

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.757 of 2013

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Munna Singh, son of Sri Krishna Singh, resident of village
Kanauli, P.S. Karai Parsurai, District Nalanda.

... .. Appellant.

Versus

The State of Bihar.

... .. Respondent.

WITH
Criminal Appeal (DB) No. 534 of 2013

1. Ashok Singh, son of Late Basisth Narain Singh.

2. Santosh Singh, son of Late Ram Pravesh Singh.

3. Krishna Singh, son of Late Shivnandan Singh.

4. Radhe Singh @ Ragho Singh, son of Late Shivnandan Singh.

All resident of village Kanauli, P.S. Karai Parsurai, District Nalanda.

... .. Appellants.

Versus

The State of Bihar.

... .. Respondent.

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Appearance :

(In Criminal Appeal (DB) No. 757 of 2013)

For the Appellant : Mr. Aaruni Singh, Advocate.
Mr. Rajesh Kumar, Advocate.

For the State : Mr. Ajay Mishra, A.P.P.

(In Criminal Appeal (DB) No. 534 of 2013)

For the Appellants : Mr. Pratik Mishra, Amicus Curiae

For the State : Mr. S. N. Prasad, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL)

Date : 04-02-2019

In spite of repeated calls none appeared on behalf of
the appellants in Cr. Appeal (DB) No.534 of 2013 and as the



case is of the year 2000, hence it is not proper to defer the matter hence Mr. Pratik Mishra, learned Advocate present in the Court has been appointed as amicus curiae in the aforesaid appeal to assist the Court in the matter.

2. As both the aforesaid criminal appeals have cropped up from the same judgment and order of conviction and sentence, hence they are taken up together for consideration and disposed of by this common judgment.

3. Heard Mr. Aaruni Singh learned counsel for the appellant assisted by Mr. Rajeev Kumar learned Advocate as well as Mr. Ajay Mishra learned Additional Public Prosecutor for the State in Cr. Appeal (DB) No.757 of 2013 and Mr. Pratik Mishra learned amicus curiae for the appellants and Mr. S.N. Prasad learned Additional Public Prosecutor for the State in Cr. Appeal (DB) No.534 of 2013.

4. The aforesaid two criminal appeals have been preferred against the judgment and order of conviction dated 10.06.2013 and order of sentence dated 14.06.2013 passed by the learned Additional Sessions Judge-III, Hilsa, Nalanda in Sessions Trial no. 278 of 2001, arising out of Hilsa (Karai) P.S. Case No. 276 of 2000, whereby the learned Trial Court convicted the accused Munna Singh, Ashok Singh, Santosh



Singh, Krishna Singh and Radhe Singh @ Ragho Singh under Section 302/34 of the Indian Penal Code (hereinafter in short referred to as the 'I.P.C.') and further convicted accused Munna Singh under Section 27 of the Arms Act and sentenced them to undergo rigorous imprisonment for life and also slapped them with a fine of Rs.10,000/- each and in default of payment of fine to further undergo rigorous imprisonment for two months under Section 302/34 I.P.C. and further sentenced Munna Singh to undergo rigorous imprisonment for four years and also slapped him with a fine of Rs.2000/- and in default of payment of fine to further undergo rigorous imprisonment for 15 days under Section 27 of the Arms Act. Both the sentences were directed to run concurrently.

5. The factual matrix of the case is that Hilsa (Karai) P.S. Case No.276 of 2000 was instituted under Section 302/307/34 I.P.C. and Section 27 of the Arms Act against accused Munna Singh, Suresh Singh, Ram Pravesh Singh, Krishna Singh, Radhe Singh, Ajay Singh, Ashok Singh and Santosh Singh on the basis of fardbeyan of Umesh Singh, son of Shiv Pukar Singh, recorded by S.I. R.B. Ram of Karai P.S. on 11.09.2000 at 3:30 PM at village Kanhauli with the allegation in succinct that on 11.09.2000 at 8 PM while the informant was



