

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.336 of 1994

Sessions trial no. 198/1992 arising Out of Barbigha P.S. case no. 131/1991
District- MUNGER

- =====
- 1. Umesh Singh @ Uchit Singh
 - 2. Tanik Singh
 - 3. Shyam Lal Singh @ Shyamli Singh
All sons of Late Parmeshwar Singh
 - 4. Sandesh Kumar @ Ghichal Singh
All resident of village Maldah P.S Barbigha Dist. Munger

State of Bihar

Versus

.... Appellant/s

with

.... Respondent/s

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Criminal Appeal (DB) No. 447 of 1994

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Shyam Singh @ Binod Kumar son of Late Parmeshwar Singh resident of
village Maldah P.S Barbigha Dist. Munger

State of Bihar

Versus

.... Appellant/s

.... Respondent/s

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Appearance:

For the Appellant/s	:	Mr.Alok Kumar Singh Mr. Bhola Kumar Mr. Ujjawal Kumar Singh
For the State	:	Mr. Dilip Kumar Sinha Mr. S.C. Mishra
For the informant	:	Mr. R.K.Sharma

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)
Date: 12-02-2018

1. Both the above stated criminal appeals arise out of



common judgment and sentence order dated 6.7.1994 passed by the Addl. Sessions Judge VII, Munger in Sessions trial no. 198/1992 by which and whereunder he convicted the appellants for the offences punishable under sections 302, 302/149, 307, 148 and 447 of the Indian Penal Code and 27 of the Arms Act and sentenced the appellant Shyam Singh @ Binod Kumar of Cr. Appeal no. 447/1994 to undergo rigorous imprisonment for life for the offences punishable under sections 302 and 302/149 IPC, to undergo rigorous imprisonment for one year for the offence punishable under section 148 IPC, to undergo rigorous imprisonment for two years for the offence punishable under section 27 of the Arms Act and remaining appellants were sentenced to undergo rigorous imprisonment for life for the offence punishable under section 302 read with section 149 of the IPC and to undergo rigorous imprisonment for one year for the offence punishable under section 148 IPC and furthermore, appellants Umesh Singh @ Uchit Singh and Sandesh Kumar @ Ghichal Singh were sentenced to undergo rigorous imprisonment for two years for the offence punishable under section 27 of the Arms Act and appellant Sandesh Kumar @ Ghichal Singh was, again, sentenced to undergo rigorous imprisonment for



seven years for the offence punishable under section 307 IPC and similarly, appellants Tanik Singh and Shyamlal Singh @ Shyamli Singh was sentenced to undergo rigorous imprisonment for one year for the offence punishable under section 324 IPC. Although all the above stated appellants were convicted for the offence punishable under section 447 IPC but no separate sentence was awarded to them for the above stated section 447 IPC. All the sentences were ordered to run concurrently.

2. It is pertinent to note here that one accused Karu Singh was acquitted of the charges by the impugned judgment.

3. Since both the appeals have emerged out of the aforesaid common order and were heard together, the above stated both appeals are being disposed of by his common judgment.

4. Before entering into the merit of the appeals, we would like to mention here that during the pendency of both the above stated appeals, appellant nos.1, 2 and 3, namely, Umesh Singh @ Uchit Singh, Tanik Singh and Shyam Lal Singh @ Shyamli Singh respectively in Cr. Appeal no. 336/1994 died as informed on their behalf and accordingly,



appeal of the aforesaid appellants stands abated.

5. Barbigha P.S. case no. 131/1991 under section 302/34 of the Indian Penal Code was registered on the basis of fardbeyan of PW5, namely, Ram Naresh Singh on 28.7.1991. PW5 gave his fardbeyan on 28.7.1991 at 8 a.m. at village Maldah before officer-in-charge of Barbigha police station that he had taken some lands of village Mauza Gaddi Bandh in settlement and on the above stated date at about 7 a.m. while he along with Arun Singh (PW2), Janardan Singh (deceased), Ranjit Singh (PW6), Mangru Singh (PW1), Bindeshwari Singh (PW 4) were ploughing their lands, appellants and FIR named accused Karu Singh having armed with firearms and other lethal weapons came there and asked the informant and his companions not to plough the lands and when the informant and his companions refused to obey the command of the appellants and their associates, appellants Shyamli Singh and Tanik Singh (since deceased) ordered to shoot the informant and his companions, thereafter, Shyam Singh appellant in Cr. Appeal no. 447/1994 shot fire causing firearm injury on the chest of the deceased Janardan Singh who fell down on the ground and thereafter, Tanik Singh and Shyamli Singh (since deceased) assaulted him by means of



Garasa and farsa. However, in the meantime, appellants Sandesh Kumar @ Ghichal Singh, too, fired upon PW 5 but, any how, PW 5 managed to escape unhurt. Villagers came there on the sound of firing and witnessed the occurrence.

