

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 192 of 1995

Arising Out of PS.Case No. -null Year- null Thana -null District- SASARAM (ROHTAS)

- 1. Raj Mukh Singh son of late Nathun Singh
- 2. Rajeshwar Singh son of Sonmukh Singh
- 3. Harihar Singh son of Manrakhan Singh
- 4. Krishna Kumar Singh son of Ran Mukh Singh

All residents of village-Tenduni, P. S. Bikramganj, District-Rohtas

.... Appellants

Versus

The State of Bihar

.... Respondent

with

Criminal Appeal (DB) No. 220 of 1995

Arising Out of PS.Case No. -null Year- null Thana -null District- SASARAM (ROHTAS)

Kamlesh Singh son of Sri Rajeshwar Singh, resident of village Tenduni, Police Station Bikramganj, District Rohtas.

.... Appellant

Versus

The State of Bihar

.... Respondent

Appearance :

(In CR. APP (DB) No.192 of 1995)

For the Appellant/s : Mr. Kanhaiya Prasad Singh, Sr. Adv.
Mr. Binod Bihari Singh, Adv.
Mr. Paramhans, Amicus Curiae

For the State : Mr. Dilip Kumar Sinha, APP

(In CR. APP (DB) No.220 of 1995)

For the Appellant/s : Mr. Kanhaiya Prasad Singh, Sr. Adv.
Mr. Binod Bihari Singh, Adv.
Mr. Paramhans, Amicus Curiae

For the State : Mr. S. C. Mishra, APP

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA



ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date: 29-06-2018

1. Both the above stated criminal appeals have arisen out of common judgment of conviction and sentence order dated 23.06.1995 and 30.06.1995, respectively passed by learned Additional Sessions Judge 1, Rohtas at Sasaram in Sessions Case No. 21 of 1990 arising out of Bikramganj P.S. Case No. 206 of 1984 and, accordingly, both the above stated criminal appeals were heard together and common judgment is being passed in the aforesaid appeals.

2. Appellants no. 2, 3 and 4 of Criminal Appeal (DB) No. 192 of 1995 were convicted for the offences punishable under Sections 302 read with Section 149 of the Indian Penal Code and 27 of the Arms Act whereas the appellant no. 1 was convicted for the offences punishable under Section 302 read with Section 149 of the Indian Penal Code and, accordingly, the appellants were sentenced to undergo imprisonment for life for the offence punishable under Section 302 read with Section 149 of the Indian Penal Code but no separate sentence was awarded for the offence punishable under Section 27 of the Arms Act.

3. The learned court below convicted the appellant in Criminal Appeal (DB) No. 220 of 1995 for the offences punishable



under Sections 302, 302 read with Section 149 of the Indian Penal Code as well as 27 of the Arms Act and sentenced him to undergo imprisonment for life for the above stated offences, except Section 27 of the Arms Act for which no separate sentence was awarded.

4. PW-6 Vijay Kumar Yadav gave his fardbeyan on 24.09.1984 at 6.45 p.m. at Tenduni Chowk, Dumrao Road to PW-9 to this effect that on the same day at about 5.30 p.m., he along with his brother Nageshwar Singh (deceased) and Girja Singh (PW-4) was returning to his house from his shop and as soon as reached at Tenduni Chowk, he noticed that appellants, Raj Mukh Singh, Harihar Singh, Krishna Kumar Singh, Kamlesh Singh and Rajeshwar Singh having armed with pistol, riffle and gun came there and appellant Raj Mukh Singh exhorted the others to kill them and, thereafter, appellant Kamlesh Singh opened fire of his country made pistol on deceased, Nageshwar Singh from the distance of five to six steps as a result whereof, deceased Nageshwar Singh having sustained firearm injury fell down there and died instantaneously. The aforesaid persons chased PW-6 and PW-4 but they got hide themselves behind a gumti. The aforesaid appellants fled away from the place of occurrence after making firing. The aforesaid occurrence was witnessed by Ramchandra Singh (PW-5), Jitendra Singh (not examined), Girja Singh (PW-4), Phoolwari



Singh (PW-3), Mahavir Singh (PW-2) etc. PW-6 further claimed that PW-1 Vidya Singh got firearm injury, too, in the aforesaid occurrence. The reason behind the alleged occurrence as claimed by PW-6 was filing of criminal case against cousin brother and nephew of appellant no. 1 of Criminal Appeal (DB) No. 192 of 1995 namely, Raj Mukh Singh by PW-6.

5. On the basis of aforesaid statement, Bikramganj P.S. Case No. 206 of 1984 for the offences punishable under Sections 147,148,149,302 of the Indian Penal Code and 27 of the Arms Act was registered and formal FIR for the aforesaid offences was drawn up against the appellants.

6. PW-9 took charge of investigation and after completion of investigation, he submitted charge-sheet against the appellants for the offences punishable under Sections 302/34 and other minor sections of the Indian Penal Code as well as 27 of the Arms Act. The cognizance of the offences was taken and, accordingly, the appellants were put on trial before the court below.

