

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.866 of 2011

1. Surendra Singh
2. Shambhu Singh
Both sons of Sri Krishnandan Singh, resident of Village- Gwasa
Sheikhpura, P.S.- Pandarak, District -Patna
... .. Appellant/s
Versus
The State Of Bihar
... .. Respondent/s

with
Criminal Appeal (DB) No. 912 of 2011

Tapeshwar Singh, son of Late Rajendra Singh, resident of village Gowasha
Sheikhpura, Police Station Pandarak, District Patna
... .. Appellant/s
Versus
The State Of Bihar
... .. Respondent/s

Appearance :
(In Criminal Appeal (DB) No. 866 of 2011)
For the Appellant/s : Sri Y.C. Verma, Sr. Advocate
Sri Tej Narayan Singh, Advocate
For the Respondent/s : Sri Ajay Mishra, APP
(In Criminal Appeal (DB) No. 912 of 2011)
For the Appellant/s : Sri Y.C. Verma, Sr. Advocate
Sri Tej Narayan Singh
For the Respondent/s : Sri S.C.Mishra APP

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 06-04-2018

1. In both the Appeals appellants were tried jointly and convicted by one common judgment, and as such, both the Appeals were taken up together for hearing and are being disposed of by this common judgment.

2. All the three appellants were convicted by judgment dated: 17.08.2011 passed by Smt. Sushma Sinha, learned Additional District & Sessions Judge – II, Barh, Patna



(hereinafter referred to as the “trial judge”) in Sessions Trial No. 1015 of 2005 for commission of offence under Section 302/ 34 of the Indian Penal Code, 1860 (hereinafter referred to as the “I.P.C.”) and Section 27 of the Arms Act, 1959 (hereinafter referred to as the “Arms Act”). By order dated 19.08.2011 all appellants were sentenced to undergo imprisonment for life and pay fine of Rs. 10,000 /- each under Section 302/34 of the I.P.C. and in default of payment of fine they were directed to undergo further simple imprisonment for three months. All the appellants were sentenced to undergo rigorous imprisonment for three years and pay a fine of Rs. 5,000/- each under Section 27 of the Arms Act and in default of payment of fine they were directed to undergo further simple imprisonment for one month.

3. Short fact of the case is that on 04.04.2004 at 9.00 Hours (morning) Sub Inspector of Police Sri Arbind Kumar of Pandarak Police Station recorded *fardbyan* of Utam Singh at the place of occurrence i.e. vacant field of one Ramashraya Singh in the village: Gowasha, P.S.: Pandarak. In the *fardbyan* the informant disclosed that on the same date in the morning he had gone to his field for cutting wheat crops and he started to cut the same. At about 8.00 in the morning he noticed that his cousin brother Ramanand Singh (deceased) was in wheat crop field for



attending call of nature and after easing he stood and proceeded towards his house. In the meanwhile, informant saw that Sunil Singh, S/o Krishnanandan Singh, Shambhu Singh [appellant no. 2 in CR. APP (DB) No. 866 of 2011] S/o Krishnanandan Singh, Surendra Singh [appellant no. 1 in CR. APP (DB) No. 866 of 2011] S/o- Krishnanandan Singh, Tapeswar Singh [appellant in CR. APP (DB) No. 912 of 2011] S/o- Late Rajendra Singh came out from *dallan* of Kanhai Singh. Tapeswar Singh gave rifle to Kanhai Singh and article to Shambhu Singh. Thereafter, Krishnanandan Singh gave indication to kill cousin brother of informant namely Ramanand Singh. Thereafter, the informant shouted and told Ramanand Singh to flee away. After hearing alarm Sunil Singh, Shambhu Singh, Tapeswar Singh, Surendra Singh and two unknown accused persons started chasing Ramanand Singh. On the order given by Krishna Singh first shot was given by Sunil Singh, which hit the head of Ramanand Singh (deceased). Shambhu Singh fired which hit stomach. Surendra Singh gave gun shot injury on his arm and Tapeswar Singh gave shot in the mouth and all the accused persons fled away towards Western side. The informant stated that after fire arm injury his cousin brother Ramanand Singh fell down and instantaneously died at the place of occurrence itself. The



