

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.482 of 1996

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1. Nathuni Singh, Son of Yamuna Singh (Criminal Appeal against appellant
No.1 has abated vide order dated 28.06.2022)
2. Pramod Singh, Son of Nathuni Singh, Residents of village Sarar, P.S.
Barauli, District Gopalganj

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 522 of 1996

Vinod Singh, Son of Nathuni Singh, resident of village Sarar, P.S. Barauli,
District Gopalganj

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In Criminal Appeal (DB) No. 482 of 1996 and Criminal Appeal (DB) No. 522 of
1996)

For the Appellants	:	Mr. A.K. Thakur, Advocate Mr. Prabhat Kr. Singh, Advocate Mr. Nilesh Kumar, Advocate Mr. Udbhav, Advocate
For the Respondent	:	Ms. Shashibala Verma, A.P.P.

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

and

HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 15-07-2022

Both the appeals are being taken up together as they
arise out of the same judgment and order passed by the trial court,
by which the appellants have been convicted.



2. Both the appeals have been preferred against the judgment of conviction dated 04.09.1996 and the order of sentence dated 06.09.1996 passed by the 1st Additional District and Sessions Judge, Gopalganj in Sessions Trial No.307 of 1993/112 of 1993, arising out of Barauli P.S. case No.99 of 1993, G.R. No.754 of 1993, whereby and whereunder appellant Vinod Singh has been convicted under Sections 302 and 379 of the Indian Penal Code along with Section 27 of the Arms Act and has been sentenced to undergo imprisonment for life under Section 302 of the Indian Penal Code, rigorous imprisonment for three years under Section 379 of the Indian Penal Code and rigorous imprisonment for seven years under Section 27 of the Arms Act, whereas appellants Nathuni Singh and Pramod Singh have been convicted under Sections 302/34 of the Indian Penal Code and have been sentenced to undergo imprisonment for life and all the sentences of the appellants have been directed to run concurrently.

3. By order dated 28.06.2022, Criminal Appeal (DB) No. 482 of 1996 against the appellant, namely, Nathuni Singh has abated, as he died during pendency of the appeal. Therefore, Criminal Appeal (DB) No. 482 of 1996 is now confined only to appellant, namely, Pramod Singh.



4. Prosecution case, in brief, is that on 20.04.1993 at about 8:30 P.M. in the night, Subodh Singh (deceased), Dinesh Singh (P.W.8) and Birbal Singh (P.W.10) were going home on a black colour Rajdoot motorcycle bearing registration No. BRD6347. Subodh Singh (deceased) was riding the motorcycle, Birbal Singh (P.W.10) was sitting at the back and Dinesh Singh (P.W.8) was sitting in the middle. When they reached about 400 yards east of Badheya and were in the middle of the road, all of a sudden someone called out. On that call, Subodh Singh (deceased), who was riding the motorcycle, first slowed down the motorcycle and then speed it up again. At that moment, someone began to assault by means of bamboo and also opened gun fire, which did not hit anyone. Again a gun fire was made causing Subodh Singh (deceased) to fell down from the motorcycle and Dinesh Singh (P.W.8) and Birbal Singh (P.W.10) fled away towards east and west respectively. Both of them also raised alarm, on which the people of the neighbourhood gathered. Birbal Singh (P.W.10) identified the miscreants, who committed the offence in the light of motorcycle. The name of the person, who called out to stop, was Nathuni Singh. Vinod Singh opened fire from double barrel gun and Pramod Singh was along with them. Vinod Singh and Pramod Singh are sons of said Nathuni Singh. Thereafter, Vinod Singh fled



towards east on the Rajdoot motorcycle. There were also 3-4 unknown persons present there, to whom the informant did not identify. Vinod Singh had opened one fire earlier, of which pellet like substance had slightly hit Dinesh Singh (P.W.8). Subodh Singh (deceased) got hit by the second fire, due to which he died at the place of occurrence. Birbal Singh (P.W.10) sustained injury on his left hand caused by unknown criminals by means of lathi. The motive behind the occurrence is said to be old enmity between the parties.

5. The fardbeyan of Birbal Singh (P.W.10) was recorded on N.H. No.28 by A.S.I. Shri P.H. Singh. On the basis of which, Barauli P.S. case No.99 of 1993 was registered against the accused persons, namely, Nathuni Singh, Vinod Singh, Pramod Singh and 3-4 unknown persons. The investigation proceeded and the police submitted charge-sheet under Sections 302, 307, 379, 109 and 120B/34 of the Indian Penal Code and Section 27 of the Arms Act against all the accused persons. The Chief Judicial Magistrate, Gopalganj took cognizance of the offences on 28.07.1993 and then committed the case to the Court of Sessions on 04.10.1993. Charges were framed against the accused persons including the appellants under Sections 302, 302/34, 307, 307/34, 379 and 120B of the Indian Penal Code and Section 27 of the



Arms Act. The appellants pleaded not guilty and claimed to be tried.

