

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 1094 of 2017

Arising Out of PS. Case No.-5 Year-2012 Thana- Thana Bihpur Rail P.S. District- Khagaria

Gopal Kumar Singh Son of Late Basudeo Prasad Singh, resident of Jamalpur,
P.S. - Bihpur, District – Bhagalpur.

... .. Appellant

Versus

1. The State of Bihar
2. Bibhas Chandra Jha @ Nago Babu @ Nego Baba Son of Late Ram Swarup Jha, resident of Bihpur Thakur Bari, P.S. Bihpur, District – Bhagalpur.
3. Mahanth Nawal Kishore Das son of Late Ram Swaroop Jha, resident of Bihpur Thakur Bari, P.S. Bihpur, District – Bhagalpur.
4. Radha Kishna Singh son of Raj Kishore Singh, resident of Jamalpur, P.S. Bihpur, District – Bhagalpur.
5. Mani Bhushan Singh son of Late Deo Narain Singh, resident of Jamalpur, P.S. Bihpur, District – Bhagalpur.
6. Baiju Raja @ Baij Nath Jha son of Late Ram Swaroop Jha, resident of Bihpur Thakur Bari, P.S. Bihpur, District – Bhagalpur.
7. Md. Alam son of Late Md. Iqbal, resident of Jamalpur, P.S. Bihpur, District – Bhagalpur.
8. Gopi Krishna Singh son of Raj Kishore Singh, resident of Jamalpur, P.S. Bihpur, District – Bhagalpur.

... .. Respondents

Appearance :

For the Appellant/s	:	Mr. Akhileshwar Pd. Singh, Sr.Adv. Mr. Ajit Kumar Singh, Adv.
For the Respondent/s	:	Mr. Ajay Mishra, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

6. 08-01-2018 Heard Sri Akhileshwar Prasad Singh, learned senior counsel assisted by Sri Ajit Kumar Singh, learned counsel for the appellant and Sri Ajay Mishra, learned Addl. Public Prosecutor.

2. The present appeal under Section 372 of the Code of Criminal Procedure, 1973 (for short “Cr.P.C.”) has been



preferred by victim/informant against judgment of acquittal dated 12th August, 2016 passed in Sessions Trial No. 263 of 2013, arising out of Thana Bihpur Rail P.S. Case No. 5 of 2012. By the said judgment, the learned Sessions Judge, Khagaria (hereinafter referred to as the 'Trial Judge') has acquitted respondent no. 2 to 8 from the charge under Sections 302/34, 120B of the Indian Penal Code and Section 27 of the Arms Act, 1959.

3. The prosecution case in short is that the appellant's *fardbeyan* was recorded at 1.00 hour on 28-07-2012 near western railway gate no. 18/B of thana Bihpur. The said *fardbeyan* was recorded by Sub-Inspector of Police-cum-S.H.O., G.R.P., Bihpur. In the *fardbeyan*, the informant disclosed that on the same date i.e. on 27-07-2012 at about 9:30 P.M., he alongwith his elder brother Mahesh Prasad Singh (deceased), after taking meal had come out from his house for walking and thereafter, on the western railway gate no. 18/B they arrived, then his brother Mahesh Prasad Singh on the eastern *verandah* of gate-man room occupied a vacant chair. His face was towards western side. The informant, at that very time, was standing. About 10:00 in the night, he heard the sound of firing and thereafter, on hearing the sound, he turned and saw (1) Baiju



Raja @ Baijnath (respondent no. 6) carrying big arm in his hand, (2) Radha Krishna Singh (respondent no. 4) carrying big arm in his hand, (3) Bibhas Chandra Jha (respondent no. 2) carrying big arm in his hand, (4) Gopi Krishna Singh (respondent no. 8) carrying small arm in his hand, (5) Mahanth Nawal Kishore Das (respondent no. 3) having small arm in his hand, (6) Md. Alam (respondent no. 7) carrying small arm in his hand and (7) Mani Bhushan Singh (respondent no. 5) carrying small arm in his hand, all residents of Police Station – Bihpur, District – Bhagalpur and other 3-4 unknown persons. Thereafter, Mahanth Nawal Kishore Das (respondent no. 3) exhorted to kill and Baiju Raja (respondent no. 6), Radha Krishna Singh (respondent no. 4) shot fire on chest of his brother and his brother fell down on the right side, however; the informant, with a view to save his life, ran to his house. It was alleged that one week prior to the occurrence, the deceased was threatened.