informant claimed that the said occurrence was witnessed by Pankaj Singh (P.W. 5, he was declared hostile), Rekha Devi (P.W. 2, wife of deceased Ramanand Singh) and others, who would explain after enquiry. The reason for the occurrence was given as old animosity and case was going on in court. The said *fardbyan* was read over to him and after understanding the same as correct he put his signature on the *fardbyan*. The *fardbyan* was also signed by Pankaj Singh (P.W. 5). After recording *fardbyan* on the same day i.e. on 04.04.2004 at about 10.00 A.M. a formal F.I.R. vide Pandarak P.S. Case No. 24 of 2004 was registered under Section 302/34 of the I.P.C. and Section 27 of the Arms Act against:-(1) Kanhai Singh (acquitted), (2) Sunil Singh (absconder), (3) Shambhu Singh [appellant no. 2 in CR. APP (DB) No. 866 of 2011], (4) Surendra Singh [appellant no. 1 in CR. APP (DB) No. 866 of 2011] (5) Tapeswar Singh [sole appellant in CR. APP (DB) No. 912 of 2011], (6) Krishnanandan Singh, who was not forwarded by the police and final report was submitted in his favour.

4. After investigation and finding the case true first charge-sheet was submitted on 02.10.2004 against (1) Kanhai Singh (2) Shambhu Singh and (3) Surendra Singh, and thereafter, on 3.11.2004 learned Additional Chief Judicial Magistrate, Barh



took cognizance of the offences. After further investigation supplementary charge -sheet was submitted on 05.04.2005 against Tapeshwar Singh [sole appellant in CR. APP(DB) No. 912 of 2011] and Sunil Singh [showing him as absconder], however , final report was submitted in favour of another F.I.R. named accused namely Krishnanandan Singh who was non else but father of both appellants in CR. APP (DB) No. 866 of 2011. On 29.04.2005 the case was committed to the court of Sessions, and as such, it was numbered as Sessions Trial No. 1015 of 2005. After commitment, on 22.12.2005 joint charge was framed under Section 302/ 34 of the I.P.C. and Section 27 of the Arms Act.

5. During trial to prove its case from the prosecution side altogether nine witnesses were examined. Out of nine witnesses, P.W. 2 (Rekha Devi @ Ranju Devi , wife of deceased) , P.W. 3 (Uttam Singh, cousin brother of deceased) and P.W. 4 (Shila Devi, wife of younger brother of deceased) were examined as eye witnesses, whereas , P.W. 5 (Pankaj Singh) and P.W. 6 (Gandhi Singh) turned hostile. P.W. 1 (Tarini Singh) though did not support the prosecution case, he was not declared hostile. P.W. 8 (Anirudha Kumar) was Advocate's Clerk and he proved inquest report, of- course with objection. P.W. 7 (Dr. Bikash Chand Choudhary) on 04.04.2004 was posted as Medical



Officer, Sub Divisional Hospital, Barh and he conducted post-mortem examination on the dead body of deceased and he also proved post-mortem examination report, which was marked as Exhibit -2 . P.W. 9 (Md. Sujauddin) is the investigating officer. After completion of prosecution evidence, on 02.06.2011 evidences and circumstances collected during investigation were explained to appellants and their statement under Section 313 of the Cr.P.C. was recorded in which all the appellants claimed to be innocent, however, during trial they took plea of false implication due to old animosity besides taking other grounds.

6. Sri Y.C. Verma, learned senior counsel, assisted by Sri Tej Narayan Singh, learned counsel for the appellants after placing entire evidence has argued that prosecution case was not believable since witnesses were not truthful and oral evidence has not been supported by medical evidence i.e. post-mortem examination report. It has been submitted by Sri Y.C. Verma, learned senior counsel for the appellants that it appears that occurrence had taken place at odd hours and after noticing dead body since there was old animosity with the appellants' side, family members of deceased and informant have fabricated a false case as if occurrence was seen by the witnesses. It has been argued that during trial none of the independent witnesses have



