

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.812 of 2018

Arising Out of PS. Case No.-180 Year-2003 Thana- HARNAUT District- Nalanda

=====

Mahesh Paswan son of Paras Paswan resident of village - Bheriya, P.S. -
Telmar Harnaut, District - Nalanda.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

=====

Appearance :

For the Appellant : Mr. Mrityunjay Kumar, Adv.

For the Respondent : Mr. Ajay Mishra, APP

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 04-04-2022

In the present appeal, the judgment of conviction dated 28th April, 2018 and the order of sentence dated 5th May, 2018 passed in Sessions Trial No. 73 of 2005 arising out of Harnaut (Telmar) P.S. Case No. 180 of 2003 by the learned Presiding Officer, Fast Track Court No.1, Nalanda, Bihar Sharif is under challenge.

2. By the impugned judgment, learned Trial Court has convicted the appellant Mahesh Paswan under Section 302 read with 149 of the Indian Penal Code and Section 27 of the Arms Act. By the impugned order, the appellant has been sentenced to undergo rigorous imprisonment for life and to pay fine of



Rs.10,000/- and in default of payment of fine to undergo rigorous imprisonment for two years under Section 302 of the Indian Penal Code and rigorous imprisonment for three years and to pay fine of Rs.1,000/- and in default of payment of fine to undergo rigorous imprisonment for two months under Section 27 of the Arms Act.

3. The case of the prosecution is based on the oral statement of Mithilesh Kumar (P.W.5) recorded by one Chandra Deep Singh, Sub-Inspector of Police on 20th October, 2003 at the door of his house at 04:15 PM. In his oral statement, Mithilesh Kumar stated that on 20th October, 2003 at about 01:00 PM while he and his brother were busy in getting a water hand-pump fixed in the courtyard of his house by a hand-pump mechanic and his father was entering the house with a bucket full of water, the accused persons, namely, Hare Kishun Paswan, Ram Babu Paswan, Ram Raj Paswan, Mahesh Paswan, Paras Paswan, Shiv Paswan, Loknath Paswan, Hare Ram Paswan, Sudhir Paswan, Parmanand Paswan, Ram Jatan Paswan, Arbind Paswan, Lalendar Paswan, Sucharam Paswan, Mangal Paswan along with 8-10 unknown miscreants being variously armed and forming an unlawful assembly arrived there and exploded a bomb to create fear as a result of which they were terrified. Thereafter, Paras Paswan exhorted upon which Hare Kishun Paswan opened fire



causing injury to his father in his thigh. When his father rushed inside the house, the accused persons also entered inside the house and killed him. In the meantime, when his mother Garbhi Devi went to his rescue, they shot her fatally. He further stated that a boy, namely, Sonu @ Ravi Shankar Kumar son of Ranjeet Singh and Karu Kumar son of Ram Narain Singh also sustained gun shot injuries in the firing made by the accused persons. The injured persons were taken to hospital. The motive for the occurrence was alleged to be an old enmity existing between the parties.

4. Treating the aforesaid oral statement of Mithilesh Kumar (P.W.5), Shiv Shambhu Prasad Sahu, the S.H.O. of Harnaut (Telmar) Police Station registered the first information report (for short 'FIR') vide Harnaut P.S. Case No. 180 of 2003 dated 20th October, 2003 under Sections 147, 148, 149, 324, 326, 307 and 302 of the Indian Penal Code (for short 'IPC'), 27 of the Arms Act and 3 and 4 of the Explosive Substances Act at 08:30 PM against the aforesaid 15 named accused persons and 8-10 unknown accused persons and handed over the investigation of the case to Chandra Deep Singh, Sub-Inspector of Police.

