

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.815 of 2012

Arising Out of PS.Case No. -20 Year- 2006 Thana- Alipur District- GAYA

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Sunil Singh, Son of Yadunandan Singh, Resident Of Vill - Bohiya, P.S - Alipur,
District - Gaya

.... Appellant/s

Versus

The State Of Bihar

.... Respondent/s

with

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Criminal Appeal (DB) No. 621 of 2012

Arising Out of PS.Case No. -20 Year- 2006 Thana - Alipur District- GAYA

=====

Dhanraj Patel, S/O Munni Singh, Resident Of Village Bohiya, P.S. Alipur, District
Gaya

.... Appellant/s

Versus

The State Of Bihar

.... Respondent/s

with

=====

Criminal Appeal (DB) No. 649 of 2012

Arising Out of PS.Case No. -20 Year- 2006 Thana - Alipur District- GAYA

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1. Birj Kishore Singh, S/O Late Fakir Chand Singh, R/O Village- Bohiya, P.S.-
Alipur, District- Gaya
2. Kamlesh Singh, S/O Late Rajballabh Singh, R/O Village- Bohiya, P.S.- Alipur,
District- Gaya

.... Appellant/s

Versus

The State Of Bihar

.... Respondent/s

with

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Criminal Appeal (DB) No. 697 of 2012

Arising Out of PS.Case No. -20 Year- 2006 Thana - Alipur District- GAYA



- 1. Ramashish Singh, S/O Late Preyag Singh, Resident Of Village- Bohiya, P.S.- Alipur, District- Gaya
- 2. Ajay Singh, S/O Late Faudar Singh, Resident Of Village- Bohiya, P.S.- Alipur, District- Gaya
- 3. Parmanand Singh, S/O Late Shyamalal Mahto, Resident Of Village- Bohiya, P.S.- Alipur, District- Gaya
- 4. Yadunandan Singh, S/O Late Shyamalal Mahto, Resident Of Village- Bohiya, P.S.- Alipur, District- Gaya

..... Appellant/s
Versus
The State Of Bihar
..... Respondent/s
with

=====

Criminal Appeal (DB) No. 698 of 2012

Arising Out of PS.Case No. -20 Year- 2006 Thana - Alipur District- GAYA

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Chitrnanjan Singh, S/O Munni Singh, Resident Of Village- Bohiya, P.S.- Alipur, District- Gaya

..... Appellant/s
Versus
The State Of Bihar
..... Respondent/s
with

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Criminal Appeal (DB) No. 733 of 2012

Arising Out of PS.Case No. -20 Year- 2006 Thana - Alipur District- GAYA

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Parikha Singh, S/O Munni Singh, Resident Of Village- Bohiya, P.S.- Alipur, District- Gaya

..... Appellant/s
Versus
The State Of Bihar
..... Respondent/s

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Against the judgment of conviction dated 14.06.2012 and the order of sentence dated 22.06.2012, passed by Mr. Md. Perwez Alam, *Ad hoc* Additional District & Sessions Judge-II, Gaya, in Sessions Trial No.115/09/51/07 (S.J.), arising out of Alipur P.S. Case No.20 of 2006

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Appearance :

(In CR. APP (DB) No.815 of 2012)

For the Appellant/s : Mr. Viveka Nand Singh, Advocate

For the Respondent/s : Mr. Ashwani Kumar Singh, APP
Mr. Dilip Kumar Sinha, APP

(In CR. APP (DB) No.621 of 2012)

For the Appellant/s : Mr. Suraj Narayan Yadav, Advocate
Mrs. Manisha Prakash, Advocate
Ms. Annu Shree, Advocate

For the Respondent/s : Mr. Ashwani Kumar Singh, APP
Mr. Dilip Kumar Sinha, APP

(In CR. APP (DB) No.649 of 2012)

For the Appellant/s : Mr. Ramakant Sharma, Sr. Advocate
Mr. Binod Kumar, Advocate

