

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.776 of 2012

Arising Out of PS. Case No.-127 Year-2010 Thana- DALSINGHSARAI District- Samastipur

Murari Paswan S/O Late Raj Karan Paswan Resident Of Village- Dih Pagra,
Police Station- Dalsingsarai, District- Samastipur

... .. Appellant/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

with

Criminal Appeal (DB) No. 643 of 2012

Arising Out of PS. Case No.-127 Year-2010 Thana- DALSINGHSARAI District- Samastipur

Devanand Rai S/O Sri Ram Swarth Rai R/O Village - Pagra Lal Kuan, P.S.
Dalsingsarai, District - Samastipur

... .. Appellant/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

with

Criminal Appeal (DB) No. 691 of 2012

Arising Out of PS. Case No.-127 Year-2010 Thana- DALSINGHSARAI District- Samastipur

Sudhir Thakur S/O Late Ramdeo Thakur R/O Village- Harishankarpur, P.S.
Dalsingsarai, District- Samastipur.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

(In Criminal Appeal (DB) No. 776 of 2012)

For the Appellant/s : M/s. Sudama Singh,
Rajni Kanth Singh, Advocates

For the Respondent/s : Mr. Ashwani Kumar Sinha(APP)

(In Criminal Appeal (DB) No. 643 of 2012)

For the Appellant/s : M/s. Ajay Kumar Thakur
Ritwaj Raman, Advocate



For the Respondent/s : Mr. Ashwani Kumar Sinha , APP
(In Criminal Appeal (DB) No. 691 of 2012)
For the Appellant/s : Mr. Amish Kumar, Amicus Curiae
For the Respondent/s : Mr. Ashwani Kumar Sinha, APP

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date : 04-01-2018

No one appears on behalf of the appellant in Cr. App (DB)

No.691 of 2012 when the matter is taken up. In Cr. App (DB)

No.776/2012 and Cr. App (DB) No.643 of 2012, learned counsel
for the appellants is present.

Accordingly, Mr. Amish Kumar, learned counsel, who is
present in person, is requested to appear as *Amicus Curiae* in Cr.
App (DB) NO.691 of 2012.

Heard parties.

The appellants have filed this appeal assailing the
judgment of conviction dated 16.06.2012 and order of
sentence dated 18.06.2012 passed by the Ad hoc Additional
Sessions Judge-II, Samastipur in Sessions Trial Nos.121 of
2011 / 167 of 2011 arising out of Dalsingsarai P.S. Case
No.127/2010 by which the appellant, Murari Paswan, has
been convicted for the offences punishable under Section 302
of the Indian Penal Code and Section 27 (1) of the Arms Act



and he has been sentenced to undergo imprisonment for life with a fine of Rs.5,000/- and in default of payment of fine, he has further been sentenced to undergo rigorous imprisonment for four months under Section 302 of the Indian Penal Code and rigorous imprisonment for three years under Section 27(1) of the Arms Act with a fine of Rs.5,000/- and in default of payment of fine, he has further been sentenced to undergo rigorous imprisonment for four months. The appellants Sudhir Thakur and Devanand Rai have been convicted for the offences punishable under Section 302/34 of the Indian Penal Code and they have sentenced to undergo imprisonment for life with a fine of Rs.5,000/- each and in default of payment of fine, they have been further sentenced to undergo rigorous imprisonment for four months. However, both the sentences have been ordered to run concurrently.

The prosecution case, in brief, is that on 25.07.2010, at about 11.30, the informant (PW 2) gave his fardbeyan before the local police alleging therein that on 25.07.2010, he had gone to Dalsinghsarai market along with his nephew Basant Kumar (PW1) for some work. On that day, at about 10.15 p.m., they were returning home. In the meantime, Vijay



Kumar Rai @ Ganga Prasad Rai (deceased) who was also nephew of the informant, was returning by driving Tata 407 vehicle of one Bipin Rai and he met with the informant at NH 21 Road. The deceased told the informant that he was also going towards Harishankarpur. At this, the informant and Basant Kumar boarded on the aforesaid vehicle. When the vehicle reached at Harishankarpur Chowk at about 10.30 p.m., accused, Murari Paswan and Mintu Paswan came on a motorcycle and accused Devanand Rai came on another motorcycle. Accused, Sudhir Kumar was also standing there from before. He asked the informant's nephew to stop the vehicle and got down for some talk. Thereafter, the informant's nephew got down from the vehicle. Accused Mintu Paswan told him as to why he was taking the vehicle through Pagra bridge in the night. After that, Mintu Paswan and Murari Paswan fired one shot each on informant's nephew Vijay Kumar Rai. He fell down on road after sustaining bullet injuries. The informant and his nephew, Basant Kumar got down from the vehicle and saw that the accused Mintu Paswan and others were fleeing away from the motorcycle, whereas, accused Sudhir Thakur was apprehended by the



villagers and he accepted his guilt and told that accused Mintu Paswan, Murari Paswan and Devanand Rai were involved in the incident.

