

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1020 of 2012

Arising Out of PS.Case No. -239 Year- 2010 Thana –Barhara (Sinha) District- BHOJPUR

=====

Manoj Singh S/o Late Bija Singh R/o Village - Neknam Tola, Police Station -
Barhara in the District of Bhojpur

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

=====

Appearance:

For the Appellant/s : Mr. Kanhaiya Prasad Singh, Advocate.
Mr. Pratik Mishra, Advocate

For the Respondent/s : Mr. S. N. Prasad, APP.

=====

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

And

HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL)

Date: 09-02-2018

Heard learned counsel for the appellant as well as
learned APP for the State on this criminal appeal.

2. This criminal appeal has been preferred against the
Judgment and Order of conviction dated 11.09.2012 and order of
sentence dated 17.09.2012 passed by Adhoc Additional District and
Sessions Judge-V, Ara in Sessions Trial No. 25 of 2011 arising out of



Barahara (Sinha) P.S. Case No. 239 of 2010, whereby the learned trial court convicted the appellant, namely, Manoj Singh for the offence punishable under Section 302 of the Indian Penal Code and Section 27 of the Arms Act and sentenced him to undergo life imprisonment and also slapped him with fine of Rs. 25000/- and in default of payment of fine, to further undergo S.I. for three months under Section 302 of the Indian Penal Code and further sentenced him to undergo R.I. for three years and slapped him with fine of Rs. 5000/- and in default of payment of fine to further undergo S.I. for two months under Section 27 of the Arms Act. Both the sentences were directed to run concurrently.

3. Factual matrix of the case is that Barahara (Sinha) P.S. Case No. 239 of 2010 was instituted under Section 302 of the Indian Penal Code and Section 27 of the Arms Act against the accused, namely, Manoj Singh on the basis of the fardbeyan of Gupti Paswan, Son of Late Lakhan Paswan recorded by S.I. S. D. Choudhary, SHO, Sinha O.P. on 10.09.2010 at 01:30 PM at Pani Tanki Compound, Nizampur with the allegation in succinct that his son Basant Paswan happens to be driver of Engineer Mohan Reddy of water tank, Nizampur and he used to reside in the quarter located in its premises. As his son was not paying visit to him for the last two months, he arrived at his son's quarter on 10.09.2010 at around 12:30



PM. At that time his son sitting on a cot in his room was interacting with a person. On quizzing about the identity of the said person, he introduced him as a driver, namely, Manoj Singh. Then they consumed tea there. After taking tea, he started seeing hither and thither. In the meantime, Manoj Singh wheeping out pistol from his waist resorted firing on his son and escaped away stepping out of the room. Responding the firing sound, he rushed to his son and found him dead sustaining bleeding bullet injury below his right eye. Then he made alarm. Responding the same, the persons working in the premises rushed there.

4. Aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted chargesheet against the aforesaid accused under Section 302 of the Indian Penal Code and Section 27 of the Arms Act.

5. On receiving the chargesheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence against the accused and committed the case to the court of sessions and on transfer finally the case came in the *seisin* of Adhoc Additional District and Sessions Judge-V, Ara for trial.

6. Charge against the accused was framed under Section 302 of the Indian Penal Code and Section 27 of the Arms Act. Charge was read over and explained to him to which he pleaded



not guilty and claimed to be tried.

7. To substantiate its case, in ocular evidence, the prosecution has examined altogether six prosecution witnesses namely, Ghanshyam Paswan as PW-1, Sheo Murti Sharma as PW-2, Saroj Kumar Singh as PW-3, informant Gupti Paswan as PW-4, Dr. Ashutosh Kumar who conducted autopsy of the cadaver of the deceased as PW-5 and I.O. Shyam Deo Choudhary as PW-6. Out of the aforesaid witnesses, PWs-2 and 3 turned hostile. In documentary evidence, the prosecution has also filed and proved some documents.

8. Statement of the accused was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence claiming to have been falsely implicated in the case. The accused has neither adduced any ocular nor documentary evidence in buttress of his case.

9. After hearing the parties and perusing the record, the learned trial court passed the aforesaid Judgment and Order of conviction and sentence as detailed in the earlier paragraph.

10. Being aggrieved and dissatisfied with the aforesaid Judgment and Order of conviction and sentence, the convict Manoj Singh has preferred this Criminal Appeal.

11. The point for consideration in this case is, as to whether the prosecution has been able to bring home the charges



levelled against the appellant beyond all reasonable doubts or not.

