

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1128 of 2012

Arising Out of PS. Case No.-125 Year-2009 Thana- MOHIUDDIN NAGAR District-
Samastipur

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Bimlesh Singh @ Karu Singh, S/o Ram Pravesh Singh, R/o Village & P.O.-
Bishanpur Beri, P.S. Mohiuddin Nagar, District-Samastipur.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Vindhya Keshari Kumar, Sr. Advocate
		Mr. Ajay Kumar Singh, Advocate
		Mr. Ravi Shankar Pathak, Advocate
		Ms. Surya Nilambari, Amicus Curiae
For the Respondent/s	:	Mr. Ashwini Kumar 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

Heard Mr. Vindhya Keshari Kumar learned
counsel for the appellant, Ms. Surya Nilambari, Amicus
Curiae for the appellant as well as Mr. Ashwini Kumar Sinha
learned APP for the State on this Criminal Appeal.

2. This appeal has been preferred against the
judgment and order of conviction dated 1.10.2012 and order
of sentence dated 4.10.2012 passed by the 2nd Additional
Sessions Judge, Samastipur in Sessions Trial no. 241 of



2010/446 of 2012 arising out of Mohiuddin Nagar P.S. Case No. 125 of 2009, whereby the learned trial court convicted the appellant Bimlesh Singh @ Karu Singh for the offence punishable under Section 302 of the Indian Penal Code and 27 of the Arms Act and sentenced him to undergo life imprisonment under Section 302 of the Indian Penal Code and further sentenced him to undergo R.I. for three years under Section 27 of the Arms Act. However, both the sentences were directed to run concurrently.

3. The factual matrix of the case is that Mohiuddin Nagar P.S. Case No. 125 of 2009 was instituted under Sections 302/34 of the Indian Penal Code and 27 of the Arms Act against accused Bimlesh Singh @ Karu Singh and Amresh Kumar Singh @ Pintu on the basis of fardbeyan of Prabha Devi W/o Late Tribhuvan Singh recorded by A.S.I. A.P. Yadav of P.S. Pirbahore, Patna on 8.10.2009 at 11:00 AM in the emergency ward of PMCH, with the allegation, in succinct that on 6.10.2009 at around 12:00 PM, her husband demanded torch from her to see the maize field. On warning by her not to rush to the field in such a late night, he sat on the chowky lying on her door while she went inside her house. After sometime, she listened sound of altercation of someone



with her husband. Responding the same, she stepped out of her house and witnessed Bimlesh Singh @ Karu Singh engaged in spar with her husband. On quizzing about reason of quarreling with her husband, he demanded Rs. 50,000/- whereupon she vented her inability to fulfill his demand. Then Bimlesh Singh @ Karu Singh started dragging her husband and shoved her away. In the meantime, own brother of Bimlesh Singh @ Karu Singh, namely, Amresh Kumar Singh @ Pintu arrived there and both dragged her husband to the door of her co-villager Balbhadra Singh. She also followed them. On the order of Amresh Singh @ Pintu, Bimlesh Singh whipped out pistol from his waist and resorted firing on the face of her husband below his eye. Sustaining injury, her husband fell down on the ground and fell senseless, then she started screaming. Then Balbhadra Singh who was witnessing the occurrence sitting at his door rushed to her house, then Bimlesh Singh @ Karu Singh asked her to take her husband who has been eliminated by them and then both the accused persons left the scene. She rushed her husband to government hospital, Mohiuddin Nagar to accord him medical aid and after giving first aid there, the doctor referred him to PMCH, Patna, but he succumbed to his injury during the course of



treatment in emergency ward of PMCH, Patna on 7.10.2009 at 7:00 PM

4. The aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted chargesheet against the accused Bimlesh Singh @ Karu Singh under Section 302 of the Indian Penal Code and 27 of the Arms Act keeping the investigation pending against Amresh Kumar Singh @ Pintu.

5. On receiving the chargesheet and the case diary and perusing the same, the learned trial court took cognizance of the offence against the accused and committed the case to the court of sessions and after commitment and on transfer, finally the case came in *seisin* of the 2nd Additional Sessions Judge, Samastipur for trial.

