

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.792 of 2013

Arising Out of PS. Case No.-44 Year-2003 Thana- CHAINPUR District- Bhabhua (Kaimur)

1. Jawahar Bind @ Jawahir Bind Son Of Chulhai Bind
Resident of Vill- Saraiya, P.S.- Chainpur . District Kaimpur At Bhabua .
2. Hira Bind Son of Late Bishwanath Bind Resident Of Vill-
Saraiya, P.S.- Chainpur . District Kaimpur At Bhabua .
3. Jag Jiwan Bind Son of Mithaku Bind Resident Of Vill- Saraiya,
P.S.- Chainpur . District Kaimpur At Bhabua .
4. Jhagru Bind Son of Mithaku Bind Resident Of Vill- Saraiya,
P.S.- Chainpur . District Kaimpur At Bhabua .

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	M/s Sandeep Kumar, Vivekanand Singh, Rohit Raj, Advocates
For the Respondent/s	:	Mr. A.K.Sinha, APP

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date : 19-07-2018

We have heard parties and have perused the records of this case.

The appellants have preferred this appeal assailing the judgment of conviction dated 05.08.2013 and order of sentence dated 07.08.2013 passed by Ad-hoc Additional Sessions Judge-III, Kaimur at Bhabua in Sessions Trial No. 34 of 2004 / 3 of 2013 arising out of Chainpur P.S. Case No.44/2003 by which all the



appellants have been convicted for the offences punishable under Sections 148 and 302 read with Section 149 of the Indian Penal Code and they have been sentenced to undergo rigorous imprisonment for two years under Section 148 I.P.C., further they have been sentenced to undergo imprisonment of life with a fine of Rs.10,000/-each and in case of default of payment of fine, they have further been sentenced to undergo rigorous imprisonment of one year under Sections 302 read with Section 149 of the Indian Penal Code. The appellant Jawahar Bind has been further convicted for the offence punishable under Section 27 of the Arms Act and he has been further sentenced to undergo the rigorous imprisonment for five years with a fine of Rs. 2,000/- and in case of default of payment of fine, he has further been sentenced to undergo rigorous imprisonment for two months under Section 27 of the Arms Act. However, all the sentences have been directed to run concurrently.

The prosecution case, in brief, is that on 24.06.2003 at about 3:30 P.M., informant Dharmendra Singh was going along with his villager Bharat Singh for prayer of Maa Mundeshwari by motorcycle. When he reached near Kenwa canal bridge, he met with Shrawan Kumar Singh, who asked the informant as to where was he going. The informant replied that they were going for



prayer of Maa Mundeshwari. Shrawan Kumar Singh also came along. They proceeded on his motorcycle for his home and informant also proceeded with Bharat Singh. When Shrawan Kumar Singh reached at 200 yards west near boring of Lalita Singh from Baurai village, then 7-8 persons surrounded intercepted and surrounded him. Jawahar Bind opened fire upon him with an intention to kill. As a result of which, he fell down from motorcycle. Thereafter, Hira Bind and Jag Jiwan Bind assaulted him by dagger upon his neck and head. Jhagru Bind and Bishwanath Bind also assaulted Shrawan Kumar Singh by lathi. Likewise, 2 to 3 unknown persons assaulted Sharwan Kumar Singh by lathi. It has further been stated in the F.I.R. that the occurrence was also seen by one Sadhu Yadav resident of Baurai village. Injured Sharwan Kumar Singh was brought to Sadar Hospital, Bhabua on a tractor, from where, the doctor referred him to Varanashi for better treatment. On the way to Varanashi, Sharwan Kumar Singh died near Mohania. The genesis of the occurrence has been stated in F.I.R. as old enmity.

On the basis of aforesaid fardbeyan, the FIR was registered under Sections 302/34 of the Indian Penal Code and Section 27 of the Arms Act vide Chainpur P.S. Case No.44 of 2003. The police took up the investigation of the case. After investigation, the police



submitted charge sheet against the appellants. Thereafter, the Chief Judicial Magistrate took cognizance and committed the case to the court of sessions, where charges were framed under Sections 148 and 302 read with Section 149 of the Indian Penal Code to which, the accused persons pleaded not guilty. Thereafter, trial started against the appellants.

