

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1030 of 2012

Arising Out of PS.Case No. -33 Year- 2009 Thana -null District- SAMASTIPUR

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Ganesh Singh, S/o Kuldeep Singh Resident of Village- Rupauli Chakseema, Police
Station- Patori, District- Samastipur

.... Appellant/s

Versus

The State Of Bihar

.... Respondent/s

With

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Criminal Appeal (DB) No. 938 of 2012

Arising Out of PS.Case No. -33 Year- 2009 Thana -null District- SAMASTIPUR

- =====
1. Kuldeep Singh, son of Late Faudar Singh
 2. Machhia Devi, wife of Kuldeep Singh, both residents of village – Rupauli,
Chakseema, Police Station – Patori, District – Samastipur.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. K. P. Singh, Sr. Advocate.
Mr. Pratik Mishra, Advocate.
For the informant : Mr. Sunil Kumar Thakur, Advocate.
For the Respondent/s : Mr. A. K. Sinha, APP.

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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: 04-05-2018

As both these criminal appeals have cropped up from the same judgment and order of conviction and sentence, hence they are taken up together for consideration and disposed of by this common judgment.

2. Heard learned counsel for the appellant, learned counsel for the informant and learned APP for the State on these criminal appeals.

3. These criminal appeals have been preferred against the Judgment and Order of conviction dated 05.09.2012 and order of sentence dated 06.09.2012 passed by Adhoc Additional Sessions Judge-II, Samastipur in Sessions Trial No. 355 of 2009 / 220 of 2012 arising out of Patori P.S. Case No. 33 of 2009, whereby the learned trial court convicted the appellant Ganesh Singh under Section 302 of the Indian Penal Code and Section 27(1) of the Arms Act and Kuldeep Singh and Machhiya Devi under Sections 302/34 and 114 of the Indian Penal Code and sentenced Ganesh Singh to undergo imprisonment for life and also slapped him with fine of Rs. 5000/- and in default of payment of fine to further undergo R.I. for six months under Section 302 of the Indian Penal Code and further sentenced him to undergo R.I. for five years and slapped him with fine of Rs. 5000/- and in default of payment of fine, to further undergo R.I. for six



months under Section 27(1) of the Arms Act, both the sentences were directed to run concurrently and sentenced Kuldeep Singh and Machhiya Devi to undergo imprisonment for life and slapped them with fine of Rs. 5000/- each and in default of payment of fine, to further undergo R.I. for six months for offence under Section 302 of the Indian Penal Code read with Section 34 and 114 of the Indian Penal Code.

4. Factual matrix of the case is that Patori P.S. Case No. 33 of 2009 was instituted under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act against the accused Ganesh Singh, Machhiya Devi, Kuldeep Singh and Dukhan Singh on the basis of the fardbeyan of Baijnath Singh, Son of Late Repat Singh recorded by S.I. D. N. Mandal, S.H.O., P.S. Patori at the door of the victim on 11.03.2009 at 04:00 PM with the allegation in succinct that on 11.03.2009 on the occasion of Holi, they were at their house, in the meantime, Ganesh Singh descending at his house started slating his son Pradeep Singh. His mother Machhiya Devi and father Kuldeep Singh also arrived there following him. When his son forbade him from slating, mother and father of Ganesh Singh gave order of his elimination. Responding the same, Ganesh Singh brought the pistol from his house. At that time Dukhan Singh was also present with him. On arriving at his door Ganesh Singh again



started slating his son and on forbading him, Ganesh Singh at the instance of his parents resorted firing upon Pradeep Singh at 03:30 PM which hit on his left chest. Sustaining injury, he fell down on the terrace and started writhing. He, his son Akhilesh Singh, his wife Sumitra Devi and others climbed on the terrace and found his son badly injured in the pool of blood sustaining bullet injury. He succumbed to injury before them. Then Ganesh Singh brandishing pistol extended threatening of dire consequence in case of giving evidence against him. Then all the accused persons left the scene. Further allegation is that Ganesh Singh is a criminal antecedent person. He had committed theft of potato from his field but he had compromised the matter scaringly. There is some open land in front of his house which has been fenced by him. Ganesh Singh asked him to vacate the same, but he has refused to oblige him and vacate the land till the construction of road. It is claimed by the informant that Ganesh Singh, Machhiya Devi, Kuldeep Singh and Dukhan Singh have committed murder of his son in furtherance of common intention.

5. Aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted chargesheet against the aforesaid accused persons.

6. On receiving the chargesheet and the case diary and



perusing the same, the learned Magistrate took cognizance of the offence against the accused persons and committed the case to the court of sessions and after commitment and on transfer finally the case came in the *seisin* of Adhoc Additional Sessions Judge-II, Samastipur for trial.