6. Charge against accused Bimlesh Singh @ Karu Singh was framed under Section 302 of the Indian Penal Code and Section 27 of the Arms Act. Charge was read over and explained to him to which he pleaded not guilty and claimed to be tried.

7. To substantiate its case, in ocular evidence, the prosecution has examined altogether eleven prosecution witnesses namely, Balbhadra Singh as PW-1, Guria Devi as



PW-2, Randhir Singh as PW-3, Ruby Devi as PW-4, Arun Singh as PW-5, informant Prabha Devi as PW-6, I.O. Satish Kumar as PW-7, Dharmraj Singh as PW-8, Dr. Arun Kumar Singh who conducted autopsy of cadaver of the deceased as PW-9, literate constable Manoj Sharma as PW-10 and Bhagwan Jha as PW-11. Out of the aforesaid witnesses, PW-10 (Manoj Sharma) and PW-11 (Bhagwan Jha) happens to be formal witnesses. The prosecution has also filed and proved some documents by way of documentary evidence.

8. The statement of the accused was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence claiming himself to be innocent. The accused has neither adduced any ocular nor documentary evidence, in buttress of his case,

9. After hearing the parties and perusing the record, the learned trial court passed the impugned judgment and order of conviction and sentence as detailed in the earlier paragraph.

10. Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction and sentence, the convict has preferred the present Criminal Appeal.



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

12. It is submitted by learned counsel for the appellant and learned Amicus Curiae that out of seven material witnesses examined by the prosecution, PW-2 (Guria Devi), PW-3 (Randhir Singh), PW-4 (Ruby Devi), PW-5 (Arun Singh) and PW-8 (Dharmraj Singh) are not eye witnesses of the occurrence rather are hearsay witnesses as PW-2 (Guria Devi) has stated in her cross-examination that at the time of occurrence, her parents were sleeping on the door of the house while others and PW-2 (Guria Devi) and PW-5 (Arun Singh) were sleeping inside the room. Door of their rooms was closed and it was not opened responding the firing sound. Moreover, PWs-2, 3, 4 and 5 have given contradictory statements before the court and before the I.O. under Section 161 Cr.P.C. regarding taking the deceased to the door of Balbhadra Singh by the accused persons and rushing by them to the place of occurrence. I.O. has also corroborated the aforesaid contradictions. Hence, in view of the aforesaid contradictions, the aforesaid witnesses appear to have taken



altogether different stand in the court regarding aforesaid material aspects of the case and they do not happen to be reliable and trustworthy witnesses and their testimonies cannot be relied upon to hold the conviction of the appellant. While PW-8 has candidly stated that he was in Rajasthan at the time of occurrence. It is further submitted that as per account of PW-1 (Balbhadra Singh), he had given statement regarding occurrence four hours later to the occurrence while fardbeyan of the informant was recorded on 8.10.2009 at 11:00 AM. Hence, the aforesaid statement given by the PW-1 (Balbhadra Singh) was actually the First Information Report and the fardbeyan given by the informant was not the First Information Report rather statement under Section 161 Cr.P.C. But, the aforesaid statement of PW-1 has not been brought on record by the prosecution which creates serious doubt about the prosecution case. It is further submitted that there has been abnormal delay in recording fardbeyan of the informant and lodging the FIR and sending the same to the court and the prosecution has not given any plausible reason to explain the aforesaid delay which creates serious doubt about the prosecution case. It is further submitted that PW-1 (Balbhadra Singh) happens to be uncle of the deceased while PW-6



(Prabha Devi) is the widow of the deceased and their statements given before the court stands in quite contradictions to that given before the I.O. under Section 161 Cr.P.C. and I.O. has also corroborated the aforesaid contradictions and in view of the aforesaid contradictions, the aforesaid two witnesses are not worth credence and reliable. It is further submitted that as as per witness account, several persons have witnessed the occurrence, but no independent witness has been examined by the prosecution in corroboration of the prosecution case and no plausible reason has been assigned by it for their non-examination. Hence, adverse inference should be drawn against the prosecution. Thus, the prosecution has utterly and miserably failed to substantiate the prosecution case against the appellant beyond all reasonable doubt by adducing trustworthy and reliable evidence. Hence, the impugned judgment and order of conviction and sentence passed against the appellant by the learned trial court is liable to be set aside and the appellant is entitled to be acquitted.