During trial, the prosecution has examined altogether ten witnesses in support of its case. P.W. 1 is Bharat Singh, P.W. 2 is Raj Kumar Yadav, P.W. 3 is Dharmendra Kumar Singh @ Munna Singh, P.W. 4 is Sadhu Yadav, P.W. 5 is Sunil Kumar Singh, P.W. 6 is Dinesh Kumar Singh, P.W. 7 is Ramjee Singh, P.W. 8 is Pappu Prasad, P.W. 9 is Ram Kumar Sharma and P.W. 10 is Dharmraj Yadav.

The defence has not been examined any witness on its behalf.

The trial court after hearing learned counsel for the parties and considering the evidence on record came to the conclusion that the prosecution has been able to prove the charges against the appellants and, as such, the judgment of conviction and order of sentence have been passed.

Now this Court is required to reappraise the prosecution evidence to see as to whether the prosecution has been able to substantiate its case beyond the shadow of all reasonable doubts?



As would be apparent from the allegation set out in the first information report, the informant was travelling on his motorcycle along with Bharat Singh, who has been examined as P.W. 1, on the fateful day at about 3.30 P.M. and they were going for *Darshan* of Maa Mundeshari. When they reached near the canal, they saw Sharwan Kumar Singh, who was coming from Bhabhua and going to his village. When he asked about them, it was disclosed that they are going for *Darshan* of Maa Mundeshari and he said that he would also accompany them. After such decision having been taken by them, Sharwan Kumar Singh also started journey towards the temple on his motorcycle and the informant accompanied him. His motorcycle was behind the motorcycle of Sharwan Kumar Singh. Suddenly from canal road 7-8 persons accosted them and stopped Sharwan Kumar Singh's motorcycle. The informant identified one of them as Jawahar Bind, who drew his country-made firearm and fired upon him, due to which, Sharwan Kumar Singh received injury and fell down and, thereafter, other persons who were identified as Hira Bind and Jag Jiwan Bind and others assaulted him on his neck and body by dagger, *Lathi* and *Danda* etc. It is also stated that Sadhu Yadav, who has been examined as P.W. 4, also witnessed the occurrence along with other local persons. The aforesaid Bharat Singh, who



was accompanying the informant on the motorcycle has been examined as P.W. 1, and has supported the testimony of the informant in examination-in-chief stating that Jawahar Bind drew his country-made pistol and fired upon Sharwan Kumar Singh due to which, he fell down and other persons Hira Bind and Jag Jiwan Bind started assaulting with dagger on the body of the deceased and others had assaulted by *lathi*. He has stated that this occurrence has been witnessed by him, Dharmendra Kumar Singh i.e. the informant, Sadhu Yadav, Kashi Nath Singh and Jay Prakash Singh. Thereafter, the injured Sharwan Kumar Singh was taken to Sadar Hospital by tractor but when his condition started deteriorating, the doctor advised to take him at Varanashi and, accordingly, he searched for Ambulance and started for Varanashi but, in the meantime, deceased breathed his last. Thereafter, the deceased was again taken back to Sadar Hospital, Bhabhua. In the hospital the police reached, subsequently, everything was done. The fardbeyan and other persons' statement were recorded. In his cross-examination, he has stated that Sharwan Kumar Singh was about 60-70 yards ahead of their motorcycle.

P.W. 2, Raj Kumar Yadav, is a seizure list witness, had denied in his evidence that anything was seized by police in his presence or he has put his signature on the seizure list. However,



he has not been declared hostile by the prosecution. He has further stated that the police has not recovered in his presence the empty cartridge, blood stained earth and broken glass of motorcycle.

