

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.567 of 2015

Arising out of the judgment dated 18th May 2015 passed by the learned Additional District
& Sessions Judge – II, Barh in Session Trial No. 178/2007 in connection with Athmalgola
(Barh) PS. Case No. - 307 of 2003 District- Patna

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Munna Singh Son of Yogendra Singh @ Yoga Singh Resident of Village -
Bahadurpur , Police Station- Athmalgola, District Patna.

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Birendra Kumar Singh, Advocate

For the Respondent/s : Mr. G.P. Jaiswal, A.P.P.

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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: 15-05-2018

Heard learned counsel for the appellant and
learned Additional Public Prosecutor representing the State.

2. This criminal appeal has been preferred for setting aside the judgment dated 18th May 2015 passed by the learned Additional District & Sessions Judge – II, Barh, District – Patna (hereinafter referred to as the “learned Trial Court”) in Session Trial No. 178/2007, by which one of the accused (appellant) in Athmalgola (Barh) P.S. Case No. 307/2003, G.R. No. 968/2003 registered under Section 302/34 of the Indian Penal Code (in short the “I.P.C.”) and Section 27 of the Arms Act, has been convicted for the aforesaid offences and has been



ordered to undergo rigorous imprisonment for life under Section 302 of the I.P.C. and to pay a fine of Rs. 5000/-, further for the offence under Section 27 of the Arms Act, he has been ordered to undergo rigorous imprisonment for three years with fine of Rs. 1000/-, in case of failure of the appellant to pay the fine, he would have to undergo one year simple imprisonment. Both the punishments have been ordered to under concurrently.

3. The prosecution case is based on the fardbeyan of Mahesh Prasad Gupta (P.W.5) who made his statement on 18.11.2003 (Tuesday) at about 6.45 a.m. before the Officer Incharge of Athmalgola Police Station at the northern – eastern corner of the platform of Athmalgola Railway Station which is the place of occurrence (in short the ‘P.O.’). According to the informant, he had a Kirana shop in Athmalgola station market. At about 6.00 a.m. his son Pinku Kumar had as usually opened the shop and was cleaning the shop, in the meantime, from the western side the co-villager Yoga Singh, Munna Singh (appellant), Binod Singh, Manoj Singh, Santosh Singh, Bablu Giri all lashed with pistol came on the shop of the informant. Yoga Singh said ‘*sale pinkua ko utha lo*’, on this, all the criminals together caught hold of his son Pinku and started pulling and taking him away towards the eastern side. The



informant claimed that he protested and tried to get his son free from the clutch of the accused persons but all of them were threatening with the pistol and were moving towards the eastern side. It is stated that on Hulla the neighbouring shopkeepers Mahendra Lal, Vishnu Lal, Pashupati Lal and brother of the informant reached there and tried to save him but all the accused persons were moving towards the northern side after crossing the eastern part of the railway platform, they were also abusing. Yoga Singh was allegedly threatening all of them to return otherwise all of them will be killed. It is alleged that on finding the crowd of the co-villagers this appellant, on the order of Yoga Singh, fired on Pinku, Yoga Singh also fired on Pinku. Pinku fell down there and started bleeding, thereafter the other accomplished namely Manoj Singh, Santosh Singh and Bablu Giri fled away towards the northern side firing upon the informant. The informant reached near the injured and found that his son had suffered firearm in his Kanpatti, stomach and on his hand and he was lying dead.

4. It is alleged that the reason for this occurrence is that on 17.11.2003 at about 6.00 p.m.(evening), Yoga Singh and Manoj Singh came to take rice on credit basis. They asked for 10 kg. of rice on credit basis but when the informant refused



to give them the rice they went away threatening the informant that he will have to bear the consequences of this tomorrow. On the basis of the fardbeyan of P.W.5, formal F.I.R. bearing Athmalgola (Barh) P.S. Case No. 307/2003 was registered on 19.11.2003 under Section 302/34 of the I.P.C. and Section 27 of the Arms Act.

5. After investigation, police submitted a charge-sheet finding the case true against this appellant, co-accused Yoga Singh and Santosh Singh. Not named F.I.R. accused namely, Jitendra Singh, Putur Singh and Pintu Giri were also found involved in the case. Initially charge-sheet was filed against not named accused Jitendra Singh and investigation was continued against other accused persons. On 03.10.2004, charge-sheet no. 66/2004 was filed against the appellant, accused Santosh Singh, Pintu Giri, Yoga Singh and Putur Singh. Yoga Singh was shown absconder in the charge-sheet, later on he was arrested and was proceeded against vide session trial no. 919/2005. Thereafter the case of this appellant was committed to the court of session and session trial no. 178/2007 was registered. The charges were read over to the accused (appellant), who denied the charges and claimed to be tried. In his statement under Section 313 Cr.P.C. the appellant claimed



that he was innocent and has been falsely implicated.