7. The appellants stood charged for the offences punishable under Sections 302, 302 read with Section 149 of the Indian Penal Code and 27 of the Arms Act. The appellants denied the charges and claimed to be tried.

8. In order to prove the charges, prosecution examined,



altogether, 10 witnesses and also got exhibited some documents including post mortem report. The statements of appellants were recorded under Section 313 of the Cr. P.C in which they reiterated their innocence and denied the prosecution story. No evidence was adduced by the appellants in support of their defence but got exhibited one document as exhibit A.

9. The learned trial court after hearing the parties and scrutinizing the evidences available on the record passed the impugned judgment of conviction and sentence order which is under challenge before this appellate court.

10. It is pertinent to note here that during pendency of the above stated appeals, appellant no. 1, namely, Raj Mukh Singh, and appellant no. 3, namely, Harihar Singh, of Criminal Appeal (DB) No. 192 of 1995 died and, accordingly, the aforesaid criminal appeal stood abated in respect of appellant no. 1, namely, Rajmukh Singh and appellant no. 3, namely, Harihar Singh.

11. Learned counsel appearing for the appellants assisted by learned amicus curiae challenged the impugned judgment of conviction and sentence order arguing that only PW-4 and PW-6 supported the prosecution story in course of trial and the prosecution failed to examine Jitendra Singh who was allegedly an eye-witness of the alleged occurrence as per prosecution case itself



and no explanation regarding his non-examination was given by the prosecution. He further submitted that the PW-6 has claimed in his fardbeyan that Vidya Singh (PW-1) had also sustained injury in the aforesaid occurrence and, admittedly, the aforesaid Vidya Singh is co-villager of the appellants but when aforesaid Vidya Singh was examined by the prosecution, the aforesaid injured witness Vidya Singh, specifically, stated that he had not seen the assailants and at para 2 of his cross-examination, he, specifically, stated that the appellants were not present on the place of occurrence when the occurrence took place. The aforesaid witness also admitted that none had disclosed the name of appellants before him on the place of occurrence. He further submitted that PW-2 Mahavir Singh has also been shown as witness in fardbeyan of PW-6 and the aforesaid PW-2 is none else than own maternal uncle of PW-6 but the aforesaid witness has also not named the appellants as assailants as he had not seen the appellants on the place of occurrence. Learned counsel for the appellants submitted that no doubt, PW-2 has been declared hostile by the prosecution but taking note of his relation with PW-6, the evidence of PW-2 cannot be discarded.

12. Learned counsel for the appellants further submitted that PW-6 vide para 21 of his deposition stated that police had not found kurta, blood stained shirt, blood stained bundi etc. from the



place of occurrence whereas PW-9, the investigating officer of this case, at para 8 of his cross-examination admitted that he had found kurta, blood stained shirt, blood stained bundi on the place of occurrence and seized the aforesaid articles. Learned counsel for the appellants further submits that the above stated statement of PW-6 goes to show that he was not present over the place of occurrence and that is the reason he could not say what was seized from the place of occurrence. He further submitted that the informant (PW-6) has claimed in his fardbeyan that the firing was made on the deceased from the distance of 5 to 6 deg equivalent to 8 to 9 feet and PW-8, Dr. Sudhir Kr. Sinha, found blackening on the skin of the deceased and, therefore, the aforesaid fact goes to show that the firing was made within close range of the deceased because according to Modi's Medical Jurisprudence, blackening is found if firing is made from a distance of not more than 2 to 3 feet and therefore the aforesaid circumstance also creates doubt about the claim of PW-6.

13. Learned counsel for the appellants further submitted that PW-6 has admitted in his fardbeyan that there was previous enmity between the parties and except PW-6 as well as his own brother PW-4, not a single independent witness came forward to support the prosecution story. He further submitted that moreover,



the claim of PW-4 and PW-6 appears improbable because PW-4 at para 12 of his cross-examination accepted that at the time of alleged occurrence he as well as PW-6 and deceased were returning to their home and the deceased as well as PW-6 were at the distance of 2 to 3 feet from him and all of a sudden the appellants came their having armed with firearms and encircled them and, therefore, it was not possible for PW-4 and PW-6 to escape from there unhurt and, therefore, the aforesaid circumstance also creates doubt about the claim of PW-4 and PW-6.

14. On the other hand, learned Additional Public Prosecutor appearing for the State supported the impugned judgment of conviction and sentence order arguing that PW-4 and PW-6 categorically and specifically stated that appellants committed the murder of deceased by opening fire on him. He further submitted that PW-8 found firearm injury on the person of deceased and the prosecution has proved not only manner of occurrence but also place of occurrence as well as involvement of the appellants in the alleged crime and, therefore, the learned trial court rightly convicted and sentenced the appellants.