4. On the basis of *fardbeyan* of the informant (P.W.9), an F.I.R., vide Rail P.S. (Bihpur) Case No. 5 of 2012, was formally drawn on 28-07-2012 at 5:45 hours against seven F.I.R. named accused persons and other unknown. After investigation, the police found accusation true and submitted chargesheet. Thereafter, all private respondents i.e. respondent no. 2 to 8



were put on trial. To prove its case, the prosecution examined altogether 14 witnesses. From the defence side also, one witness was examined, who was none else but grand son of the deceased. Since during the trial, the prosecution had not established its case beyond all reasonable doubt and there were serious contradictions in the evidences, the learned Trial Judge has passed judgment of acquittal, which has been assailed in the present appeal.

5. Alongwith the present appeal, the appellant/brother of the deceased as also informant has filed an application for grant of leave under Section 378(3) of the Cr.P.C., vide I.A. No. 1942 of 2017.

6. Sri Akhileshwar Prasad Singh, learned senior counsel for the appellant/informant has argued that there is apparent perversity in the judgment impugned, which requires interference. He submits that during trial, there was direct ocular evidence, particularly of P.W.3 own brother of the deceased and P.W.9 (informant), who categorically stated showing involvement of the accused persons, but the learned Trial Judge has incorrectly passed the judgment of acquittal. According to Sri Singh, in case of direct ocular evidence, supported by the medical evidence, the learned Trial Judge was required to pass



judgment of conviction, however; incorrectly the judgment of acquittal has been passed, which requires interference.

7. Learned Addl. Public Prosecutor has opposed the appeal and submits that learned Trial Judge has rightly passed the judgment of acquittal.

8. Besides hearing, we have perused the evidences on record. In the case, at the stage of admission itself, learned counsel for the appellant has produced certified copy of F.I.R. as well as copy of evidences i.e. evidence of P.W.1 to P.W.14 as well as evidence of D.W.1, which were kept on record. It is a peculiar case, in which, though P.W.2, who was the gate man and in whose presence, occurrence had taken place, had categorically stated that he had not seen anyone committing the offence. He stated that at about 10.00 in the night, the deceased/brother of the informant had come to his gate room alone. He occupied a chair, in the meanwhile, he heard the ring sound of telephone, then he entered inside the room, in the meanwhile, he heard the sound of firing and when he came out, he saw the brother of the informant in injured condition and thereafter, he immediately rushed to the Assistant Station Master for providing force. Immediately thereafter, force arrived. In the meanwhile, the officer incharge of Jhandapur Police Station had



also arrived, who has been examined as P.W.14 namely Subhash Baijnathan. On arrival, he noticed that there was some life in the body of the deceased and thereafter, he carried the injured to Naugachhia, however; on way, he succumbed to the injury. P.W.2 gate man Pokhlal Mahton has categorically stated in paragraph – 3 of his cross-examination that where Mahesh Babu (deceased) was lying, Jhandapur O.P. incharge alongwith armed forces had arrived with government jeep, and only after his arrival, the family members of Mahesh Babu (deceased) had arrived. Meaning thereby that from the time of occurrence till the arrival of officer incharge of Jhandapur Police Station, none of the family members of the deceased was present, even then, to the reasons best known to the prosecution, the informant has come out with a case, as if, in his presence, occurrence had taken place. Besides this, during evidence, this fact has come that wife of the deceased namely Nutan Devi had fought election of Mukhiya and she was defeated by the sister of respondent no. 3 namely Mahanth Nawal Kishore Das. Besides this, the evidence has come that in cases, some of the other accused persons (respondents) were witness against the deceased. It has also come that the deceased was having criminal antecedent and at least, in the case diary, his



involvement in seven cases has been mentioned. This fact has been stated by the investigating officer during the trial and even this fact has been suggested to the witnesses. After examining the entire evidences, the learned Trial Judge has passed the judgment of acquittal.

9. In this case, nothing has been indicated by the prosecution evidence as to once deceased, who at the time of arrival of the police, was alive and he was carried to Naugachhia for treatment and alleged occurrence had taken place at about 10:00 PM, then under what circumstances, the *fardbeyan* of the informant was got recorded at 1.00 hour on 28-07-2012 at the same place of occurrence i.e. western railway gate no. 18/B.

10. On going through the entire evidences, it appears that the learned Trial Judge has committed no error in passing the judgment of acquittal. Accordingly, there is no need to interfere with the impugned judgment and grant leave and as such, the leave petition i.e. I.A. No. 1942 of 2017 stands dismissed. Consequently, the appeal against acquittal too is dismissed.

(Rakesh Kumar, J.)

(Arvind Srivastava, J.)

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