6. The trial of the appellant was expedited on the ground that he was in jail for long time. In course of trial the prosecution examined as many as 10 witnesses and proved the documentary evidences such as inquest report (Exhibit-1), fardbeyan (Exhibit-2), signature of the informant on the F.I.R. (Exhibit-3 & 3/1), inquest report (twice) (Exhibit-4). Case diary from page 3 to G.D. Map of P.O. (Exhibit-5) and post mortem report (Exhibit-6). The evidence of Doctor in session trial no. 919/2005 has been exhibited and marked as Exhibit-7. No evidence was produced on behalf of the defence.

7. The learned Trial Court examined the evidence of the prosecution witnesses and found that P.W.1 Sitaram Singh has stated that he was not aware about the occurrence and does not know anything about the same. He was a formal witness and had not said anything about the occurrence.

8. P.W.2 Bishnu Lal is a shopkeeper having his shop in the Bazaar at Athmalgola Railway Station, he claims that he was also there while cleaning his own shop and had seen the accused persons taking away Pinku forcibly towards eastern side. The informant was seen following them raising Hulla. This witness had also followed the informant raising hulla. He has



stated that on the way from Athmalgola Station platform to Nirpur – Kamra Village the victim was asked to stand, Yoga Singh ordered to kill him and on this order Munna Singh (appellant) fired at Pinku (victim), thereafter Binod Singh also fired and Yoga Singh fired thereafter. All the accused persons fled away towards eastern side. This witness was cross examined. He has stated that his residence and shop are situated in his own house. He had made statement before the Investigating Officer but did not remember the date and time when he deposed before the Investigating Officer.

9. P.W.3 Pashupati Lal has also claimed that he had seen the occurrence, the accused persons were seen forcibly taking away Pinku from his shop. This witness was also following them and had tried to get free Pinku but Yoga Singh had threatened that all of them should return otherwise he would fire on them. This witness has also supported the evidence of P.W.2. This witness has further stated that he had told the police in his statement that the deceased had suffered three fire-arm injuries. He had also said to police officer that on 17.04.2003 in evening time Yoga Singh and Binod Singh were asking for 10 – 10 kgs. of rice in Rangdari but when Pinku refused to give them, they had threatened to show them.



10. P.W.4 Mahendra Lal has also supported the prosecution case. he has proved his signature on the fardbeyan of Mahesh Prasad Gupta (P.W.5-informant). He has proved his signature as Exhibit-1. This witness has also stated that three pellets were fired. He had also been investigated by police and in course of his statement he had stated that at the time of occurrence he was in his house and was brushing his mouth. He had narrated about the accused persons reaching on the shop of Pinku and that they have been taking away Pinku forcibly. He had stated before the I.O. that he along with Pashupati Lal and Arun Prasad Gupta was following the accused persons.

11. P.W.5, Mahesh Prasad Gupta, is the informant of this case and father of the deceased. He had reiterated his statements which are recorded in the fardbeyan. He has proved his fardbeyan which was recorded in the handwriting of Shyam Kishore Yadav (Daroga). He had seen three injuries on the body of Pinku. He had also stated that from the place where the dead body was lying, the Investigating Officer had collected/seized the blood stained soil and the blood soaked cloths of the deceased. He had stated that the place where the dead body was lying is normally used by people coming and going from that way but the P.O. was at lonely place.



12. P.W.6 Pappu Kumar Singh was tendered by the prosecution. P.W.7 Arun Prasad Gupta has supported the prosecution case. This witness had seen the accused Putur Singh, Jintendra Singh, Manoj Singh, Binod Singh, Santosh Singh, Pintu Giri, Yoga Singh and Munna Singh (appellant) altogether eight persons fleeing towards northern side of the platform and that they were also firing. He had seen that the deceased Pinku had suffered fire-arm injury. He identified his signature and the signature of Ramakant Lal on the inquest report of the dead body. This witness had not seen the occurrence at the time of firing on the deceased but had seen the accused persons including the appellant fleeing away from the P.O.

13. P.W.8, Shyam Singh was tendered by the prosecution as he said in his cross examination that he was not aware about the occurrence. P.W.9, Shyam Kishore Yadav was the Officer-in-Charge of Athmalgola Police Station on 18.11.2003 and had visited the P.O. on getting information about the murder of one Pinku Kumar Lal. At the P.O. he had recorded the fardbeyan of P.W.5. He has proved it and also proved the formal F.I.R. which was written in the handwriting of Shiv Pujan Singh (Munsi) at his instance which has been marked as Exhibit-3 and 3/1 also.



14. He had also proved the inquest report of the dead body (Exhibit-4) with objection. In his evidence he has proved the sketch map of the P.O. and the statement of the witnesses recorded in the case diary from paragraph 1 to 71 which were in his handwriting. Paragraph 72 to 77 of the case diary was in the handwriting of Md. Nizam, the then Officer Incharge which has also been proved by this witness. He had prepared the Nazri Naksa of the place of occurrence (Exhibit-5) with objection. According to inquest report he had not found any injury on the left and right ear of the deceased. The place of occurrence is situated in the premises of Athmalgola Railway Station. He had however not recorded in his case diary about the injury on the upper central region over stomach on the dead body. He had not recorded in the case diary that blood was found on the soil. He was suggested that he had not conducted the investigation properly which he denied.