collecting cow dung on the brick soling of his 'Nad' the above named accused persons armed with rifle, gun and pistol made attack on his house. They scaringly intruded into their house while his son was studying on the terrace. Suresh Singh gave order to Munna Singh to gun him down. Responding the same Munna Singh resorted firing upon his son Dabloo Singh @ Sunil Singh by means of country made rifle. Sustaining injury his son fell down on the terrace and died instantly on the spot. The bone of contention is said to be old animosity over row of drain flowing between the house of informant and accused Suresh Singh and Ram Pravesh Singh. Muneshwar Singh, Baleshwar Singh, Congress Singh and Sheopujan Singh and others witnessed the occurrence. On arrival of villagers accused persons left the scene resorting indiscriminate firing.

6. Aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted charge-sheet against all the F.I.R. named accused persons. Subsequently, accused Ajay Singh absconded, hence his trial was separated.

7. On receiving the charge-sheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence and committed the case to the Court of Sessions



and after commitment and on transfer finally the case came in seisin of the learned Additional Sessions Judge-III, Hilsa, Nalanda for trial.

8. Charge against the accused Munna Singh, Suresh Singh, Ram Pravesh Singh, Krishna Singh, Ragho Singh, Ashok Singh and Santosh Singh was framed under Section 307/34 & 302/34 of the Indian Penal Code and Section 27 of the Arms Act and further charge against the accused Munna Singh was framed under Section 302 I.P.C. Charge was read over and explained to them by the Court to which they pleaded not guilty and claimed to be tried. As the accused Suresh Singh and Radhe Singh @ Ragho Singh died during the course of trial, hence the proceeding against the aforesaid accused was dropped by the learned Trial Court, hence only rest five accused persons faced the trial.

9. To substantiate its case, in ocular evidence, the prosecution has examined altogether six prosecution witnesses, namely, Sheopujan Singh as P.W.1, Congress Singh as P.W.2, Ramyadh Singh as P.W.3, informant Umesh Singh as P.W.4, Dr. Jai Shankar Prasad who had conducted the autopsy of the cadaver of the deceased as P.W.5 and second I.O. of the case Arun Kumar Singh as P.W.6. The prosecution has also filed and



proved some documents by way of documentary evidence in the case.

10. The statement of the accused persons was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence. The accused persons have also examined three witnesses, namely, Sanjay Paswan as D.W.1, Devendra Gope as D.W.2 and Anil Paswan as D.W.3 in butress of their case.

11. After hearing the parties and perusing the record, the learned trial court passed the impugned judgment and order of conviction and sentence as detailed in the earlier paragraph.

12. Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction and sentence, the convict Munna Singh has preferred Criminal Appeal (DB) No.757 of 2013 and convicts Ashok Singh, Santosh Singh, Krishna Singh and Radhe Singh @ Ragho Singh have preferred Criminal Appeal (DB) No.534 of 2013.

13. The point for consideration in this case is, as to whether the prosecution has been able to bring home the charges levelled against the appellants beyond all reasonable doubts or not.



14. It is submitted by learned counsel for the appellants that all the material witnesses examined by the prosecution happens to be informant and his relatives and no independent witness has been examined by the prosecution and no plausible and convincing explanation has been assigned for their non-examination. The manner of occurrence has not been established by the prosecution. It is further submitted that as per the informant firing was made from the distance of 10'-12'. but the doctor has found blackening mark on the wound which completely belie the prosecution case, manner of occurrence as well as witnessing of the occurrence by the witnesses. It is also submitted that as per the account of Ramyadh Singh (P.W.3) all the witnesses were at his 'Palani' at the time of occurrence barring the informant, while the informant had rushed to his house. But in quite contradiction to P.W.3, Sheopujan Singh (P.W.1) and Congress Singh (P.W.2) have stated that they had rushed to the place of occurrence from their respective houses responding hulla. It is also submitted that as per the fardbeyan itself and as per the account of the informant Umesh Singh (P.W.4) and other witnesses there was old animosity between the parties and the prosecution has falsely implicated the appellants in the aforesaid occurrence due to aforesaid animosity. It is



