

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.266 of 1995

RAVINDRA SINGH @ SHARMA, son of Late Sagar Singh, resident of village-Amhara, P.S. Bihta, District-Patna.

... .. Appellant

Versus

THE STATE OF BIHAR

... .. Respondent

with
CRIMINAL APPEAL (DB) No. 341 of 1995

RAM NARAYAN SINGH, son of Late Alakh Singh, resident of village-Amhara, P.S. Bihta, District-Patna.

... .. Appellant

Versus

THE STATE OF BIHAR

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 266 of 1995)

For the Appellant : Mr. Pramod Kumar Singh, Advocate

For the Respondent : Mr. Dilip Kumar Sinha, APP

(In CRIMINAL APPEAL (DB) No. 341 of 1995)

For the Appellant : Mr. Pramod Kumar Sinha, Advocate

For the Respondent : Mr. S.C.Mishra, APP

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

30-08-2019 Both stated criminal appeals have arisen out of impugned judgment of conviction dated 31.08.1995 and sentenced order dated 02.09.1995 passed by learned 12th Additional Sessions Judge, Patna in Sessions Trial No.228 of 1994 by which and whereunder he convicted appellant Ravindra Singh @ Sharma in Cr.Appeal (DB) No.266 of 1995 for the offence punishable under Section 302/34 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for life thereunder and so far as the appellant, namely, Ram Narayan Singh in Cr.Appeal (DB) No.341 of 1995 is concerned, he was convicted for the offence punishable under Section 302



of the Indian Penal Code and Section 27 of the Arms Act and, accordingly, he was sentenced to undergo rigorous imprisonment for life for the offence punishable under Section 302 of the Indian Penal Code and to undergo rigorous imprisonment for three years for the offence punishment under Section 27 of the Arms Act. However, it is pertinent to note here that during pendency of Cr.Appeal (DB) No.341 of 1995, the sole appellant Ram Narayan Singh died and, accordingly, the aforesaid Cr.Appeal (DB) No.341 of 1995 stands abated. Now, we pass the judgment/order only in Cr.Appeal (DB) No.266 of 1995.

2. It is pertinent to note here that, altogether, six persons including appellant in Cr.Appeal (DB) No.266 of 1995 faced trial before the learned trial Court in Sessions Trial No.228 of 1994 and by the same impugned judgment, the learned trial Court acquitted four persons whereas convicted the appellant Ravindra Singh @ Sharma and Ram Narayan Singh (now dead) in the manner as stated above.

3. Briefly stated the prosecution case is that on 18.10.1993 at about 6.05 A.M., PW-4 Birendra Kumar Sharma gave his fardbeyan to PW-6 Ram Narayan Roy, the then Officer-in-Charge of Bihta police station, inside the bus bearing bus



no.BR-1B-7009 in presence of Yogi Singh, the then conductor of the aforesaid bus as well as the dead body of deceased Surendra Kumar Arun near Bihta police station to this effect that on the same day, he along with above stated conductor and other staffs of bus no.BR-1B-7009 reached north of Bihta railway Gumti by the above stated bus at about 5.15 P.M. The above stated bus was parked north of the Bihta railway line. In the meantime, his brother Surendra Kumar Arun (deceased) came there at about 6.05 A.M. on his scooter and started talking with him. PW-4 further claimed that in the meantime, appellant Ravindra Singh @ Sharma and five others came from behind the bus and at that time, Ram Narayan Singh was carrying rifle in his hand and as soon as the appellant and his associates reached near him, appellant Ravindra Singh @ Sharma exhorted to kill and, thereafter, Ram Narayan Singh opened fire twice of his rifle and first shot hit on the chest of deceased Surendra Kumar Arun whereas second shot hit on his right elbow as a result whereof, deceased Surendra Kumar Arun, fell down there and died then and there. PW-4 further claimed that Yogi Singh, the then conductor of above stated bus, also sustained injury by the fire made by Ram Narayan Singh. PW-4 further claimed that the aforesaid occurrence was witnessed by PW-1 Nam Shyam



Sharma, PW-2 Raj Kishore Sharma, PW-3 Umeshwar Narayan Singh and several other persons. PW-4 unfolded the cause of occurrence as two days ago hot exchange of words had taken place between Ram Narayan Singh as well as deceased Surendra Kumar Arun on the point of dispute of parking of bus and at that time, he as well as other accused persons including appellant were also present there.