6. In course of trial, the prosecution has examined fifteen witnesses in all. Out of whom, Birbal Singh (P.W.10) is the informant of the case and eye witness to the occurrence. Dinesh Singh (P.W.8) had accompanied the deceased and the informant on their way home when the occurrence took place. Bir Bahadur Singh (P.W.1), Bikrama Singh (P.W.3) and Ram Janam Singh (P.W.5) have claimed to reach the place of occurrence after the incident took place. Dharmnath Singh (P.W.9) happens to see the dead body of the deceased while he was passing nearby the place of occurrence and informed Shankar Singh (P.W.11), who is father of the deceased. Chandradeo Singh (P.W.2), Vishwanath Singh (P.W.4) and Kailash Singh (P.W.6) claim to have reached the place of occurrence within an hour of the incident. Rama Tiwary (P.W.7) is a hearsay witness. Dr. Kishori Lal Sah (P.W.12) conducted post-mortem on the dead body of the deceased. Dr. Jagdish Chandra (P.W.13) and Dr. Ashok Kumar Srivastava (P.W.14) examined the injuries on the person of Dinesh Singh and Birbal Singh respectively. Krishna Gopal Verma (P.W.15) is one of the two Investigating Officers. The defence has examined two witnesses, namely, Hiranman Singh (D.W.1) and Paramhansh Singh (D.W.2).



Further, the prosecution has brought on record two seizure lists, which have been marked as Ext.5 and 5/1 respectively. Ext. 2 is the post-mortem report of the deceased. Exts.3 and 3/1 are injury certificates of Dinesh Singh (P.W.8) and Birbal Singh (P.W.10) respectively. Ext. 6 is the carbon copy of a letter bearing Memo No.260 dated 28.06.1993 under the original copy of which the licensee gun, which was seized from the house of the appellants, was sent to the Director, Forensic Science Laboratory, Patna. Ext. 7 is the Inquest report.

7. Learned Counsel for the appellants submits that there is material contradiction in the deposition made by both the eye witnesses i.e. P.W.8 and P.W.10 so far the identification of the appellants is concerned. Both P.W.8 and P.W.10 claimed to have seen the miscreants but only P.W.10 has identified the appellants. P.W.8 in his deposition has not named the appellants although he was present and had the same opportunity for identifying the appellants as P.W.10. Rather, it has come in his cross-examination that he has seen the person who had fired but he did not identify him. The source of identification i.e. the light of the motorcycle under which the witnesses claimed to have identified the appellants also appears to be doubtful. It has further been submitted that the prosecution has neither brought on record the



seized gun nor the report of the Forensic Science Laboratory regarding the gun so seized. Therefore, it cannot be ascertained that whether the licensee gun of the appellant, namely, Nathuni Singh was used in the occurrence. The injuries sustained by P.W.8 and P.W.10 also do not corroborate with the allegations levelled by the prosecution. Learned counsel for the appellants has lastly submitted that the evidence of P.W.9 is also not reliable as he claimed to have seen the dead body of the deceased, while he was going on his jeep. However, he has stated in his deposition that he did not see P.W.8 and P.W.10 at the place of occurrence at the relevant point of time. Learned counsel has relied upon the judgments of the Hon'ble Supreme Court in the cases of ***Raja Ram vs. State of Rajasthan*** reported in (2005) 5 SCC 27; ***Mukhtiar Ahmed Ansari vs. State (NCT of Delhi)*** reported in (2005) 5 SCC 258; ***Assoo vs. State of Madhya Pradesh*** reported in (2011) 14 SCC 448; ***Sukhwant Singh vs. State of Punjab*** reported in AIR 1995 SC 1601 and ***Balbir Singh vs. State of Haryana and Anr.*** reported in AIR 2000 SC 11.

8. Learned APP for the State has submitted that the judgment and order under challenge requires no interference as the prosecution has been able to prove its case beyond all reasonable doubts. From the evidence which has been adduced by the



prosecution, the guilt of the appellants is satisfactorily proved and there is no infirmity in the judgment rendered by the Trial Court.

9. After hearing the arguments advanced by the learned counsel appearing for the parties and perusing the materials available on record, following issues arise for consideration in both the appeals:-

(i) Whether the evidence adduced by P.W.1 and P.W.3 can be relied upon, so far their presence at the place of occurrence is concerned?

(ii) Whether the prosecution has failed to prove the use of seized licensee gun in course of occurrence, in absence of producing the same as material Exhibit and the report of the Forensic Science Laboratory on record?

