

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1315 of 2018**

Arising Out of PS. Case No.-201 Year-2004 Thana- JAGDISHPUR District- Bhojpur

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Tunjay Singh @ Durjay Singh Son of Laxman Singh Resident of Village-
Barnaw, Police Station-Ayar, Distt.-Bhojpur at Ara.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Krishna Prasad Singh, Sr. Advocate. Mr. Jharkhandi Upadhyay, Advocate
For the Respondent/s	:	Mr. Mayanand Jha, APP

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
And
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)**

Date : 24-01-2020

Heard Mr. Krishna Prasad Singh, learned senior counsel being assisted by Mr. Jharkhandi Upadhyay, learned counsel for the appellant and Dr. Mayanand Jha, learned Additional Public Prosecutor for the State.

2. The present appeal is directed against the judgment of conviction dated 13.09.2018 and order of sentence dated 18.09.2018 passed by the Fast Track Court 1st, Bhojpur at Ara in Sessions Trial No. 33 of 2005 arising out of Jagdishpur



P.S. Case No. 201 of 2004 by which the appellant has been convicted for the offences punishable under Section 302 of the Indian Penal Code and Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for life with a fine of Rs. 5000/- under Section 302 of the Indian Penal Code and rigorous imprisonment for three years with a fine of Rs. 1000/- under Section 27 of the Arms Act. Both the sentences have been ordered to run concurrently. In default of making payment of fine, for both the offences, the appellant has been directed to undergo additional imprisonment for three months.

3. Mr. Krishna Prasad Singh, learned senior counsel appearing for the appellant submitted that the impugned judgment of conviction and order of sentence are bad in law as well as on facts. He submitted that none of the witnesses examined on behalf of the prosecution has supported the case of prosecution. The trial court completely misappreciated the evidence adduced on behalf of the prosecution and instead of acquitting the appellant for want of any legal evidence against him, erroneously convicted him in a case of no evidence.

4. Per contra, Dr. Mayanand Jha, learned Additional Public Prosecutor for the State has submitted that no fault can be found with the impugned judgment of conviction



and sentence. He contended that in all, six witnesses were examined on behalf of the prosecution including the informant, the doctor, the investigating officer and they all have supported the case of prosecution. According to him, the trial court rightly came to the conclusion that the prosecution has been able to prove the case against the appellant beyond reasonable doubt.

5. The prosecution case as stated in fardbeyan of Ajay Pal Singh, son of Kapil Muni Singh of village-Barnaw, P.S.-Ayar, District-Bhojpur recorded by the Assistant Sub Inspector of police R.S. Ram of Ayar P.S. on 11.10.2004 at 05:00 AM at village Barnaw is that on 10.10.2004 at 08:00 PM after taking meals, his father Kapil Muni Singh went to sleep on cot at the Dalan while he along with his younger brothers Vijay Pal Singh and Santosh Pratap Singh and the cousin brothers of his grand father Raj Hansh Singh and Kawal Hansh Singh went to sleep in a hut situated in front of the Dalan. All of a sudden, at about 11:45 PM, on hearing sound of firing and shouting of his father that Tunjay had fired at him, he went near him and saw profused bleeding from his left rib. He also saw that Tunjay was running away towards west. Since his father was shouting very loudly, his brothers Vijay Pal Singh, Santosh Pal Singh and others also reached there and when they all were



taking the injured to hospital for treatment, he died on the way.

6. The motive for committing the offence alleged in the fardbeyan is that about three months ago, a piece of land pertaining to the joint family was sold in Rs. 4,75,000/- and the consideration money was distributed amongst the three co-sharers, but Tunjay and his father were demanding the entire amount.

7. On the basis of the aforesaid information, Jagdishpur P.S. Case No. 201 of 2004 dated 11.10.2004 was registered under Section 302 of the Indian Penal Code against the appellant and investigation was taken up.

8. On completion of investigation, the appellant was charge-sheeted for the offence punishable under Section 302 of the Indian Penal Code.

