

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.175 of 2012

Against judgment and order dated 23.12.2011 passed by the First Additional Sessions Judge-cum-Special Judge, Kaimur, Bhabhua in Sessions Trial Case No. 11/4 of 2004/05.

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Rajendra Singh S/O Narsingh Singh R/O Vill-Dariyaon, P.O.Amaon Baraon,
P.S.Karamchat (Sabar), Distt-Kaimur(Bhabua)

.... Appellant/s

Versus

The State Of Bihar

.... Respondent/s

with

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Criminal Appeal (DB) No. 169 of 2012

Against judgment and order dated 23.12.2011 passed by the First Additional Sessions Judge-cum-Special Judge, Kaimur, Bhabhua in Sessions Trial Case No. 11/4 of 2004/05.

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Gulab Singh S/O Narsingh Singh R/O Village - Dariyaon, P.O. Amaon Baraon,
Police Station Karamchat (Sabar) District - Kaimur (Bhabhua)

.... Appellant/s

Versus

The State Of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (DB) No.175 of 2012)

For the Appellant/s : Mr. Abhishek Kumar

For the Respondent/s : Mrs. Shashi Bala

(In CR. APP (DB) No.169 of 2012)

For the Appellant/s : Mr. Abhishek Kumar

For the Respondent/s : Mrs. Shashi Bala

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 06-03-2018

Cr. Appeal No. 175 of 2012 has been preferred by Rajendra Singh
for setting aside the judgment dated 23.12.2011 passed by the learned First
Additional Sessions Judge-cum-Special Judge, Kaimur, Bhabhua in Sessions



Trial Case No. 11/4 of 2004/05 arising out of Bhagwanpur PS Case No. 136/2002 under Section 302/34 IPC read with Section 3 /4 of the SC ST Act as also under Section 27 of the Arms Act. By the impugned judgment the learned 1st Additional Sessions Judge-cum-Special Judge, Kaimur, Bhabhua (hereinafter referred to as the 'learned trial court') held that the charges under Section 302, IPC and Section 27 of the Arms Act framed against the accused Rajendra Singh are proved beyond all reasonable doubts, and for that offence he has been sentenced to undergo rigorous imprisonment for life under Section 302, IPC and further rigorous imprisonment for five years under Section 27 of the Arms Act.

Cr. Appeal No. 169 of 2012 has been preferred by Gulab Singh who has been convicted by the same impugned judgment dated 23.12.2011 passed by the learned trial court whereunder the charges against him under Section 302/34, IPC has been held proved beyond all reasonable doubts and he has been convicted and sentenced for the said offence. The appellant Gulab Singh has been sentenced to undergo rigorous imprisonment for life for the offence under section 302/34, IPC.

In course of hearing, learned counsel representing the appellant Rajendra Singh informed this Court that he is still in custody pursuant to his conviction whereas the appellant Gulab Singh is on bail.

It is the prosecution case that on 28.10.2002 while the informant and his brother Ram Awtar Ram and co-villagers Munna Ram, Soma Ram and Sudama Ram were proceeding towards the village Maraicha for purchasing some household articles, at about 5.30 P.M., when they reached in Bagodaha Bagicha, the east of village Dariyawan, they met Gulab Singh who asked them to provide 'khaini'. Soma Ram gave 'khaini' to Gulab Singh. It is alleged that in the meantime, Kanhaiya Singh and Rajendra Singh who were hidden behind



the heap of straw of paddy holding 'katta' and rifle, respectively, appeared and all the three persons surrounded the prosecution party. Kanhaiya Singh ordered abusing that "Sala Chamar Log Ka Man Barh Gaya Hai Maro Salo Ko". Thereupon, accused Rajendra Singh is said to have shot Ram Awtar Ram on his temple 'kaanpatti' by the rifle. Ram Awtar Ram fell down and died immediately. It was further alleged that all the three accused persons intimidated the informant and his associates saying that not to inform the police failing which they will also face similar consequence. People of the village are said to have raised 'halla' on hearing the sound and at this stage all the accused persons fled away towards north side.

A formal F.I.R. arising out of Bhagwanpur PS Case No. 136 of 2002 dated 30.10.2002 was registered against the three named accused persons. After completion of the investigation by Ravi Shankar Prasad, Investigating Officer, a charge-sheet was submitted in this case. Cognizance of the offence was taken on 25.02.2003 and the case was committed to the court of sessions on 29.11.2003 whereupon a Sessions Trial was registered. As a matter of record, it has transpired from the lower court records that the case of the accused Kanhaiya Singh was separated on 29.11.2003 by the learned court below and only the case against accused Rajendra Singh and Gulab Singh was committed to the court of session.

On behalf of the prosecution, altogether 16 witnesses were named in the charge-sheet. However, the prosecution examined 13 witnesses. The informant of the case is Kedar Ram who has been examined as PW 11, the doctor who had conducted the post-mortem on the dead body of the deceased has deposed as PW 12. The Investigating Officer, Ravi Shankar Prasad has also deposed as PW 13. On behalf of the prosecution, some of the witnesses have



been brought to prove the prosecution case. Apart from the ocular evidence, the prosecution has also proved the carbon copy of seizure list (Ext.1 with objection), signature of the informant on Fardbeyan (Ext.2), Post mortem report (Ext. 3), carbon copy of inquest report (Ext.4), Fardbeyan (Ext.5), formal F.I.R. (Ext.6) and seizure list (Ext. 7). The defence has not led any evidence in the present case.

