

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.34 of 2020

Arising Out of PS. Case No.-543 Year-2015 Thana- HAJIPUR SADAR District- Vaishali

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Khusboo Devi @ Khushbu Kumari W/O Late Milan Singh @ Chandeshwar Singh @ Milan Kumar Resident Of Village - Dighikala West , P.S.- Sadar, Distt.- Vaishali.

... .. Appellant/s

Versus

1. The State of Bihar
2. Harendra Singh Son of Late Dev Prasad Singh Resident of Village - Dighikala West , P.S.- Sadar, Distt.- Vaishali.
3. Sunil Kumar Singh Son of Harendra Singh Resident of Village - Dighikala West , P.S.- Sadar, Distt.- Vaishali.
4. Rohit Kumar @ Baljeet Singh Son of Arvind Singh Resident of Village - Lal Pokhar Dighi , P.S.- Sadar, Distt.- Vaishali.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Vishwanath Prasad Sinha, Sr. Advocate Ms. Bela Singh, Advocate Mr. Rajeev Ranjan, Advocate
For the Respondent/s	:	Mr. Abhimanyu Sharma, APP

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE KHATIM REZA

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 17-10-2022

This appeal has been filed under Section 372 of the Code of Criminal Procedure by the appellant assailing the common judgment and order passed by the learned Additional Sessions Judge-III, Vaishali dated 13.11.2019 in Sessions Trial No. 283 of 2017 and Sessions Trial No. 315 of 2018 to the extent the trial court has recorded acquittal of respondents No. 2, 3 and 4 of the offences punishable under Sections 302/34, 341/34 and 120B of the Indian Penal Code, while convicting one Arvind Singh of the offences punishable under Section 302



of the Indian Penal Code and Section 27 of the Arms Act.

2. The appellant is the informant of Sadar Hajipur P.S. Case No. 543 of 2015 registered on 11.11.2015, which is the genesis of the aforesaid two Sessions Trial No. 283 of 2017 and Sessions Trial No. 315 of 2018. The appellant is the widow of the deceased. Respondent No. 2 was facing trial in Sessions Trial No. 282 of 2017, whereas respondents No. 3 and 4 were facing trial in Sessions Trial No. 315 of 2018, along with the convict (Arvind Singh), arising out of the same criminal case.

3. We have heard Mr. Vishwanath Prasad Sinha, learned Senior Counsel with Ms. Bela Singh, learned counsel for the appellant and Mr. Abhimanyu Sharma, learned Additional Public Prosecutor for the State.

4. The prosecution's case as disclosed in the F.I.R., by the informant/appellant (PW-7), is that on 10.11.2015 the respondent No. 2 (Harendra Singh) came to her house and asked her husband to come along the land in respect of which there was some dispute between them. The informant becoming suspicious followed them with her mother-in-law Radhika Devi (PW-1) to the disputed land where they reached at 9:40 am. There they saw that respondent No. 2 and respondent No. 3 had caught hold of her husband and they ordered the convict



(Arvind Singh) to kill him, whereupon, Arvind Singh fired a shot with his pistol hitting in the left chest of her husband (the deceased). Thereafter, Arvind Singh passed on the pistol to Rohit Kumar (respondent No. 4) and ordered him to kill the deceased. Afterwards, the accused persons along with 4-5 other unknown persons escaped from the place of occurrence. The husband of informant died on the spot.

5. It is noteworthy, as is evident from the cause title of the present memo of appeal that respondent No. 4 is son of the convict (Arvind Singh) whereas respondent No. 3 (Sunil Singh) is son of respondent No. 2 (Harendra Singh).

6. Based on the said written report of the informant Sadar P.S. Case No. 543 of 2015 came to be registered on 11.11.2015 for the offences punishable under Sections 341, 420, 302, 120B, 34 of the I.P.C. and Section 27 of the Arms Act. A charge-sheet came to be submitted on 20.12.2016 against respondent No. 2 and on 16.09.2017 against the convict (Arvind Singh). A third charge-sheet was submitted on 22.03.2018 against respondent No. 3 (Sunil Singh). Cognizance was thereafter taken as per the charge-sheet on different dates by the learned Magistrate. Subsequently, Sessions Trial No. 283 of 2017 was committed to the Court of Sessions in which



cognizance was taken of the offence alleged against respondent No. 2. Thereafter, Sessions Trial No. 315 of 2018 was committed to the trial court in relation to the accused Arvind Singh (the convict), Sunil Singh (respondent No. 3) and Rohit Kumar (respondent No. 4). Charges were framed on 27.07.2017 of commission of offences punishable under Sections 302/34, 341/34 and 120B of the I.P.C. against respondent No. 2 and on 02.07.2019 against the convict Arvind Singh, Rohit Kumar (respondent No. 4) and Sunil Singh (respondent No. 3) for commission of the aforesaid offences under the provisions of Indian Penal Code as also under Section 27 of the Arms Act. As the accused persons denied the accusation against them, they were put to trial.