For the Respondent/s : Mr. Ashwani Kumar Singh, APP
Mr. Dilip Kumar Sinha, APP

(In CR. APP (DB) No.697 of 2012)

For the Appellant/s : Mr. Viveka Nand Singh, Advocate
Mrs. Manisha Prakash, Advocate

For the Respondent/s : Mr. Ashwani Kumar Singh, APP
Mr. Dilip Kumar Sinha, APP

(In CR. APP (DB) No.698 of 2012)

For the Appellant/s : Mr. Suraj Narayan Yadav, Advocate
Mrs. Manisha Prakash, Advocate
Ms. Annu Shree, Advocate

For the Respondent/s : Mr. Ashwani Kumar Singh, APP
Mr. Dilip Kumar Sinha, APP

(In CR. APP (DB) No.733 of 2012)

For the Appellant/s : Mr. Suraj Narayan Yadav, Advocate
Mrs. Manisha Prakash, Advocate
Ms. Annu Shree, Advocate

For the Respondent/s : Mr. Ashwani Kumar Singh, APP
Mr. Dilip Kumar Sinha, APP

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

CAV JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA MISHRA)

Date: 09-10-2018



The present appeals have been preferred against the judgment dated 14.06.2012 and the order of conviction dated 22.06.2012 passed by Mr. Md. Perwez Alam, Ad hoc Additional District & Sessions Judge-II, Gaya, in Sessions Trial No.115/09/51/07 (S.J.), arising out of Alipur P.S. Case No.20 of 2006, whereby and whereunder the appellant Sunil Singh in Cr. Appeal (DB) No.815 of 2012 and appellant Parikha Singh in Cr. Appeal (DB) No.733 of 2012 have been sentenced to undergo imprisonment for life and fine of Rs.10,000/- (Ten thousand only) under Section 302 I.P.C., imprisonment for seven years and fine of Rs.5,000/- (Five thousand only) under Section 307/149 I.P.C., imprisonment for two years under Section 148 I.P.C. and imprisonment for three years and fine of Rs.2,000/- (Two thousand only) under Section 27 Arms Act. In default of payment of fine under Section 302, 307/149 I.P.C. and 27 Arms Act, the convicts would have to undergo further imprisonment of six months, three months and two months respectively.

By the aforesaid judgment, the appellants Ramashish Singh in Cr. Appeal (DB) No.697 of 2012, Dhanraj Patel in Cr. Appeal (DB) No.621 of 2012, Kamlesh Singh in Cr. Appeal (DB) No.649 of 2012, Chitranjan Singh in Cr. Appeal (DB) No.698 of 2012, Birj Kishore Singh in Cr. Appeal (DB) No.649 of 2012,



Yadunandan Singh in Cr. Appeal (DB) No.697 of 2012, Ajay Singh in Cr. Appeal (DB) No.697 of 2012 and Parmanand Singh in Cr. Appeal (DB) No.697 of 2012 have been sentenced to undergo imprisonment for life and fine of Rs.10,000/- (Ten thousand only) under Section 302/149 I.P.C., imprisonment for seven years and fine of Rs.5,000/- (Five thousand only) under Section 307/149 I.P.C. and two years under Section 148 I.P.C. respectively. In default of payment of fine under Section 302/149 and 307/149 I.P.C., the convicts would have to undergo further imprisonment for six months and three months respectively. All the sentences awarded to the convicts have been directed to run concurrently and the period of sentence awarded to them has been directed to be set off from the period which the accused have already undergone in custody during trial and investigation of this case.