12. It is submitted by learned counsel for the appellant that out of four material witnesses examined by the prosecution, PW-1 Ghanshyam Paswan happens to be the hearsay witness of the case while PWs-2 and 3 turned hostile. Thus the only material witness who supported the prosecution case is the informant. But the testimony of the informant is not unblemished, untainted and worth credence and reliable as as per the prosecution case, the informant was sitting at the place of occurrence at the time of occurrence, but in his statement he has stated that responding the firing sound, he rushed at the aforesaid place after the occurrence and found his son lying dead there sustaining bleeding bullet injury below his right eye. Likewise, as per the prosecution case and statement of the informant as made in his examination-in-chief, the deceased had sustained injury below his right eye, but in quite contradiction to the aforesaid statement, in his cross-examination he has stated that the deceased had sustained injury in his left eye. The aforesaid aspect of the case rules out the presence of the informant at the place of occurrence at the time of occurrence and witnessing of the occurrence by him. It is further submitted that as per the prosecution case the appellant gunned down the deceased in front of his father (informant), but the aforesaid aspect of the case was not explained to him under Section



313 of the Code of Criminal Procedure. Hence aforesaid evidence of the prosecution to the effect that the appellant gunned down the deceased before the informant cannot be considered against him. It is further submitted that as per the account of the informant as made in his examination-in-chief, beside Manoj Singh another person was also sitting at the place of occurrence, but the said person who happens to be material and eye witness of the occurrence has not been examined by the prosecution. There is a gateman at the gate of the premises of Pani Tanki, Nizampur but he has also not been examined by the prosecution. Likewise, as per the prosecution case, several persons rushed at the place of occurrence responding the alarm made by the informant and found the deceased dead, but none of them have been examined by the prosecution. The aforesaid witnesses have been withheld by the prosecution without assigning any plausible reason which creates serious doubt about the prosecution case. It is also submitted that none has seen the appellant escaping after the occurrence from the place of occurrence. I.O. has also not found any blood and cup or glass of tea at the place of occurrence. The medical evidence also does not corroborate the prosecution case as as per the prosecution case, the deceased sustained bullet injury below his right eye while the doctor has found fire arm injury on the left eye of the deceased as wound of entry.



Thus in view of the aforesaid facts and circumstances of the case, the prosecution has utterly and miserably failed to bring home the charges levelled against the appellant beyond all reasonable doubts by adducing consistent, trustworthy, reliable and worth credence evidence. Hence the appellant is entitled to be acquitted.

13. On the other hand, learned APP advocating the correctness and validity of the impugned Judgment and Order of conviction and sentence submitted that the informant who happens to be the solitary eye witness of the case was present at the place of occurrence at the time of occurrence and has seen the occurrence and he has supported the prosecution case in toto. The ocular evidence also stands corroborated by the medical evidence and learned lower court correctly appreciating the facts and evidence available on record has rightly passed the aforesaid Judgment and Order of conviction and sentence which is liable to be upheld and this appeal has no substance in it and is liable to be dismissed.

14. From perusal of the record, it appears that four material witnesses have been examined by the prosecution namely, PW-1 Ghanshyam Paswan, PW-2 Sheo Murti Sharma, PW-3 Saroj Kumar Singh and PW-4 Gupti Paswan. Out of the aforesaid witnesses, PW-1 is the hearsay witness as in Para-1 of his examination-in-chief he has stated that at the time of occurrence he



was at his house. Gupti Pawan (informant) arriving at his house divulged him that Basant has sustained bullet injury assaulted by Manoj Singh and he has died. Moreover informant Gupti Paswan has not corroborated the factum of divulgence of the aforesaid facts to the said witness making the evidence of said witness inadmissible in evidence even as a hearsay witness. While PWs-2 and 3 turned hostile, so the only material witness who appears to have made a bid to support the prosecution case is the informant (PW-4).

15. From perusal of the prosecution case of the informant (PW-4), it appears that at the time of occurrence his son was sitting along with the appellant on a cot in his room. He was offered tea. After taking tea along with his son and Manoj Singh, he was seeing hither and thither. In the meantime, Manoj Singh resorted firing below the right eye of his son and escaped stepping out of the room of his son. Responding the firing sound, he rushed to his son and found him dead sustaining bleeding bullet injury below his right eye. But in quite contradiction to the aforesaid prosecution case, he has stated in Para-1 of his examination-in-chief that on arriving at Nizampur Pani Tanki he found his son sitting in front of a room along with two other persons. He offered tea to him. He was sitting there. In the meantime, Manoj Singh whipped out pistol from his waist and resorted firing upon his son which hit below his right eye.



Sustaining injury, his son started writhing and died instantly. As per written report, he has stated that he rushed at the place of occurrence after sustaining injury by his son and found him dead there while in his examination-in-chief, he has stated that aforesaid occurrence of assault by means of pistol by the appellant on his son took place before him.