further submitted that as per the account of the I.O. Arun Kumar Singh (P.W.6) Chowkidar informed the occurrence to the police at the P.S. and thereafter police arrived at the place of occurrence and as per account of P.W.3, he after the occurrence had rushed to the P.S. and had given the statement at P.S. and his statement was recorded and he put his signature thereon, but the statement of either of the Chowkidar or P.W.3 have not been brought on record which creates serious doubt about the prosecution case. It is submitted by learned amicus curiae Mr. Pratik Mishra for the appellants Ashok Singh, Santosh Singh, Krishna Singh and Radhe Singh @ Ragho Singh that they are not the assailants and there was no intention on their part to commit such occurrence and prosecution has utterly and miserably failed to substantiate sharing of common intention by the appellants in the occurrence. It is also submitted that only signature of P.W.3 has been marked on the inquest report but the inquest report has not been exhibited and brought on record to establish the finding of the dead body on the terrace of the informant and to prove the place of occurrence. Thus, the prosecution has utterly and miserably failed to substantiate the prosecution case against the appellants beyond all reasonable doubt by adducing trustworthy, convincing and reliable



evidence. Hence, the impugned judgment and order of conviction and sentence passed against the appellants by the learned Trial Court is liable to be set aside and the appellants are entitled to be acquitted.

15. Per contra, learned APP advocating the correctness and validity of the impugned judgment and order of conviction and sentence submitted that the informant has supported the prosecution case in toto and besides the informant three other witnesses who happen to be eye witnesses of the occurrence have corroborated the prosecution case. The doctor has also found bullet injury on the face of the deceased. Thus, the ocular evidence also stands corroborated by the medical evidence and the learned Trial Court correctly appreciating the facts and evidence on record has rightly passed the impugned judgment and order of conviction and sentence which is liable to be upheld and these appeals are shorn of merit and are liable to be dismissed.

16. From perusal of record, it appears that to substantiate its case the prosecution case has examined four material witnesses in the case, namely, Sheopujan Singh (P.W.1), Congress Singh (P.W.2), Ramyadh Singh (P.W.3) and informant Umesh Singh (P.W.4). Out of them P.W.1 happens to be 'Gotiya' (cousin



brother of the informant) and as per the account of P.W.3 given in para-4 of his examination-in-chief marriage of daughter of brother-in-law of informant has been solemnized with the son of Sheopujan Singh (P.W.1). From perusal of testimony of said witness, it appears that though he has made an abortive bid to support the prosecution case by deposing in consonance to the prosecution case by stating in his examination-in-chief that at the time of occurrence he was at his home. Responding hulla he arrived near the place of occurrence and witnessed Munna Singh, Ajay Singh, Santosh Singh, Ashok Singh, Radhe Singh, Krishna Singh, Suresh Singh and Pravesh Singh armed with rifle and gun indulged into hurling abuse. Suresh Singh gave order to gun down whereupon Munna Singh resorted firing by means of country made rifle which hit on the temple of Dabloo Singh @ Sunil Singh who was studying on the terrace. Thereafter the accused persons left the scene. But the said witness in para-11 of his cross-examination has candidly denied to have given the statement before the I.O. under Section 161 Cr.P.C. about arriving at the place of occurrence responding hulla, witnessing of exchange of abuse by the parties, giving order by Suresh Singh to gun down, resorting firing by Munna Singh by means of country made rifle which hit Sunil Singh @



Dabloo Singh who was studying at the terrace. Thus, P.W.1 does not appear to have witnessed the occurrence and appears to have taken altogether different stand before the Court regarding the aforesaid material aspect of the case, hence he does not appear to be worth credence and reliable witness.