2. The case of the prosecution, as detailed in the *Fard beyan* of the informant Mahendra Singh (P.W. 5), is that the informant was having a dispute with Ramashish Singh for a piece of land for the last two years. On the said land, there was a mango tree. On 28.04.2006 at about 5.30 pm, when the informant along with his brother Braj Kishore Singh and Ranjay Kumar alias Ravi Ranjan Kumar was guarding the mango tree, then, all of a sudden, eleven accused persons came there. Uday Singh and Sunil Singh were



having rifle in their hands, Parikha Singh was having a gun in his hand and rests of the accused persons were having *Garasa* and *Bhala*. The accused persons also inquired from the informant as to why he is sitting on his land and near their mango tree. The informant replied that the land and the mango tree were his own, whereupon the accused Uday Singh fired upon Braj Kishore Singh from the rifle, the bullet of which hit his right hand. Thereafter, Parikha Singh fired from the gun on Ravi Ranjan alias Ranjay on the chest. Sunil Singh also fired from the rifle, the bullet of which hit Ranjay on the back. Accused Chitranjan Singh came and assaulted the informant by means of *Lathi* on the head. On alarm being raised by them, the family members of the informant and other co-villagers started running from the place of occurrence but, in the meantime, the accused persons fled away.

3. All the injured were brought on the road on a cot and from there they were taken to Alipur P.S. on a Maxi. The injured persons were then sent to the Tekari Hospital from the P.S., but Birj Kishore Singh and Ranjay Kumar succumbed to the injuries on way to the hospital.

4. Accordingly, the *Fard beyan* of the informant was recorded by S.I. D.N. Mandal of Tekari P.S. at Primary Health Centre, Tekari, vide Alipur P.S. Case No.20/06 dated 28.04.2006,



under Section 147, 148, 149, 302, 323, 325, 307 I.P.C. and Section 27 of the Arms Act.

5. The I.O. of this case reached the place of occurrence and prepared the Inquest Report of the deceased and the dead bodies were sent for post-mortem examination to A.N.M.C.H., Gaya, where the post-mortem examination was conducted on the dead bodies by Dr. Arvind Prasad (P.W.13). The I.O. of this case (P.W.6) after completion of investigation submitted the charge-sheet under Section 147, 148, 149, 302, 323, 325, 307 I.P.C. and Sections 25(1-B)A, 27/35 of the Arms Act. Thereafter, cognizance of the offence was taken under the aforesaid sections by the C.J.M., Gaya, who committed the case to the Court of Session.

6. The prosecution has examined altogether 14 witnesses in support of its case. Of these, (P.W.14) Chunni Singh is the formal witness who has recognized the *Fard beyan* of the informant in the writing of D.N. Mandal, the then Officer-in-Charge, Tekari P.S., which has been marked as Ext.-6 on his recognition. Inquest report (Ext.-2) is also in the writing of D.N. Mandal. The injury report of one Mahendra Singh has been marked as Ext.-7 whereas the sanction order of the D.M., Gaya has been marked as Ext.-8 on his recognition and the report of the Sergeant Major Mithilesh Prasad has been marked as Ext.-9. After closing of



the prosecution witnesses, the statements of the accused persons were recorded under Section 313 Cr.P.C.

7. The case of the defence is that the accused persons did not commit any offence and have been falsely implicated by the prosecution due to previous enmity on account of the land dispute. Thus, these appellants have on conviction preferred the present appeals against the findings and the judgment of conviction followed by the sentence as have been indicated above in the respective cases.

8. Leading the argument on behalf of the appellants, Shri Rama Kant Sharma, learned Senior Counsel, has assailed the judgment and order of conviction on the specious ground that the evidence of the doctor who conducted the post-mortem on the two bodies squarely belies the prosecution case inasmuch as the statement that the appellant Parikha Singh fired on the chest of Ranjay and thereafter, Sunil Singh fired on his back is squarely countenanced by the medical evidence, which has come from the post-mortem report by Dr. Arvind Prasad (P.W.13) who has categorically stated that there was only one gun-shot injury on the deceased Ranjay. It has been stated by the Doctor that the deceased had only one entry wound and one exit wound, which was indicative of the fact that only one person had hit the said Ranjay. It



was further evident from the medical evidence that since there is no wound on the chest of Ranjay, therefore, the prosecution story stood falsified as the doctor had opined that only one firing was made on him. Thus, it cannot be said as to which the two appellants i.e. Parikha Singh and Sunil Singh had fired on the deceased Ranjay.

