

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.165 of 2012

Arising Out of PS. Case No.-51 Year-1995 Thana- PALIGANJ District- Patna

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Kumbha Raj S/o Late Rama Nand Mahto R/o Village-Nirakhpur, Post
Siddhipur, P.S. Paliganj, District - Patna

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

Criminal Appeal (DB) No. 57 of 2012

Arising Out of PS. Case No.-51 Year-1995 Thana- PALIGANJ District- Patna

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1. Sheo Pujan Sao, S/o Late Chandradeep Sao
2. Raj Kumar @ Raj Kapur S/o Late Ramanand Mahto
3. Sanjay Kumar S/o Late Vidyanand Mahto
All R/o Village-Nirakhpur, P.S. Paliganj, P.O. Siddhipur, District-Patna.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

Criminal Appeal (DB) No. 60 of 2012

Arising Out of PS. Case No.-51 Year-1995 Thana- PALIGANJ District- Patna

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1. Guru Dayal Singh Son of Late Pradeep Singh
2. Sanjay Mistry Son of Late Gunni Mistry
Both residents of Village- Baheria Nirkhpur, P.S.- Paliganj, District- Patna

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In Criminal Appeal (DB) No. 165 of 2012)

For the Appellant/s : Mr. Ajay Kumar Thakur
Mr. Md. Imteyaz Ahmad
Mr. Nilesh Kumar
Mr. Shashank Shekhar



For the Respondent/s : Mr. S.N. Prasad, A.P.P.
(In Criminal Appeal (DB) No. 57 of 2012)
For the Appellant/s : Dr. Amitesh Kumar
Mr. Raghunath Singh
For the Respondent/s : Mr. Ajay Mishra, A.P.P.
(In Criminal Appeal (DB) No. 60 of 2012)
For the Appellant/s : Dr. Amitesh Kumar
Mr. Raghunath Singh
For the Respondent/s : Mr. D.K. Sinha, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
And
HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL)

Date : 06-02-2019

As the aforesaid three 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.

2. Heard Mr. Ajay Kumar Thakur learned counsel for the appellant (in Cr. Appeal (DB) No. 165 of 2012) and Dr. Amitesh Kumar for the appellants (in Cr. Appeal (DB) No. 57 of 2012 and Cr. Appeal (DB) No. 60 of 2012) as well as Mr. S.N. Prasad, Mr. Ajay Mishra and Mr. A.K. Sinha learned Addl. Public Prosecutors in the aforesaid appeals.

3. The aforesaid three criminal appeals have been preferred against the judgment and order of conviction dated 13.12.2011 and order of sentence dated 16.12.2011 passed by Additional Sessions Judge-VI, Danapur in Sessions Trial No.



742 of 1997 arising out of Paliganj P.S. Case No. 0051 of 1995 whereby the learned trial court convicted the accused Rabindra Prasad, Kumbha Raj, Sheo Pujan Sao, Raj Kumar @ Raj Kapur, Guru Dayal Singh, Sanjay Mistry and Sanjay Kumar for the offence punishable under Sections 302/149 of the Indian Penal Code and Section 27 of the Arms Act and sentenced them to undergo R.I. for life and also slapped them with a fine of Rs. 10,000/- each and in default of payment of fine to further undergo S.I. for six months each under Section 302 of the Indian Penal Code and further sentenced them to undergo R.I. for four years under Section 27 of the Arms Act and also sentenced convicts Sanjay Mistry, Sanjay Kumar, Guru Dayal Singh, Sheo Pujan Sao and Raj Kumar @ Raj Kapur to undergo R.I. for one year under Section 144 of the Indian Penal Code. All the sentence were directed to run concurrently.

4. The factual matrix of the case is that Paliganj P.S. Case No. 0051 of 1995 was instituted under Sections 147, 148, 149, 302 of the Indian Penal Code and Section 27 of the Arms Act against accused Kumbha Raj, Raj Kumar, Hans Raj, Rabindra Prasad, Guru Dayal Singh, Sanjay Kumar and some unknown miscreants on the basis of fardbeyan of Urmila Devi W/o Ram Pravesh Singh recorded by S.I. Bipin Kumar P.S.



