

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.18 of 1996

Vinay Singh, son of Shri Ram Nandan Singh, resident of village Ramni Bigha, Police Station- Dhanarua, District- Patna.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the appellant:

Mr. Rajendra Prasad, Sr. Advocate

Mr. Pramod Kumar, Advocate

Mr. Ritesh Kumar, Advocate

Mr. Dharmendra Kumar, Advocate

For the State :

Mr. Abhimanyu Sharma, APP

For the informant:

Mr. Subhash Prasad Singh, Advocate

Mr. Ghanshyam Sharma, Advocate

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

and

HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 08-09-2023

The present criminal appeal has been preferred in the year 1996, i.e. around 27 years ago, against the judgment of conviction dated 15.12.1995 and the order of sentence dated 16.12.1995 passed by Sri Gopal Jee, 3rd Addl. Sessions Judge, Patna, in Sessions Trial No. 470 of 1993, arising out of Dhanarua P.S. case No. 197/91 whereby and whereunder the appellant has been convicted for the offences under Section 302 of the Indian Penal Code (hereinafter referred to as “the I.P.C.”) and Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 30,000/-



under Section 302 of I.P.C. and in default of payment of fine, the appellant was further directed to undergo simple imprisonment for five years. The appellant has also been sentenced to undergo rigorous imprisonment for seven years and a fine of Rs. 5,000/- under Section 27 of the Arms Act and in default of payment of fine, the appellant was further directed to undergo simple imprisonment for two years. Both the sentences so imposed were directed to run concurrently.

2. The prosecution case, as per the fardbeyan of the informant Kusumi Sinha before the Officer-in-charge of the Dhanarua P.S. on 4.12.92 at about 8.15 a.m., is that while she was doing domestic works in her house at about 7 a.m., she saw that her gotias Vinay Singh, Sudhir Singh, Dharmendra Singh, Raj Ballam Singh and Jai Prakash Singh @ Pappu were taking water after digging Karaha in her hand in the northern side of her house. The informant objected to it and asked them as to why they were taking water after digging the land. On this, the accused persons aforesaid started abusing her and due to fear, she closed the door of her house. The informant further stated that after sometime, her husband Sunil Singh (deceased) came from outside and asked her not to talk with the accused persons as they were not good persons and after that her husband went on



the roof of the house for washing his mouth. In the meantime, accused persons also went on their roof. They were armed with pistols and were uttering that "Sale ko jaan se maar do". The informant further stated that accused Mithilesh Devi, Baby Devi and Poonam Kumari were throwing brickbats from their roof to her roof and were uttering to kill her husband. On hearing this, her husband due to fear tried to conceal himself in the north western corner of the roof. In the meantime, accused Vinay Singh fired from his pistol on the person of her husband Sunil Singh which hit in left side of chest and he fell down. Her husband told her as to what she was looking for as he sustained fire arms injury. The informant raised *hulla* on which Ramji Prasad Yadav, Dasrath Chaudhary, Bachchu Paswan, Jageshwar Paswan of her village and Awadhesh Singh of village Fatehpur arrived at the place of occurrence and they brought her husband to Dhanarua for treatment but on the way, her husband died. The informant further stated that her daughter Mamta and son Ranjit Kumar had seen the occurrence themselves. The cause of occurrence is that the accused persons were digging karaha in her land forcibly for taking water. The informant further stated that accused persons namely Vinay Singh, Sudhir Singh, Dharmendra singh, Raj Ballam Singh, Jai Prakash Singh @ Pappu, Mithilesh Devi,



Poonam Kumari and Baby Devi after forming unlawful assembly, armed with brickbats and pistols, committed murder of her husband.

3. On the basis of fardbeyan of the informant, Dhanarua P.S. case No. 197/91 was registered under Sections 147, 148, 149, 337, 302 of the I.P.C. and Section 27 of the Arms Act and investigation was taken up. On completion of the investigation, a charge-sheet was submitted and accordingly cognizance was taken. Charges were framed under Section 302 of I.P.C. and Section 27 of the Arms Act to which the appellant pleaded not guilty and claimed to be tried.