9. After taking cognizance of the offence and complying with the mandatory requirements of Section 207 of the Code of Criminal Procedure, the case was committed to the court of Sessions for trial.

10. On receipt of the record, the trial court framed charges for the offences punishable under Section 302 of the Indian Penal Code and Section 27 of the Arms Act.

11. Since the appellant did not plead guilty, the trial



commenced.

12. In support of the prosecution, six witnesses were examined. They are PW-1 Santosh Pratap Singh, PW-2 Vijay Pal Singh, PW-3 Rameshwar Singh, PW-4 Ajay Pal Singh, PW-5 Dr. Nand Kishore Narayan and PW-6 Ram Shrestha Ram.

13. The informant Ajay Pal Singh (PW-4) has reiterated his version given in the fardbeyan in his examination-in-chief. His brothers, Santosh Pratap Singh (PW-1) and Vijay Pal Singh (PW-2) have also reiterated the fardbeyan of the informant in the examination-in-chief during trial. The only difference in their statement before the court in examination-in-chief from the fardbeyan is that they have stated that when they went towards Dalan where their father had sustained gun shot injury, they saw Tunjay running away with a katta (country made pistol) in his hand. However, in their cross-examination, none of them has supported the prosecution case.

14. The informant Ajay Pal Singh has stated during cross-examination that the hut in which he was sleeping was 20-25 yards west to the Dalan of his house where his father was sleeping. He has further stated that besides him, 4-5 other family members were also sleeping in the hut and his father was sleeping alone in the Dalan. He has further stated that after he



woke up, the other family members also woke up and they all came out of the hut. Since, it was a dark night, nothing was visible outside. When he went near his father, he was injured and unconscious and in an unconscious state of mind, he died. He has further stated that he had named the appellant in the fardbeyan merely on suspicion. Lastly, he has stated that in the morning, he took his father to hospital. He has proved his signature on the fardbeyan, which has been marked as Ext-1.

15. PW-1 Santosh Pratap Singh has stated in his cross-examination that the hut in which he was sleeping was about 30-40 yards north to the Dalan of his house. He woke up on the shouting of his brothers Ajay Pal Singh and Vijay Pal Singh and went near his father, who was unconscious and, in an unconscious state of mind, he died. He has also stated that since it was a dark night, he did not identify anyone running away. He has admitted that nobody has stated him to have seen anyone running away from the place of occurrence.

16. Similarly, PW-2 Vijay Pal Singh has stated in his cross-examination that the hut in which he was sleeping was about 10-12 meters away from the Dalan. He has further stated that when he woke up and went near his father, he saw that he had sustained gun shot injury, but he was breathing and was



unable to speak. He died while being taken to the hospital. He has admitted that prior to his death, he never regained consciousness. He has also admitted that when he woke up, he did not see anyone running away in the night.

17. The only other independent witness is Rameshwar Singh (PW-3). He is not an eyewitness of the occurrence. He has stated in his deposition that on the date and time of occurrence, Kapil Muni Singh was killed. He has further stated that on hulla, he went near the door of the house of Kapil Muni Singh and saw that he was lying dead. He has further stated that the informant Ajay Pal Singh told him that his father has been killed by the appellant. However, in cross-examination, he has stated that his house is about 100-150 yards away from the house of the deceased Kapil Muni Singh and prior to his reaching at the door of the house of Kapil Muni Singh, his son Ajay Pal Singh and others had taken him to the hospital. He has further stated during cross-examination that he has no knowledge as to who killed Kapil Muni Singh. He has also admitted that he has never ever talked with Ajay Pal Singh.

18. The two other witnesses examined on behalf of the prosecution are the doctor and the investigating officer.

19. PW-5 Dr. Nand Kishore Narayan had



conducted the postmortem examination on the body of the deceased Kapil Muni Singh on 11.10.2004 at 08:45 AM. He has stated in his deposition that he had found lacerated wound oval size 1/2" x 1/2" x cavity deep with blacken inverted margin over right chest on lower portion near anterior costal margin on the body of the deceased. He has stated that the time elapsed since death was within six to twenty four hours. His evidence would simply suggest that the deceased Kapil Muni Singh had sustained antemortem gun shot wound from a close range due to which he died. He has proved the postmortem report which has been marked as Ext-2.

