incident which is in the nature of an oral dying declaration given by the victim to P.W. 1, P.W. 5 and P.W. 9. The consistent case emerges from the evidence is the existence of prior inimical terms and



the fact that one day prior to the incident the accused Binod Singh had resorted to firing at his door and meted out threats to the brother of P.W. 9. Thus, motive is also present and supports the commission of the murderous attack by the two accused persons upon the deceased.

14. At this stage it would be relevant to refer to the post-mortem report which has been proved by P.W. 8 Dr. Anil Kumar of PMCH. In his deposition he has stated that he had performed the post mortem examination on the dead body of Manoj Kumar at 02.30 p.m on 19.09.2009. He found two ante mortem firearm injuries on the body of the deceased victim. The findings in the postmortem report are as follows :

“1. External Examination :

Average built. Rigor Mortis present all over body. No sign of decomposition. I.V. Cath dorsum of both hand and left foot. On removal of Bandage IV cannula found on right side neck. Chest led colostomy wound right side abdomen. Blood mixed forthcoming colostomy from mouth and nose.

Anti mortem injury found as follows :—

On removal of bandage, stitched wound (surgical operation wound) 10/1/2” long situated in mid line abdomen between 2” below xiphisternum and 3/1/2” above pubic symphysis.

2 - Entry wound-stitched wound of 1” length on right side abdomen situated 8” below right nipple. On right eliac region. The margin was blackened and appears to be entry wound of fire arm however no bullet was recovered from abdominal cavity and may be recovered by operating surgeon as



there was no exit wound was found in abdomen.

3(A) Entry wound - Lacerated wound of size $\frac{3}{4}$ " x $\frac{1}{2}$ " on antero medial aspect of right fore arm margin was blackened.

(B) Exit wound-Lacerated wound of size - $\frac{3}{4}$ " x $\frac{1}{2}$ " on postero medial aspect of right fore arm.

Both wound was fused as bullet passed superficially making a superficial track.

On dissection - Cranial and spinal canal - pale.

Thorax Both lung pale.

Heart - Right side chamber contained blood, left side empty.

Abdomen – Cavity full of pus colostomy done on right side, evidence of surgical repair of gut at four places found. Mesentary tear was also repaired. Liver and spleen congested, urinary bladder empty.

Opinion – 1 cause on injury –

Injury no. 1 and colostomy made by surgeon (operating wound) caused by sharp object. Injury no. 2, 3A and 3 B all caused by fire arm.

Cause of death – injury no. 2 and 3 which causes rupture of gut and mesentery. Detail injury may be obtained by operating surgeon.

Time elapse since death-
6 to 24 hours approx."

15.The deceased having received these injuries survived for several hours. The evidence of P.Ws. 1,2, 3,7 and 9 gets full support by the medical evidence of P.W. 8 and the postmortem report (Ext 3).

16. One of the submissions made by the defence counsel is that the conduct of P.Ws. 1,2 and 3 was unnatural, inasmuch as they



made no efforts to give first aid to the victim or an information to the police.

17. From the depositions above noted it is quite apparent that P.W. 1 had immediately informed the P.W. 6 to come and take the victim. It is on his information that P.W. 6 and one Subhash Singh had come with the Bolero Vehicle for treatment. The fact that the victim Manoj has driven his motor cycle for about 500 meters after the incident and the later fact that he survived till the next morning establishes that his condition was not so bad. The victim, as per deposition of P.Ws, was sitting on his motor cycle until P.W. 6 reached Chintaman Bazar. These facts along with the fact that P.W. 1 had just seen the victim Manoj who had sustained firearm injuries and had already informed P.W. 6, it is only obvious that P.W. 1 must have been shaken by the incident and was only waiting for P.W. 6. Thus, his conduct seems only natural.

18. The another submissions made by the counsel for the appellant is that none of the witnesses have mentioned blood stains at the Bazar where the victim was present for 40-45 minutes. Once again it would be relevant to refer to the post-mortem report which shows out of the two firearm injuries, one was on the right side of the abdomen about 8" below right nipple. In the post-mortem report it is clearly mentioned that no exit wound was found in the abdomen.



Opinion of the Doctor was that the bullet may be recovered by operating surgeon. Since there was no exit wound, there is less chance of uncontrolled/profuse bleeding. The other gun shot injuries was sustained on the right forearm. As per opinion of the Doctor (P.W. 8) it was “fused as bullet passed superficially making a superficial track”. Again, even as per this injury, there is no chance of uncontrolled and profuse bleeding so as to invite attention of any noticeable unusual trail or pool of blood at the Chintaman Bazar. Apart from that mere non mentioning of any blood stains at Chintaman Bazar cannot be considered fatal to the entire sequence of events established by reliable and consistent evidence given by P.Ws. 1, 2, 3, 7 and 9.

19. One more submission made by the defence counsel was that oral dying declaration was a very weak piece of evidence which was required to be proved beyond all reasonable doubt. The said submission may carry some force if in a given case conviction is to be sustained merely on an oral dying declaration. In the instant case apart from the oral dying declaration made by the victim to P.Ws 1, 5 and 9 there is also the ocular evidence of P.Ws 2 and 3 and the corroborative evidence being the post-mortem report. The said submission of the appellant is therefore misplaced as the instant case is not one wherein there is no other evidence or material except oral



dying declaration.

20. After considering the aforesaid submissions made on behalf of the appellants and the APP for the State and upon consideration of the relevant depositions and other evidence available on record, we find it a case where the evidence on record sufficiently establish the guilt of the two appellants beyond all reasonable doubt. The prosecution in our opinion, succeeded in establishing the case under Section 302/34 of the Indian Penal Code and 27 of the Arms Act. The submissions of the counsel for the appellants do not make out a case where the reliable depositions/evidence on record would be discarded. The appellants are thus, found guilty of the charge framed against them. The judgment of conviction dated 25.02.2013 and order of sentence dated 28.02.2013 are, thus, affirmed.

21. The appeal is accordingly, dismissed.

(Madhuresh Prasad, J)

(Kishore Kumar Mandal, J)

(Kishore Kumar Mandal, J)

Prakash

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