7. Charge against the accused Ganesh Singh was framed under Section 302 of the Indian Penal Code and Section 27 of the Arms Act while charge against the accused Kuldeep Singh, Machhiya Devi and Dukhan Singh was framed under Sections 302/34 and Section 114 of the Indian Penal Code. The charge was read over and explained to them to which they pleaded not guilty and claimed to be tried.

8. To substantiate its case, in ocular evidence, the prosecution has examined altogether nine prosecution witnesses namely, Raja Ram Singh as PW-1, Akhilesh Singh as PW-2, Sumitra Devi as PW-3, informant Baijnath Singh as PW-4, Dr. Rakesh Chandra Sahay Verma who conducted the autopsy of the cadaver of the deceased as PW-5, Dr. Uday Kumar Udayan and Dr. Hemant Kumar Singh who were members of the medical board conducting the autopsy as PW-6 and PW-7 respectively, I.O. Mahendra Mishra as PW-8 and Shivji Hajra as PW-9. Out of the aforesaid witnesses, PW-9 happens to be formal witness. Prosecution has also filed and



proved some documents by way of documentary evidence in the case.

9. Statement of the accused persons was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence. In ocular evidence, the accused persons have examined two witnesses, namely, Bijay Rai as DW-1 and Sunil Chaudhary as DW-2.

10. 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.

11. Being aggrieved and dissatisfied with the aforesaid Judgment and Order of conviction and sentence, the convict Ganesh Singh has preferred Criminal Appeal (DB) No. 1030 of 2012 and convicts Kuldeep Singh and Machhiya Devi have preferred Criminal Appeal (DB) No. 938 of 2012.

12. The point for consideration in this case is, as to whether the prosecution has been able to bring home the charge levelled against the appellants beyond all reasonable doubts or not.

13. It is submitted by learned counsel for the appellants that as per the witnesses account, several persons had witnessed the occurrence, but no independent witness has been examined by the prosecution rather all the witnesses examined by the prosecution are



family members of the informant and highly interested witnesses of the case. Hence, the appellants cannot be convicted relying upon the evidence of highly interested witnesses of the case. It is further submitted that as per the prosecution case, the deceased was standing on the terrace at a height of 10 feet from the road and has sustained injury on his left chest while the bullet was fired on him by Ganesh Singh from the road. In the fardbeyan, the informant has nowhere stated that Ganesh Singh resorted firing upon the deceased climbing on the heap of the sand. They have also not stated so in their statements recorded under Section 161 Cr.P.C. before the police. But later on realizing that such injury could not be inflicted from such distance by means of pistol, the prosecution has manipulated and developed the story of resorting firing upon the deceased climbing on the heap of the sand lying in front of the house of the informant in their evidence for the first time which is not reliable. It is further submitted that there is a vital contradiction between the statements of the witnesses given before the court and that given before the I.O. under Section 161 Cr.P.C. regarding aforesaid aspect and other material aspect of the case and I.O has also corroborated the aforesaid contradiction. Hence, witnesses examined by the prosecution are not worth credence and reliable and no conviction can be made relying upon the evidence of such unreliable witnesses.



It is further submitted that as per the prosecution case, the deceased was standing at 10 feet from the road on the terrace and Ganesh Singh had allegedly resorted firing from the road by means of pistol standing on the road, but doctor has found blackening mark on the wound but such injury could not be inflicted by firing from such a long distance. Hence, medical evidence also does not corroborate the prosecution case. Thus, the prosecution has utterly and miserably failed to substantiate the prosecution case and bring home the charges levelled against the appellants beyond all reasonable doubts by adducing reliable, trustworthy and worth credence ocular and documentary evidence. Hence, the Judgment and order of conviction and sentence passed by learned Trial Court is liable to be set aside and the appellants are entitled to be acquitted.

14. On the other hand, learned APP and learned counsel for the informant advocating the correctness and validity of the impugned Judgment and Order of conviction and sentence submitted that the informant has fully supported the prosecution case and other three witnesses namely PW-1, PW-2 and PW-3 have also corroborated the aforesaid case. Ocular evidence also stands corroborated by medical evidence and learned trial 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 these two appeals are shorn of merit and are liable to be dismissed.

