

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.228 of 1995

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Lal Mohan Singh, son of Kedar Singh, resident of village- Bhalauna Rampur, P.S.Phulwarisharif(Janipur), District-Patna	 Appellant/s
Versus	
State of Bihar	 Respondent/s

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with
Criminal Appeal (DB) No. 243 of 1995

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Subodh Singh, Son of Sri Jagat Prasad Singh, resident of village-Bhelura- Rampur, P.S.-Janipur (Phulwarisharif), District-Patna	 Appellant/s
Versus	
State of Bihar	 Respondent/s

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with
Criminal Appeal (DB) No. 247 of 1995

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Jitendra Singh, son of late Shiv Bachan Singh, resident of village-Bhelura- Rampur,P.S.-Janipur, District-Patna.	 Appellant/s
Versus	
State of Bihar	 Respondent/s

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Appearance :

(In Criminal Appeal (DB) No. 228 of 1995)

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

For the Respondent/s : Mr. Ajay Mishra, APP

(In Criminal Appeal (DB) No. 243 of 1995)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate

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

(In Criminal Appeal (DB) No. 247 of 1995)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate

For the Respondent/s : Mr. Ajay Mishra, APP

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

Date : 03-02-2018

All the three appeal arises out of judgment of conviction

dated 29.7.1995 passed by 12th Additional Sessions Judge,

Patna in Sessions Trial No. 200 of 1989 whereby the learned



Additional Sessions Judge has convicted all the three appellants for the offence under sections 302/34 and appellant in (Cr. Appeal No. 247 of 1995) has been further convicted for offence under section 27 of the Arms Act and vide order of sentence dated 12.8.1995 the appellants have been sentenced to undergo RI for life for offence under section 302/34 and sole appellant in (Cr. Appeal No. 247 of 1995) has been further sentenced to undergo three years for the offence under section 27 of the Arms Act. However, both the sentences against him was directed to run concurrently.

2. Mr. Promod Kumar Singh, learned counsel appearing in Cr. Appeal No. 228 of 1995 submitted that the trial court has convicted the appellants against the basic norms of criminal jurisprudence notwithstanding the fact that the evidence available on the record does not prove the case against the appellants beyond all reasonable doubt. He submits that in the instant case the specific allegation of murder of deceased was against Paras Singh who has been declared as absconder in this case, all appellants are quite innocent. Neither there is any eye-witnesses to the occurrence nor there is any overt act alleged against the appellant of Cr. Appeal No. 228 of 1995.

3. Mr. Singh submitted that the occurrence took place



allegedly on 24.2.1988 and after seven years of protracted the trial court convicted the appellants without any evidence indicating complicity of the appellants.

4. The prosecution case as narrated by the informant Raghubir Bhagat of village Raghunathpur and recorded as FIR by the police in Naubatpur police station on 24.2.88 at 10 P.M. in presence of his co-villagers Nagina Yadav, Bionod Prasad and Vidya Yadav is that in the evening of the same day Ramuna Yadav of same village had gone to the newly built temple of the village standing on eastern side road of the village for the purpose of showing 'Sanihaut' (evening light in the temple). He saw at about 6 P.M. the above three accused persons alongwith accused Paras Singh and Manoj Singh and two more unknown persons assembled on the road, a bit north west from the temple and amongst them, Paras Singh and Jitendra Singh were armed with pistol. Ramuna Yadav in the meantime, after doing Sanjhaut in the temple came out and moved a few steps towards Paras Singh fired his pistol hitting on the chest of Ramuna Yadav. The victim Ramuna Yadav cried "Jan Gail Ho Babu" twice or thrice and in a fit of agony moved ahead and fell down on north flank of the road. Thereafter the villagers Ramjatan Rai, Binod Rai, Sudheashwar Yadav who were irrigating their