13. On the other hand, learned APP advocating the correctness and validity of the impugned judgment and order of conviction and sentence, submitted that informant



Prabha Devi (PW-6) and Balbhadra Singh (PW-1) happen to be eye witnesses of the occurrence and they have fully supported the prosecution case and the ocular evidence also stand corroborated by the medical evidence and after correctly appreciating the facts and material on record, the learned trial court has rightly passed the impugned judgment and order of conviction and sentence which is liable to be upheld and this appeal is shorn of merit and is liable to be dismissed.

14. From perusal of record, it appears that to substantiate its case, the prosecution has examined seven material witnesses of the case. Out of them, PW-2 (Guria Devi), PW-3 (Randhir Singh), PW-4 (Ruby Devi), PW-5 (Arun Singh) do not happen to be eye witnesses of the occurrence rather are hearsay witnesses. As though PWs-2, 3, 4 and 5 have stated in their respective examination-in-chief in consonance with the prosecution case claiming themselves to be eye witnesses of the occurrence. But, from perusal of testimony of PW-2 (Guriya Devi), it appears that she has stated in paragraph 4 of her cross-examination that on the date of occurrence, her parents were sleeping outside of the house while other family members were sleeping in the rooms of the house at 10-11 PM, on the date of occurrence. Their door was



closed and it was not opened responding the firing sound. PW-3 (Randhir Singh) and PW-5 (Arun Singh) happen to be son-in-law of the informant and brother-in-law of PW-2 (Guria Devi) while PW-4 (Ruby Devi) happens to be sister of PW-2 (Guria Devi). The aforesaid statement of PW-2 eloquently rules out her and PWs-3, 4, and 5 to be eye witnesses of the occurrence as as per aforesaid account of PW-2 (Guria Devi), they were sleeping in the room of the house closing the door at the time of occurrence and the door was not opened responding the firing sound. Hence, the aforesaid witnesses had not witnessed the occurrence. The aforesaid statement of PW-2 (Guria Devi) also creates serious doubt about credibility of PW-1 (Balbhadra Singh) and PW-6 (Prabha Devi) as PW-1 and PW-6 have stated in their respective examination-in-chief that the aforesaid persons had also arrived at the place of occurrence i.e. door of Balbhadra Singh at the time of occurrence following taking of the deceased by the appellant and witnessed the occurrence. While as per the aforesaid account of PW-2 (Guria Devi), the aforesaid witnesses were inside the closed room at the time of occurrence and had not stepped out responding the firing sound. Moreover, PW-3 (Randhir Singh) has stated in



paragraph 2 of his cross-examination that he had arrived at his in-laws house (house of the informant) on 4.10.2009 at 3:00 PM and stayed there for two days. Thereafter, he regressed to his house and he again arrived in his in-laws house on 8.10.2009. The aforesaid statement of PW-3 (Randhir Singh) indicates that he had left the house of the informant in the evening of 6.10.2009 and again arrived there on 8.10.2009 while the occurrence is of midnight of 6.10.2009. Hence, the said witness has not witnessed the occurrence. While PW-4 (Ruby Devi) has stated in paragraph 3 of her cross-examination that her marriage was performed on 15.5.2009 and she stayed in her marital house for five months which means she stayed in her marital house till 15.10.2009 while the occurrence is of 6.10.2009. The aforesaid statement of PW-4 (Ruby Devi) also indicates that the said witness was not present in her maternal house (house of the informant) at the time of occurrence and she has not witnessed the occurrence.

