

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.558 of 2013

Arising Out of PS. Case No.-132 Year-2001 Thana- KHIJARSARAI District- Gaya

Umesh Singh @ Sudama Singh, S/O Suryanath Singh, Resident Of Village-
Dema Fatehpur, P.S.- Khizersarai, District- Gaya

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Shri Ajay Kumar Thakur, Advocate Shri Md. Imtiyaz Ahmad, Advocate
For the Respondent/s	:	Shri Ajay Mishra, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 25-01-2018

The sole appellant, has approached this Court by filing the present Appeal under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the “Cr.P.C.”) against judgment of his conviction and sentence. By the judgment dated: 18.04.2013 the appellant was convicted for the offence under Section 302/34 of the Indian Penal Code, 1860 (hereinafter referred to as the “I.P.C.”) and Section 27 of the Arms Act, 1959 (hereinafter referred to as the “Arms Act”) and by order of sentence dated: 22.04.2013 he was directed to undergo rigorous imprisonment for life and was imposed a fine of Rs. 10,000/- under Section 302/34 of the I.P.C. and in default of payment of



fine, he was directed to further undergo imprisonment for six months. For offence under Section 27 of the Arms Act, the appellant has been directed to undergo rigorous imprisonment for three years and a fine of Rs. 3,000/- and in default of payment of fine, he was directed to further undergo imprisonment for three months. The judgment of conviction and sentence was passed by Shri Md. Perwez Alam, learned Adhoc Additional District & Sessions Judge IInd, Gaya (hereinafter referred to as the “trial judge”) in Sessions Trial No. 66 of 2011 / 87 of 2005 (S.J.) {arising out of Khizersarai P.S. Case No. 132 of 2001}.

2. Short fact of the prosecution case is that on 28.11.2001 at 20.00 Hours (8.00 P.M.) fardbayan of Ranjit Singh, S/o Ashlok Singh (deceased) of village: Dema Phatehpur, P.S. – Khisarsarai, District :- Gaya was recorded in the Emergency Ward of Magadh Medical College and Hospital (hereinafter referred to as the “M.M.C.H.”) . The fardbayan was recorded by Sub Inspector of Police Sri R.S. Paswan, O/C Magadh Medical Police Station, Gaya (M.M.P.S., Gaya). The said fardbayan was given by the informant in presence of his injured father Ashlok Singh who was lying on bed. In the fardbayan the informant disclosed that on the same day in morning at about 7.00 A.M. his father , one Balkeshwar Manjhi (not examined) and Sanjay Singh / P.W. 1



were returning after seeing the field. While they were about half kilometer before his village, Umesh Singh (appellant), S/o Suryanath Singh, Suryanath Singh, Ramswaroop Singh, Ramesh Singh and other 2-3 persons variously armed, surrounded them and Suryanath Singh immediately after noticing the father of the informant by using filthy language ordered to kill him by giving bullet shot. Immediately thereafter, Sudama Singh @ Umesh Singh (appellant) fired from his pistol which hit on abdomen of his father. Others also started firing. When persons nearby from village arrived there, all the accused fled away. The informant stated that at that very time he was in Gaya and when his father reached in M.M.C.H. he got information from his father. The informant stated that since at the time of fardbayan his father was seriously injured the informant will give detailed facts subsequently. Balkeshwar Manjhi and Sanjay Singh / P.W. 1 anyhow saved their life by fleeing away from the place of occurrence. He stated that all the accused persons were of his own village and claimed that all the aforesaid accused persons with intent to kill his father after surrounding his father had tried to kill him by giving fire arm injury. The said fardbayan was signed by the informant. Besides him, one Amrendra Singh also put his



signature as witness to the fardbayan, however, Amrendra Singh Arun was not examined.

3. After recording fardbayan a formal F.I.R. was drawn on the next date i.e. on 29.11.2001 at 16.30 Hours (4.30 P.M.) vide Khizersarai P.S. Case No. 132 of 2001 for the offences under Sections 147/ 148/149/341/326/307 of the I.P.C. and Section 27 of the Arms Act against four F.I.R. named accused persons namely: 1- Umesh Singh , S/o Suryanath Singh/ appellant; 2- Suryanath Singh, 3- Ramswaroop Singh, 4- Ramesh Singh and other 2-3 unknown persons. Since subsequently the injured died, by order of the Court on 22.12.2001 Section 302 of the I.P.C. was also added in the F.I.R. The Police after registering F.I.R. investigated the case and during investigation the appellant was arrested and thereafter, charge-sheet was submitted on 11.12.2004 against the appellant keeping investigation open against other accused persons. After submission of charge –sheet, on 13.12.2004 learned Chief Judicial Magistrate, Gaya took cognizance of offence, and thereafter, on 17.01.2005 the case was committed to the court of Sessions. Finally, on 2.4.2005 charge was framed against the appellant for commission of offence under Section 302/ 34 of the I.P.C. and Section 27 of the Arms Act.