wheat crop in the field beside the temple also came and stated to have seen the accused and identified them who fled away by opening blank firing. The informant thereafter had raised hulla of that occurrence whereupon the villagers assembled at the P.O. where the victim Ramuna Yadav was lying dead. He also stated that in the meantime two passer by coming from north side cautioned them from moving towards east as they had seen some persons standing armed with pistols. Thereafter, avoiding that road the informant taking alongwith aforesaid witness had through other course gone to the police station. The informant stated the cause for occurrence that the people of his village had to go to distant temple situated at Rampur village for prayer and in that course modesty of female members were being outraged by some male members and for avoiding such incident his villagers constructed temple in their own village where recital of Kirtan had started only three days before and finished only on previous day. In that course of installation of deity in new temple Kasaili and flower etc. offered to the deity of Rampur temple had been brought to new temple construction and that had peeved and enraged the people of Rampur. In construction of temple of Raghunathpur the victim Ramuna Yadav had a leading role and as such the accused persons who belonged to



Rampur village committed his murder.

5. The police on completion of investigation submitted charge-sheet against five accused persons and after taking cognizance, the case was committed to the court of sessions. The charge was framed under sections 302/34, 147 of the Indian Penal Code against the three appellants herein namely Manoj Singh, Lal Mohan Singh and Subodh Singh and Paras Singh whereas the charges under section 148 was framed against accused Paras Singh and the appellant Jitendra Singh. The appellant Manoj Singh died during the pendency of the case and Paras Singh absconded after he was released on bail and as such the trial commenced against the three appellants and the case of Paras Singh was separated and due to death of Manoj Singh the case was dropped against Manoj Singh.

6. On framing of charges the appellants pleaded not guilty and they were subjected to trial.

7. On behalf of the prosecution nine witnesses were examined whereas on behalf of the defence one witness was examined on the point of alibi of appellant Jitendra Singh.

8. Mr. Promod Kumar Singh submitted that in the instant case the allegation of firing at the deceased was specifically against accused Paras Singh whose case has been separated. He



is not the appellant before this court. The post-mortem report indicate that there is only one gun-shot injury found on the deceased which was the cause of the death of the deceased and so far as the appellant in Cr. Appeal No. 228 of 1995 is concerned, there is absolutely no allegation that he has in any manner participated in the alleged commission of murder of the deceased. He contended that from the material available on record, it would manifest that at the highest the appellant was seen at the place of occurrence but there is no allegation of any overt act alleged by any of the witnesses to establish complicity of the this appellant. He submitted that in the present case Fard-beyan was lodged at the instance of the informant who was examined in this case as P.W.1. From the Fard-beyan it is evident that the informant has stated that Paras Singh has fired on the chest of the deceased and sustaining such fire-arms injury, the deceased fell down and became restless. On the sound of firing, several persons reached the place of occurrence and they have seen the assailants. He claimed that Ramjatan Singh, Binod Singh and Sidheswar Yadav have reached the place of occurrence and they have also seen the assailants and many people of the village assembled at the place of occurrence and they have seen dead body of the deceased lying and



thereafter police was informed about the occurrence.

9. Referring to the aforesaid version of the informant in the Fard-beyan, he submitted that apart from the informant, others have not seen the actual occurrence of murder. They have assembled at the place of occurrence after hearing sound of firing on raising alarm by the informant. Referring to his deposition he submitted that even the informant has stated before the court that while he was moving towards **Devisthan** for lighting, he heard the remour that murder has taken place. When he reached the place of **Devistahan** he saw dead body of the deceased Ramuna Bhagat. He has stated that he has not seen the assailants. He has also admitted that he has signed on the Fard-beyan but contents of the Fard-beyan was not read over to him.

10. Mr. Singh referring to the deposition of P.W.1 submitted that the foundation of the present case is the Fard-beyan which was allegedly lodged by the informant claiming to be eye-witnesses of the occurrence but this witness has categorically stated before the court that he has not seen the occurrence and he denied the fact that content of the Fard-beyan was read over and explain to him and thus very foundation of the case set out in the Fard-beyan bellies the



prosecution case and as such it is rendered under serious cloud. He referred to the deposition of other witnesses to contend that apart from the informant no one has seen the occurrence as per Fard-beyan before the police and as such he admitted that when the foundation of the case as to the involvement of the appellant goes then the conviction of the appellants is unsustainable.