16. As per the prosecution case and the account of the informant as given in his examination-in-chief, the appellant resorted firing below right eye of his son and his son sustained injury there. But in quite contradiction to the aforesaid prosecution case and his examination-in-chief, the informant has stated in para-14 of his cross-examination that he has given statement before the police that when he rushed to his son responding firing sound, he found his son dead there sustaining bleeding bullet injury below his left eye. As per the aforesaid statement given by him in his examination-in-chief, he was at the place of occurrence at the time of occurrence, but the I.O. (PW-6) in his cross-examination has stated that the informant has not divulged him that at the time of occurrence he was there rather has stated that responding the firing sound, he entered into the room and found his son lying dead on the folding. Thus, the informant appears to have taken altogether different stand before the court regarding his presence at the place of occurrence at the time of occurrence than



taken before the I.O. The aforesaid aspect of the case creates serious doubt about the presence of the informant at the place of occurrence at the time of occurrence and witnessing of the occurrence of assault upon his son by the appellant.

17. As per the statement of the informant as given by him in his examination-in-chief, one other person was sitting at the place of occurrence along with his son and the appellant Manoj Singh and as per the prosecution case, responding the firing sound and his screaming, the workers of the premises of Pani Tanki, Nizampur also rushed at the place of occurrence and found his son dead and as per the account of the informant as made by him in para-8 of his cross-examination, there is a gate towards west of the Pani Tanki where the gateman is posted, but none of the aforesaid persons has been examined by the prosecution and no plausible reason has been assigned by the prosecution for their non-examination, hence adverse inference is drawn against it. Moreover none has seen the appellant escaping from the place of occurrence after the occurrence.

18. As per the statement of the informant as given in his examination-in-chief, the appellant gunned his son down before him, but from perusal of the statement of the appellant recorded under Section 313 of the Code of Criminal Procedure, it appears that no question was put to the appellant regarding gunning down the



deceased in presence of the informant to enable him to explain the aforesaid circumstance appearing in evidence against him. Hence, aforesaid evidence of prosecution cannot be considered against the appellant. Thus in view of the aforesaid aspect of the case, there remains no evidence of the prosecution that occurrence of gunning down the son of the informant took place before the informant and the informant happens to be the eye witness of the occurrence.

19. The Hon'ble Apex Court in **Sharad Birdhichand Sarda Vs. State of Maharashtra** reported in **AIR 1984 Supreme Court 1622** has been pleased to rule that when the circumstances appearing against the accused were not put to accused in his examination under Section 313 Cr.P.C. then it cannot be used against him. In **Hate Singh Bhagat Singh Vs. State of Madhya Bharat** reported in **AIR 1953 Supreme Court 468**, **Shamu Babu Chaugale Vs. State of Maharashtra** reported in **(1976) 1 Supreme Court Cases 438** and in **Harijan Megha Jesha Vs. State of Gujarat** reported in **AIR 1979 SC 1566**, the Hon'ble Apex Court has been pleased to observe that circumstances not put to the appellant in his examination under Section 313 Cr.P.C. have to be completely excluded from consideration. Hon'ble Apex Court in case of **Shaikh Maqsood Vs. State of Maharashtra** reported in **(2009) 6 SCC 583** have been pleased to rule that when no question was put to the



accused which established that he was the author of the crime, conviction cannot be maintained and is set aside.

20. It is the settled principle of law that conviction can be held on the evidence of solitary eye witness, if it is found to be unblemished, untainted, reliable and worth credence on cautious and careful scanning and scrutiny of his evidence, but in view of the aforesaid contradiction with the prosecution case and the testimony of the informant and the testimony of the informant inter se, aforesaid testimony of the informant does not appear to be unblemished, untainted, worth credence and reliable and it would not be safe to hold conviction of the appellant relying upon the aforesaid testimony of the solitary eye witness of the occurrence. From perusal of the medical evidence, it appears that the doctor conducting the autopsy of cadaver of the deceased has found fire arm injury below left eye of the deceased. Thus, the aforesaid ocular evidence of the prosecution also does not stand corroborated by the medical evidence.

21. Having regard to the aforesaid facts and circumstances of the case, I find and hold that the prosecution has utterly and miserably failed to substantiate the prosecution case beyond all reasonable doubts by adducing consistent, trustworthy, reliable and worth credence ocular and documentary evidence.



Hence, the impugned judgment and order of conviction and sentence passed by the learned lower court is set aside and the appellant is acquitted of the charges levelled against him. As the appellant is in custody, he is directed to be released forthwith from the custody, if not wanted in any other case. Accordingly, this criminal appeal is allowed.

(Prakash Chandra Jaiswal, J)

Dr. Ravi Ranjan, J: I agree.

(Dr. Ravi Ranjan, J)

Mishra/-

AFR/NAFR	A.F.R.
CAV DATE	16.01.2018
Uploading Date	10.02.2018
Transmission Date	10.02.2018