come forward to support the case. Even some of the witnesses who were not relative of the informant's side and were examined had not at all supported the prosecution case and this was the reason that P.W. 5 & P.W. 6 were declared hostile by prosecution side. Similarly, P.W. 1 (Tarini Singh) has not supported the prosecution case. Of- course, he was not declared hostile by prosecution. Sri Y.C. Verma, learned senior counsel for the appellants submits that Pankaj Singh was cited as witness in the F.I.R. and he had also signed *fardbyan* but during trial he did not support the case, and as such, he was declared hostile. By way of referring to *fardbyan* as well as evidence of P.W. 2 and P.W. 3 who have claimed to be eye witnesses, it has been argued that the story explained by those witnesses appears to be not believable. He submits that the manner in which those witnesses have explained as to which shot given by which of the appellant hit which part of the deceased was explained by those witnesses. According to Sri Y.C. Verma, learned senior counsel for the appellants such evidence may not be relied upon. He further submits that P.W. 4 (Shila Devi, wife of younger brother of deceased) had since given not truthful evidence, her evidence was completely disbelieved by the trial judge. Sri Y.C. Verma, learned senior counsel for the appellants submits that P.W. 4 in her evidence has deposed as if some of the



accused who were arrayed in the F.I.R. as assailant were not participants in the occurrence or they were not present in the occurrence. Of-course, learned trial judge has disbelieved the evidence of P.W. 4, and as such, no reliance can be placed on her evidence. It has also been argued that it is consistent case of prosecution that in the occurrence the deceased was fleeing away and he was being chased by the appellants and accused persons fired, however, on the back of the deceased no injury was found. He further submits that all the so-called eye witnesses have said that four shots were given by four appellants and all the four shots hit the deceased, but this evidence is completely contrary to the post-mortem examination report. By way of referring to Exhibit -2 i.e. post-mortem examination report Sri Y.C. Verma, learned senior counsel for the appellants has argued that during post-mortem examination only two gun shot injuries were found on the person of the deceased and none of the injuries were noticed on the back of the deceased, whereas, it was case of prosecution that he was chased and fired. In that event there was every possibility of receiving some injuries on the back side of the deceased. He submits that story of prosecution that four gun shot injuries was given to the deceased by four accused persons is completely contrary to post-mortem examination report which reflects only



two fire arm injuries. Of- course four injuries were found on the person of the deceased, injury no. (2) was exit wound and it was in connection with injury (1). Similarly, injury no. (4) was fire arm wound of exit which was in connection with injury no. (3) which was entry wound. It has been argued that presence of P.W. 2 (wife of deceased) also appears to be doubtful. He submits that P.W. 2 has taken plea that she had gone to Durga Asthan for taking water from hand pump, however, in her evidence she has accepted that near her house itself there was one hand pump. In such situation, it appears to be not believable that for taking water P.W. 2 instead of visiting the hand pump near her house had gone to far away i.e. near Durga Asthan. It has been argued that place of occurrence has not been exactly proved by the prosecution during investigation. No seizure list was prepared regarding finding or noticing any blood mark at the place of occurrence or seizure of blood soaked soil. On aforesaid grounds it has been argued that prosecution has not proved its case beyond all reasonable doubt and the appellants were required to be extended benefit of doubt, however, the learned trial judge has incorrectly passed judgment of conviction and sentence.

7. Sri Ajay Mishra, learned Additional Public Prosecutor opposing the Appeal has argued that in a situation in which such



occurrence had taken place it was not at all necessary that in the occurrence deceased would have received injury on his back side but there was possibility that while fleeing away the deceased was also looking behind and this was the reason that he received injury on his neck as well as temporal region. He submits that evidence of P.W. 2 i.e. wife of deceased may not be suspected.

8. Besides hearing, we have examined entire evidence on record and after going through entire evidence *prima facie* we are of the opinion that prosecution has not proved its case beyond all reasonable doubt. Before proceeding, it would be necessary to firstly refer to the evidence of P.W. 3 (Uttam Singh) who was examined as eye witness. This witness was the cousin brother of the deceased. In his evidence he deposed that on the date and time of occurrence he was cutting wheat crops in his field and his cousin brother had come out for attending call of nature and just ahead of him he sat for easing. Thereafter, he proceeded to his house. He deposed that Sunil Singh, Shambhu Singh, Surendra Singh, Tapeswar Singh and two unknown persons came out from *dallan* of Kanhai Singh armed with rifle and they started chasing Ramanand Singh. Accused Krishna Singh said that deceased was fleeing away whereupon all the accused persons started chasing Ramanand Singh who was fleeing towards Eastern side. After