(iii) Whether the allegations levelled in the fardbeyan regarding the injuries sustained by P.W.8 and P.W.10 stands corroborated by the medical evidence brought on record?

(iv) Whether the identification of the appellants made by P.W.10 regarding their involvement in the occurrence can be relied upon?

10. In order to deal with the first issue, scrutinisation of the ocular evidence of P.W.11 is necessary. The presence of P.W.1 and P.W.3 at the place of occurrence stands falsified in light



of the evidence of P.W.11, wherein in his deposition P.W.11 has stated that he received information regarding the alleged incident from P.W.9. Thereupon, he alongwith P.W.1, P.W.3 and P.W.5 went to the place of occurrence from the village. Therefore, the presence of P.W.1 and P.W.3 at the place of occurrence appears to be doubtful. From perusal of the deposition of P.W.11, it is clear that he is silent regarding the presence of P.W.1 and P.W.3 at the place of occurrence. Further, P.W. 11 was informed regarding the incident by P.W.9 and not by P.W.1 and P.W.3.

11. So far the second issue is concerned, from perusal of the record, it appears that in order to ascertain whether the seized licensee gun was used in course of occurrence or not, the same was sent for Forensic Science Laboratory examination, which is evident from Ext.-6. However, the report from the Forensic Science Laboratory has not been brought on record by the prosecution to suggest that the recovered licensee gun of the appellant Nathuni Singh has been used in course of occurrence. The prosecution has also not produced the said licensee gun as Material Exhibit during the course of trial. The prosecution has also not explained the reason as to why the seized gun was not produced as material exhibit and as to why the FSL report was not brought on record. This is an omission on the part of the



prosecution. Hence the allegation of the prosecution that the appellants have used the seized licensee gun in course of occurrence is not proved. At this juncture, we would like to refer to the judgment rendered by the Hon'ble Supreme Court in the case of ***Sukhwant Singh vs. State of Punjab*** reported in ***AIR 1995 SC 1601***, wherein, the Hon'ble Apex Court in paragraph 20 has held as follows: -

“20. There is yet another infirmity in this case. We find that whereas an empty had been recovered by PW6, ASI Raghbir Singh from the spot and a pistol alongwith some cartridges were seized from the possession of the appellant at the time of his arrest, yet the prosecution, for reasons best known to it, did not send the recovered empty and the seized pistol to the ballistic expert for examination and expert opinion. Comparison could have provided link evidence between the crime and the accused. This again is an omission on the part of the prosecution for which no explanation has been furnished either in the trial court or before us. It hardly needs to be emphasised that in cases where injuries are caused by fire arms, the opinion of the Ballistic Expert is of a considerable importance where both the fire arm and the crime cartridge are recovered during the investigation to connect an accused with the crime.



Failure to produce the expert opinion before the trial court in such cases affects the creditworthiness of the prosecution case to a great extent.”

12. While advertng to the third issue, the allegation as levelled by P.W.10 (informant) in the fardbeyan as well as in his deposition during trial is that he was assaulted by bamboo on his head by accused persons and P.W.8 has sustained injury as the pellet of the bullet had hit him, which was fired during the course of occurrence. From perusal of the injury reports of P.W.8 and P.W.10 marked as Exts.3 and 3/1 respectively, it is evident that neither there is any fire arm injury found by the doctor on the body of P.W.8., nor there is any injury found by the doctor on the head of P.W.10. The injuries of P.W.8 and P.W.10, as referred in above mentioned Exhibits, do not corroborate with the case of the prosecution. The said injuries are said to be superficial, on non-vital part of the body and are simple in nature, which creates doubt on the narration made by P.W.8 and P.W.10. Further the injuries as sustained by P.W.8 and P.W.10 have not been explained by them. As a result of which, their ocular evidence is in contradiction to the medical evidence, which has been brought on record by the prosecution. This casts doubt on the version of the prosecution.



13. While advertng to the fourth issue, from perusal of the depositions of P.W.8 and P.W.10, the identification of the appellants by P.W.10 appears to be doubtful for the reason that under the same circumstances P.W.8 and P.W.10 were witnessing the occurrence and both P.W.8 and P.W.10 had similar opportunity to identify the accused persons. However, P.W.8 in his deposition claims to have seen the accused persons, who were committing the alleged occurrence, but has not identified the accused persons, who committed the occurrence, as to when P.W.8 and the accused persons are well acquainted with each other prior to the occurrence and are co-villagers. The source of identification claimed by P.W.10 is the light of the motorcycle as to when the accused persons were in the flank of the road as per the prosecution. If the said fact is accepted, the light of the motorcycle is only confined to the road and not to the flank of the road. If the prosecution case would have been that the accused persons had assaulted from the front of the motorcycle, in the said circumstances only the identification of the accused in the light of the motorcycle would have been possible, keeping in mind the said occurrence had taken place at 8:30 P.M. Therefore, in the aforesaid facts, the identification of the appellants itself becomes doubtful. At this juncture, we would rely upon the judgment rendered by the