Paliganj on 28.05.1995 at 08:00 hours at Nirkhpur house with the allegation, in succinct that on 28.05.1995 at 04:45 AM, the informant had gone for defecation towards west of the village while her husband towards north and when she was regressing after defecation at around 05:00 AM, she witnessed her villagers Sheo Pujan Sao, Sanjay Mistry and Guni Mistry proceeding towards north and listened firing sound from the said direction. On suspicion, she also rushed towards north of the village through her house and spotted 40-45 persons armed with rifle and gun scattered in all the four directions. When she further proceeded, she witnessed that the accused persons were resorting firing upon her husband near Devi Asthan. She witnessed her villagers Kumbha Raj, Raj Kapur, Hans Raj, Rabindra Prasad, Guru Dayal Singh, Sanjay Kumar armed with pistol, gun and rifle and some unknown miscreants armed with rifle and gun there. Rabindra Prasad resorted firing upon her husband by means of rifle and also assaulted on his face by means of butt of the rifle. Kumbha Raj also resorted firing upon him by means of rifle. She could not identify other persons resorting firing. They resorted 15 rounds of firing and were not allowing any of the villagers to escape from the village and also extended threatening of dire consequences in case of giving



evidence against them. Thereafter, accused persons left the scene raising slogan. After their departure, she rushed near Devi Asthan and found bullet riddled dead body of her husband with brain material protruded from the skull. It is further alleged that preceding to the occurrence, miscreants had apprehended Ramesh Mahto near her house, but later on let him free not finding him to be her husband. The bone of contention is said to be old animosity with the accused persons.

5. The aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted charge-sheet against the aforesaid accused persons.

6. 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-VI, Danapur for trial.

7. Charge against the accused Rabindra Prasad, Kumbha Raj was framed under Section 302 of the Indian Penal Code and Section 27 of the Arms Act and charge against the accused Sheo Pujan Sao, Hans Raj, Raj Kapur @ Raj Kumar, Gurudayal Singh, Sanjay Mistry, Sanjay Kumar and Gunni



Mistry was framed under Section 302/149 of the Indian Penal Code. Charge was read over and explained to them by the court to which they pleaded not guilty and claimed to be tried. During course of trial, accused Gunni Mistry passed away, hence, his name was expunged from the record and the trial of Hans Raj was separated and sent to J.J. Board finding him juvenile. Thus, only rest seven accused persons faced further trial.

8. To substantiate its case, in ocular evidence, the prosecution has examined altogether eight prosecution witnesses namely, Ramesh Prasad (Mahto) as PW-1, Ramashraya Prasad as PW-2, Dharendra Kumar @ Dharendra Prasad as PW-3, Akhila Nand Prasad as PW-4, Surendra Prasad as PW-5, informant Urmila Devi as PW-6, I.O. Bipin Kumar as PW-7, and Dr. Shailendra Kumar, who conducted autopsy of the cadaver of the deceased as PW-8. The prosecution has also filed and proved some documents by way of documentary evidence in the case.

9. 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 claiming themselves to be innocent. The accused persons have



neither adduced any ocular nor documentary evidence in buttress of their case.

10. 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.

11. Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction and sentence, the convict Kumbha Raj has preferred Cr. Appeal (DB) No. 165 of 2012, convicts Sheo Pujan Sao, Raj Kumar @ Raj Kapur, Sanjay Kumar have preferred Cr. Appeal (DB) No. 57 of 2012 and convicts Guru Dayal Singh and Sanjay Mistry have preferred Cr. Appeal (DB) No. 60 of 2012.

12. 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.