17. As per the prosecution case, following the attack by the accused persons on his house the informant entered into his house scaringly. P.W.2 has also stated in para-6 of his cross-examination that he witnessed Umesh Singh (informant) entering into his house but in para-9 of his cross-examination informant has divulged about witnessing of the entire occurrence standing outside of the house which creates serious doubt about the witnessing of the occurrence by the informant. P.W.2 Congress Singh in para-9 of his cross-examination at one place has denied to have given statement to the police regarding the occurrence but at the another place admitted to have given statement to the police at the door of informant Umesh Singh. Thus, he happens to be dam lier and is not worth credence and reliable witness. P.W. 3 happens to be on inimical term with appellants as in para-8 of his cross-examination he has stated that there has been dispute between them and accused persons over passage since before. Case under Section 144 Cr.P.C. was



fought between them which is pending in revision. P.W.3 has stated in para-9 & 10 of his cross-examination that Shivpujan Singh (P.W.1), Umesh Singh (informant), Congress Singh (P.W.2) and others were sitting in his Palani at the time of occurrence and only Umesh Singh escaped to his house following attack by accused persons indicating that P.W.1, P.W.2 & P.W.3 were sitting in the Palani of P.W.3 at the time of occurrence and they did not rush to place of occurrence and witnessed the occurrence. Thus, in view of aforesaid aspects of the case testimonies of P.W.1, P.W.2, P.W.3 and informant P.W.4 do not appear to be worth credence and reliable and do not inspire our confidence to hold conviction of the appellants relying upon the same.

18. Congress Singh (P.W.2) who happens to be cousin brother of the informant. Ramyadh Singh (P.W.3) uncle of the informant and Umesh Singh (P.W.4) informant himself, have unanimously stated that the appellant Munna Singh resorted firing from the lane which hit Dabloo Singh @ Sunil Singh during the course of his study at the terrace. P.W.4 has further stated in para-12 of his cross-examination that there was distance of 10'-12' between the assailant and the victim. In para-10 of his cross-examination, he has stated that his terrace is



around 10'-12' high. The aforesaid statement of the said witnesses indicates that the deceased was gunned down from not less than 10'-12'. But from perusal of the postmortem report marked as Ext.3 and the evidence of the Dr. Jai Shankar Prasad (P.W.5), it appears that Dr. has found lacerated wound of the size of 1½" x 1" over left zygoma of face with blackened inverted margin with blood clots over the body and face as wound of entry. Thus, the doctor has found blackened margin on the aforesaid wound of the deceased. As per the text book of Medical Jurisprudence and Toxicology authored by Modi, if a firearm is discharged very close to the body or in actual contact, subcutaneous tissues over an area of two or three inches around the wound of entrance are lacerated and the surrounding skin is usually scorched and blackened by smoke and tattooed with unburnt grains of gunpowder or smokeless propellant powder. The adjacent hairs are singed, and the clothes covering the part are burnt by the flame. If the powder is smokeless, there may be a greyish or white deposit on the skin around the wound. Blackening is found, if a firearm like a shotgun is discharged from a distance of not more than three feet and a revolver or pistol discharged within about two feet. Finding of blackening mark on the wound of the deceased by the doctor indicates that



the deceased was gunned down from very short distance. Hence, finding of blackening mark on the entry wound by the doctor, in our considered opinion, completely rules out the prosecution case and witnessing of the occurrence by the witnesses including the informant. Thus, the aforesaid untrustworthy and unreliable ocular evidence of the prosecution also does not stand corroborated by the medical evidence.

19. Informant Umesh Singh (P.W.4) has stated in para-16 of his cross-examination that he had sent the information of the occurrence to the P.S. by Chowkidar, namely, Shekhar Paswan. Ramyadh Singh (P.W.3) has stated in para-13 of his cross-examination that after departure of the accused persons from the place of occurrence he had himself rushed to the P.S. Karai Parsurai at 10 AM and informed the occurrence. S.I. had reduced his statement into writing and he had put his signature on his statement in the police station itself, but neither the statement of aforesaid Chowkidar nor of P.W.3, which must be first information report has been brought on record by the prosecution rather suppressed which creates serious doubt about the prosecution case.