5. On completion of investigation, the Investigating Officer initially submitted charge-sheet against five accused



persons, namely, Ram Jatan Paswan, Arbind Paswan, Lalendra Paswan, Sucharan Paswan and Mangal Paswan under Sections 147, 148, 149, 324, 326, 307 and 302 of the IPC, 27 of the Arms Act and 3 and 4 of the Explosive Substances Act vide charge-sheet no. 23 of 2004 dated 10th March, 2004 and kept the investigation open in respect of the other accused persons. Subsequently, a supplementary charge-sheet, vide charge-sheet no. 134 of 2004 dated 17th October, 2004 under the aforesaid provisions of law was submitted by the Investigating Officer against Mahesh Paswan (appellant), Hare Ram Paswan and Sudhir Paswan and the investigation was kept open with respect to the remaining accused persons.

6. After commitment of the case, the appellant Mahesh Paswan was charged together with Sudhir Paswan and Hare Ram Paswan for the offences under Sections 302 read with 149 and 307 of the IPC and 27 of the Arms Act by the Trial Court. Since the appellant and the two other accused persons did not plead guilty to the charges, the trial commenced.

7. In support of its case, the prosecution examined altogether eight witnesses. After closure of the prosecution evidence, the appellant and other co-accused persons were examined under Section 313(1)(b) of the Code of Criminal



Procedure. They denied that they have committed the offences alleged against them. The case of the defence was that all the accused persons were innocent. The defence did not adduce any evidence.

8. After hearing the parties, though the Trial Court acquitted Sudhir Paswan and Hare Ram Paswan and discharged them from the liabilities of their bail bonds, it arrived at a finding that charges under Section 302 read with 149 of the IPC and Section 27 of the Arms Act had been proved beyond reasonable doubt against the appellant. It convicted the appellant for the aforesaid offences and sentenced him accordingly.

9. Being aggrieved by the aforesaid conviction and sentence passed against him, the appellant has preferred the instant appeal.

10. We have heard Mr. Mritunjay Kumar, learned counsel for the appellant and Mr. Ajay Mishra, learned Additional Public Prosecutor for the State and carefully perused the evidences adduced during trial.

11. On perusal of the record, we find that the examination-in-chief of **Mithilesh Kumar (P.W.5)** was held by the Trial Court on 26th September, 2011. He had reiterated the prosecution case as narrated by him in his oral statement recorded



by Chandra Deep Singh, the Investigating Officer of the case. He was cross-examined at length on 27th September, 2011. However, his cross-examination could not be completed on that day. Thereafter, he did not turn up before the Trial Court for further cross-examination.

12. **Bijendra Beldar (P.W.1)** son of the deceased Kailu Bind and Garbhi Devi stated in his testimony that on 20th October, 2003 at 12:30 PM he was at his house. His brother Fuchchu Bind, his wife Manju Devi, aunt Kanti Devi and father Kailu Bind were present in the house. At that time, water hand-pump was being affixed. While his mother and father were sitting in the lane, 10-12 accused persons arrived out of whom he could identify Hare Krishna Paswan, Ram Raj Paswan, Mahesh Paswan, Paras Paswan, Shiv Paswan, Parmanand Paswan, Ram Jatan Paswan, Arbind Paswan and Dularchand Paswan. They were variously armed with gun and rifle. It was Hare Krishna Paswan, who fired first causing injury in the thigh of his father, Ram Raj Paswan shot his mother fatally and Mahesh Paswan shot Sonu Kumar in his abdomen. After sustaining gun shot injury when his father rushed inside the house, Paras Paswan exhorted that nobody should be spared whereupon Hare Krishna Paswan entered inside the house with his gun and again shot his father in his chest as a



result of which he died on the spot. The injured Sonu Kumar was taken to hospital for treatment. He further stated that one Karu had also sustained injury in his chest. He stated that Sonu Kumar died while he was on way to the hospital whereas his mother died on the spot. He stated that his brother had given his oral statement before the police in his presence. He proved his signature on the oral statement reduced into writing by the Investigating Officer of the case. He identified the accused persons in the dock.