4. With a view to prove its case, from the prosecution side altogether thirteen witnesses were examined. Out of thirteen witnesses, P.W. 1/ Sanjay Kumar Singh and P.W. 13/ Randhir Kumar (son of deceased) were examined as eyewitnesses to the occurrence, whereas P.W. 2 /Santra Devi (wife of deceased) and P.W. 3 /Aneeta Devi (daughter of the deceased) have come forward to depose as if injured before his death had made disclosure statement as to how he received injury and who were involved in the crime. P.W. 4 / Ranjeet Singh is the informant whereas, P.W. 9 / Deepak Yadav, P.W. 11 / Chunni Singh and P.W. 12/ Abhimanyu Singh are formal witnesses. P.W. 8 / Dr. Tara Bakla had firstly examined injuries of the deceased; P.W. 7 / Dr. Arun Kumar Singh conducted post -mortem examination on the dead body of the deceased, P.W. 6 / Pawan Kumar is the first investigating officer, P.W. 5 / Prakash subsequently took charge of investigation on 15.8.2003 and P.W. 10 / Sunil Kumar had submitted charge- sheet in the case against the appellant.

5. Sri Ajay Kumar Thakur, learned counsel for the appellant after referring to entire evidences, has argued that the prosecution has not proved its case beyond all reasonable doubt and as such, the learned trial judge was required to pass judgment of acquittal. It has been argued that it was a case of no evidence , however,



subsequently, due to land dispute, a case was developed as if the appellant was the main assailant in the occurrence and falsely he was implicated. Sri Thakur has argued that though the informant in his fardbyan has narrated the story which according to the informant was provided by the injured (deceased) himself, however, on examination of the evidence of P.W. 8 / Dr. Tara Bakla it is evident that the injured (deceased) was not at all in a position to make any statement. By way of referring to the evidence of P.W. 8 particularly when he was examined on recall, it has been argued that this witness had proved the bed head ticket and this witness has stated that while he was admitted in hospital, the injured was having no pulse and even blood pressure was also not detected. In sum and substances it has been argued that on the basis of evidence of P.W. 8 it is clear that the story developed by the informant that he was informed by the injured (deceased) regarding participation of the appellant in the case itself appears to be not believable. He further submits that once the injured was having no pulse rate nor there was any reading of his blood pressure, the case of prosecution may not be accepted on the point that the deceased made disclosure to either of the witnesses whether informant / P.W. 4 or P.W. 2 or P.W. 3 (wife and daughter respectively). Sri Thakur has further argued that the



prosecution in the case has miserably failed to establish even the place of occurrence. By way of referring to the evidence of P.W. 2, P.W. 5, P.W. 6 and P.W. 13 it has been argued that none of the witnesses has stated regarding the exact place of occurrence. Some witnesses said that while they reached, they found the injured lying on the ridge of the field. Some witnesses said that he was lying in the field and some of the witnesses had said that he was lying near the road. Besides this, by way of referring to the evidence of the first investigating officer i.e. P.W. 6 /Pawan Kumar particularly paragraph no. -2 of his evidence he submits that the investigating officer has given a description of different place of occurrence. Moreover, investigating officer has not found any blood -mark on the place of occurrence, whereas it was case of the prosecution that after getting gun shot injury the injured was lying at the place of occurrence and in such a situation in normal course the investigating officer would have noticed some blood- mark at the place of occurrence. It has been argued that since no blood- mark was available on the place of occurrence the investigating officer had not stated anything regarding finding of blood- mark on the place of occurrence. It has been argued that in a case if the prosecution fails to establish even the place of occurrence that too in the type of occurrence which has been