20. As per the account of Sheopujan Singh (P.W.1) given in paras-9 & 10 of his cross-examination 25-50 villagers



had arrived at the place of occurrence and witnessed the occurrence. People of other caste had also arrived at the place of occurrence. Malik Mahto, Shivnarayan and Sarudha Pandit, Bakhori Pandit, Ram Sharan Mahto and others had arrived there. As per account of Ramyadh Singh (P.W.3) given in para-12 of his cross-examination around 100-200 persons had congregated at the place of occurrence. But the aforesaid witnesses who happen to be independent witnesses of the occurrence have not been examined by the prosecution and no plausible and convincing explanation has been assigned by the prosecution for their non-examination, hence adverse inference is drawn against the prosecution.

21. As per the account of informant (P.W.4) as given in para-24 of his cross-examination there was a bamboo made ladder on his dalan. Said ladder is used for climbing on terrace and I.O. had also climbed on the terrace by the aforesaid ladder. As per the prosecution case and the statement of the informant, the informant was collecting cow dung at the place of occurrence and basket full cow dung was collected there and as per the prosecution case the deceased sustained firearm injury on the terrace and died instantly on the spot but no objective evidence such as falling of blood on the terrace, empty



cartridge, wooden ladder used for climbing the terrace, book of deceased, basket having cow dung has been brought on record by the prosecution. Inquest report of deceased has not been exhibited and brought on record to establish finding of dead body of deceased on the terrace of the informant and moreover I.O. of the case has also not been examined by the prosecution. Thus, place of occurrence also does not stand establish by the prosecution.

22. As per the fardbeyan itself there is old dispute between the informant and the accused persons over the drain flowing between their houses. Informant (P.W.4) has stated in para-2 of his examination-in-chief that there was old dispute with accused Ram Pravesh Singh over the row of drain resulting into the occurrence. He has further stated in para-13 of his cross-examination that there was previous dispute with the accused persons over the drain and there was two criminal cases between them. The aforesaid two cases have been lodged by the accused persons. He has also lodged a case against them for resorting firing upon his brother. P.W.2 has stated in para-8 of his cross-examination that there was a litigation between both the parties preceding to the occurrence. The aforesaid aspect of the case indicates that there is animosity between the parties. It



is settled principle that animosity cuts both the edges. But in view of non-corroboration of the ocular evidence by medical evidence, non-examination of any independent witnesses of the occurrence, not bringing on record objective evidence, not establishment of place of occurrence, not bringing on record the statement of Chowkidar or P.W.3 which must be the first information report false implication of the appellants in the case by the prosecution due to aforesaid animosity cannot be ruled out.

23. In the aforesaid facts and circumstances of the case, we find and hold that the prosecution has utterly and miserably failed to substantiate the prosecution case and complicity of the appellants in the occurrence beyond all reasonable doubt by adducing convincing, cogent, consistent and worth credence evidence. Hence, the impugned judgment and order of conviction and sentence passed by learned Trial Court against the appellants is set aside and the appellants are acquitted of all the charges levelled against them. As the appellants of Criminal Appeal (DB) No. 534 of 2013 are on bail, they are discharged from the liability of their bail bonds while as the appellant Munna Singh of Criminal Appeal (DB) No. 757 of 2013 is in custody, he is directed to be released forthwith from



the custody, if not wanted in any other case. Accordingly, the aforesaid two Criminal Appeals are allowed.

24. Let a copy of the first page and the last page of this judgment be handed over to the learned amicus curiae. Learned amicus curiae be paid prescribed fee by the Patna High Court Legal Services Committee.

(Rakesh Kumar, J)

(Prakash Chandra Jaiswal, J)

Trivedi/-

AFR/NAFR	AFR
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