9. Learned counsel for the appellant further contended that the allegation as against the appellant Parikha Singh is completely falsified by the statement of doctor, namely, Dr. Arvind Prasad (P.W.13) wherein he has stated that only one entry wound and one exit wound was found upon the back of left scapular region and exit wound on the chest in the cavity, which indicates that the firing was made upon the back of the deceased and since that allegation is not against the appellant Parikha Singh, as alleged in the *Fard beyan*, the prosecution story stands completely falsified and is indicative of false implication. It was submitted that the informant has sought to falsely implicate more and more members of the same family. Thus, even if the appellant Parikha Singh had fired, as is evident from the post-mortem report, it did not hit the body of the deceased. Hence, the conviction and sentence passed against the appellant Parikha Singh is based on conjectures and surmises and is a good ground for setting aside the conviction. Accordingly, it was contended that the judgment of conviction and



sentence passed by the learned trial court is bad on facts and in law and is fit to be set aside. Moreover, the learned trial court has failed to consider such evidence and the conclusion arrived at is not based on sound rationale nor is it satisfactory and well considered, as the medical evidence categorically rules out the story of second shot having been fired which hit the chest of the deceased Ranjay.

10. Another point which has been urged by the learned counsel for the appellants is that the doctor who has given the post-mortem report has been examined by the doctor and his post-mortem report has been verified and proved by another person. He further submitted that on post-mortem of Ranjay alias Ravi Ranjan, the doctor found only one entry and one exit wound and categorically stated that the firing made by other co-accused was not present as the second injury was not there.

11. It has been further urged that the allegation that Parikha Singh fired upon the deceased Ranjay which hit upon his chest was doubtful as the doctor did not find any injury upon the chest. As such, it can well be inferred that no firing was made by this appellant or that the firing made by this appellant did not hit the body of the deceased Ranjay.

12. Thus, it was contended by Shri Sharma that the entire narration in the prosecution story stands belied by the



testimony of the doctor and the post-mortem examination and, therefore, the conviction and sentence passed against accused Parikha Singh cannot be sustained in the eyes of law and at best, it can be treated to be a member of the mob but not the main assailant, so as to attract the provisions of Section 302 of the I.P.C. As such, his conviction under Section 302 of the I.P.C. does not contain the ingredients and the offences do not support the allegations, for which the sentence against the appellant Parikha Singh can be held to be illegal and is fit to be set aside.

13. In so far as the appellant Chitranjan Singh in Cr. Appeal (DB) No.698 of 2012 is concerned, it was contended by the learned counsel for the appellants that there is no material worth the name, to convict him. The only allegation that has been levelled against Chitranjan Singh is that he had attacked the informant with *Lathi* on the head and no overt act has been attributed to him so far as the deceased are concerned. Thus, the conviction of the said appellant under Section 302/149 I.P.C. is based on no material.

14. So far as the appellant Sunil Singh in Cr. Appeal (DB) No.815 of 2012 is concerned, it was submitted that he is alleged to have attacked Mahendra Singh (informant) and is said to have fired from the rifle which hit Ranjay on the back. There is a marked variation in the statement made by the informant (P.W.5)



and in the statement of Binod Singh (P.W.1). There is also statement by the said P.W.1 Binod Singh in paragraph 11 that blood was oozing out from the head of the Mahendra Singh, but P.W.5 instead has stated that Sunil Singh fired upon him, the bullet of which hit on the back and he fell down. This witness does not talk about firing on either Braj Kishore Singh or Ranjay. P.W.12 Kanti Devi is the wife of Braj Kishore Singh who had stated that at the time of occurrence, she was sitting in her granary and that Ranjay and Sanjay are her sons.