13. It is submitted by learned counsel for the appellants that the prosecution has utterly failed to prove the place of occurrence and manner of occurrence. The informant has not disclosed the name of the witnesses present at the place of occurrence either in her fardbeyan or in her deposition. It is



also submitted that though there were several villagers at the place of occurrence, but none of the villagers has been made attesting witness of the case instead persons of some other village have been made attesting witness in the F.I.R. which creates serious doubt about the prosecution case as had the occurrence taken place, same would have been witnessed by the villagers and they would have been made the attesting witness of the F.I.R. It is also submitted that as per the fardbeyan, the informant rushed to the place of occurrence in the mid of regression to her house after defecation and witnessed the occurrence, but in quite contradiction to the aforesaid prosecution case, the informant has stated in her deposition that after defecation, she regressed to her house and on listening firing sound, she rushed to the place of occurrence and witnessed the occurrence. It is also submitted that as per the account of I.O., he had arrived at the place of occurrence at 08:00 AM, but the inquest report has been prepared at 07:45 AM, i.e. preceding to the arrival of I.O. at the place of occurrence. The inquest report also contains the P.S. Case No. Though to fill up the aforesaid lacunae, the I.O. has stated that he has gathered the P.S. Case No. from the P.S. concerned through wireless after registration of F.I.R. at 08:30 AM, but the



F.I.R. was registered at 09:30 AM. The aforesaid aspect of the case also creates serious doubt about preparation of the inquest report and the prosecution case. It is also submitted that no objective evidence has been brought on record and no seizure list was prepared on the spot, though as per the statement of the I.O., he had seized blood and cartridge on 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, worth credence 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.

14. On the other hand, learned APPs for the State 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 other material witnesses examined by the prosecution have also corroborated the same. I.O. has seized the blood and cartridge at the place of occurrence. The ocular evidence also stands corroborated by the medical evidence and 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.

15. From perusal of record, it appears that to substantiate its case, the prosecution has examined altogether six material witnesses in the case. Though, PW-1 Ramesh Prasad (Mahto) has made an abortive bid to support the prosecution case by giving deposition in consonance to the prosecution case as adumbrated in the fardbeyan by stating in his examination-in-chief that at the time of occurrence while he was proceeding to see the son-in-law, namely, Arvind Singh of elder brother of Ram Pravesh Singh (deceased) and arrived near his house, four unknown miscreants caught him hold and inquired him as to whether he is Ram Pravesh Singh which he denied. In the meantime, his villagers Sanjay Mistry and Rabindra Mistry arrived there armed with rifle and pistol from other side and did not identify him as Ram Pravesh Singh. Thereafter, the aforesaid persons slapping him let him free. Thereafter, the aforesaid four unknown persons and two named villagers rushed towards Devi Asthan. He also followed them to some distance out of curiosity and witnessed 30-40 persons armed with rifle and gun encircled Ram Pravesh Singh near



Devi Asthan. He identified Kumbha Raj, Hans Raj, Sanjay Kumar, Raj Kapur Singh, Pujan Sao @ Sheo Pujan Sao, Gunni Mistry and Lakshman Singh amongst them. Lakshman Singh exhorted to gun down Ram Pravesh Singh. Responding the same, Rabindra, Sanjay Mistry and Kumbha Raj resorted firing upon Ram Pravesh Singh which hit his head and stomach. Sustaining injury, Ram Pravesh Singh fell down and started writhing. Other unknown miscreants also resorted firing upon him including Sanjay Kumar, Raj Kapur, Sheo Pujan Sao, Gunni Mistry. Resultantly, Ram Pravesh Singh died on the spot. On making alarm by Ram Pravesh Singh, all the accused persons left towards west extending threatening of dire consequences in case of giving evidence against them. After departure of all the accused persons, he arrived at the place of occurrence and found Ram Pravesh Singh dead. But, attention of the said witness has been drawn towards his statement given before the court and that given before the I.O. under Section 161 Cr.P.C. by the defence in paragraphs 24 and 25 of his cross-examination to the effect of letting him free by the accused persons after slapping, witnessing of committing occurrence by the aforesaid accused persons, identifying them in the occurrence etc. I.O. PW-7 at page 65 has also corroborated the