7. At the trial, altogether 12 witnesses came to be examined for the prosecution as under :-

- (i) PW-1 Radhika Devi (mother of the deceased)
- (ii) PW-2 Bhism Kumar Singh (brother of the deceased)
- (iii) PW-3 Vinay Kumar Singh
- (iv) PW-4 Sunil Kumar Singh
- (v) PW-5 Neelam Devi (sister-in-law i.e. *bhabhi* of PW-3)
- (vi) PW-6 Brajesh Kumar Singh (who had conducted the *post mortem* examination)



- (vii) PW-7 Khusboo Devi (the informant)
- (viii) PW-8 Kamlesh Rai (declared hostile)
- (ix) PW-9 Jai Kumar (declared hostile)
- (x) PW-10 Nirbhay Kumar (Investigating Officer)
- (xi) PW-11 Pramod Kumar Singh (witness to the inquest report)
- (xii) PW-12 Randhir Kumar (second Investigating Officer)

8. From the deposition of PW-1, it transpires that the persons named in the F.I.R. including the private respondents were *pattidars* (agnates). There was a joint family property in the nature of land ad-measuring 51 decimal out of which the two disputing parties had got 20 decimal each. There was dispute in relation to the remaining 11 decimal of land. One Suresh Singh had constructed a house over the five and half decimal of land and remaining five and half decimal of land was in possession of Arvind Singh (the convict) for last 10 years. The said five and half decimal of land in possession of Arvind Singh (the convict) was the place of occurrence.

9. PW-1 in her examination-in-chief claimed to be an eye-witness of the entire occurrence as disclosed in the F.I.R. According to her, she had seen respondents Harendra Singh and Sunil Singh, who had grasped the deceased (her son) and



Arvind Singh had shot at the deceased at the instigation of respondent No.2 (Harendra Singh). During the course of examination, however, she admitted in paragraph-4 of her evidence that she was in her house when she heard the sound of bullet and after hearing the sound, she and her daughter-in-law had rushed to the place of occurrence. She further deposed that respondent No. 2 was about 70 years of age as on the date of occurrence. When she reached at the place of occurrence the deceased was lying after having been shot at and the accused persons were holding him.

10. PW-2 also reached the place of occurrence after the deceased was shot at. He had seen Arvind Singh holding a pistol in his hand and these private respondents present there with the convict Arvind Singh.

11. PW-3 Vinay Kumar Singh in his deposition stated, *interalia*, that the occurrence had happened due to land dispute as the deceased had got dug a pit on his share of land for laying foundation of a boundary wall. His attention was drawn to his statement as recorded by the police under Section 161 of Cr.P.C. that he had heard about Arvind Singh (the convict), who had shot at the deceased. PW-3 is the uncle of the deceased as per his deposition. He further deposed that a Police Officer had



come at the place of occurrence at about 10-11 am. on the date of occurrence. He described in his disposition the dimension of the digging of the land. According to him, at the time of occurrence he was sitting in his shop located towards western side of the place of occurrence. He had heard the voice of exchange of hot words of the deceased and he had gone to the place of occurrence, after the deceased was shot at.

12. PW-4 Sunil Kumar Singh and Bhism Kumar Singh PW-2 had reached the place of occurrence after the victim was shot at, as deposed by him at the trial.

13. PW-5 in her deposition narrated that respondent No. 2, Harendra Singh had accosted the deceased asking him as to why he had got dug a pit over the land, responding to which the deceased had replied that he had done so as the land belonged to him. PW-5 also deposed that she was sitting at her door when Harendra Singh had called the deceased. In her cross-examination she, however, stated that her statement was recorded by the police on the next day and that Harendra Singh and Sunil Singh had caught hold of the deceased and Rohit Kumar had assaulted him by means of bamboo.