some distance Sunil Singh fired from his rifle which hit near the right ear, Shambhu Singh gave shot from rifle which hit right side of stomach, Surendra Singh fired from his rifle which too hit on the right arm, Tapeshwar Singh gave shot from rifle on the mouth and Ramanand Singh died at the place of occurrence itself. In paragraph no. 2 of his deposition he stated that reason for the occurrence was that prior to the said occurrence one Parmanand Singh [brother of deceased Ramanand Singh] was murdered in which Sunil Singh and Shambhu Singh were held guilty. In the said case the accused persons were pressurizing to withdraw the said case. Since the case was not withdrawn the occurrence had taken place. He further deposed that the said case was being monitored by Ramanand Singh. He also said that the occurrence was seen by Pankaj Singh and wife of deceased- Ramanand Singh namely, Rekha Devi. He claimed that he was conversant with the writing and signature of the police official who had recorded *fardbyan* and he proved entire *fardbyan*, which was marked as Exhibit -1. In paragraph no. 21 of his cross- examination he stated that he had shown Drinking Vessel (*Lota*) to the Police but no seizure list was prepared. It is case of the prosecution that deceased filling water in Drinking Vessel (*Lota*) had gone to attend natural call. His attention was drawn to his previous



statement recorded under Section 161 of the Cr.P.C. which was dealt with in paragraph no. 28 and 29 of his cross-examination and on examination of the evidence of P.W. 9 [investigating officer] it is evident that many facts were stated by this witness during trial, which were never stated by him during investigation. Meaning thereby, that this witness besides his suspicious deposition had also tried to develop the story during trial. This witness was also given suggestion that due to old animosity the appellants were falsely implicated and occurrence had taken place somewhere else and not at the time as which was suggested by the prosecution, however, this suggestion was denied by P.W. 3.

9. P.W. 2 (Rekha Devi @ Ranju Devi) is the wife of deceased and she has also claimed to be eye witness to the occurrence and in her evidence she deposed as if she had gone to take water from a hand pump which was installed near Durga Asthan which was far away from her house and at that very time, she claimed, that she noticed that the accused persons were chasing her husband and this witness also stated in similar manner like P.W. 3 as to which of the appellant had given shot which hit on which part of the deceased. In her cross-examination she stated that she had taken back Drinking Vessel (*Lota*) from the place of occurrence, however, during investigation no seizure list



or nothing was indicated regarding finding of any such article at the place of occurrence. Her attention was also drawn to her previous statement recorded under Section 161 of the Cr.P.C. which were dealt in from paragraph no. 55 to 62 of her deposition. On examination of the evidence of investigating officer it is evident that many facts which were deposed during trial by this witness were never stated by her during investigation. Meaning thereby, that this witness had tried to develop story during trial. Moreover, her evidence also appears to be not believable particularly in view of the fact that once she had claimed to be eye witness in an occurrence in which her husband was being chased by number of accused persons, it was not possible to exactly identify as to which of the accused had fired and hit which part of the deceased. However, she is also very much categorical like P.W. 3 which creates serious doubt in the mind of the Court. Besides aforesaid two witnesses, P.W. 4 (Shila Devi, wife of younger brother of deceased) has also claimed to be eye witness to the occurrence but during her evidence she tried to save some of the accused persons. Meaning thereby, that she had not given truthful deposition and this was the reason that evidence of P.W.4 was disbelieved by the trial court itself. Accordingly, there is no reason to place reliance on the evidence of P.W. 4.



10. P.W. 7 (Dr. Bikash Chand Choudhary) who was posted on 4.4.2004 as Medical Officer in Sub Divisional Hospital, Barh and on the same day i.e. date of occurrence at 3.10 P.M. he had conducted post -mortem examination on the dead body of deceased and he noticed the following facts:-

“External injury no. 1 lacerated wound 1/2” radius with inverted margin on right side of the neck below and angle of temporal -mandibular joint i.e. wound of entrance.

2. Lacerated wound 1” radius with loss of left eye ball and brain matter protruding through the wound--- wound of exit of wound no. 1.