6. The above stated Barbigha P.S. case no. 131/1991 was investigated by the police and after completion of investigation charge sheet was submitted, cognizance of the offences was taken and case was committed to the court of sessions. The appellants and Karu Singh were put on trial before the court of sessions and accordingly, prosecution examined, altogether, eight witnesses and also got exhibited some documents to prove its case. The statements of the appellants were recorded under section 313 of the Code of Criminal Procedure. No evidence was adduced by the appellants and other accused in support of their defence. The learned court below, having scrutinized the evidences available on record, passed the impugned judgment of conviction and sentence order in the manner as stated above.

7. Learned counsel appearing for the appellants challenged the impugned judgment of conviction and sentence order arguing that the prosecution witnesses made contradictory statements but even then the trial Judge relied



upon testimonies of the prosecution witnesses. He, further, submitted that neither Investigating officer nor doctor was examined and non-examination of I.O was fatal to the prosecution case because it was the specific case of the appellants that deceased was killed somewhere else and the informant and the prosecution witnesses got implicated the appellants due to previous enmity and land dispute. He, further, submitted that the appellants did not get any opportunity to ask a question regarding the place of occurrence from investigating officer and moreover, the prosecution witnesses claimed that investigating officer seized bloodstained earth from the field but the aforesaid bloodstained earth was not produced before the court nor any forensic science laboratory report was brought on record to show that seized earth contained human blood. He, further, submitted that proper questions were not put up before the appellants under section 313 of the Code of Criminal Procedure which also caused prejudice to the appellants. In support of his contention, he referred a decision reported in 2013(3) PLJR page 162.

8. On the other hand, learned Additional Public Prosecutor appearing for the State supported the impugned



judgment of conviction and sentence order submitting that PW1, PW2, PW4 are eye witnesses and they are consistent in their depositions. Similarly, PW5, informant, is also an eye-witness and all the above stated eye-witnesses, categorically, stated about manner of occurrence and they have also proved the place of the occurrence. Therefore, there was no confusion regarding the place of the occurrence. Learned Addl. Public Prosecutor, further, submitted that non-examination of the I.O and doctor is not always fatal to the prosecution case unless it is proved by the defence that serious prejudice has been caused to the defence due to non-examination of the I.O and doctor. Learned Addl. Public Prosecutor, further, submitted that in the present case, appellants could not succeed to show as to how defence was prejudiced due to non-examination of the Investigating officer and doctor.

9. Learned counsel appearing for the informant seconded the submissions advanced on behalf of the learned Addl. Public Prosecutor.

10. As we have already stated that, altogether, eight prosecution witnesses were produced by the prosecution to prove its case and out of them PW1, PW2, PW4 and PW 5



claimed to be eye-witnesses and stated that the appellants and their associates came at the field and committed the alleged occurrence but none of the aforesaid witness disclosed khata number and plot number of the aforesaid field. However, a specific suggestion was given to the above stated prosecution witnesses on behalf of the appellants that the deceased was killed somewhere else and subsequently, the present case was lodged implicating the appellants. Therefore, in the aforesaid circumstances, when the defence challenged the place of the occurrence, it was incumbent upon the prosecution to prove the place of the occurrence by producing Investigating officer. Moreover, witnesses claimed that the Investigating officer seized blood stained earth from the place of the occurrence and prepared seizure list but no seizure list nor any report of chemical examination of the seized earth was produced by the prosecution before the trial court. Furthermore, we find that neither any inquest report nor post mortem report was produced before the trial court by the prosecution.

11. No doubt, prosecution, in course of trial, got exhibited entire case diary as exhibit 5 and learned trial court took help of exhibit 5 in convicting the appellants but, in our



view, learned trial court based his findings on inadmissible evidence because contents of exhibit 5(case diary) were not admissible in evidence. Therefore, for want of post mortem report, nature of the injury sustained by the deceased could not be established.

12. So far as statement recorded under section 313 of the Code of Criminal Procedure is concerned, no question regarding place of the occurrence as well as time of occurrence were put to the appellants. In our view, non-mentioning of the place of the occurrence in the statement under section 313 of the Cr.P.C was fatal to the prosecution case because at the very outset, appellants had challenged the place of the occurrence by giving specific suggestion to the prosecution witnesses and, therefore, non-mentioning of the place of the occurrence in the statement under section 313 of the Cr.P.C was fatal to the prosecution case.

13. On the basis of the aforesaid discussions, we are of the opinion that the appellants are entitled to get benefit of doubt and accordingly, the impugned judgment of conviction and sentence order dated 6.7.1994 passed by the Addl. Sessions Judge VII, Munger in Sessions trial no. 198/1992 is, hereby, set aside. Appellants are acquitted of the charges



giving the benefit of doubt. They are on bail. They are discharged from the liability of their bail bonds.

14. In the aforesaid manner, both the aforesaid criminal appeals stand disposed of.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	27.2.2018
Transmission Date	27.2.2018

Shahid