15. The story by the informant of the firing by Sunil Singh is also falsified by the statement of P.W.13 Dr. Arvind Prasad, who conducted the post-mortem examination on the dead bodies of the deceased Braj Kishore Singh and Ranjay @ Ravi Ranjan. Both the deceased were found to be having one entry wound and one exit wound each and in his cross-examination, the Doctor had stated that he did not find any hard blunt injury on both the dead bodies. The Doctor opined that the injury on the body of Braj Kishore Singh was caused by only one shot and the injury of Ranjay was also found to be caused by one shot. In paragraph 6 of his cross-examination he has categorically asserted that the exit wound of Ranjay is on the front side and entry wound is on the back side. The bullet was fired from the back side which may have been



from a range of 2-4 feet distance. However, the inconsistency which existed between the prosecution witness (informant) and the Doctor has been given a complete go-by, as the judgment has failed to notice such discrepancy. Thus, the story about firing by Sunil Singh also cannot be said to have been proven beyond reasonable doubt and his conviction is fit to be set aside.

16. The appellant Dhanraj Patel in Cr. Appeal (DB) No.621 of 2012 has also been made an accused and has been convicted. The Court has, however, failed to appreciate that there is nothing attributed to the present appellant Dhanraj Patel and the entire allegations are against others. It is important to notice that none of the witnesses have stated anything about this appellant regarding any assault by him or any member and his name has just been included for some oblique purpose, though he was engaged in Haryana where he has since constructed his house and was residing with his entire family members. This fact has also come in the deposition of P.W.1 and, therefore, the conviction of Dhanraj Patel along with others and sentencing for offences under Sections 302/149, 307/149 and 148 of the Indian Penal Code appear to be a figment of imagination and, as such, his conviction cannot be sustained.

17. Challenging the conviction, so far as appellants



Birj Kishore Singh and Kamlesh Singh in Cr. Appeal (DB) No.649 of 2012 are concerned, it has been contended that the allegation is that this appellant fired from the rifle which hit the informant on his right hand and thereafter Parikha Singh fired from the gun which hit Ranjay @ Ravi Ranjan on the chest. So far as the appellant Kamlesh Singh is concerned, there is no act specifically attributed to him. P.W.5 (informant) has not specifically mentioned who has fired to whom which hit on different parts of the body. Most of the witnesses are family members of the informant and were interested witnesses and all through, during the course of the trial, no independent witness has been examined. Furthermore, in the deposition of several witnesses, it has come that there was no land dispute whatsoever. The story that the deceased was attacked with *Lathi* by the appellant has also been disputed by the Doctor who examined the deceased and found no *Lathi* injuries. Moreover, these appellants were not held guilty under Section 302 I.P.C. and there conviction was founded on the purview of Section 149 of the I.P.C. Moreover, not a single independent witness has come forth to testify and there are contradictions patent in the deposition of prosecution witnesses. Over and above, the post-mortem report and the injury report do not support the allegation on these appellants, which casts a serious cloud on the prosecution story and the prosecution has not



been able to prove beyond reasonable doubt the allegations against the appellants.

18. So far as appellants in Cr. Appeal (DB) No.697 of 2012, namely, Ramashish Singh, Ajay Singh, Parmanad Singh and Yadunandan Singh, are concerned, their names have been included in a mechanical manner and the entire evidences, which have been placed before the trial court, do not reveal the role of these appellants in the alleged occurrence.

19. Learned counsel appearing for the appellants submitted that apart from Ramashish Singh against whom it is alleged that he has purchased the land, on which a mango tree stood, from one Jirwa Devi, there is no material worth the name to indicate that there was any enmity with regard to the land over which the occurrence is alleged to have taken place. The evidences which have surfaced are all of interested witnesses and they too have not named these accused. Moreover, the presence of the witnesses, who were family members, at the place of occurrence has not been established and, therefore, they cannot be used to supplement the version of the informant (P.W.5). There are contradictions patent and manifest in the evidences of all the prosecution witnesses and there being such inconsistencies, it was alleged by the learned counsel for the appellants that the conviction



of these appellants cannot be sustained.

20. We have heard learned counsel for the appellants and the learned counsel/Public Prosecutor on behalf of the State. We have also perused the evidences of the prosecution witnesses and analyzed the same in the light of the statements made in the *Fard beyan* by the informant.