15. From perusal of the fardbeyan of the informant, prosecution case appears to be that on forbading the appellant Ganesh Singh from slating by the son of the informant, namely, Pradeep Singh who was standing on the terrace of his house at the time of occurrence, Ganesh Singh brought pistol from his house and on the order of his parents, he resorted firing on the left chest of Pradeep Singh from the ground. Sustaining injury, Pradeep Singh fell down on the terrace and succumbed to injury instantly. There is no case of prosecution about resorting firing upon Pradeep Singh by Ganesh Singh climbing on the heap of sand rather from the ground but PW-1 Raja Ram Singh who happens to be uncle of the deceased, PW-2 Akhilesh Singh who happens to be son of the informant, PW-3 Sumitra Devi who happens to be wife of the informant and PW-4 the informant Baijnath Singh have stated that the appellant Ganesh Singh resorted firing upon Pradeep Singh, who had climbed on the terrace by that time, climbing on the heap of the sand lying in front of the house of the informant which proved fatal. I.O. Mahendra Mishra (PW-8) has stated in Para-4 of his examination-in-chief that there was heap of sand at 10 feet towards East of the house of the informant and the height of the terrace is 10 feet from the ground.



Informant Baijnath Singh (PW-4) has stated in Para-16 of his cross-examination that his son Pradeep Singh was standing at 3 feet from the last step of the staircase on the terrace. PW-2 Akhilesh Singh has stated in Para-14 of his cross-examination that there was heap of sand of the height of 5 feet in front of his house and the sand was spread in the diameter of 7.5 to 9 feet. In Para-15 of his cross-examination, he has further stated that Ganesh Singh had resorted firing climbing on the mid of heap of sand. The aforesaid statement of the PW-2, informant (PW-4) and I.O. indicates that the deceased Pradeep Singh was standing on the terrace which was at 10 feet from the ground and the heap of sand was lying at 10 feet from the house of the informant. The said heap was spread in the diameter of 7.5 to 9 feet and Ganesh Singh had allegedly resorted firing standing on the said heap of sand while the deceased Pradeep Singh was standing three feet back to the last step of the staircase on the terrace. Admittedly, he had sustained injury on his left chest. The inquest report marked as Exhbiit-4 indicates that the height of Pradeep Kumar Singh was 5'8'' which means that he had sustained injury on his chest at the height 3'8'' from the terrace. On arithmetic calculation of the aforesaid distance and location of the injury on the person of the deceased and that of the appellant Ganesh Singh at the time of occurrence, it appears that at the time of occurrence, the



deceased was standing at 17½ feet away from the appellant Ganesh Singh which means that Ganesh Singh had resorted firing upon the deceased from the distance of 17½ feet. But from perusal of the post mortem report and evidence of Dr. Rakesh Chandra Sahay Verma (PW-5), it appears that the doctor has found entry wound as lacerated with inverted margin ½” in diameter over left auxiliary area on the left side of chest about 3” above and lateral to left nipple with few blackening.

16. As per the 25th Edition of Modi's Medical Jurisprudence, if a firearm is discharged very close to the body or in actual contact, subcutaneous tissues over an area of two or three inches around the wound of entrance are lacerated and the surrounding skin is usually scorched and blackened by smoke and tattooed with unburnt/partially burnt grains of gunpowder or smokeless propellant powder. The adjacent hairs are singed, and the clothes covering the part are burnt by the flame. If the powder is smokeless, there may be a greyish or white deposit on the skin around the wound. Blackening is found, if the firearm like shotgun is discharged from a distance not more than three feet and revolver or pistol is discharged within about two feet. As per prosecution case, Ganesh Singh had resorted firing upon the deceased by means of pistol. As the doctor has found lacerated wound with few blackening



as wound of entry over the left side of the chest of the deceased and the bullet was fired from the pistol. Hence, as per the Modi's Medical Jurisprudence, the bullet must have been fired from a distance within about 2 feet, but from perusal of the aforesaid evidence of the witnesses, it appears that the bullet was fired by the appellant from the distance of 17½ feet. The aforesaid aspect of the case goes to rule out witnessing of the aforesaid occurrence by the aforesaid witnesses and also the prosecution case.

17. Attention of PW-1 in Para-18 of his cross-examination, PW-2 in Para -10 of his cross-examination and PW-4 in Para-15 of his cross-examination was drawn by the defence regarding contradiction between their statements given before the court and that given before the I.O. under Section 161 Cr.P.C. regarding resorting firing upon the deceased by Ganesh Singh by climbing on the heap of sand. I.O. in Para-6 and 7 has corroborated the aforesaid contradiction between the statement of the aforesaid witnesses given before the Court and that given before him under Section 161 Cr.P.C. regarding aforesaid material aspect of the case. Thus, the aforesaid witnesses appear to have taken different stand before the Court regarding the aforesaid material aspect of the case and they do not happen to be worth credence and reliable.

18. I.O. has stated in Para-9 of his cross-examination



that he had not found any foot print on the sand or the sand strewn. Aforesaid statement of the I.O. also goes to negate the prosecution case about resorting firing upon the deceased by the appellant Ganesh Singh by climbing on the heap of the sand as had Ganesh Singh had resorted firing climbing on the heap of the sand, there must have been foot print on the sand and the sand must have been strewn, but not so.