14. PW-6 Doctor, in his deposition proved following external and internal injuries:-

“External- Lacerated wound 3”X4” in diameter



over left front of chest below nipple, margin inverted, margin charred directed medially towards (right side of chest)

Dissection-Skull-Bones intact, brain and meninges intact and pale.

Neck- Trachea, mucosa and blood vessels intact.

***Chest-** Bony cage intact fracture of sixth rib (L). Left lungs lacerated with haemothorax (L), Peri cardium lacerated with laceration of Atrium (L) right lower zone of lungs lacerated and contains a **metallic substance resembling like bullet** which has been preserved and handed over to police.*

***Abdomen-** Wall, Peritoneum intact, liver, spleen, kidneys intact. Stomach contains 90 ml of fluid, Bladder contain 60 ml of urine. Perinium intact normally.*

Substance used- Firearm weapon

Time elapsed since death- Within 24 hours from the time of PM examination.

***Opinion-** Death is due to syncope following heart and lungs injuries.*

***Enclosure-** Metallic substance in sealed vial.”*

15. PW-7, the informant in her examination-in-chief, supported the prosecution's case as disclosed in her written report to the effect that she and Radhika Devi (PW-1) had followed the deceased going towards the disputed land with respondent No. 2 and that she had seen the convict Arvind Singh shooting the deceased when the deceased was held by respondents No. 2 and 3. She also stated in her examination-in-chief that the convict had passed on his pistol to respondent No.



4 and had ordered him to kill the deceased, upon which respondent No. 4 had put a bullet in the fire-arm but it misfired. After the occurrence the villagers have gathered at the place of occurrence. It is noteworthy, at this juncture, that the attention of the Investigating Officer was drawn during the course of his cross-examination to the restatement of the informant recorded in the case diary. With reference to the case diary, the Investigating Officer deposed that the informant had not stated before him that respondent No. 2 Harendra Singh had come at the place where the pit was being dug.

16. The trial court, upon appreciation and analysis of evidence adduced at the trial reached a conclusion that the prosecution could establish beyond all reasonable doubts the charge against convict Arvind Singh. The present appeal does not relate to the legality or, otherwise, of the finding recorded by the trial court in respect of conviction of Arvind Singh. The scope of this appeal is confined to the acquittal of respondents No. 2 to 4 as recorded by the trial court.

17. Mr. Vishwanath Prasad Sinha, learned Senior Counsel appearing on behalf of appellant has submitted that the trial court did not disbelieve the evidence of the prosecution's witnesses to the extent the same related to commission of



offence by the convict Arvind Singh. He has submitted that since the witnesses were consistent in their deposition regarding participation of respondents No. 2 to 4 in commission of the offence, the finding of their acquittal recorded by the trial court deserves interference by this Court.

18. We have perused the impugned judgment and order of the trial court and other materials available on record. We have given our anxious considerations to the rival submissions made on behalf of the appellant. As regards respondent No. 2, the trial court noticed the fact that PW-7 had not stated before the police in her statement under Section 161 of the Cr.P.C., about agitated disposition of respondent No. 2 when he had, as per the prosecution's case, angrily called the deceased, but she improved her version in her statement at the trial deposing that respondent No. 2 was angry over digging of pit in the disputed land by the deceased and he had called him in anger. The allegation against respondent No. 2 has accordingly been doubted. In respect of accused Sunil Singh, the trial court has noticed the deposition of PW-1 (Radhika Devi), in her examination-in-chief to the effect that Harendra Singh and Sunil Singh had caught hold of the deceased. She did not depose about the involvement of respondent No. 3 in commission of the



offence. Noticing contradictory evidence of PW-1 the trial court found the accusation against Sunil Singh (respondent No.3) doubtful. Dealing with the evidence against respondent No. 4 (Rohit Kumar) the trial court has noticed the evidence of PW-1, who had stated in her deposition that Arvind Singh (the convict) had handed over his pistol to him and ordered him to kill the deceased but there was no evidence to the effect that any shot was fired by Rohit Kumar, even if the prosecution's case was taken to be correct. PW-2 Bhism Kumar Singh though deposed that Rohit Kumar was also present with the accused persons, no further material came against him. PW-3 Vinay Kumar Singh too did not disclose any overt act against the respondent No. 4 (Rohit Kumar). Only PW-5 had deposed that Rohit Kumar had also fired a shot but it misfired. The trial court noticed the evidence of PW-10 (Investigating Officer) that involvement of Rohit Kumar was not found in the occurrence. PW-12 (the second Investigating Officer) also deposed that there was no material against Rohit Kumar. No charge-sheet was submitted by the police against him as no material was found against him. After having analyzed the evidence of witnesses, the trial court has concluded that the essential ingredients of criminal conspiracy to make out an offence under Section 120B of the



I.P.C. could not be established in the absence of any proof of agreement between the parties for doing an unlawful act. Similarly the trial court is of the view that the prosecution failed to establish the offence of common intention under Section 34 of the Indian Penal Code against the respondents No. 2 to 4 and accordingly acquitted respondents No. 2 to 4 for the offence punishable under Section 302 of the I.P.C. read with Section 34 thereof.