11. Mr. Singh further submitted that apart from the informant the only witnesses claims to be the eye-witness is P.W.8 but P.W. 8 has also been declared hostile by the prosecution as he has not supported the case of prosecution. The other witnesses according to Mr. Singh are not competent to throw light on the commission of crime and involvement of the appellant in the commission of crime.

12. Mr. Singh submitted that in the present case the I.O. was not examined in this case which caused serious prejudice. He contended that in the present case in absence of examination of the I.O. and eye-witnesses have turned hostile and not supported the prosecution case, conviction is not free from ambiguity. Commenting upon the appreciation of the trial court, he submitted that the trial court has wrongly placed reliance on deposition of P.Ws.4 to 5 to convict the appellant on deeper scrutiny of their deposition and on consideration of the entire



facts and circumstances, it is established beyond doubt that these witnesses are not the eye-witnesses but they are hearsay witnesses and under the aforesaid circumstances conviction of the appellant is unwarranted. He lastly submitted that when there is specific case of prosecution that Paras Singh has fired which caused death of the deceased, the conviction of the appellant under section 302/34 of the Indian Penal Code is unsustainable for the reason that there is absolutely no material to establish the common intention of the appellants in commission of crime. He has also submitted that motive attributed for commission of crime is artificial and does not appeal to reason to any sensible man for such trivial matter the appellant could commit offence,

13. Mr. Ajay Thakur, learned counsel appearing on behalf of the appellants Subodh Singh and Jitendra Singh submitted that in the present case there is no allegation of any overt act against the appellant Subodh Singh since the informant of the case who has named the appellant has not supported the prosecution case as to the implication of the appellant in commission of crime, the conviction of Subodh Singh is unsustainable and he deserves benefit of doubt in the absence of any cogent material to connect the appellant Subodh Singh in



commission of crime. He next submitted that when there is no evidence of any overt act against the appellant nor there is any allegation that he was equipped with any arm the conviction for the offence under section 302/34 of the Indian Penal Code is unsustainable.

14. Mr. Thakur submitted that trial court has committed error in relaying upon the various paragraphs of the case diary which is not substantive piece of evidence. He has also adopted the arguments advanced by Promod Kumar Singh that the defence has suffered immense prejudice on account of non-examination of the I.O. of the case as from the version of the witnesses there are apparent contradictions and in view of the fact that two witnesses have turned hostile and examination of the I.O. has vitiated the trial.

15. Mr. Thakur while arguing the case of the appellant Jitendra Singh submitted that in the present case the prosecution has made a pick and choose and without any reason no examination the witnesses named in the Fard-beyan namely, Nagina Yadav Binod Prasad and Sanjay Kumar and as such he submits that prosecution has made a pick and choose in the matter of examination of the witnesses. In addition thereto in the present case according to the prosecution large number of



villagers assembled at the place of occurrence but they were not examined.

16. Mr. Thakur submitted that trial court has not appreciated the evidence of witnesses in its natural perspective when para-4 claimed he reached the place of occurrence after hearing sound of firing yet he was accepted as eye witness to the occurrence, referring to the deposition of P.W.4. He submitted that in the absence of any overt act against the appellants drawing any inference that there was any common intention for commission of murder of the deceased and in the absence of definite material that there was any pre-arranged plan of commission of murder of the deceased, the conviction of the appellants is unsustainable. He submitted that the attending facts and circumstances does not in any manner suggest that the appellants have any intention to commit murder and as such they participated in the commission of crime and they contributed in commission of crime, the conviction is uncalled for.

17. Learned counsel appearing on behalf of the appellants submitted that in the present case the court has failed to appreciate that no independent witnesses or persons of nearby locality was examined in support of prosecution story although



they were available as per prosecution case which creates serious doubt on the prosecution story.