On the basis of aforesaid fardbeyan (Ext. 2), the FIR was registered under Sections 302/34 of the Indian Penal Code and Section 27 of the Arms Act vide Dalsingsarai P.S. Case No.127 of 2010. The police took up the investigation of the case. After investigation, the police submitted charge sheet. Thereafter, the Additional Chief Judicial Magistrate, Dalsingsarai took cognizance and the case was committed to the court of sessions, where charges were framed, to which, the accused persons pleaded not guilty. Thereafter, trial started against the appellants.

During trial, the prosecution has examined altogether six witnesses in support of its case. P.W. 1 is Basant Kumar Rai, P.W. 2 is Deep Narain Rai, P.W. 3 is Ram Babu Rai, P.W. 4 is Shiv Kumari Devi, P.W. 5 is Ramesh Chandra Upadhyay and PW 6 is Dr. Ashok Vardhan Sahai.

The defence has not examined any witness in support of its case.



The trial court after hearing learned counsel for the parties and considering the evidence on record came to the conclusion that the prosecution has been able to prove the charges against the appellants and, as such, the judgment of conviction and order of sentence has been passed.

Now this Court is required to reappraise the prosecution evidence to see as to whether the prosecution has been able to substantiate its case beyond shadow of all reasonable doubts or not?

From perusal of the materials on record, such as, First information report and the deposition of the witnesses, in our view, there is a marked variation in respective statement which has proved lethal or fatal to the prosecution story.

From perusal of the first information report, it is evident that at about 10.30 p.m., the Tata 407 vehicle, which was being driven by Vijay Kumar Rai, the deceased, who happened to be the nephew of the informant, Deep Narain Rai, was stopped by co-accused, Sudhir Thakur and at that point of time, another co-accused, Mintu Paswan was on his motorcycle, so were Murari Paswan and Devanand Rai. When the nephew of the informant came down of the motorcycle, Mintu Paswan as well as Murari Paswan fired upon him causing his death. Then the informant



along with his nephew, Basant Kumar Rai (PW 1) came down of the vehicle but all the accused persons save and except Sudhir Thakur, escaped from the scene on motorcycle. The said Sudhir Thakur accepted that Mintu Paswan, Murari Paswan and Devanand Rai killed the informant's nephew, Vijay Kumar Rai.

It appears therefrom that at least two persons were eyewitnesses. The first is Basant Kumar Rai (PW 1) who was riding the vehicle along with the informant and second was the informant himself. However, there is vital deviation in the version of the said Basant Kumar Rai (PW 1). In his examination-in-chief he has stated that Mintu Paswan, Murari Paswan and Devanand Rai stopped the vehicle and Sudhir Thakur was present there before their coming to the place. When the driver Vijay Kumar Rai got down from the vehicle, Mintu Paswan first fired upon him and secondly, Murari Paswan also fired upon him. However, in the cross-examination, he has accepted in paragraph no.4 that he has named Murari Paswan on the pressure of certain persons. Again in paragraph no.6, he has stated that in fact Mintu Paswan was the person who had fired twice upon the deceased. He has stated that Sudhir Thakur actually was standing there from before. It would be appropriate to note here that Mintu Paswan did not face the trial. He remained absconder for some period and the



investigating officer who has been examined as PW 6 has stated that he has already been killed in some other occurrence. According to PW 1, who happened to be the eyewitness of the case, the aforesaid Mintu Paswan is the only person who had fired upon the deceased, whereas name of the Murari Paswan was taken by him on the pressure of certain persons.

So far Devanand Rai is concerned, there is no allegation upon him of assaulting in any manner in occurrence save and except that he was accompanying the said Mintu Paswan.

The informant, Deep Narain Rai, who has been examined as PW 2, has stated in his examination-in-chief that only Mintu Paswan was there on the motorcycle and he ordered Vijay Kumar Rai to get down from the vehicle. Further, he was the only person who fired upon him and, thereafter, on alarm being raised, people of the locality assembled and from the side of Mintu Paswan, Sudhir Thakur, Devanand Rai and Murari Paswan were also there. In paragraph no.2 of his cross-examination, this witness has stated that when he got down of the vehicle, his nephew had already died and nobody was present there at that point of time and when alarm was raised by him, Basant Kumar Rai came there. He has further stated that all the accused persons are villagers and as such he knew them from before and he has not seen any of the accused



persons who were present in the court room, either assaulting or killing his nephew or fleeing away from the scene. All of them have come at the place of occurrence after alarm being raised by him. He has further stated that he was not in a good condition due to the death of his nephew and wherever sub-inspector asked him to sign, he had put his signature.