19. In nutshell, the prosecution's case is that Harendra Singh (respondent No.2) and Sunil Singh (respondent No. 3) were physically holding the deceased when the Arvind Singh fired at the deceased. It has been rightly noticed by the trial court that PW-1 in her deposition has not stated that Sunil Singh was holding the deceased rather according to her, Sunil Singh was seen holding him after the fire was shot at him. Reason for doubting the implication of Harendra Singh (respondent No.2) cannot be said to be unreasonable, there being difference of the prosecution's case as narrated by the informant in her written report which is the basis for registration of F.I.R., her statement under Section 161 of the Cr.P.C., before the police and her deposition at the trial.

20. In our considered view, a trial court has an



additional advantage of seeing the witnesses while being examined. The occurrence is said to have taken place in the background of dispute in respect of a piece of land between two families. Considering the background in which the occurrence had taken place and nature of evidence adduced at the trial, the trial court doubted the veracity of the prosecution's case as against private respondents No. 2 to 4. Reasons assigned by the trial court for recording acquittal of the respondents No. 2 to 4 cannot be said to be wholly unsustainable. The view which has been taken by the trial court to the extent the same relates to acquittal of respondents No. 2 to 4 cannot be said to be, not a possible view.

21. It would be useful to note, at this stage, the Supreme Court's decision in case of ***Murugesan v. State, (2012) 10 SCC 383***, which lucidly distinguishes the expressions "possible view", "erroneous view" and "wrong view" and has concluded in paragraph-34, which reads as under:-

"34. It will be necessary for us to emphasise that a possible view denotes an opinion which can exist or be formed irrespective of the correctness or otherwise of such an opinion. A view taken by a court lower in the hierarchical structure may be termed as erroneous or wrong by a superior court upon a mere disagreement. But such a conclusion of the higher court would not take the view rendered by



the subordinate court outside the arena of a possible view. The correctness or otherwise of any conclusion reached by a court has to be tested on the basis of what the superior judicial authority perceives to be the correct conclusion. A possible view, on the other hand, denotes a conclusion which can reasonably be arrived at regardless of the fact where it is agreed upon or not by the higher court. The fundamental distinction between the two situations have to be kept in mind. So long as the view taken by the trial court can be reasonably formed, regardless of whether the High Court agrees with the same or not, the view taken by the trial court cannot be interdicted and that of the High Court supplanted over and above the view of the trial court.”

22. It is discernible from the Supreme Court’s decision in case of **Murugesan** (supra) that a possible view denotes an opinion which can exist or be found irrespective of the correctness or otherwise of such an opinion. A view taken by a Court lower in hierarchical structure may be termed as erroneous or wrong by a Superior Court upon a mere disagreement. However, such a conclusion of higher Court would not take a view rendered by subordinate court outside the arena of possible view.

23. Whereas, the correctness or otherwise of any conclusion reached by a Court has to be tested on the basis of what the judicial authority perceives to be correct conclusion; a



possible view denotes a conclusion which can be reasonably arrived at, regardless of the fact whether it is agreed upon or not by the higher Court.

24. It has been held in case of ***Murugesan*** (supra) in no uncertain terms that so long as view taken by the trial court cannot be reasonably found, regardless of whether the High Court agrees with the same or not, the view taken by the trial court cannot be interdicted and that of High Court supplanted over and above the view of the trial court.

25. Applying the legal position as enunciated by the Supreme Court in case of ***Murugesan*** (supra) and in the background of the abovenoted discussions we do not find any merit in this appeal. We are of the view that the acquittal recorded by the trial court of respondents No. 2 to 4 in its impugned judgment does not require any interference.

26. This appeal has no merit, and is accordingly dismissed.

(Chakradhari Sharan Singh, J)

I agree
(Khatim Reza, J):-

(Khatim Reza, J)

Anand/-

AFR/NAFR	NAFR
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