aforesaid contradiction. Hence, in view of the aforesaid contradiction regarding the aforesaid material aspect of the case, the said witness does not appear to be worth credence and reliable. Likewise, PW-3 (Dhirendra Kumar @ Dhirendra Prasad) and PW-5 (Surendra Prasad), who have also made an abortive bid to support the prosecution case by stating in their respective examination-in-chief in consonance to the prosecution case as adumbrated hereinabove claiming themselves to be eye witnesses of the occurrence. But, from perusal of their testimony, it appears that attention of the said witnesses have also been drawn towards contradiction between their statement given before the court and that given before the I.O. under Section 161 Cr.P.C. by the defence regarding witnessing of the occurrence by them and identifying the accused persons in the occurrence in paragraph 17 of cross-examination of PW-3 and paragraphs 25 and 26 of cross-examination of PW-5. I.O. PW-7 at page 66 and 67 of his cross-examination has corroborated the aforesaid contradiction. Hence, the aforesaid two witnesses also appear to have taken altogether different stand before the court regarding aforesaid material aspect of the case and they also do not appear to be worth credence and reliable and their testimony do not inspire



our confidence to hold the conviction of the appellants relying upon the same.

16. PW-2 (Ramashraya Prasad), who happens to be brother of the deceased appears to be hearsay witness of the occurrence as in paragraphs 2 and 3 of his examination-in-chief itself he has stated that on the date of occurrence, he was at his residence located in Dulhin Bazar. He arrived at his house located in Nirakhpur at 08:00 AM on getting information of murder of Ram Pravesh Singh. His Bhawa (sister-in-law) and villagers divulged him about the occurrence and complicity of the accused persons in the said occurrence. But, neither sister-in-law of said witness i.e. informant PW-6 nor any other villager has corroborated the factum of divulgence of the occurrence to PW-2. Hence for want of corroboration, the aforesaid statement of said witness is not admissible in evidence even as a hearsay witness of the case.

17. I.O. Bipin Kumar (PW-7) has stated that he has not taken statement of PW-4 (Akhila Nand Prasad), who happens to be cousin brother of the deceased, hence, it would not be safe to rely upon the testimony of PW-4. Moreover, as per account of PW-4, witness Dhirendra Kumar was 20-25 yard ahead of him at the time of occurrence, but as discussed by us



hereinabove, said Dhirendra Kumar was not present at the place of occurrence at the time of occurrence and witnessed the occurrence. Hence, aforesaid statement of PW-4 also creates serious doubt about his presence of the place of occurrence and witnessing of occurrence by him.

18. Informant (PW-6) though has also made an abortive bid to support the prosecution case by stating in her examination-in-chief in consonance to the prosecution case as adumbrated in the fardbeyan and as detailed hereinabove, but from perusal of fardbeyan, it appears that as per the fardbeyan while the informant was regressing to her house after defecation, on the way, she witnessed accused Sheo Pujan Sao, Sanjay Mistry and Gunni Mistry proceeding towards north of the village and also listened firing sound and as her husband had gone to north of the village for defecation, hence, on suspicion, she also rushed to north of the village and witnessed the occurrence near Devi Asthan. But, in quite contradiction to the aforesaid prosecution case, the informant has stated in paragraph 25 of her cross-examination that after defecation, she arrived at her house and then listened firing sound. Thereafter, she rushed to north of her house and witnessed the occurrence. She has also not divulged about presence of any of the



witnesses, who have claimed to have witnessed the occurrence at the place of occurrence at the time of occurrence. The aforesaid material and vital contradiction between the fardbeyan and statement of the informant creates serious doubt about witnessing of the occurrence by the informant.

19. From perusal of record, it appears that PW-3 (Dhirendra Kumar @ Dhirendra Prasad) in paragraph 11 of his cross-examination has stated that assailant were at 7-8 feet from his father. But, from perusal of the postmortem report marked as Ext-4 and testimony of Dr. Shailendra Kumar (PW-8), it appears that doctor has found four wound of entry with blackened margin. As per the 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. As per the aforesaid finding of the doctor, the firing must have been made from a very short distance, but as per the aforesaid account of said witness, the firing was made from distance of 7-8 feet. Hence, the ocular evidence of prosecution also does not stand corroborated by the medical evidence and it creates serious doubt about the prosecution case and witnessing of the occurrence by the witnesses.