13. In cross-examination, he admitted that accused Hare Ram Paswan and Sudhir Paswan are his co-villagers and they were not involved in the occurrence. He stated that his father has four brothers and all his uncles live in separate house. He stated that it was Indra Deo Mistri (not examined) who was fixing the water hand-pump in the courtyard. He stated that he had seen his mother being shot from point blank range. He further contended that when his father entered inside the house after sustaining gun shot injury, accused persons again shot him inside the house. He admitted that the neighbours had arrived at the place of occurrence after the incident. He further admitted that because the gun shots hit the *gamchha* and underwear of his father and the sari and petticoat of his mother, who had sustained injury in her thigh, hole was caused on those clothes. He admitted that blood



had fallen on the earth and the Investigating Officer was shown blood at the place of occurrence and the holes in the sari and petticoat of his mother and *gamchha* and underwear of his father. His attention was drawn towards his previous statement made before the police. He stated that he had narrated to the Investigating Officer that it was Hare Krishna Paswan who opened fire first, which caused injury in the thigh of his father, whereafter Ram Raj Paswan fatally shot his mother and Mahesh Paswan opened fire causing injury in the abdomen of Sonu. He stated that he had also stated before the Investigating Officer that on the exhortion made by Paras Paswan, Hare Krishna Paswan entered inside the house and shot his father with his rifle causing injury in his chest as a result of which his father died on the spot. His mother also died on the spot. He had also stated that the injured Sonu died on way to the hospital. He denied the defence suggestion that his father was a veteran criminal and he and others died in a different manner and a false case has been instituted due to old enmity.

14. **Ranjeet Singh (P.W.2)** stated in his evidence that his son Sonu @ Ravi Shankar had gone to bring sugar. He sustained gun shot injury as a result of which he became restless. He stated that his cousin brother Karu also sustained gun shot injury. Kailu



Bind and Garbhi Devi also sustained gun shot injuries. In his examination-in-chief itself he admitted that he did not see who shot Sonu. It was Sonu who disclosed him that Mahesh Paswan had shot him in the navel. He stated that because of the gun shot injuries Kailu Bind, Garbhi Devi and Sonu died. However, Karu Bind survived. He identified the accused persons in the dock.

15. In cross-examination, he admitted that he did not witness the occurrence. He further admitted that his statement was recorded by the police at 04:00 PM on the date of occurrence. He admitted that he came to know through his son Sonu that it was Mahesh Paswan who had caused gun shot injury to him. He stated that the occurrence took place at 01:00 PM. At that time, his son was conscious. He died at about 04:00 PM. He stated that he took his son to hospital on a cot first. After some distance, the cot was drenched with blood. However, it was not shown to the police. After some distance, he took his son in the police jeep. He stated that at that time neither his statement nor the statement of his son was recorded by the police. He stated that his statement was recorded in the hospital. He denied the defence suggestion that since the accused persons belong to weaker section of the society, he has implicated them in a false case.

16. **Kanti Devi (P.W.3)**, aunt of the informant, stated in



her testimony that the incident occurred at around 01:00 PM. At that time she was at her house. She was informed about the deaths and came to the scene of the crime. She stated that Ram Raj Paswan shot Kailu Bind, Hare Krishna Paswan shot Garbhi Devi, Mahesh Paswan shot Sonu and Paras Paswan shot Karu.

17. In cross-examination she also admitted that she had not witnessed the occurrence. She admitted that her husband has four brothers and they all live in their own house separately. She stated that she had seen the injuries sustained by the deceased Kailu Bind and Garbhi Devi. She had also seen the injured Sonu. She stated that at that time Sonu was alive and was able to speak. Her attention was drawn towards her previous statement made before the police. She admitted that she had stated in her previous statement that Ram Raj Paswan shot Kailu Bind, Hare Krishna Paswan shot Garbhi Devi, Mahesh Paswan shot Sonu and Paras Paswan shot Karu. She denied the defence suggestion that she has given tutored evidence before the court.