4. It is pertinent to note here that PW-6 claimed before the trial court that the statement of PW-4 was recorded within the premises of police station, and accordingly, the FIR was prepared under Section 302 and other minor Sections of the Indian Penal Code as well as Section 27 of the Arms Act against the appellant and others on the same day, i.e., on 18.10.1993 at 6.15 A.M. The first information report was sent to Court on 18.10.1993 and the same was received in Court on 19.10.1993.

5. PW-6 took the charge of investigation and after completion of investigation, he submitted chargesheet against appellant and others for the offences punishable under Section 302 and other minor Sections of the Indian Penal Code as well as 27 of the Arms Act. The cognizance of the offence was taken and the case was committed to the Court of Sessions and, accordingly, appellant Ravindra Singh @ Sharma along with



five others were put on trial before the trial Court in Sessions Trial No.228 of 1994.

6. The appellant along with five others stood charged for the offence punishable under Sections 302, 149 and 147 of the Indian Penal Code whereas Ram Narayan Singh (since deceased) stood, separately, charged for the offence punishable under Sections 302 and 148 of the Indian Penal Code and Section 27 of the Arms Act. The appellant and others denied the charges and claimed to be tried.

7. In course of trial, prosecution examined, altogether, six witnesses and also got exhibited some documents to bring the appellants and others guilty home.

8. The statements of appellant and others were recorded under Section 313 of the Cr.P.C. in which they denied the prosecution case and claimed their false implication.

9. No evidence was adduced by the appellant as well as others in support of defence but from perusal of statements recorded under Section 313 of the Cr.P.C. as well as trends of cross-examination of the prosecution witnesses, we find that the defence of appellant was total denial of prosecution story and furthermore, the appellant and others took stand that the deceased Surendra Kumar Arun might be killed by his



enemies and the appellant and others were implicated due to business rivalry.

10. As we have already stated that altogether six prosecution witnesses were examined to prove the charges framed against the appellant and others. Out of the aforesaid six prosecution witnesses, PW-1 Nam Shyam Sharma, PW-3 Umeshwar Narayan Singh, who are also named witness in the fardbeyan and PW-4 Birendra Kumar Sharma, who is informant of the case, claimed themselves to be eye witness of the alleged occurrence whereas PW-2 Raj Kishore Sharma is a hostile witness and PW-5 Dr. Ashwani Kumar Ashu claims to have done the postmortem examination on the corpus of the deceased Surendra Kumar Arun and PW-6 Ram Narayan Rai is the investigation officer.

11. PW-1 claims that on the alleged date of occurrence, he was going to Patna and reached near Bihta railway gunti and saw the PW-4 and deceased Surendra Kumar Arun who were taking with each others and in the meantime, appellant and others came there and appellant ordered to kill and thereafter, Ram Narayan Singh made fire twice which hit to deceased Surendra Kumar Arun as well as Yogi Singh. PW-4 further claims that at the time of alleged occurrence, Ram



Narayan Singh was armed with rifle whereas remaining persons including appellant (Ravindra Singh @ Sharma) armed with country made pistols.

12. PW-3 Umeshwar Narayan Singh claims that on the alleged date of occurrence, he was going to his shop situated at Bihta and when reached near Bihta railway gumti, he saw PW-4 and deceased Surendra Kumar Arun, who were talking with each others and, in the meantime, appellant and others came there and appellant (Ravindra Singh @ Sharma) ordered to kill and, thereafter, Ram Narayan Singh opened fire which hit to deceased Surendra Kumar Arun and Yogi Singh. This witness also claims that at the time of alleged occurrence, Ram Narayan Singh was armed with rifle whereas remaining persons including appellant Ravindra Singh @ Sharma were armed with country made pistols.