15. P.W.10 Anil Kumar has identified the handwriting and signature of Dr. Rajesh Ranjan Choudhary who had prepared the post mortem report (Exhibit-6). At the instance of the informant the evidence of Dr. Rajesh Ranjan Choudhary recorded in Session Trial No. 919/2005 was brought on record and the same was exhibited. Dr. Rajesh Ranjan Choudhary had



performed the post mortem on the dead body and had found the following injuries:-

- (i) Lacerated wound ½" circular in diameter x cavity deep with black around at 3" above left ear*
- (ii) Lacerated wound 1" oval x cavity deep with connected margin at above and outer only right ear.*
- (iii) Lacerated wound ½" circular in diameter x cavity deep with black around at right side sternum.*
- (iv) Lacerated wound ½" circular x track deep at Epigetric region with black around it.*
- (v) Lacerated wound ¾" circular x track deep side below costal region.*
- (vi) Lacerated wound ½" circular x track deep with black broader ulnar aspect (Rt) firearm*
- (vii) Lacerated wound ¾" circular x track deep ventral aspect of right firearm.*

16. The doctor had opined that two injuries were connected with each other and the brain tissues were damaged. The deceased had died due to brain hemorrhage and shock due to fire-arm injuries.

17. The learned Trial Court having examined the evidences available on the record convicted the accused (appellant) for the offences stated hereinabove and sentenced him accordingly.

18. Learned counsel representing the appellant submits that the learned Trial Court has not been able to



appreciate the prosecution evidence. It is submitted that there are several material contradictions in the evidence of prosecution witnesses and according to the defence the appellant was falsely implicated in the murder case. It is stated that the murder of Pinku had taken place somewhere else but because of enmity name of the appellant has been involved. It is further submitted on behalf of the defence that all the prosecution witnesses are interested witnesses only and they are not independent witnesses. It is also submitted that the doctor was not examined in this case and there are contradictions in the inquest report and the post mortem report which will prove fatal to the case of the prosecution.

19. On the other hand, learned counsel representing the State submits that in this case the defence has not been able to show as to why the evidence of the prosecution witnesses such as P.Ws. 2, 3, 4 & 5 are not believed. The fact that on 17.11.2003 accused Yoga Singh had gone to the shop of the victim and had demanded 10 kgs. rice in Rangdari has been proved by the prosecution witnesses who are the neighbouring shopkeepers. The defence has not been able to show as to how those prosecution witnesses who have supported the case of the prosecution may be put in the category of interested witnesses. It



is submitted that the injuries found on the dead body as noticed in the inquest report and by the doctor are not in the nature of material contradiction. The post mortem report in fact supports the ocular evidence that the deceased was shot dead by fire-arm injuries. It is submitted that the prosecution witnesses are consistent on the point that this appellant along with other accused persons who are facing session trial no. 919/2005 had been forcibly taking away Pinku Kumar Lal and they had seen that he (the deceased) was taken towards the platform and then shot dead.

20. Having heard learned counsel for the appellant as also learned counsel representing the State and after going through the evidences available on the record, we find that the prosecution witnesses are consistent on the point, firstly, that because Yoga Singh had come on the shop of the informant on 17.11.2003 and had asked him to give 10 kgs. rice which the deceased refused to give and on this accused Yoga Singh had threatened the informant and his son of dire consequences. The witnesses have also seen the accused persons coming on the shop of Pinku Kumar Lal and then forcibly taking him away with themselves towards the Athmalgola Platform, they have stated that they followed the accused persons when heard hulla



being raised by the informant (P.W.5). They have also stated that they were also threatened by the accused Yoga Singh, it is on the order of accused Yoga Singh that the appellant fired and thereafter the other accused persons also fired upon the deceased. We are unable to agree with the submission of learned counsel for the appellant that the neighbouring shopkeepers would be in the nature of interested witnesses. Nothing has been shown from the evidence that the prosecution witnesses who have supported the prosecution case had any common interest against the accused (appellant). The evidence of these witnesses cannot be disbelieved and thrown out only because they happened to be the neighbouring shopkeepers.

21. In our opinion, they are the competent witnesses who are also having their shops in the market and they had occasion to see the occurrence taking place in the morning when there is not much rush in the market and it is only the shopkeepers who reside in the premises are likely to be there. The injuries found on the body as have been noted in the post mortem report are in consonance with the ocular evidence. The prosecution has brought on record the evidence of the doctor which was recorded in session trial no. 919/2005 arising out of the same F.I.R. and therefore the same has been admitted in



evidence in course of trial of the present appellant.

22. On appreciation of the entire materials available on the record, we do not find any reason to interfere with the impugned judgment of the learned Trial Court. The present appeal stands dismissed.

23. Since, we have found from the impugned judgment that that session trial no. 919/2005 was said to be pending at the time of passing of the impugned judgment, we make it clear that any part of the observations made by us, while considering the case of the present appellant, shall not prejudice the case of the other co-accused and no part of it shall be used against him in course of trial.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	NAFR
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