18. **Manju Devi (P.W.4)**, wife of Bijendra Beldar (P.W.1) stated in her evidence that at the time of incident she was at her house. She heard sound of firing. When she came out, she saw her mother-in-law dead due to gun shot injury. She saw that Sonu had sustained gun shot injury. She stated that she came to



know that her father-in-law and mother-in-law were shot by Hare Krishna Paswan and Sonu was shot by Mahesh Paswan. She stated that because of the gun shot injury his father-in-law and mother-in-law died.

19. In cross-examination, she stated that Kailu Bind and Garbhi Devi were shot dead at the door of their house and Sonu was shot near the shop. She admitted that the police arrived at the place of occurrence at 02:00 PM on the date of occurrence. She further admitted that she and her husband gave their statements in writing to the police. Mithilesh Kumar also gave his statement in writing to the police. She admitted that her statement was recorded by the police in which she had stated that it was Mahesh Paswan who shot Sonu and Hare Krishna Paswan had fired twice at her father-in-law, which caused injury in his thigh and chest. He also fatally shot her mother-in-law. She denied the defence suggestion that her father-in-law was a veteran criminal of the area and he had been killed in a different manner due to his criminal activity.

20. **Devnandan Singh (P.W.6)** stated in his examination-in-chief that he does not know anything about the incident. He further stated that his statement was never recorded by the police during investigation. At the request of the



Prosecutor, the Trial Court declared him hostile. He was cross-examined by the prosecution. However, nothing relevant could be taken out from him in the cross-examination.

21. **Madheshwar Rai (P.W.7)** stated in his testimony that he was entrusted with the supplementary investigation of the case. After taking over the investigation of the case, he collected the post-mortem report of Kailu Bind, Garbhi Devi and Sonu and, pursuant to the direction given by the superior police officer, he submitted supplementary charge-sheet against Mahesh Paswan, Hare Ram Paswan and Sudhir Paswan.

22. **Dr. Ramanand Sah Suman (P.W.8)** was the Medical Officer posted at the Sadar Hospital, Biharsharif on 21st October, 2003. On that date he had conducted the post-mortem examination of Kailu Bind and Garbhi Devi. In his evidence, he admitted that the original post-mortem report was not available before him. He further admitted that the attested copy of the post-mortem reports of Kailu Bind and Garbhi Devi, which were marked as Exhibits 1 and 1/1, were not clearly visible. He admitted that he is not in a position to say as to why the original reports were not produced before the court. From the attested copies of the post-mortem reports, which were not visible, he could only say that Kailu Bind had died due to massive



hemorrhage and shock caused by fire arm within 24 hours. Similarly, after going through the attested copies of the post-mortem report of Garbhi Devi he could simply say that cause of death was massive hemorrhage and shock due to fire arm injury sustained by her.

23. Mr. Mritunjay Kumar, learned counsel for the appellant submitted that the Trial Court has convicted the appellant in absence of any reliable evidence. He submitted that since the informant did not turn up for further cross-examination after he was cross-examined in part, his evidence should not have been taken into consideration for arriving at a conclusion of guilt against the appellant by the learned Trial Court. He further contended that Ranjeet Singh (P.W.2), Kanti Devi (P.W.3) and Manju Devi (P.W.4) are not the eye-witnesses to the occurrence. They are hearsay witnesses. They are not consistent while deposing before the court. The only other witness is Bijendra Beldar, who claims himself to be an eye-witness.

24. He submitted that the main Investigating Officer, who had conducted the investigation of the case was not examined during trial. The place of occurrence has not been established as neither empties were seized nor blood nor blood stained clothes of the deceased and the two injured were seized by



the police. In absence of his examination, the case of the defence has greatly been prejudiced. He argued that though the trial was held for killing of three persons, the doctor, who had conducted the post-mortem examination on the body of deceased Sonu, was not examined during trial. Even the post-mortem report of Sonu was not produced and proved by any formal witness. Not only this, the post-mortem report of the other two deceased was also not produced in original. The attested copy of the post-mortem report, which was produced before the court was not legible. Thus, he urged that the conviction has been recorded by the Trial Court merely on the basis of uncorroborated testimony of Bijendra Beldar (P.W.1).