alleged in the present case, certainly benefit of doubt is required to be given to the defence. He further submits that most of the witnesses were given suggestion that it appears that some group of extremists had injured the father of the informant and considering that he was dead, his body was thrown in the field and thereafter, due to land dispute the appellant, his father and others were framed as accused in the present case. By way of referring to the evidences it has further been argued that the deceased was himself having criminal antecedent, who was a convict and after serving sentence of life imprisonment, he was released. According to Shri Thakur it appears that the deceased was having animosity with number of other persons and as such he might had been killed by someone else and due to land dispute the appellant was victimized in the present case. Sri Thakur, learned counsel for the appellant has also raised doubt on the prosecution case on the ground that the prosecution purposely withheld the evidence of independent witnesses. By way of referring to the fardbyan it has been argued that informant had stated that his father along with P.W. 1/ Sanjay Kumar Singh and Balkeshwar Manjhi while was returning after seeing the field was intercepted and given fire arm injury and without any rhyme and reason the prosecution withheld the evidence of Balkeshwar



Manjhi who was a natural and independent witness in the present case. According to learned counsel for the appellant all the witnesses are close relatives of the deceased. P.W. 1 / Sanjay Kumar Singh was nephew of the deceased, P.W. 2 / Santra Devi [widow of deceased], P.W. 3 / Aneeta Devi [daughter of the deceased] and P.W. 4 / Ranjeet Singh [informant] is the son of the deceased and P.W. 13 / Randhir Kumar [son of the deceased] are only material witness in the case. Otherwise, P.W. 9, P.W. 11 and P.W. 12 are formal witnesses, whereas, P.W. 5, P.W. 6 and P.W. 10 are police officials who had participated in investigation and P.W. 7 and P.W. 8 are doctors . According to him all the witnesses who had supported the prosecution case on material point were admittedly having animosity with the appellant, and as such, there was every chance of false implication of the appellant in the present case. In sum and substance it has been argued that prosecution has not given any explanation as to under what circumstances once as per the prosecution case P.W. 1 and P.W. 13 were accompanying the injured, instead of recording fardbyan of those persons in the case P.W. 4 has turned as informant as if he was provided information from the mouth of the injured (deceased). In sum and substance it has been argued that the prosecution in the present case has not established its case beyond



all reasonable doubt and considering the fact that there was old animosity in between the parties, the appellant deserves to be acquitted by way of extending benefit of doubt.

6. Shri Ajay Mishra, learned Additional Public Prosecutor has vehemently opposed the Appeal. He submits that in the case P.W. 1 is none else but the person who had gone along with the deceased for watching the field and while returning in his presence occurrence had taken place and as such, evidence of P.W. 1 in the present case may not be ignored. He further submits that of – course in the F.I.R. name of Randhir Kumar / P.W. 13 was not mentioned but on examination of his evidence no doubt can be raised on his veracity. Besides this, according to Sri Mishra on examination of evidence of P.W. 2 and P.W. 3 it is clear that immediately after getting information regarding the occurrence they came out from the house and reached the place of occurrence and they noticed that father of the informant was lying in injured condition and he was in a position to make statement and injured himself disclosed as to how occurrence had taken place in which the appellant has given shot from his pistol which hit the injured . He submits that the prosecution case is based on dying declaration of the deceased, of- course, such declaration was given before P.W. 2, P.W. 3 and the informant himself. He further submits that



the submission made by learned counsel for the appellant regarding the condition of the injured at the time of his admission in the hospital is also not sustainable. Learned Additional Public Prosecutor has drawn our attention to the evidence of P.W. 7 / Dr. Arun Kumar Singh who had conducted post- mortem examination on the person of the deceased and he submits that this witness on being asked had stated that it cannot be ruled out that in such injured condition the injured would have made statement.

7. Besides hearing learned counsel for the parties, we have minutely examined the entire evidences i.e. oral and documentary evidence. It would be appropriate to firstly discuss the evidence of the informant / P.W. 4 (Ranjeet Singh) who is non else but the son of the deceased and in his evidence he has stated that on the date and time of occurrence while his father was returning with his younger brother Randhir / P.W. 13 , Sanjay / P.W. 1 near the pyne the accused persons about 6 - 7 in numbers variously armed came out from the Arahar field and surrounded his father. Suryanath ordered to fire . Thereafter, Umesh Singh (appellant) from his pistol shot fire which hit his father and after receiving fire arm injury his father fell down . Immediately thereafter his two brothers raising hulla went towards the village and informed his all family members regarding the occurrence. Again they,