20. PW-6 Ram Shrestha Ram, is the investigating officer of the case. He has stated in his deposition that on 11.10.2004, he was posted at the Ayar Police Station as an Assistant Sub Inspector of Police. He came to know from Dafadar that a man in village Barnawa had sustained gun shot wound. Thereafter, he went there and recorded statement of Ajay Pal Singh (informant) which was signed by him. He has further stated that he took up the investigation of the case, recorded statement of the informant, visited the place of occurrence, prepared inquest report of the body of the deceased and dispatched the dead body for autopsy. He has further stated



that he recorded the statement of the witnesses and, on completion of the investigation, submitted charge-sheet in the court.

21. On scrutiny of the evidence adduced during trial, it would be evident that the prosecution has been able to prove that Kapil Muni Singh was murdered by a single gun shot injury caused to him by some unknown miscreant.

22. There is no eyewitness of the occurrence of murder. P.Ws. 1, 2 and 4, the three sons of the deceased came to the place of occurrence i.e. Dalan of the house soon after the occurrence on hearing sound of firing from the hut which was at a distance of 20-30 yards and saw that their father had sustained gun shot wound. Though in the FIR, it is alleged that the injured was shouting that it was Tunjay (appellant), who had fired at him, they have not supported the said allegation in their evidence. They have stated that by the time they reached near their father at the Dalan of the house, due to the fire arm injury caused to him, he had become unconscious. Though, he was breathing, he was not in a position to speak. They have further stated that he died even before he was taken to hospital without disclosing anything about the identity of the assailant. The contention that they saw Tunjay running away, as given in the



FIR, which was further developed during examination-in-chief that Tunjay was seen running away with a katta (country made pistol) in his hand was also not supported by them during cross-examination. They stated in cross-examination that it was a dark night and nothing was visible. They admitted that they did not see anyone running away from the place of occurrence. The informant Ajay Pal Singh has gone to the extent of admitting that name of Tunjay was given in the FIR merely on suspicion. Similarly, the evidence of P.W.3 Rameshwar Singh is of no help to the prosecution. He is neither an eyewitness of the occurrence nor he has supported the charge against the appellant in any manner.

23. In the absence of any evidence against the appellant, we fail to understand as to how the trial court held him guilty for the offence of murder.

24. The trial court has completely failed to appreciate the evidence on record. It has failed to appreciate that in criminal cases, the burden of proving the guilt of an accused is upon the prosecution. It must stand by itself. It has also failed to appreciate that the accused need not establish his case beyond reasonable doubt.

25. The trial court also failed to appreciate the



basic principle of law that if there is a real and reasonable doubt as to guilt of an accused, the accused is entitled to the benefit of doubt.

26. It completely failed to appreciate that the law always requires that the conviction should be certain and not doubtful.

27. We are of the opinion that the judgment of the trial court is not only erroneous but also perverse. The prosecution has miserably failed to prove its case. The conviction of the appellant and sentence awarded to him for the offences under which he had been charged are based on no legal evidence.

28. Keeping in mind the discussions made above, the impugned judgment of conviction and order of sentence cannot be sustained. Accordingly, the impugned judgment of conviction dated 13.09.2018 and order of sentence dated 18.09.2018 passed by the Fast Track Court 1st, Bhojpur at Ara in Sessions Trial No. 33 of 2005 arising out of Jagdishpur P.S. Case No. 201 of 2004 are set aside.

29. The appellant Tunjay Singh @ Durjay Singh, who is in custody, is hereby acquitted. He is directed to be released forthwith, unless he is required to continue in detention



in some other case.

30. The appeal stands allowed.

(Ashwani Kumar Singh, J)

(Partha Sarthy, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
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