

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.1761 of 2018

In
Criminal Appeal (DB) No.426 of 2018

Arising Out of PS. Case No.-222 Year-2012 Thana- PHULWARI District- Patna

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Vimla Devi wife of Ravindra Kumar Singh @ Bhola Singh @ Ravindra Kumar, resident of village- Madhopur, P.S.-Janipur (Phulwarisharif)

... .. Appellant/s

Versus

1. Dinesh Singh son of Late Hardev Singh
2. Sidhnath Singh son of Ramesh Singh
3. Sudai Singh son of Late Harvansh Singh
4. Ramesh Singh of Late Hardev Singh
5. Nidhi Singh son of Ramesh Singh
6. The State of Bihar

Respondent nos. 1 to 5, resident of village-Madhampur, P.S.-Janipur,
District- Patna

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Suraj Narain Prasad Sinha, Sr. Advocate
	:	Mr. Jitendra Narain Sinha, Advocate
	:	Miss. Rashmi Bharti, Advocate
For the Respondent/s	:	Mr. Dilip Kumar Sinha , APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 10-12-2018

Heard Mr. Suraj Narain Prasad Sinha, learned Senior
Advocate appearing for the appellant.

2. This appeal under proviso to Section 372 of the Code of Criminal Procedure has been filed by the appellant against the judgment and order dated 21.08.2017, passed by the learned Additional District and Sessions Judge-VII, Patna in G.R. Case No. 2793 of 2012 arising out of Phulwari Sharif (Janipur) P.S. Case No. 222 of 2012, whereby respondent no. 1 to 5, who were



tried for the charges under Sections 147, 148, 149, 323, 341, 337 and 504 of the Indian Penal Code, have been acquitted.

3. Mr. Suraj Narain Prasad Sinha, learned Senior Advocate appearing for the appellant submitted that the trial court has failed to appreciate the evidence adduced on behalf of the prosecution in correct perspective. It erroneously came to a finding that the prosecution has failed to prove its case beyond reasonable doubt. He contended that the accused Nidhi Kumar @ Nidhi Singh had given blow by means of an iron rod to the injured Vimla Devi on her nose and, in the mean time, the accused Dinesh Singh exhorted them to kill upon which the accused Sidhnath Singh opened fire, which hit one Kislay Kumar whereafter there was commotion and Kislay Kumar was taken to hospital and, in course of treatment, he died. He contended that though the trial court ought to have framed charge under Section 302 of the Indian Penal Code also, it failed to do so, which has caused great prejudice to the defence. He pleaded that in all six prosecution witnesses were examined in course of trial and they all supported the case of the prosecution. According to him, the trial court, erroneously acquitted the accused persons by giving them benefit of doubt.

4. Having heard learned Senior Advocate for the appellant and perused the materials on record, I find that the first



information report was instituted on the basis of written report of the appellant Vimla Devi in respect of an occurrence, which is alleged to have taken place, on 10.06.2012, at 2.00 p.m. In her written report, she alleged that while she was watching construction of linter in her old house, the accused persons (respondent nos. 1 to 5) came and asked her to stop the work. She told them that she was getting the work done on her own land whereupon they started abusing her and throwing brick-bats. In the meantime, the accused Nidhi Singh firstly assaulted her with an iron rod causing injury on her nose and, thereafter repeated the blow, which caused injury on her hand and at the same time upon the order of the accused Dinesh Singh, Siddha Nath Singh opened fire, which caused injury to Kislay Kumar, son of the accused Dinesh Singh.

5. On the basis of said written report, the Police registered Phulwari Sharif (Janipur) P.S. Case No. 222 of 2012. Upon completion of investigation, the Police submitted charge sheet under Sections 341, 323 and 504 read with Section 34 of the Indian Penal Code.

6. It would be pertinent to note here that on 10.06.2012 itself on the basis of the information given by the accused Dinesh Singh Phulwari Sharif (Janipur)P.S. Case No. 223 of 2012 was



instituted against the husband of the appellant and others under Sections 341, 307, 504, 506 read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act. In the said counter case, in course of investigation, at the request of the Police, Section 302 of the IPC was also added to the FIR. Upon completion of investigation of Phulwari Sharif P.S. Case No. 223 of 2012, the Police found the case to be true inter alia under Section 302 of the IPC. Hence, after taking cognizance of the case, Phulwari Sharif P.S. Case No. 223 of 2012 was committed to the Court of Session for trial.

7. Though in the present case, the Police have submitted charge sheet for the offences which were all triable by Court of Magistrate, this case was also transmitted to the Court of Session, as the counter case had been committed to the Court of Session. Both the trials proceeded before the same Sessions Court simultaneously.

8. In course of trial, the prosecution had examined six witnesses, namely, PW-1 Narendra Kumar, PW-2 Sushma Devi, PW-3 Lavkush Sharma, PW-4 Sukesh Kumar, PW-5 Vimla Devi and PW-6 Ranveer Kumar on behalf of the defence. The first information report of the counter case and the charges submitted by the Police were proved and were marked as Exts. A and B



respectively. Upon conclusion of trial, the trial court acquitted the accused persons giving them benefit of doubt.

9. It would be evident from perusal of the impugned judgment that the trial court has discussed in detail about the evidence adduced by each of the witnesses. By analyzing the facts of the case and the evidence, the trial court held that the witnesses examined on behalf of the prosecution have contradicted each other on material points. All the witnesses examined on behalf of the prosecution are relatives and interested witnesses. Most of the related witnesses have not supported the contention of the appellant Vimla Devi that she was ever examined in the hospital. Even related witnesses are resident of distant places and, from their evidence, it is not clear as to how and why they all were present at the time of occurrence. The trial court further held that from the written report as also the evidence of witnesses it would be manifest that at the time of occurrence no family member was present in the house and, thus, none of them went together with the appellant to lodge the first information report, but from the counter case instituted against the husband of the appellant and other family members, it would appear that upon order of Siyaram Singh, one Ravi Kumar had fired, which had caused injury to Kislay Kumar son of the accused Dinesh Singh, who died in



course of treatment in Patna Medical College and Hospital for which Phulwarisharif P.S. Case No.223 of 2012 was registered. In such background, the trial court came to a conclusion that in order to create defence in Phulwarisharif P.S. Case No.223 of 2012 the appellant had instituted a false case on the basis of false and fabricated injury report. The trial court has further held that the doctor, who had examined the appellant, was not examined in course of trial. The investigating officer of the case has also supported the case of the defence that at the time of occurrence itself the first information was instituted by accused Dinesh Singh regarding fire arm injury caused to his son in which husband of the appellant was a named accused. The investigating officer also admitted that none of the witnesses examined in course of investigation had disclosed that accused Sidhnath Singh had opened fire, which caused injury to Kislay Kumar.

10. At this stage, it would also be relevant to note that learned Senior Advocate appearing for the appellant, on query made by the court, admitted that while taking cognizance of the offence or at the stage of framing of charge no objection was raised by the appellant. As no objection was raised at earlier stage, in my considered opinion, it would not be open to the appellant at this stage to urge that the Court erred in framing of charge against



the accused persons and the non-framing of charge under Section 302/149 of the IPC has caused prejudice to the prosecution.

11. The aforesaid findings are findings of fact. Nothing has been brought to my notice to show that the aforesaid findings are perverse.

12. In my opinion, if the trial court had found so many discrepancies in the evidence of the prosecution, no illegality can be found with the conclusion of innocence of the accused persons by the trial court.

13. In that view of the matter, I see no merit in this appeal. It is dismissed accordingly.

(Ashwani Kumar Singh, J)

Md. S/-

AFR/NAFR	NAFR
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