along with family members returned to the place of occurrence and noticed that his father was lying on road in injured condition. He was loaded on MAXI and thereafter, he was carried to M.M.C.H. P.W. 4/ informant has clarified that at that very time he was in Gaya where he got information regarding the occurrence and thereafter, he reached to the M.M.C.H. and he got entire information from his father. In the M.M.C.H. his father was operated and on the same date in night at about 8.00 P.M. Police Officer of M.M.C.H. arrived and recorded his fardbyan . He proved his signature on the fardbyan which was marked as Exhibit- 1. He also identified the signature of his cousin brother namely Amrendra Singh Arun on the fardbyan and same was marked as Exhibit -1/1. As per his evidence on the next date doctor of M.M.C.H. referred his father to I.G.I.M.S., Patna and thereafter, they carried his injured father to Patna, however, due to non availability of doctor his father was not admitted there and he was taken to a private nursing home where he was admitted. Since in the nursing home his condition deteriorated, on 4.12.2001 the injured was carried to P.M.C.H. where he was admitted in Emergency Ward and on the next date on 5.12.2001 at 12.30 father of P.W. 4 died. He stated that in P.M.C.H. also Police officer of Pirbahore Police Station recorded his statement and on



the said fardbyan also he put his signature and post- mortem on the dead body of his father was conducted in Patna itself. In paragraph 8 of his cross -examination he further clarified that on the date of occurrence he was not in his village. He stated that whatever was stated by his father regarding the occurrence, he has disclosed in the case. His statement was recorded in M.M.C.H. itself. In paragraph no. 9 of his cross- examination P.W. 4 stated that before lodging case his father was completely conscious , however, after being operated he never got consciousness. In paragraph no. 10 of his cross -examination this witness tried to clarify the reason for not introducing Randhir as informant and he stated that Randhir was eye witness to the occurrence and since he was not well he was not asked to lodge case. This witness denied the suggestion that since injured Ashlok (deceased) was not disclosing the name of the appellant in the present case, they purposely did not allow the Police to record his statement. He further denied that the father of the informant was killed by some unknown accused and he was thrown in the field of Arahar considering as if he had already died and he also denied that due to animosity the appellant and his father and others were made accused and there was dispute regarding registry of land.



8. On going through the evidence of the informant/ P.W. 4 it appears that no plausible explanation was given as to under what circumstances once there were eye witnesses to the occurrence, this witness who was not present in the village at the time of occurrence was introduced as informant. Further no plausible explanation has been given as to why in a case in which alleged occurrence had taken place at 7.00 A.M. and in injured condition the father of the informant was carried to M.M.C.H. who was admitted at 10.15 A.M. why fardbayan was shown to be recorded at 8.00 P.M. in the night i.e. almost after thirteen hours from the time of occurrence, whereas it is the case of the informant that his fardbayan was recorded by the police officer who was posted in the hospital itself, and as such no much reliance can be placed on the evidence of the informant. Moreover, the evidence of this witness that his father was completely conscious and in a position to make statement also appears to be not believable in view of the evidence of P.W. 8 / Dr. Tara Bakla . This doctor was posted at A.N.M.M.C.H., Gaya as Resident Surgical Officer and on 28.11.2001 at about 10.15 A.M. he examined the father of the informant and noticed the following facts:-

“1- Lacerated wound 1 ½” x ½” x cavity deep on left side of lower part of front of chest in the margin inverted. Operation note- unclear G/A abdomen was opened by mid line incision whole peritoneal fluid was full of blood and intestinal



contents. There was rupture of spleen and two big pents on stomach. Tear of Mesopolan and tear of mensentry at four places. Small intestine was stitched at two places and rupture of wall intestine at four places. There was tear of superior surface of urinary bladder. Nature of injury – injury is grievous in nature caused by fire arm injury within 12 hours.”

9. After his cross- examination he was discharged on 8.9.2009 however, subsequently, his evidence was recorded on re-call on 28.02.2011 in which he proved the bed head ticket of the hospital regarding admission of injured- Ashlok Singh. In paragraph no.- 6 of his evidence he stated that while injured was admitted he was in shock. He could not notice pulse rate nor blood pressure could be recorded. He further stated that patient was not in a condition to speak. On examination of the evidence of P.W. 8 regarding the condition of the injured (deceased), the evidence of P.W. 4 as if entire fact was disclosed by the deceased to him appears to be doubtful.