25. On the other hand, Mr. Ajay Mishra, learned Additional Public Prosecutor for the State submitted that Bijendra Beldar (P.W.1) is an eye-witness to the incident. He has fully supported the prosecution case during trial. He is a witness to the oral statement of the informant. He contended that the informant had also adduced his evidence before the Trial Court. He was cross-examined at length. Unfortunately, his cross-examination could not be completed on the day on which he was present before the court. He submitted that non-examination of the Investigating Officer or the doctor, who conducted post-mortem



examination on the body of Sonu has not prejudiced the case of defence in any manner. His contention is that Ranjeet Singh (P.W.2), Kanti Devi (P.W.3) and Manju Devi (P.W.4) had arrived at the place of occurrence immediately after the incident took place and their evidence also fully corroborates the prosecution case. The doctor, who had conducted post-mortem examination on the body of the deceased Kailu Bind and Garbhi Devi, was also examined during trial and his evidence would also suggest that the death of the aforesaid two deceased was caused due to fire arm injury.

26. Mr. Mishra, learned Additional Public Prosecutor submitted that there is no error in the judgment passed by the Trial Court and the appellant has rightly been held guilty for the charges under Section 302 read with 149 of the IPC and Section 27 of the Arms Act.

27. Having heard learned counsel for the parties and having perused the evidence on record, we find force in the submissions of the learned counsel for the appellant. It would be evident from the prosecution case, as narrated by the witnesses examined during trial, that the accused persons had resorted to several rounds of firing at the door of the house of the informant and inside the house. However, there is no seizure of either



weapon of the crime or the empties from the scene of crime. There is no evidence that bullet mark was found on the walls of the house. It is the case of the prosecution that blood had fallen on the ground in huge quantity and the *gamchha* and the underwear of Kailu Bind and sari and petticoat of Garbhi Devi were hit by gun shots and they were having holes. However, the prosecution failed to lead any evidence in this regard. It also failed to produce either the seizure list or the material exhibits during trial. Under the circumstances noted above, we are of the opinion that the prosecution failed to establish the place of occurrence.

28. It has come in the evidence of Ranjeet Singh (P.W.2) that the injured Sonu was first taken to some distance on a cot and thereafter he was taken to hospital in a police jeep. However, on way, he died. The cot on which Sonu was being carried had also blood mark. However, neither the cot was seized nor the blood found on the cot was sent to the Forensic Science Laboratory for test.

29. It is shocking to note that the prosecution has dealt with the case involving triple murder in the most casual and insensitive manner. The Investigating Officer, who recorded the oral statement of the informant, inspected the place of occurrence after the incident took place, recorded the statements of witnesses



and submitted the initial report under Section 173(2) of the Code of Criminal Procedure against some of the accused persons did not turn up during trial. There is no explanation for his non-examination during trial. The oral statement reduced into writing by him, which led to the institution of the FIR, was also not proved during trial. The attention of the witnesses examined during trial was drawn towards their previous statements, but owing to non-examination of the Investigating Officer, the contradictions could not be taken by the defence. In that view of the matter, we are of the opinion that the defence has certainly been prejudiced in the present case.

30. The lack of sensitivity on the part of the prosecution would further be reflected from the fact that the original post-mortem reports of the three deceased were also not produced during trial. The prosecution brought the attested copies of the post-mortem reports of Kailu Bind and Garbhi Devi. However, those attested copies of the post-mortem reports are also of no use because the doctor, who conducted the post-mortem examination on the body of the two deceased, namely, Dr. Ramanand Sah Suman (P.W.8) categorically admitted in his examination-in-chief that the attested copies are so faint that injury on the person of the two deceased are not visible. There is no explanation as to why



the original post-mortem reports of the three deceased could not be produced.