18. Mr. Ajay Mishra, learned A.P.P. appearing on behalf of the State submitted that in the present case mischief was played by the informant and prosecution has to suffer on account of somersault by the informant of the case and as such this court should direct the prosecution of the informant for retracting from the version made in the Fard-beyan. However, he could not be able to dispute the fact that against the appellants there is no allegation of any overt act. He has not been able to dispute the fact that the witnesses examined on behalf of the prosecution except the informant have assembled at the place of occurrence only after hearing sound of firing and as such they have assembled at the place of occurrence after the actual occurrence. He has also not disputed the fact that the doctor conducting the post-mortem has found only one injury on the chest of the deceased that was levelled against Paras Singh and not against these appellants.

19. We have gone on the materials available on record, we find that there is only one gun-shot injury found on the deceased and there is specific allegation of prosecution that the gun shot injury was caused by Paras Singh and not these



appellants. We have also examined the record of the present case and we find that there is neither any allegation nor any material that these appellants have in any manner participated in the murder of the deceased except the appellant Jitendra Singh and other two appellants were not even alleged that they were equipped with any weapon. The seizure memo of empty bullet is not conclusive to establish the fact that the appellant Jitendra Singh has made any attempt to fire either on the deceased or any other person. The allegation against him is that he has fired in the air. However, from the deposition of P.W.5, it appears that only one empty cartridge of bullet was found at the place of occurrence.

20. On perusal of the material on record and on appreciation of the submission of the parties, we are of the view that the factum of murder is not in dispute. We also find that there is no dispute about the place of occurrence the only dispute is manner of participation of the appellant in the commission of crime. Even the prosecution and the appellant during the course of submission has not disputed that there was only one gun-shot injury on the deceased and that was levelled against Paras Singh who was declared absconder in this case. Thus, in the totality of the facts situation when the informant



has not only declared hostile but also he was re-examined in the present case and on his version during his examination, cross-examination and re-examination materials have come to indicate that he has pleaded ignorance about the contents of the Fard-beyan and as such the foundation of the case against these appellants has been demolished by the deposition of the informant and failure of the prosecution to examine the I.O. in the present case. In addition thereto, we find substance in the submission of learned counsel for the appellants that villagers who rushed the place of occurrence as per prosecution case immediately after occurrence were not examined by the prosecution and they have made a pick and choose in the examination of the witnesses withholding of the material witnesses like Sanjay Kumar, Nagina Yadav who has been named in the Fard-beyan and they alleged to have seen the occurrence goes against the prosecution as withholding of the material witnesses and a pick and choose of the witnesses may be enough to draw adverse inference against the prosecution case. Thus, in the totality of facts situation, the witnesses examined on behalf of the prosecution are not reliable and their deposition is not sufficient to convict the appellants particularly the two witnesses P.W.7 and 8 have been declared hostile and



the other two witnesses on whose deposition that the prosecution relied for convicting the appellants are not the eye-witnesses as they reached the place of occurrence only after the occurrence took place and as such placing reliance on their deposition, the conviction of the appellants is not safe. In addition thereto, we find that the trial court has failed to discharge the mandatory provision of confronting the accused with all adverse circumstances surfaced during the trial while examining the the accused under section 313 of the Cr.P.C. In the present case we find that accused persons were not confronted with the materials which surfaced during the trial on which the trial court has convicted the appellants. The cumulative effect of the inconsistency in the version of prosecution witnesses, eye-witnesses turned hostile including the informant, non-examination of the I.O. of the case, no specific overt act against the appellants goes to show that the conviction of the appellants is not beyond all reasonable doubt and the attending facts and circumstances do suggest that there are serious doubt about the prosecution case as to the involvement of these appellants.

21. Appellants deserve benefit of doubt, accordingly, the appeal is allowed. The judgment of the trial court is set aside.



22. Since the appellants are on bail, they are discharged from the liability of bail bonds.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Ravi/-

AFR/NAFR	N/A
CAV DATE	N/A
Uploading Date	28.2.2018
Transmission Date	28.2.2018