13. PW-4 Birendra Kumar Sharma claims that on 18.10.1993 at about 5.30 A.M., he along with Yogi Singh as well as other staffs of his bus bearing no.BR-1B-7009 came to Bihta railway *gumti* by the aforesaid bus and the bus was parked towards north of Bihta railway gumti. He, further, claims that in the meantime, deceased Surendra Kumar Arun came there on scooter and while he was talking with deceased Surendra Kumar



Arun, appellant (Ravindra Singh @ Sharma) and others came there and at that time Ram Narayan Singh was carrying rifle whereas remaining persons including appellant were carrying pistols. This witness further claims that appellant (Ravindra Singh @ Sharma) ordered to kill and, thereafter Ram Narayan Singh opened fire twice of his rifle which hit to deceased Surendra Kumar Arun and Yogi Singh.

14. This witness on being cross-examined by the defence admitted at para-21 of his cross-examination that when he gave his fardbeyan, he was aware of this fact as to what weapon was being carried by which accused but he could not remember as to whether at the time of making his statement before the police, he had disclosed that the other accused persons were holding pistols in their hands.

15. The perusal of FIR, the initial statement of PW-4, goes to show that he has claimed in his fardbeyan that it was only Ram Narayan Singh who was carrying rifle in his hand at the time of alleged occurrence and so far as remaining persons are concerned, this witness did not disclose in his statement regarding the weapons being carried by appellant (Ravindra Singh @ Sharma) and others at the time of alleged occurrence. Therefore, the aforesaid fact goes to show that PWs.1, 3 and 4



developed this story in course of trial that at the time of alleged occurrence, appellant and others were also carrying country made pistols in their hands.

16. Furthermore, we find that PW-1 at para-6 of his cross-examination admitted that PWs.3 and 4 are his agnates and deceased Surendra Kumar Arun was also his agnates and this fact has been admitted by PW-3 also at para-4 of his cross-examination. Therefore, it is obvious that PWs.1, 3 and 4 as well as deceased Surendra Kumar Arun are related with each others and they come under the category of related persons. However, the testimony of related witness cannot be discarded only on the ground that the witness comes under the category of related witness but the testimony of related witness has to be scrutinized with more cautious and care. Admittedly, PWs.1 and 3 claimed that they reached over the place of occurrence by chance as PW-1 claimed that he was going to Patna on the alleged date and time of the occurrence and witnessed the alleged occurrence. Similarly, PW-3 claimed that on the alleged date and time of the occurrence, he was going to his shop situated at Bihta. PW-1 at para-14 of his cross-examination claimed that he had shown the place from where he had seen the alleged occurrence but PW-6 admitted at para-2 of his cross-



examination that PW-1 had not shown the place from where he had seen the occurrence. This witness further admitted at para-16 of his cross-examination that he had claimed before PW-6 that he was to go to Patna by bus but he had not disclosed the purpose for which he was going to Patna.

17. PW-3 claims that he was going to his shop but it is surprising enough that in early hour of morning, this witness was going to his shop and the claim of this witness does not appear to be probable. However, this witness had not claimed before PW-6 that he was going to Patna through his shop. Furthermore, this witness admitted at para-6 of his cross-examination that almost all the shops in its vicinity were closed at the time of alleged occurrence. This witness also admitted that the bus from his village to Aurangabad as well as to Patna were available and, therefore, there was no occasion either before PW-1 or before PW-3 to go to Bihta to catch the bus. PW-1, further, admits at para-21 of his cross-examination that only Yogi Singh was present where deceased Surendra Kumar Arun and PW-4 were talking and he had not seen any other present there. As we have already stated that PW-1 is agnate of PW-3 and, therefore, had PW-3 been present near the place of occurrence, PW-1 would have certainly stated about the



presence of PW-3. Therefore, in the aforesaid circumstance, the presence of PWs.1 and 3 over the place of occurrence appears to be doubtful.