3. Lacerated wound 1/2” radius with inverted margin on left temporal area of scalp above left ear ----wound of entrance.

4. Lacerated wound 1” radius with everted margin on right Mastoid area of scalp behind right ear through which brain matter protruding----wound of Exit of wound no. 3

On dissection----

Skull- Fracture of the frontal, orbital bone left side, parietal bone of right and left side. Fracture of body of mandible and right side and temporal bone of left side. Meninges pale and torn. Brain matter mutilated.

Chest---- rib cage intact. Both lungs pale.

Heart ----pale and empty.

Abdomen ----- Stomach digested food.

Liver -pale, kidney -pale, spleen - congested, small and large intestine contain gases and faecal matter.

Time since death--- 8 to 12 hours.

Cause of death – Haemorrhage and shock due to above injuries caused by fire arms.

I can't say whether the fire arms were pistol or any other because the ballistic experts are the competent to reply on this point

All the injuries were ante mortem. The injuries were sufficient to cause death within ordinary course of nature.”

This witness proved the post -mortem examination report, which was marked as Exhibit -2. On examining evidence



of P.W. 7 as well as on minute examination of the post -mortem examination report [i.e. Exhibit -2] this fact is established that only two gun shot injuries were found on the person of the deceased. Meaning thereby, that story of two witnesses who had claimed to be eye witness, that four persons had fired and all the four shots had hit the deceased appears to be concocted and this suggests that both the witnesses, though had claimed to be eye witness, were exactly not ocular witness and subsequently, story was developed. In view of direct conflict in between such oral evidence and medical evidence, certainly, evidence of P.W. 2 and P.W. 3 is required to be examined with caution. Fact remains that in between the informant's side and appellants' side cases were going on. From both the sides murder had taken place prior to the present occurrence and as such while examining evidence of those witnesses side by side of the post -mortem examination report, on the basis of such oral evidence judgment of conviction and sentence of appellants may not be approved. The investigating officer was examined as P.W. 9. P.W. 9. of- course in paragraph no. 3 and 4 of his evidence he tried to explain regarding inspection of place of occurrence. He himself has deposed that he had not prepared any seizure list regarding seizure of any blood soaked soil nor he had noticed any article at the place of occurrence. At



the place of occurrence though it was the prosecution case that at least four shots were fired from rifle no remains of fire arm was found. At the place of occurrence any *khokha* was not found. In view of serious conflict in between oral evidence as well as medical evidence in the circumstances in which there were admitted animosity in between the parties only placing reliance on the evidence of P.W. 2 and P.W. 3 the judgment of conviction may not be approved. Moreover, though alleged occurrence had taken place at 8.00 in the morning and prosecution witnesses themselves had said that at the time of occurrence in the field number of persons were there, during trial none of those witnesses have come forward to support the prosecution case. In the case no independent witness has come forward

11. P.W. 5 who was shown to be independent witness and is also shown as witness in the F.I.R. too has not supported the prosecution case and this was the reason that he was declared hostile.

12. Considering the facts and circumstances, we are of the opinion that prosecution has not proved its case beyond all reasonable doubt, and as such, by way of extending benefit of doubt, their judgment of conviction and sentence is required to be interfered with. Accordingly, the judgment of conviction dated:



17.08.2011 and sentence dated 19.08.2011 passed by Smt. Sushma Sinha, learned Additional District & Sessions Judge – II, Barh, Patna in Sessions Trial No. 1015 of 2005 (arising out of Pandarak P.S. Case No. 24 of 2004) is hereby set aside and both Appeals are allowed. Appellant no. 1 (Surendra Singh) in CR APP (DB) No. 866 of 2011 and sole appellant (Tapeshwar Singh) in CR. APP (DB) No. 912 of 2011 are on bail and since their conviction and sentence has been set aside, they are discharged from liability of their bail bond. Appellant no. 2 (Shambhu Singh) in CR. APP (DB) No. 866 of 2011 is in jail and since judgment of conviction and sentence has been set aside, he is directed to be released forthwith, if not required in any other case.

(Rakesh Kumar, J)

praful/-

(Arvind Srivastava, J)

AFR/NAFR	AFR
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