19. From perusal of the record, it appears that PW-1 Raja Ram Singh happens to be uncle of the deceased, PW-2 Akhilesh Singh, son of the informant, PW-3 Sumitra Devi, wife of the informant and PW-4 Baijnath Singh informant himself and all happen to be family members of the deceased. PW-1 has stated in Para-11 of his cross-examination that 15-20 persons had congregated at the place of occurrence at the time of occurrence. They had also witnessed the occurrence. He has stated in Para-10 of his examination-in-chief that towards North of his house, houses of Jogendra Singh, Tilakdhari Singh and Ganesh Singh are located, towards South houses of Hriday Paswan, Parmeshwar Paswan, Surendra Paswan, Sarju Paswan and others are located, towards East house of Rampadarath Singh and Parmeshwar Singh are located. PW-2 has stated in Para-11 of his cross-examination that listening the hurling abuse by the appellant, 10 villagers had congregated there.



PW-3 has stated in Para-12 of his cross-examination that her neighbours were witnessing the accused persons hurling abuse from their door. In Para-14 of her cross-examination, she has further stated that on the firing sound, around 1000 persons had flocked at her door and PW-4 (informant) has stated in Para-17 of his cross-examination that around ten villagers had witnessed Machhiya Devi, Kuldeep, Ganesh and Dukhan bringing pistol from their house. 10-20 villagers had witnessed them hurling abuse. But none of the aforesaid independent witnesses of occurrence has been examined by the prosecution and no plausible and convincing explanation has been assigned by the prosecution for non-examination of the aforesaid independent witnesses of the case. Hence, adverse inference is drawn against the prosecution.

20. As per the prosecution case, at the instigation of Kuldeep Singh and Machhiya Devi, Ganesh Singh had resorted firing upon the deceased and Dukhan Singh was also present there along with them. But I.O. in Para-8 of his cross-examination has stated that witnesses had divulged him that except Ganesh Singh, all other accused persons have been falsely implicated in the case by the informant by hatching conspiracy. The aforesaid statement of the I.O. goes to create serious doubt about the credibility and reliability of the aforesaid witnesses examined by the prosecution including the



informant.

21. From perusal of the record, it appears that occurrence is of 11.03.2009 at around 03:30 PM and fardbeyan was recorded on the same day at 4 PM while F.I.R. was lodged on the same day at 7 PM, but the same was sent to the Magistrate two days later on 13.03.2009 and no reasons has been assigned by the prosecution to explain the aforesaid delay in sending the F.I.R. to the Court which creates serious doubt about the prosecution case.

22. PW-2 has stated in Para-5 of his examination-in-chief and Para-13 of his cross-examination that Ganesh Singh had made demand of extortion tax from his brother (deceased) and his father had given information of demanding the extortion tax to the S.D.O six months back. The informant (PW-4) has stated in Para-7 of his examination-in-chief that Ganesh Singh had stolen potato from his field preceding to the occurrence for which he has filed a case against him but he has compromised the aforesaid case with him scaringly. He has further stated that he had fenced the land located in front of his house. Ganesh Singh used to mount pressure upon him to vacate the same, but he had refused to oblige him and had told him not to vacate the same till the construction of the road there. Informant has also stated so in his fardbeyan. Thus, from perusal of the aforesaid statement of the witnesses and the fardbeyan, it appears



that there is animosity between the prosecution party and the deceased. Animosity cuts both the edge. But in view of the aforesaid contradiction between the statement of the witnesses given before the court and that given before the I.O. under Section 161 Cr.P.C. regarding material aspect of the case, contradiction between the ocular and medical evidence, non-examination of any independent witness of the occurrence and sending of the F.I.R. to the Court two days later to the lodging of the case, false implication of the appellant by the prosecution party due to aforesaid animosity cannot be ruled out.

23. In the aforesaid facts and circumstances of the case and discussion made by me herein above, I find and hold that the prosecution has utterly and miserably failed to substantiate the prosecution case and bring home the charge levelled against the appellants 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 trial court is set aside and the appellants are acquitted of the charge levelled against them. As the appellant Ganesh Singh is in custody, he is directed to be released forthwith from the custody, if not wanted in any other case while as the appellants Kuldeep Singh and Machhiya Devi are on bail, they



are discharged from the liability of their bail bonds. Accordingly,
these two criminal appeals are allowed.

(Prakash Chandra Jaiswal, J)

Ravi Ranjan, J.: I agree.

Mishra/-

(Ravi Ranjan, J)

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