

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.829 of 2013

Arising Out of PS.Case No. -46 Year- 2009 Thana -VIDYAPATINAGAR District- SAMASTIPUR

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Mithilesh Singh S/o Bhupendra Singh Resident Of Village - Chamtha, P.S. -
Bachhawara, District - Begusarai (Bihar)

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Vikramdeo Singh, Advocate
For the Informant : Mr. Pankaj Kumar
For the State : Mr. M.N. Jha, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA)

Date: 30-03-2018

Heard Sri Vikramdeo Singh, learned counsel
appearing for the appellant, Mr. M.N. Jha, learned Additional Public
Prosecutor, appearing for the State and Mr. Pankaj Kumar, learned
counsel appearing on behalf of the informant.

2. This appeal has been filed against the judgment of
conviction dated 30.07.2013 and order of sentence dated 03.08.2013,
passed by learned Additional District and Sessions Judge, *Ad hoc-I*,
Samastipur in Sessions Trial No. 247 of 2010 arising out of Vidyapati
Nagar P.S. Case No. 46 of 2009, G.R. No. 277 of 2009, whereby the
appellant has been convicted under sections 302/120B of the Indian
Penal Code and section 27 of the Arms Act and sentenced to undergo



life imprisonment for the offence under section 302/120B I.P.C. and to pay a fine of Rs. 20,000/-, in default, he has been further sentenced to undergo rigorous imprisonment for one year. The appellant has been further sentenced to undergo rigorous imprisonment for three years for the offence under section 27 of the Arms Act. All the sentences have been directed to run concurrently.

3. The prosecution case, as per the fardbeyan of the informant, Pankaj Kumar, recorded at 4:00 P.M., near the place of occurrence is that on 27.05.2009, when his father, Rajendra Sah (deceased), returned from Samastipur, he along with his father went to his field to see their maize crops at about 11:00 A.M. In the way, they saw four accused persons namely, Vijay Paswan, Virendra Paswan, Rajkumar @ Khesari Singh, Mithilesh Singh and two unknown persons were taking liquor at the shop of Vijay Paswan. When he along with his father reached at their field, at about 12:00 noon, all the above mentioned accused persons came there and surrounded his father. Accused Khesari Singh told to his father that in spite of repeated demands, why he is not handing over the field and thereafter, Khesari Singh and Mithilesh Singh took out pistol for their waist. In the meantime, Vijay Paswan and Virendra Paswan pushed his father on the ground and both Khesari Singh and Mithilesh Singh fired upon his father, which hit his head, right temple, chest and right ribs. His



father succumbed to the injuries. On *hulla*, raised by the informant, all the accused persons fled away. On *hulla*, so many persons gathered and saw the accused persons fleeing. The cause of occurrence, as claimed by the informant, is the denial of his father to fulfill the demand of land by Khesari Singh.

4. On the basis of the aforesaid *fardbeyan* of the informant/P.W. 7 Pankaj Kumar, Vidhiyapati Nagar P.S. Case No. 46 of 2009 was instituted for the offence under sections 302/34 of the Indian Penal Code and section 27 of the Arms Act. After investigation, charge-sheet was submitted by the police for the offence under section 302/120B of the Indian Penal Code and section 27 of the Arms Act against the appellant. Thereafter, cognizance has been taken. When accused Khesari Singh did not appear before the Court below, the case of this appellant and co-accused Sipahi Mahto was separated and was committed to the Court of Sessions. On 03.05.2010, charge was framed in this case for the offence under sections 302, 120B of the Indian Penal Code and section 27 of the Arms Act.

5. During Trial, the prosecution has examined altogether 8 witnesses. P.W. 1/Lakho Paswan, P.W. 2/Tetari Devi and P.W. 3/Maya Devi became hostile. P.W. 4/Vimal Prasad Singh, P.W. 5/Ashok Kumar Sah and P.W. 6/Rajeev Kumar are F.I.R. witnesses.



P.W. 7/Pankaj Kumar is the informant. P.W. 8/Dr. Ashok Vardhan Sahay, who conducted the *Postmortem* of the deceased.

6. In order to establish the charges, the prosecution has proved the following documents as Exhibits :-

Signature of the witnesses (P.W. 4, 5 and 7) on the *fardbeyan* (Exhibits-1, 1/1 and 1/2). Signatures of the Doctor (P.W. 8) on the Postmortem Report (Exhibit-2, 2/1 and 2/2).

7. The statement under section 313 Cr. P.C. was recorded, in which appellant has denied the allegation.

8. Sri Vikramdeo Singh, learned counsel for the appellant submits that in the present case, there is no independent witness and all the witnesses are interested witnesses. They have implicated this appellant only with ulterior motive. Further submission is that the Investigating Officer of this case has not been examined, which was necessary in view of the fact that three F.I.R. witnesses had turned hostile. The Investigating Officer could have deposed regarding the place of occurrence, any incriminating substance having been seized from there, delay in recording of the *fardbeyan* and the circumstances leading to lodging of the present F.I.R.