Hon'ble Supreme Court in the case of ***Raja Ram vs. State of Rajasthan*** reported in ***(2005) 5 SCC 272***, wherein the Hon'ble Apex Court in paragraph 9 has held as follows:

“9. But the testimony of PW 8 Dr. Sukhdev Singh, who is another neighbour, cannot easily be surmounted by the prosecution. He has testified in very clear terms that he saw that PW5 making the deceased believe that unless she puts the blame on the appellant and his parents she would have to face the consequences like prosecution proceedings. It did not occur to the Public Prosecutor in the trial court to seek permission of the court to heard (sic declare) PW 8 as a hostile witness for reasons only known to him. Now, as it is, the evidence of PW 8 is binding on the prosecution. Absolutely no reason, much less any good reason, has been stated by the Division Bench of the High Court as to how PW 8's testimony can be sidelined.”

The Hon'ble Supreme Court in the case of ***Assoo Vs. State of Madhya Pradesh*** reported in ***(2011) 14 SCC 448***, in paragraph 10 has held as follows:

“10. We have also perused the evidence of PW 3 None Lal, a neighbour, and one of the first to arrive at the spot. He gave a story which completely dislodges the statements of PWs 1 and 2. He deposed in his cross-examination that Shri Bai, a



neighbour of the Appellant, had made allegations against the deceased in the presence of Ghaffoor and Ishaq that she was involved in illicit activities while her husband was away and that she would reveal all to her husband when he returned home and that immediately after these remarks the Appellant had returned home on which the deceased had gone inside and set herself ablaze. We take it, therefore, as if the prosecution had accepted the statement of PW3 as true, as the witness had not been declared hostile.”

14. We also put reliance on the decision rendered by the Hon’ble Supreme Court in the case of ***Mukhtiar Ahmed Ansari Versus State (NCT of Delhi)*** reported in ***(2005) 5 SCC 258***, wherein the Hon’ble Apex Court in paragraph Nos.29 to 31 has held as follows:

“29. The learned counsel for the appellant also urged that it was the case of the prosecution that the police had requisitioned a Maruti car from Ved Prakash Goel. Ved Prakash Goel had been examined as a prosecution witness in this case as PW 1. He, however, did not support the prosecution. The prosecution never declared PW1 "hostile". His evidence did not support the prosecution. Instead, it supported the defence. The accused hence can rely on that evidence.



30. A similar question came up for consideration before this Court in Raja Ram v. State of Rajasthan. In that case, the evidence of the Doctor who was examined as a prosecution witness showed that the deceased was being told by one K that she should implicate the accused or else she might have to face prosecution. The Doctor was not declared "hostile". The High Court, however, convicted the accused. This Court held that it was open to the defence to rely on the evidence of the Doctor and it was binding on the prosecution.

31. In the present case, evidence of PW1 Ved Prakash Goel destroyed the genesis of the prosecution that he had given his Maruti car to the police in which the police had gone to Bahai Temple and apprehended the accused. When Goel did not support that case, the accused can rely on that evidence."

15. Applying the aforesaid proposition of law in the facts of the case, we find that since the prosecution has not declared P.W.8 as hostile, the prosecution cannot escape away from the ocular evidence adduced by him. The prosecution has thus accepted the deposition made by P.W.8 as he has not been declared hostile. Therefore, in view of the fact that P.W.8 has not identified the appellants, as to when, he had the similar opportunity and was placed in same situation as P.W.10. The



identification made by P.W.10 appears to be doubtful and cannot be relied upon.

16. On the basis of the findings arrived at on the issues formulated above and the judgments referred, we are of the considered opinion that the conviction of the appellants is not sustainable as there is no conclusive evidence to prove the guilt of the appellants. The prosecution has failed to prove its case beyond all reasonable doubts.

17. Accordingly, both the appeals are allowed. The judgment of conviction dated 04.09.1996 and the order of sentence dated 06.09.1996, passed by the 1st Additional District and Sessions Judge, Gopalganj in Sessions Trial No.307 of 1993/112 of 1993, arising out of Barauli P.S. case No.99 of 1993, G.R. No.754 of 1993 are set aside. Since the appellants of both the appeals are on bail, they are discharged from the liabilities of their respective bail bonds.

(Sudhir Singh, J)

(Chandra Prakash Singh, J)

Narendra/-

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