10. Evidences of P.W. 1 /Sanjay Kumar Singh and P.W. 13/ Randhir Kumar may not be sufficient to approve the conviction and sentence of the appellant due to the simple reason that story introduced by the informant itself has come within the cloud of doubt. Of- course, P.W. 1 who is non else but nephew of the deceased and P.W. 13 (son of the deceased) have claimed to be eye witnesses to the occurrence, otherwise also in the case



prosecution has miserably failed to establish the place of occurrence. The investigating officer has not at all stated as if he had noticed any blood- mark on the place of occurrence. The description of the place of occurrence which has been given by the investigating officer / P.W. 6 is also not exactly similar to the place of occurrence as has been described by the informant or other witnesses. P.W. 2 has stated that when she came out and reached she noticed that her husband was given gun shot injury near the pyne whereas P.W. 13 /Randhir Kumar (son of the deceased) has stated that while he along with the deceased reached forward 7-8 baans from the pyne the accused persons came out from the Arahar field and thereafter, Umesh Singh fired. However, the investigating officer in paragraph no. 2 while describing the place of occurrence has stated as if the place of occurrence was near the road in the village Dema Phatehpur near the Southern Bhui Toli near the road towards Upthu. On examination of paragraph no. 2 of the evidence of the investigating officer as well as evidence of other witnesses, place of occurrence also appears to be doubtful. However, on examination of evidence of the investigating officer it appears that the investigating officer had conducted investigation in a perfunctory manner, otherwise he would have described each and



every fact regarding the place of occurrence. Even during the evidence he tried to say that place of occurrence was mentioned in paragraph no.- 4 of the case diary. Similarly, from the defence side also no appropriate questions were asked to disapprove the place of occurrence. Only at the time of hearing of the Appeal a dispute has been raised regarding the place of occurrence. Accordingly, there is no need to delve into the dispute regarding the place of occurrence, however on perusal of the evidences it is evident that no explanation has been given regarding recording of fardbyan belatedly, whereas, the injured was firstly treated at A.N.M.M.C.H. at 10.15 A.M. immediately after the occurrence and it is not a case that the Police Officer who was posted in M.M.C.H. hospital was waiting for recording statement of injured and subsequently after the injured was operated in night at 8.00 P.M. son of the informant namely- Ranjit Singh came forward as if he was informed by the injured regarding the entire occurrence. No reason has been assigned by the prosecution as to why the witnesses who had claimed to be ocular witness and were with the injured, had not come forward as informant of the case, instead fardbyan of Ranjit Singh / P.W. 4 was recorded who himself has admitted that at the time of occurrence he was not in the village and was in Gaya and in hospital itself he reached. It appears that



after gap of several hours he introduced the story of entire occurrence. The evidence of P.W. 2 and P.W. 3 may not be believed in view of the evidence of P.W. 8 which suggests that the injured was not in a condition to speak anything and as such, the introduction of story by the prosecution that injured had disclosed facts regarding the occurrence appears to be doubtful. Similarly, no plausible reason has been assigned as to why one of the person who was not relation of the informant's side and whose name was mentioned in the fardbayan was not examined as witness in the case. All the material witnesses are close relatives of the deceased and as such, on those evidences it would not be save to approve the judgment of conviction of the appellant particularly in view of the fact that there was land dispute in between the parties.

11. On examination of entire evidences, we are of the considered opinion that prosecution has not proved its case beyond all reasonable doubt, and as such, judgment of conviction and sentence of the appellant i.e. judgment of conviction dated 18.04.2013 passed in Sessions Trial No. 66 of 2011 / 87 of 2005 (S.J.) {arising out of Khizersarai P.S. Case No. 132 of 2001 } is required to be interfered with. Accordingly, judgment of conviction dated: 18.04.2013 and sentence dated 22.04.2013



passed in Sessions Trial No. 66 of 2011 / 87 of 2005 (S.J.) {arising out of Khizersari P.S. Case No. 132 of 2001 } by Shri Md. Perwez Alam, Adhoc Additional District & Sessions Judge, IInd, Gaya is hereby set aside. The Appeal is allowed. Since the judgment of conviction and sentence of the appellant has already been set aside and he is in jail, it is hereby directed to release him forthwith , if not required in any other case.

12. The Appeal is allowed.

(Rakesh Kumar, J)

(Arvind Srivastava, J)

praful/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	02 -02 -2018
Transmission Date	02 -02 -2018