20. From perusal of postmortem report and evidence of Dr. Shailendra Kumar (PW-8), it appears that doctor had conducted autopsy of the cadaver of the deceased on 28.05.1995 at 04:10 PM while the occurrence is of 28.05.1995 at 05:00 AM. Thus, the doctor appears to have conducted autopsy within 11:00 hrs. of the occurrence, but he has assessed the time since death is within 36 hrs. The aforesaid finding of doctor regarding time of death of the deceased is not matching with the time of occurrence and it creates serious doubt about the occurrence and the prosecution case.

21. From perusal of the testimony of I.O. PW-7, it appears that he had arrived at the place of occurrence at 08:00 AM and recorded the fardbeyan first of all and then sent it to the P.S. with Chawkidar. Thereafter, he recorded further statement



of the informant. But, from perusal of the inquest report Ext-4 of the deceased, it appears that the aforesaid inquest report has been prepared by the I.O. at 07:45 AM i.e. preceding to his arrival at the place of occurrence and recording the fardbeyan of the informant. The said inquest report also bears the P.S. Case No. as Paliganj P.S. Case No. 51/95. In a bid to fill up the aforesaid lacunae, the I.O. has stated in his cross-examination that he had obtained the aforesaid P.S. Case No. from the P.S. concerned through wireless at 08:30 AM. But from perusal of record, it appears that the F.I.R. in the case was registered on 28.05.1995 at 09:30 AM. The aforesaid aspect of the case creates serious doubt about preparation of the inquest report at the place of occurrence and also about the sanctity of the prosecution case. The I.O. in his cross-examination has stated that he had seized blood stained soil and eight live cartridges from possession of the deceased, but the seizure list is not available in the case diary. He has also stated that seized articles were not sent to forensic lab. The aforesaid statement of the I.O. indicates that virtually he had not seized any incriminating article at the place of occurrence, and thus, no objective evidence has been brought on record to establish the place of occurrence. In view of the aforesaid aspect of the case, the



place of occurrence does not stand established by the prosecution.

22. As per the fardbeyan itself, there is old animosity between the parties. PW-2 (Ramashraya Prasad) in paragraph 5 of his examination-in-chief has stated that Sanjay Mistry and others had assaulted Ramayan Sharma in the course of taking care of the paddy field and his deceased brother Ram Pravesh Singh had given evidence in favour of Ramayan Sharma in the case lodged in connection with said assault. PW-3 (Dhirendra Kumar @ Dhirendra Prasad) in paragraph 6 of his examination-in-chief has stated that his father had deposed against Sanjay Mistry in the case lodged by Ramayan Sharma and PW-6 (Urmila Devi) has stated in paragraph 2 of his examination-in-chief that her husband had given evidence in the case lodged by Ramayan Sharma against Sanjay and Gunni Mistry. The aforesaid statement of the witnesses and aforesaid aspect of the case indicate that both parties are on inimical terms. Animosity cuts both the edges. But, in view of non-reliability of material witnesses of the case, not supporting the prosecution case by the independence witness of the occurrence, not bringing the objective evidence on record, preparation of the inquest report by the I.O. preceding to his arrival at the place of



occurrence, non-corroboration of the ocular evidence by the medical evidence, false implication of the appellants at the hand of the prosecution party due to aforesaid animosity cannot be ruled out.

23. It is pertinent to mention here that as per the witnesses account, eight live cartridges were recovered from the possession of the deceased which indicates that the deceased was criminal antecedent person.

24. 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 bring home the charges levelled against the appellants 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 giving them benefit of doubt. As the appellant Kumbha Raj of Criminal Appeal (DB) No. 165 of 2012 is in custody, he is directed to be released forthwith from the custody, if not wanted in any other case whereas the appellants Sheo Pujan Sao, Raj Kumar @ Raj Kapur, Sanjay Kumar of Criminal Appeal (DB) No. 57 of 2012



and appellants Guru Dayal Singh and Sanjay Mistry of Criminal Appeal (DB) No. 60 of 2012 are on bail, and as such, they are discharged from the liability of the bail bonds. Accordingly, the aforesaid three Criminal Appeals are allowed.

(Rakesh Kumar, J)

(Prakash Chandra Jaiswal, J)

rohit/-

AFR/NAFR	AFR
CAV DATE	N.A.
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