18. PW-4 claims that he along with conductor Yogi Singh and other staffs came by bus bearing bus no.BR-1B-7009 from his house but at para-8 of his cross-examination, this witness admitted that the aforesaid bus used to start at 5.20 A.M. from Veer Kuwar Singh Park, Patna. The aforesaid admission of PW-4 goes to show that at the time of alleged occurrence, the above stated bus was not coming from village-Amhara rather the aforesaid bus was coming from Veer Kuwar Singh Park, Patna and, therefore, the above stated fact creates doubt about the claim of PW-4 that he along with Yogi Singh and other came to Bihta from village-Amraha by the above stated bus. Furthermore, this witness, further, admitted at para-14 of his cross-examination that after the occurrence, he had also picked up the dead body of his brother. He further admitted that there was copious blood falling from the dead body but the blood of deceased Surendra Kumar Arun had not fallen on the clothes of this witness nor his hands were shocked with blood of deceased Surendra Kumar Arun. The aforesaid admission of PW-4 also creates doubt about his claim because had he been lifted the



deceased Surendra Kumar Arun after the alleged occurrence, the blood of deceased Surendra Kumar Arun must have been fallen on his clothes. Furthermore, PW-6 has admitted that he did not find any scooter near the place of occurrence nor the key of scooter was handed over to the police. PW-6 also admitted that he had not seized blood from the place of occurrence though he claimed that the blood had fallen on the pitch road. Therefore, almost all the aforesaid circumstances create doubt about the claim of prosecution witnesses.

19. PWs.1, 3 and 4 claimed that prior to the alleged occurrence, hot exchange of words had taken place between Ram Narayan Singh and deceased Surendra Kumar Arun as the bus of Ram Narayan Singh was seized by Sale Tax Department and Ram Narayan Singh suspected the hands of deceased Surendra Kumar Arun in the above stated seizure. PWs.1 3 and 4 claimed that when above stated hot exchange of words took place between Ram Narayan Singh and deceased Surendra Kumar Arun, the appellant (Ravindra Singh @ Sharma) and other accused were also present there but PW-4 did not make such claim in his fardbeyan as well as statement recorded under Section 161 of the Cr.P.C. and, therefore, it is obvious that the above stated claim of PWs.1, 3 and 4 is a subsequent



development in course of trial.

20. The prosecution case can be looked from other angle. PWs.1, 3 and 4 almost all the witnesses have stated that appellant (Ravindra Singh @ Sharma) ordered to kill but the aforesaid witnesses nowhere claimed that appellant ordered to kill deceased Surendra Kumar Arun because appellant had not even uttered the name of deceased Surendra Kumar Arun and according to prosecution case itself, the deceased Surendra Kumar Arun as well as PW-4 and Yogi Singh were present over the place of occurrence when occurrence took place and, therefore, even if it assumed that Ram Narayan Singh opened fire causing death of deceased Surendra Kumar Arun, then also, it cannot be said with certainty that appellant (Ravindra Singh @ Sharma) shared common intention with Ram Narayan Singh to commit murder of deceased Surendra Kumar Arun because it is not the case of prosecution that appellant ordered to kill deceased Surendra Kumar Arun.

21. Therefore, in our view, the appellant could not have been convicted for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code. Our above stated view is supported by a decision reported in AIR 2017 SC (Criminal) 159 rendered in Mew Ram & another vrs. State of



Rajasthan.

22. Apart from the aforesaid infirmities, we find that the most competent witness, namely, Yogi Singh was not examined by the prosecution and non-examination of the Yogi Singh dents in the prosecution case because it was Yogi Singh who sustained injury in the alleged occurrence and he was competent to tell the real story before the trial court. Apart from this, not a single independent witness has been examined on behalf of the prosecution and, therefore, in the aforesaid circumstances, we are of the view that the appellant (Ravindra Singh @ Sharma Cr.Appeal (DB) No.266 of 1995) is entitled to get benefit of doubt.

23. On the basis of aforesaid discussions, this Cr.Appeal (DB) No.266 of 1995 is allowed and impugned judgment of conviction and sentence order are, hereby, set aside. The appellant is acquitted of the charges. He is on bail, and therefore, he is discharged from the liabilities of his bail bonds.

(Hemant Kumar Srivastava, J)

Brajesh Kumar/-

(Prabhat Kumar Singh, J)

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