P.W. 3 is the informant, Dharmendra Kumar Singh, himself. He has also supported the case about the first information report. He has stated in his cross-examination in paragraph 4 that Sharwan Kumar Singh's motorcycle was stopped by Jawahar Bind and he fired from his country-made pistol upon Sharwan Kumar Singh, due to which, he received injury and fell down, thereafter, other assaults were made. In paragraph-11, he has given the reason for the occurrence to be a dispute between the deceased and the accused persons. In his cross-examination, he has also stated that they stopped besides the Canal road at a betel shop and consumed betel from that shop and started towards Maa Mundeshwari Temple when the occurrence took place. However, to corroborate this, the betel shop owner has not been examined by the prosecution. Why his examination was important would be dealt with later on. He has stated that he was 60-70 yards behind the motorcycle of deceased Sharwan Kumar Singh when the occurrence took place. He has further stated that when he was moving on motorcycle he did not hear any gun shot sound. He only heard the sound when he stopped his motorcycle. He has



described the injury other than done by the dagger etc. as on the head there was injury and the hairs were appearing burnt but, at the same time, he has stated in paragraph-32 that before gun shot injury, he did not hear any alarm and a question would be as to why he has stopped the motorcycle when he neither heard the gun shot sound nor did he hear any alarm raised by anyone? Very interestingly, he has also stated that about 2 K.M. away from the place of occurrence, the extremist had blown up a jeep.

P.W. 4, Sadhu Yadav, has been named in the F.I.R., to have witnessed the occurrence. He has also supported by saying that about 7-8 persons were there, out of which, he had identified Jawahar Bind. However, he has further stated that he does not know as to who had fired upon the deceased out of 7-8 persons. At one place, he says that he has not seen who had fired at all and there were 7-8 miscreants who were not previously known to him. He has further stated that Jawahar Bind was about 10-12 yards from the place of occurrence and he was unarmed and he did not see him making an assault.

P.W. 5, Sunil Kumar Singh, is a witness of the inquest report.

P.W. 6, Dinesh Kumar Singh, is a formal witness.



P.W. 7, Ranjee Singh, is father of the deceased. However, he has stated in paragraph-7 of his cross-examination that there was previous enmity with the accused persons for which their side has lodged a criminal case in which the accused persons were convicted by the Sessions Court.

P.W. 8, Pappu Prasad, is again a seizure list witness, who has been declared hostile by the prosecution.

P.W. 9, Ram Kumar Sharma, is a Pharmacist, who has identified the signature of the doctor put on the injury report as well as postmortem report.

P.W. 10, Dharmraj Singh, is also a formal witness.

Mr. Sandip Kumar, learned counsel appearing for the appellants submits that, in fact, the place of occurrence shown in the case is not the actual place of occurrence as the actual place of occurrence was about 2 K.M. away from the scene where the extremists had blown up the Jeep and the deceased might have received injuries there but in view of the enmity, as has been admitted by father of the appellant who has been examined as P.W. 7, the accused persons have been implicated in this matter.

From the evidence which is available on record as well as the F.I.R., it is apparent that the allegation is that while traveling towards Maa Mundeshwari Temple, 7-8 persons including the



accused-convicts accosted the deceased Sharwan Kumar Singh, who was traveling ahead of the informant on his motorcycle and Jawahar Bind stopped the motorcycle and fired upon him with country-made pistol, due to which, he received injury and fell down and obviously the motorcycle also fell down with him. Thereafter, other persons assaulted him by means of dagger, *lathi*, *danda* etc. All the eye witnesses have supported this case but the question is whether this ocular evidence is supported by the medical evidence?