15. Moreso, attention of PW-2 (Guria Devi) and PW-4 (Ruby Devi) at paragraph 6 and PW-5 (Arun Singh) at paragraph 5 of their respective cross-examination has been drawn by the defence towards contradictions in their statement given before the court and that given before the I.O. under



Section 161 Cr.P.C regarding altercation of the accused persons with the deceased at the time of occurrence, sustaining injury by the deceased below his left eye, arriving of PW-3 along with aforesaid witnesses and others at the place of occurrence at the time of occurrence, demanding of extortion money of Rs. 50,000/- by the accused persons as stated by PW-5 (Arun Singh) and I.O. (PW-7) has corroborated the aforesaid contradictions between the statement of the aforesaid witnesses given before the court and that given before him under Section 161 Cr.P.C. Hence, in view of the aforesaid contradictions, the said witness appears to have taken altogether different stand before the court regarding the aforesaid material aspects of the case and they do not appear to be worth credence and reliable and their testimonies are not trustworthy, worth credence and reliable.

16. PW-8 (Dharmarj Singh) also happens to be hearsay witness of the case, as in paragraph 1 of his examination-in-chief, he has stated that at the time of occurrence, he was in Rajasthan. On 7.10.2009, he was telephonically informed that Amresh Kumar Singh @ Pintu and Bimlesh Singh @ Karu Singh have gunned down his father and on the said information, he arrived at the PMCH,



Patna. By that time, his father had expired. Moreover, the said witness has not disclosed the name and identity of the person giving him information of the occurrence on telephone and none has come forward to corroborate the factum of divulgence of the occurrence to the said witness by telephone. Hence, for want of corroboration, the aforesaid evidence of PW-8 (Dharmraj Singh) even as hearsay witness is not admissible in evidence.

17. Now, the two witnesses namely, Balbhadra Singh (PW-1) and Prabha Devi (PW-6) are left to be examined. Balbhadra Singh (PW-1) happens to be uncle of the deceased. Though he has claimed to have witnessed the occurrence by stating in consonance with the prosecution case in his examination-in-chief. But, attention of the said witness has been drawn by the defence in paragraph 9 of his cross-examination in respect of contradiction in his statement given before the court and that given before the I.O. under Section 161 Cr.P.C. regarding arriving of two daughters, two son-in-laws and father of Tribhuvan Singh at the place of occurrence and rushing of Tribhuvan Singh to the hospital on falling down by him. I.O. (PW-8) has also corroborated the aforesaid contradiction between the statement given before the court and



that given before him under Section 161 Cr.P.C. by the said witness. Thus, the said witness appears to have taken altogether different stands regarding aforesaid material aspects of the case and does not appear to be worth credence and reliable.

18. Likewise, though informant (Prabha Devi) PW-6, who happens to be wife of the deceased has also given statement in consonance with the prosecution case as alleged by her in her fardbeyan, but she also does not appear to be worth credence and reliable witness as attention of the said witness has been drawn in paragraph 15 of her cross-examination regarding the statement given in the court and that given before the I.O. under Section 161 Cr.P.C. in respect of arriving of her daughters and son-in-laws at the door of Balbhadra Singh i.e. the place of occurrence, her presence at her court yard at the time of altercation between her husband and accused persons. I.O. has also corroborated aforesaid contradiction between her statement given before the court and that given before him regarding aforesaid aspect of the case. Moreover, as per prosecution case as stated by her in fardbeyan, she alone arrived at the door of Balbhadra Singh at the time of occurrence following the accused persons. But, in



quite contradiction to the aforesaid statement, she has stated in paragraph 4 of her examination-in-chief that her daughters and son-in-laws had also arrived at the door of Balbhadra Singh i.e. the place of occurrence besides her. As per prosecution case, the bone of contention is said to be demanding of extortion money by the accused persons preceding to the occurrence. But in quite contradiction to the aforesaid prosecution case, in paragraph 9 of her examination-in-chief, she has stated about altogether different bone of contentions by stating that they had supported her co-villager Ranjit Singh in the fax election. They had not supported Pintu despite his request due to which the accused persons gunned her husband down.