21. The main thrust of the learned counsel for the appellants in these cases, is with regard to the contradictions in the ocular testimony of the informant, which stands diametrically opposed to the evidence by Doctor who has conducted the post-mortem examination. It has been strongly argued that the medical evidence of P.W.13 Dr. Arvind Prasad clearly contradicts the oral testimony of the informant since the injuries suffered by the deceased do not match with the said ocular evidence. Under the said condition, it was urged that it is a fit case where this Court sitting in appeal, in order to prevent miscarriage of justice, should set aside the judgment of the trial court and acquit the appellants. In this context, it is necessary to draw attention to the submission of P.W.13 vis-à-vis the deposition of P.W.5 (informant). In paragraph 1, it has been stated that Ramashish Singh ordered to fire, whereupon Uday Singh fired on Braj Kishore Singh, Parikha Singh fired on Ranjay on the right side of the chest and Sunil Singh fired



on back side of Ranjay. However, only one firearm injury has been found on the person of Ranjay and similarly, on the person of Braj Kishore Singh also, there is only one firearm injury. In both the cases, the entry wound and exit wound have been found to be communicating with each other.

22. In this context, it would be relevant to cite the settled law as pronounced by the Supreme Court in the case of ***Ram Narain Singh vs State of Punjab***, reported in ***AIR 1975 SC 1727***, paragraph 14 of which is quoted hereunder:-

"14. Where the evidence of the witnesses for the prosecution is totally inconsistent with the medical evidence or the evidence of the ballistic expert, this is a most fundamental defect in the prosecution case and unless reasonably explained it is sufficient to discredit entire case. In Mohinder Singh v. The State(1) this Court observed in similar circumstances as follows:

"In a case where death is due to injuries or wounds caused by a lethal weapon, it has always been considered to be the duty of the prosecution to prove by expert evidence that it was likely or at least possible for the injuries to have been caused with the weapon with which and in the manner in which they are alleged to have been caused. It is elementary that where the prosecution has a definite or positive case, it is doubtful whether the injuries which are attributed to the appellant were caused by a gun or by a rifle."

It is obvious that where the direct evidence is not supported by the expert evidence, then the evidence is wanting in the most material part of the prosecution case and it would be difficult to convict the accused on the basis of such evidence.



While appreciating the evidence of the witnesses, the High Court does not appear to have considered this important aspect, but readily accepted the prosecution case without noticing that the evidence of the eye witnesses in the Court was a belated attempt to improve their testimony and bring the same in line with the Doctor's evidence with a view to support an incorrect case."

23. Similarly, in the case of ***Khambam Raja Reddy and Anr. vs Public Prosecutor, High Court of Andhra Pradesh***, reported in (2006) 11 SCC 239, the Court has categorically held that the injuries suffered by the deceased were not matching with the ocular evidence and there was patent contradictions between the ocular testimony and the medical evidence and thus the Court held the same to be highly improbable and set aside the conviction and sentence of the appellant. Paragraph 12 of the said judgment is relevant, which runs as follows :

"12. The present case is an example of contradiction between the ocular evidence and the medical evidence, where the medical evidence is not borne out by the ocular evidence. In such a situation it was suggested on behalf of the appellants on the authority of a decision of this Court in the case of [State of M.P. vs. Dharkole](#) alias Govind Singh and Ors., reported in (2004) 13 SCC 308, where the medical evidence was at variance with the ocular evidence, the testimony of the eye-witness should be decided independently and if found trustworthy, the same could not be discarded merely because it is at variance with medical opinion. While there can be no difference of opinion with the principle explained in the aforesaid decision, the application thereof will depend on



whether the story as made out by the prosecution is trustworthy and can be related to the injuries suffered by the victim in the manner as sought to be projected. If the ocular testimony is such that it is not possible to relate the injuries with the circumstances in which they were said to have been inflicted, the court has the discretion not to accept the ocular evidence. The principle enunciated in Dharkole's case (supra) may be applied in an appropriate case, but each case has to be determined having regard to its own set of facts. In the instant case, in the absence of any depressed injury and in the absence of any bleeding from the nose and ears of the deceased, we are unable to give credence to the evidence of PW-1 as to the manner in which the incident is said to have occurred."