This is a peculiar case in which neither the doctor who had treated the deceased nor one who had done the autopsy upon the dead body of deceased, have been examined as a prosecution witness. The injury report as well as postmortem examination report has been proved by a pharmacist, who has merely identified the signature of the doctor, cannot, thus, prove the contents thereon. However, surprisingly, neither the injury report nor the postmortem report discloses that there is any firearm injury upon the dead body of the deceased. It is true that in case there is contradiction between the medical evidence vis-a-vis ocular evidence, the ocular testimony of a witness would have greater evidentiary value vis-a-vis a medical evidence but what if the medical evidence makes the ocular testimony improbable? The



answer has been given by the Hon'ble Supreme Court in **Mahavir Singh Vrs. State of Madhya Pradesh [(2016) 10 Supreme Court Cases 220]** that if, in view of the medical evidence, the ocular testimony becomes improbable then that becomes a relevant factor in the process of evaluation of evidence. If the medical evidence goes so far that it completely rules out all possibilities of the ocular evidence being true, the ocular evidence may be disbelieved.

In our considered view, this is a that kind of the case in which the medical evidence is completely ruling out all the possibilities of ocular evidence as un-equivocally, all the eye witnesses have stated that at the first hand Jawahar Bind drew his country-made pistol and fired upon the deceased causing injury and, due to which, he fell down and, thereafter, other persons assaulted with the help of dagger and lathi. However, if there is no firearm injury then the entire sequence of evidence as portrayed in the prosecution comes in question and a serious question mark is put on the reliability of the P.Ws, 1, 2, 3 and 4 being eye witnesses because all of them have supported the aforesaid sequence of evidence and all of them have stated that after receiving firearm injury, the deceased fell down.

That apart, it is intriguing as to why neither the doctor, who had treated the deceased when he was injured nor the doctor



who had done autopsy on the dead body, has been examined as a prosecution witness ?

The case of the prosecution is that first the injured was taken to Bhabhua hospital on tractor where some treatment done and stitches were put on him, thereafter, he was referred to Varanashi. While they were going to Varanashi, the injured died. When they again came back to Bhabhua hospital then police came and started investigation after recording the fardbeyan and making inquest report etc. however, the injury report which is on record as Exhibit-4, there is is a forwarding letter of the police Bhabhua in which it is stated that the injured Sharwan Kumar Singh was being treated at a place and the nature of injury is also written there and thereafter, request was made to give the injury report. Now, the question would be, if the police came after the death of the injured then how a request was being made to give injury report portraying that the deceased is being treated in the hospital.

On the conjoint consideration of all the aforesaid facts and circumstances of the case, it appears that the existence of eye witnesses become very much in doubt and the manner of occurrence also comes in question and so as the entire case which has been put up by the prosecution. The best person who could have explained every thing would have been the investigating



officer as he could have stated about the sequence how the police investigated the matter and would have cleared the doubt and the defence could have also got opportunity to cross-examine him but unfortunately, for the reason best known to the prosecution, the investigation officer has not been examined in this case. This gives a further blow to the prosecution case.

That apart, when the very existence of eye witness is becoming doubtful then to establish it, the prosecution could have brought some evidence to corroborate such event. For example, the informant has stated in his testimony that they stopped besides the road at a betel shop and purchased some betel and consumed it and then proceeded then occurrence took place. To corroborate his presence at that point of time on the road along with the deceased, the betel shop owner could have been examined by the prosecution but unfortunately the same could not be done.

It is stated in the seizure list that the blood stained earth, one empty cartridge and broken glass of the motorcycle were seized by the police on the place of occurrence. The seizure list has been exhibited as Exhibit-3, but no seized material has been exhibited and produced before the court.

Further question is as to why the motorcycle was not seized or produced before the Court ?



To sum up, in the facts and circumstances stated above, now this becomes a case of no eye witness, without any material exhibit and without corroboration of given sequence by any competent witness regarding the presence of informant and other persons at the place of occurrence, such as, betel shop owner etc.

Having considered the entire materials on record, we are of the view that since several doubts have been created in this matter and the prosecution has failed to bring home the charges levelled, it would be impossible to convict the appellants.

Accordingly, this appeal succeeds. The judgment of conviction and order of sentence passed against the appellants are set aside. They are acquitted of the charges. Since the appellants are in jail custody, they are directed to be released forthwith, if not wanted in any other case.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

Spd/-V.K. Pandey

AFR/NAFR	AFR
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