19. The aforesaid witnesses i.e. PW-1 and PW-6 happen to be family members of the deceased and interested witnesses of the case. It is the settled principle of law that the testimony of the interested witness should not be discarded outrightly rather should be scanned cautiously and carefully. On careful and cautious scanning and scrutiny of the testimony of the aforesaid witnesses, I find that their testimonies are full of contradictions between the statement given before the court and that given before the I.O. under



Section 161 Cr.P.C. regarding material aspects of the case, testimony of PW-6 between the FIR and her deposition given before the court regarding material aspects of the case. As per account of PW-5 (Arun Singh) as given by him in paragraph 4 of his cross-examination, besides them, Parsuram Singh, Niraj Singh, wife of Parsuram Singh and Mudrika Singh were also present at the place of altercation between the deceased and the accused persons at that time and as per account of PW-6 as given by her in paragraphs 16, 17 and 20 of her cross-examination, when the accused persons started dragging her husband from her door, she made hulla and her entire family members and co-villagers who happen to be their gotiyas were present there. All of them went to the door of Balbhadra Singh together. She and other villagers were standing at two deg of her husband at the time of occurrence of gunning him down by the accused persons. But, neither the aforesaid persons nor any other villagers who happen to be independent witness of the occurrence have been examined by the prosecution and no plausible and convincing reason has been assigned by the prosecution for their non-examination which creates serious doubt about the prosecution case and the aforesaid evidence of PW-1 and PW-6 also do not stand



corroborated by any independent witness of the occurrence.

20. The occurrence is of the midnight of 6.10.2009 at 12:00 PM and as per account of the informant, the deceased was admitted in the PMCH, Patna in the wee hour of 7.10.2009 at around 3:00 AM and he succumbed to his injury there on 7.10.2009 at 7:00 PM, but her fardbeyan was recorded on 8.10.2009 at 11:00 AM in the PMCH, Patna i.e. after 32 hours of arrival of the injured at PMCH and 16 hours of death of the injured. Though, O.P. of P.S. Pirabhore is housed in the premises of PMCH, Patna and police personnel are always present there. But, no plausible explanation has been assigned by the prosecution to explain the aforesaid abnormal delay in recording fardbeyan of the informant. Moreover, on the basis of the aforesaid fardbeyan, the FIR was lodged on 9.10.2009 at 5:00 PM while the FIR was sent to the court of C.J.M., Samastipur on 10.10.2009 and no plausible reason has been assigned to explain the aforesaid delay in lodging the FIR and sending the same to the court. Hence, the aforesaid aspects of the case create serious doubt about the prosecution case.

21. PW-1 (Balbhadra Singh) has stated in paragraph 9 of his cross-examination that the police had



recorded his statement regarding the occurrence in the midnight of occurrence four hours later to the occurrence. The occurrence is of midnight of 6.10.2009 while the fardbeyan of the informant was recorded on 8.10.2009 at 11:00 AM i.e. later to recording the statement of PW-1. Hence, the statement of PW-1 regarding occurrence which is cognizable offence must be the First Information Report and the fardbeyan of the informant recorded two days later to the statement of PW-1 is virtually his statement under Section 161 Cr.P.C. But the aforesaid statement of PW-1 has not been brought on record by the prosecution which creates serious doubt about the prosecution case.

22. In the aforesaid facts and circumstances of the case, I find and hold that the prosecution has utterly and miserably failed to bring home the charges levelled against the appellant beyond all reasonable doubts by adducing convincing, cogent, consistent and wroth credence ocular and documentary evidence. Hence, the impugned judgment and order of conviction and sentence passed by learned trial court is set aside and the appellant is acquitted of the charges levelled against him. As the appellant is in custody, he is directed to be released forthwith from the custody, if not



wanted in any other case. Accordingly, this Criminal Appeal is allowed.

23. Let a copy of the first and last page of this judgment be handed over to the learned *amicus curiae*, Ms. Surya Nilambari and learned *amicus curiae* be paid prescribed fee by the Patna High Court Legal Services Committee.

(Prakash Chandra Jaiswal, J)

Dr. Ravi Ranjan, J.-I agree.

rohit/-

(Dr. Ravi Ranjan, J)

AFR/NAFR	AFR
CAV DATE	03-04-2018
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