24. In the instant case also, this Court after delving deep into the evidences of the informant, who is the sole eye-witness and after consideration of the medical evidence, which has come on record, is of the considered opinion that the injuries purported to have been inflicted on the appellants do not co-relate to the medical evidence available on record and thus in such a situation, the circumstances as have evolved create sufficient doubt regarding the prosecution case and as to the manner of the occurrence in which the appellants have been said to have participated and are said to have been found guilty. This factum in itself is enough to set aside the judgment and order of conviction of the trial court and the charge under Section 302 I.P.C. cannot be sustained. We, thus, order accordingly.



25. Learned counsel for the appellants has also drawn our attention to the common intention factors, which have governed the reasoning of the trial court in arriving at the conviction of all the appellants herein. It has been submitted by the learned counsel appearing on behalf of the appellants that in order to sustain a conviction under Section 149 I.P.C., it was important that the accused should be sharing a common object to murder. Mere presence of the accused at the place of occurrence would not suffice inasmuch as it had to be proved that the accused have come to the place of occurrence with a premeditated plan. To sustain a conviction under Section 302 or 324, that even if the murder was proved, those persons who are not involved in the actual assault and were not responsible for the injuries caused to the deceased, unless and until it was conclusively proved that they had participated in the same, the appellants were entitled to the benefit of doubt.

26. In the instant case, most of the appellants were not involved in the actual assault and evidences, which have come on record. There is also no material on record to indicate that there was any previous meeting of minds or premeditation and thus their conviction under Section 149 I.P.C., in the considered opinion of this Court, appears to be wholly uncalled for and fit to be set aside. In this regard, reference can be made to a decision of the Supreme



Court in the case of ***Roshan v. State of Maharashtra***, reported in ***(1976) 4 SCC 65***, paragraph 2 of which is quoted hereunder:

“2.....There is no reliable evidence at all to show that the appellant also shared this changed new common object. But even if they may be deemed to have shared the common object, by virtue of the vicarious liability, contemplated by Section 149 I.P.C., there are clear circumstances to show that the appellants did not participate in the offence.....”

27. In this context, the recent decisions cited in the case of ***Bishu Sarkar v. State of West Bengal***, reported in ***AIR 2017 Supreme Court 1729***, would also be relevant, paragraph 7 of which is quoted herein below:

“7.....The allegations coming from all the witnesses are consistent that none of the present appellants had dealt any blow by any weapon and all that they did was to participate in the scuffle. It is true that PW2 and 5 assert that the present appellants had caught hold of Rajy Bose. But it is not clear from the record whether such act was so intended to enable accused No.1 to deal the fatal blow. Further, P.W.3 is completely silent on this aspect.....”

28. Having dealt with the aforementioned provisions



and also the present facts and circumstances of this case, we find and hold that the conviction of the appellants is wholly unwarranted and there being consistent discrepancies in the evidences of the prosecution witnesses and also on account of the aforementioned reasons, cited above, we deem it appropriate to grant the appellants the benefit of doubt and acquit them of the charges under Section 302/149 of the I.P.C.

29. In the result, these appeals succeed and are allowed. The judgment and the order of conviction and sentences recorded against the present appellants are set aside. The appellants, except Sunil Singh, shall stand discharged from their respective bail bonds. So far as the appellant Sunil Singh in Cr. Appeal (DB) No.815 of 2012 is concerned, he is in custody, let he be set at liberty forthwith, if not wanted in any other case.

(Anjana Mishra, J)

Dr. Ravi Ranjan, J. I agree.

(Dr. Ravi Ranjan, J)

PNM

AFR/NAFR	AFR
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