31. It is a glaring example of an incompetent, negligent, insensitive, callous and collusive prosecution in a multiple murder case. The prosecution has neither produced the post-mortem report of the deceased Sonu nor the doctor, who conducted his post-mortem examination was examined during trial.

32. So far as the appellant Mahesh Paswan is concerned, he is alleged to have shot Sonu Kumar, who sustained injury in his abdomen. The defence had no opportunity to look into the nature of injuries sustained by him. It is not known what kind of injury was sustained by Sonu. The defence did not get any opportunity to cross-examine the doctor, who conducted autopsy on the body of the deceased Sonu. One does not know whether Sonu died due to gun shot injury or his death was a natural one or due to the injury caused in a different manner by a different weapon. The withholdment of post-mortem report of Sonu and non-examination of the doctor, who conducted the autopsy has certainly caused great prejudice to the case of the defence.

33. Similarly, withholdment of the original post-mortem reports of the two other deceased because of which the doctor, who conducted the autopsy, expressed his inability to explain the



injuries sustained by them has also caused great prejudice to the case of the defence.

34. Since the informant did not turn up for further cross-examination, his evidence has to be discarded.

35. The important witnesses like main Investigating Officer, who recorded the oral statement of the informant on the basis of which the FIR was instituted, the SHO who drew the formal FIR and Indradeo Mistri, the mechanic, who was fixing the water hand-pump in the courtyard of the informant at the relevant time were not examined during trial. Even the oral statement of the informant and the formal FIR could not be proved during trial. The original post-mortem reports of the three deceased have been suppressed. The attested copies of the post-mortem reports of the two deceased were so faint that they could not be read even by the doctor, who conducted the autopsy and prepared them.

36. Apart from the aforesaid deficiencies in the prosecution case, when we look at the testimony of Manju Devi (P.W.4), we find that she admitted in her cross-examination that the police had arrived at the place of occurrence at 02:00 PM and she and her husband had given their written statements in writing to the police. If that be so, either the written statement made by



the P.W.4 or her husband, who had given the written statement, first ought to have been treated as the FIR and not the subsequent statement of Mithilesh Kumar (P.W.5), which was made before Chandra Deep Singh, the Sub-Inspector of Police at 04:15 PM on 20th October, 2003. In that case, the oral statement, which was signed by Mithilesh Kumar (P.W.5) would be hit by Section 162 of the Code of Criminal Procedure.

37. Further, Bijendra Beldar (P.W.1) stated in his testimony that Ram Raj Paswan shot his mother Garbhi Devi whereas Kanti Devi (P.W.3) and Manju Devi (P.W.4) stated that Hare Krishna Paswan shot Garbhi Devi. Similarly, Bijendra Beldar (P.W.1) stated in his testimony that it was Hare Krishna Paswan who fired causing injury in the thigh of his father Kailu Bind whereas Kanti Devi (P.W.3) stated that Ram Raj Paswan shot Kailu Bind and Manju Devi (P.W.4) stated that it was Hare Krishna Paswan who shot Kailu Bind. Thus, there is material inconsistencies in the testimony of the prosecution witnesses examined during trial.

38. In the circumstances mentioned above, we are of the opinion that the Trial Court has not arrived at a correct finding. The prosecution has miserably failed to prove the charges beyond reasonable doubt.



39. In the result and for the reasons discussed above, the impugned judgment of conviction dated 28th April, 2018 and the order of sentence dated 5th May, 2018 passed in Sessions Trial No. 73 of 2005 arising out of Harnaut (Telmar) P.S. Case No. 180 of 2003 by the learned Presiding Officer, Fast Track Court No.1, Nalanda, Bihar Sharif are hereby set aside.

40. The appeal stands allowed. The appellant Mahesh Paswan, who is in custody, is directed to be released forthwith, if not wanted in any other case.

(Ashwani Kumar Singh, J)

(Rajeev Ranjan Prasad, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	05.04.2022
Transmission Date	05.04.2022