9. Learned counsel further contends that neither any seized substance nor the blood stained soil from the place of



occurrence was produced before the trial Court. Learned counsel further submits that injury no. 6 was explained by the Doctor to be a stab wound caused by knife or sharp pointed weapon and not by any firearm.

Learned counsel also contends that during course of trial, witnesses have improved their statements and have brought new facts to fill-up the lacuna and to show themselves as eye witness of the alleged occurrence.

It is also submitted that the police reached at the place of occurrence at 01:00 P.M., and the present *fardbeyan* was recorded at 04:00 P.M. on 27.05.2009, but the same was forwarded to the Court below on 29.05.2009 without any explanation for the delay and thus, there was ample scope for manipulation.

Further contention of learned counsel is that it was another Mithilesh Singh, who had been involved in this case but he was arrested and sent to jail in connection with Vidyapati Nagar P.S. Case No. 47 of 2009 instituted for the rioting done by public after death of the deceased of the instant case instead of Vidyapati Nagar P.S. Case No. 46 of 2009.

10. Learned counsel further submits that the Court below has failed to take into consideration the aforementioned facts, which has caused serious prejudice to the appellant. Hence, the order



passed the Court below is an erroneous order. As such, it is submitted that the impugned judgment of conviction and the order of sentence is illegal, vitiated, unsustainable in the eye of law and is fit to be set aside.

11. Mr. M.N. Jha, learned Additional Public Prosecutor appearing on behalf of the State and Mr. Pankaj Kumar, learned counsel appearing on behalf of the informant oppose the prayer of the appellant.

12. Considering the facts and circumstances of the case, the materials available on record and the submission advanced on behalf of the parties, this Court finds that the submissions advanced on behalf of the appellant have substance and agrees with the same.

13. In the present case, the informant is an eye witness and has clearly stated in his *fardbeyan* that Khesari Singh and Mithilesh Singh took out pistol from their waist and shot the deceased dead by firing one by one on his right temple, chest, right side of stomach and ribs, but in his evidence (P.W. 7), he takes the name of one Prashant Singh @ Paras Singh also besides the above two accused persons. He says about firing and killing of his father by all the above three accused persons. The informant is a literate person and has put his full signature on the *fardbeyan*, so it cannot be said that one name



has been missed out inadvertently.

14. P.W. 5/Ashok Kumar Sah, being a witness, has also put his full signature on the *fardbeyan* and this witness is also a literate person and as such, it will be presumed that he has put his signature after reading out the *fardbeyan*, but in contrary, he also takes the name of accused Prashant Singh and says about firing by him in his evidence.

15. Further, besides the injuries of firing, the Doctor/P.W. 8 has also found a stab injury. Doctor has clearly opined that such injury cannot be sustained by fall and it is possible only by knife or sharp pointed weapon. But none of the witnesses have said that the accused persons assaulted the deceased by knife or sharp pointed weapon.

16. Due to non-examination of Investigating Officer by the prosecution, the submission of the learned counsel that it was another Mithilesh Singh, who was involved in the present case, but he was arrested and sent to jail in connection with Vidyapati Nagar P.S. Case No. 47 of 2009 registered for rioting done by public after death of the deceased in place of Vidyapati Nagar P.S. Case No. 46 of 2009 could not be verified. Further in his absence, questions could not be asked on the self-contradictory statements of witnesses. Moreover, the place of occurrence also could not be established. Prosecution has also



not produced the blood stained soil, seizure list and inquest report. The non-examination of the Investigation Officer has adversely affected the accused.

17. It is relevant to mention here that out of the eight witnesses examined on behalf of the prosecution, one is the Doctor and one is a formal witness. Out of the remaining six witnesses, three independence witnesses have turned hostile and only such witnesses, who are relatives of the deceased, have supported the prosecution case.

18. The First Information Report was registered on 27.05.2009 and it was sent to the Court of C.J.M., on 29.05.2009. However, no explanation has been given by the prosecution for the aforesaid delay.

19. The aforesaid facts make the prosecution story doubtful and it cannot be said that the prosecution has been able to prove the case beyond all reasonable doubt. On these grounds, this Court is of the considered opinion that the benefit of doubt should have been given to the appellant and accordingly, he is given the benefit of doubt.

20. Accordingly, the appeal is allowed. The judgment of conviction dated 30.07.2013 and order of sentence dated 03.08.2013, passed by learned Additional District and Sessions Judge,



Ad hoc-I, Samastipur in Sessions Trial No. 247 of 2010 arising out of Vidyapati Nagar P.S. Case No. 46 of 2009, G.R. No. 277 of 2009, is, hereby, set aside.

Since the appellant is in custody and the judgment of his conviction and sentence has been set aside, it is, hereby, directed to release him forthwith, if not wanted in any other case.

(Arvind Srivastava, J)

(Rakesh Kumar, J)

(Rakesh Kumar, J)

Shailendra/-

AFR/NAFR	NAFR
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