This witness, in our view, was very vital and being the informant and eyewitness, has completely demolished the case.

So far convict, Devanand Rai, Murari Paswan and Sudhir Thakur are concerned, further he has also given a fatal blow to the prosecution case and the testimony of Basant Kumar Rai (PW 1) by saying that even he was not present at the scene at the time of occurrence and they came there on alarm being raised by him.

Ram Babu Rai has been examined as PW 3. He also claims to be an eyewitness. He has put up new story in his cross-examination by saying that there was some quarrel going on between Vijay Kumar Rai, Sudhir Thakur and Mintu Paswan etc. When Sudhir Thakur caught hold of the deceased, Vijay Kumar Rai and then Mintu Paswan fired upon him. Devanand Rai at that point of time, as per his version, was standing at some distance and somehow, they caught hold of the accused Sudhir Thakur whereas others escaped. He has stated that the accused persons



used to demand ransom from Vijay Kumar Rai as he used to run the vehicle on the said route. Then entire new story appears to be set up by him in his cross-examination which is not there in the first information report. However, as per stand, his statement was recorded by the police on the night of the date of the occurrence and he had stated all the aforesaid facts to the police, however, the investigating officer, who has been examined as PW 6, has demolished his aforesaid version by saying in paragraph no.6 that witness Rambabu Rai has never stated before him that Sunil Thakur caught hold of Vijay Kumar Rai and Mintu Paswan fired upon him on the chest and that accused persons used to demand ransom from the deceased Vijay Kumar Rai. In fact, this witness has stated before him that he has heard that the accused persons have fired upon the deceased. This witness who was a hearsay witness before the police has been set up as an eyewitness during the trial and has come up with a completely new story which stands demolished by the statement of the investigating officer.

Same is the case with the version of PW 4, Shiv Kumari Devi, wife of the deceased, who has also stated that Pintu has fired upon her husband, however, she does not claim to be eyewitness. She has claimed that Sunil Thakur and Devanand Rai stopped the vehicle and then caught hold of her husband and then



Pintu fired. She has taken the name of Ram Babu and Deep Naraian etc. However, this version is not supported by the informant. So far Ram Babu's evidence is concerned, we have already observed that his version stands demolished. So far Murari Paswan is concerned, she had categorically stated in paragraph no.3 of her cross-examination that he was not involved in this occurrence. She has stated in paragraph no.4 of the cross-examination that she came to know about the occurrence and the manner of the occurrence from Deep Narayan, who happened to be her cousin father-in-law and informant of this case, who has been examined as PW 2 and his version does not support the version of this witness. She has also stated that she had told the police regarding her version but the investigating officer in paragraph no.8 has completely denied this and stated that Shiv Kumari Devi has never stated before him that Sudhir Thakur and Devanand Rai stopped the vehicle and caught hold of her husband and then Mintu Paswan fired. This gives fatal blow to the deposition of this witness.

From the aforesaid discussion, it appears that the story set up in the first information report has completely been given a go-by by the witness such as, PW 1, Basant Kumar Rai, PW. 2, Deep Narain Rai (informant) as well as the investigating Officer, who



has been examined as PW 6 and so far Pws. 3 and 4 are concerned, they do not appear to be creditworthy and trustworthy for the reason that they are not the eyewitnesses. As has been discussed above, the story put up by them stands demolished by the deposition of investigating officer.

The aforesaid circumstances give fatal blow to the prosecution story and in the facts and circumstances of the case, it would not be possible to convict these appellants for killing of the deceased, Vijay Kumar Rai. From the version of the witness, it appears that, in fact, Mintu Paswan was the only person who can be accepted to have fired upon the deceased but for whatever reason, he could not be put to trial and investigating officer has stated that in fact he has already died.

In the facts and circumstances of the case, we are left with no option than to set aside the judgment of conviction and order of sentence.

Ordered accordingly.

All the appellants are acquitted from the charges. Since the appellants, Devanand Rai and Sudhir Thakur are already on bail, they are discharged from the liability of their respective bail bonds. So far appellant, Murari Paswan is concerned, who is in jail



custody, should be released forthwith, if he is not wanted in any other case.

These appeals are allowed.

Let a copy of the first page and the last page be given to Mr. Amish Kumar, Amicus Curiae so that he would be able to get the prescribed fee from the Patna High Court Legal Services Committee.

(Dr. Ravi Ranjan, J)

(Anjana Mishra, J)

Sanjay/-

AFR/NAFR	AFR
CAV DATE	NA
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