The learned trial court has found that Kedar Ram, Munna Ram, Soma Ram and Sudama Ram were named as eye-witnesses on the occurrence. However, in course of evidence, PW 11 Kedar Ram, PW 7 Sudama Ram and PW 8 Soma Ram only have deposed as eye-witnesses of the occurrence. The prosecution witnesses who claimed themselves as eye-witnesses of the alleged occurrence have supported the facts narrated by them before the Investigating Officer and the informant (PW 11) has deposed that he had given his statement before the I.O. and supported the facts as disclosed in the Fardbeyan. Dr. Kanhaiya Prasad Singh (PW 12) from the ante-mortem on the dead body caused by firm arm, he has deposed that he found circular lacerated wound with tatooes and inverted maigin, the diameter of whom was found 3/4” and the diameter of tatooes and charring with gunpowder area surrounding the wound has been found as 1.1/2” on external examination. The doctor proved that there is a wound of entry and exist over left side of neck upper part below and behind the lower of the ear. The doctor had found that the deceased was shot dead by bullet fire from a gun.

The Investigating Officer (PW 13) has proved the inquest report. He has stated that when he reached the place of occurrence and saw the dead body he found a whole on the right temple of the dead body, a heap of paddy straw was kept towards south from the place of occurrence. He had recorded the



statement of the informant at about 7 A.M. on 29.10.2002. He had submitted the charge-sheet. PW 7 Sudama Ram and PW 8 Soma Ram have deposed that they were going together with the deceased and on the alleged place of occurrence at the time stated by them that all the three accused surrounded them and on instigation of Kanhaiya Singh, accused Rajendra Singh shot at Ram Awtar Ram who died spontaneously.

The learned trial court did not find any reason to disbelieve the depositions of PWs 7, 8 and 11 who had been consistent as records the manner of assault, date and time as also the place of occurrence. The motive of occurrence has been found to be previous enmity. The trial court did not find the charges under Section 3 /4 of the SC ST Act true against the accused persons and hence they had been acquitted from the charges under these sections.

In course of argument, while assailing the impugned judgment the learned counsel representing the appellants has vehemently argued that as per the prosecution story the deceased was killed by fire from a rifle, whereas the post mortem report and the deposition of the doctor (PW 12) it is evident that the injury was caused by a bullet fired from a gun and not from a rifle. This according to the learned counsel would be a material contradiction in the case of prosecution and that of the evidence which have been led to prove the prosecution case. Learned counsel has submitted that the prosecution witnesses who deposed as the eye-witnesses have stated that the appellant Rajendra Singh had fired from rifle and when the witness was called upon to answer as to whether he understands the difference between a gun and a rifle he stated that he understands the difference between a gun and a rifle. It is, therefore, submission of learned counsel representing the appellants in both the appeals



that evidence of these prosecution witnesses are not worth reliable.

On the other hand, learned A.P.P. representing the State submits that the guilt of the accused (appellants) have been duly proved by the prosecution beyond all reasonable doubts. Learned counsel submits that the prosecution witnesses are the rustic and illiterate villagers and, therefore, even if they have stated that the deceased was killed by a shot fired from a rifle, the same cannot be taken as a material contradiction to the extent that it would prove fatal to the case of the prosecution. Learned A.P.P. further submits that the prosecution witnesses, particularly, the informant (PW 11), PW 7 and PW 8 are very much consistent on the manner of assault, motive of occurrence and genesis of the occurrence.

We have heard learned counsel for the appellants in both the appeals and the learned A.P.P. for the State as also perused the records received from the learned trial court. Having gone through the deposition of the prosecution witnesses, particularly the depositions of PW 11, PW 7 and PW 8 we find that they have been consistent and have proved the motive of the alleged occurrence, the genesis and the manner of assault which has been further provided from the post mortem report (Ext. 3). Dr. Kanhaiya Prasad Singh (PW 12) has also proved the post mortem report by explaining the injury nos. (i) and (ii) which were the injuries of entry and exit respectively. A perusal of the post mortem report demonstrates that the deceased was killed from a very close range as the wound have been found charring with gun powder. The inquest report as well as the post mortem report support the prosecution case as narrated by PW 11, PW 7 and PW 8 as eye-witnesses. We are not persuaded to accept the submission of the learned counsel representing the appellants that because the prosecution witnesses said that the appellant Rajendra Singh had



fired from rifle it would prove fatal to the case of the prosecution. In our opinion, such minor contradiction that too considering the fact that PWs 11, 7 and 8 are illiterate and rustic people of the village would not persuade us to come to a conclusion that the prosecution story suffers from a reasonable doubt. We do not find any reason to disbelieve the finding of the learned trial court in the present appeals.

These appears are accordingly dismissed.

The bail bond of appellant Gulab Singh is hereby cancelled and he is directed to surrender in the court below forthwith failing which the Superintendent of Police, Bhabhua shall take him into custody. Both the appellants shall undergo the sentence in terms of the judgment of the learned trial court.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

mr1./-

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