15. Having heard the rival contentions of the parties, we went through the record. As we have already stated that prosecution got examined altogether 10 witnesses, out of them PW-



2, PW-3 and PW-5 have been declared hostile and they have not supported the prosecution case. It is pertinent to note here that PW-2, PW-3 and PW-5 have been shown as eye-witnesses of the occurrence in fardbeyan of PW-6. Furthermore, according to prosecution case, PW-1 had sustained injury in the occurrence and admittedly, PW-1 is co-villager of the appellants but PW-1 stated that he had not seen the appellants on the place of occurrence when the occurrence took place. Therefore, it is obvious that only PW-4 and PW-6 have supported the prosecution story.

16. PW-4 stated that while he along with PW-6 and deceased was returning to his home and reached near Tenduni Chowk, the appellants being armed with various firearms came there and appellant Kamlesh Singh opened fire on the deceased. PW-4 stated that he as well as PW-6 were chased by the appellants but they got hide themselves behind a gumti. At para 8 of his cross-examination, this witness admitted that eight days prior to the alleged occurrence, the appellant Harihar Singh and one Shivji Singh had abused him as well as his family members and one case was lodged for the aforesaid occurrence. This witness further admitted at para 11 of his cross-examination that there were several shops and gumti near the place of occurrence. The perusal of statement of this witness goes to show that there was previous



enmity between him and the appellants and furthermore, the statement of this witness goes to show that he did not sustain any injury in the aforesaid occurrence though he along with deceased and PW-6 was encircled by the appellants who were carrying various firearms in their hands and made firing at the time of alleged occurrence. Furthermore, the statement of this witness goes to show that he could not see as to whether there was any cloth lying near the dead body of the deceased or not.

17. PW-6 is informant and this witness supported the prosecution case and admitted that PW-1 had, too, sustained injury in the occurrence. This witness further admitted at para 3 of his cross-examination that Jitendra Singh was with him at the time of alleged occurrence. It is not out of place to mention here that this witness had disclosed in fardbeyan that Jitendra Singh had also witnessed the occurrence but the aforesaid Jitendra Singh has not been examined by the prosecution and no explanation regarding his non-examination has been given. This witness also admitted at para 14 of his cross-examination that there were several shops near the place of occurrence. This witness further admitted at para 20 of his cross-examination that the cloths of deceased were not removed and furthermore, this witness admitted at para 21 of his cross examination that police had not found white coloured kurta, blood



stained shirt and blood stained bundi near the dead body of deceased.

18. The evidence of PW-6 shows that there was previous enmity between him and appellants and furthermore, the evidence of this witness goes to show that when the appellants, allegedly, encircled the deceased, PW-6 and PW-4 were also present there and they got separated themselves from deceased and got hide themselves behind a gumti but the aforesaid claim of PW-6 appears to be improbable because it is surprising as to how this witness as well as PW-4 could succeed to get separated themselves from the deceased and managed to escape unhurt from the place of occurrence, particularly, in the circumstance when according to prosecution case, all the appellants were armed with firearms. Furthermore, the presence of PW-6 on the place of occurrence appears to be doubtful because he stated that police did not find blood stained shirt, bundi etc., near the dead body of the deceased whereas PW-9, specifically, claimed in his deposition that he had found blood stained shirt, bundi etc., near the place of occurrence. Furthermore, PW-6 has claimed in his fardbeyan that firing was made from the distance of 5 to 6 steps which is equivalent to 8 to 9 feet and the doctor has found the blackening on the person of the deceased and, therefore, the aforesaid facts goes to show that firing



on the deceased was made within range of 2 to 3 feet and, therefore, the aforesaid facts also create doubt about the presence of PW-6 on the place of occurrence.

19. PW-4 and PW-6 have admitted in their evidence that there were several shops surrounding the place of occurrence and the occurrence took place at about 5.30 p.m but not a single independent witness came forward to support the claim of PW-4 and PW-6 and not only this the own relative of PW-4 and PW-6 have demolished the prosecution case by saying that the appellants had not participated in the alleged crime. Apart from this, the PW-1, whose presence over the place of occurrence is admitted by the PW-4 and PW-6, also stated that appellants were not present over the place of occurrence and it is important to note here that PW-1 has not been declared hostile by the prosecution. Therefore, in the aforesaid circumstances, in our view, the above stated facts create doubt about the prosecution case and the appellants are entitled to get the benefit of doubt.

20. On the basis of aforesaid discussions, both the above stated criminal appeals are allowed and accordingly, impugned judgment of conviction and sentence order are, hereby, set aside. The appellant no. 2 Rajeshwar Singh, appellant no. 4, Krishna Kumar Singh in Criminal Appeal (DB) No. 192 of 1995



and appellant Kamlesh Singh in Criminal Appeal (DB) No. 220 of 1995 are acquitted of the charges. All the above stated appellants are on bail. They are discharged from the liabilities of their bail bonds.

20. The first and last page of this judgment be handed over to learned amicus curiae for needful.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

SHAHZAD/-Rajeev

AFR/NAFR	AFR
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