4. During the trial, the prosecution examined altogether twelve witnesses, namely, PW1 Nageshwar Chaudhary, PW2 Dasrath Chaudhary, PW3 Bachchu Paswan, PW4 Awadhesh Singh, PW5 Dharambir Singh, PW6 Ramjee Prasad Yadav, PW7 Kusum Devi, PW8 Mamta Kumari, PW9 Ramjeet Kumar, PW10 Kusumi Sinha (informant), PW 11 Bipin Kumar, PW12 Dr. Rajiv Kumar Sinha and PW13 Sarju Rakesh. Prosecution has also produced some documents as exhibits viz. Ext. 1 fardbeyan, Ext. 2 signature of Kusumi Sinha (informant) on the statement under Section 164 Cr.P.C., Ext. 3 carbon copy of inquest report and Ext. 4 post-mortem report. The defence has neither produced any



witness nor produced any documentary evidence in support of its case. Thereafter, the statement of the appellant was recorded under section 313 of the Cr.P.C. After conclusion of the trial, the learned Trial Court convicted and sentenced the appellant in the manner indicated above.

5. Learned counsel for the appellant has submitted that the judgment of conviction and order of sentence passed by the learned trial Court is bad in law and deserves to be set aside. The learned trial Court has failed to properly appreciate the entire material available on the record. It has further been argued that the prosecution has also utterly failed to prove the case beyond all reasonable doubts. In order to buttress this contention, the attention of this Court has been drawn towards the variation and contradiction in the testimony of the prosecution witnesses. It has also been pointed out that there is severe inconsistency between the ocular testimony of the witnesses and the findings of the post-mortem report, leading to doubt the manner of occurrence. The learned counsel for the appellants has further argued that the prosecution has also failed to prove the place of occurrence to the judicial satisfaction of the Court. Such lapses of the prosecution have caused immense prejudice to the appellant. Therefore, it is contended that the findings of the learned trial Court are bad in



law, wrong on facts, bereft of legal reasoning, devoid of merit and the judgment of conviction is fit to be set aside.

6. Learned A.P.P. for the State and the counsel for the informant, on the other hand, has submitted that the judgment of conviction and order of sentence under challenge require no interference as the prosecution has been able to prove the case beyond all reasonable doubts. It is observed that the testimony of the witnesses have been consistent throughout, thereby solidifying the case of the prosecution. It has been stated that minor inconsistencies in the testimony of the witnesses do not undermine the entirety of their evidence. As such, it has been contended that the guilt of the appellant has been satisfactorily proved by the evidence adduced during the course of trial and there is no infirmity in the judgment of conviction of the learned trial Court.

7. After perusing the record and hearing the arguments advanced by the parties, following issues arise for consideration in this appeal :-

- (I) Whether there is consistency between the ocular and medical evidence to prove the Manner of Occurrence?
- (II) Whether the prosecution has established the Place of Occurrence beyond all reasonable doubt?



8. With reference to issue no. I, it is found upon thorough examination of the case record that the deceased was shot on his roof by the accused from their roof. It is relevant to note that the Investigating Officer (PW 13) and the Informant (PW 10) mentioned that the firing was made at the distance 20-22ft in their respective depositions. The manner of occurrence becomes doubtful in the light of the postmortem report, marked as *Exhibit 4*, where it shows that the deceased had sustained wound of entry:-

“ 2” × 2” × chest cavity deep over left lower lateral chest wall, 6” below left axilla, 8” left of midline. **Blackening** of ¼” was seen around the upper, left & right margins of the wound of entry.”

The Medical Officer, (PW 12) in paragraph 3 of his cross examination, stated that blackening occurs when the firing is done within the range of 4-5-6 ft. and blackening wouldn't happen if firing made within the range of 15-20ft. This contention is further strengthened by the reference of *Modi, A textbook of Medical Jurisprudence and Toxicology, (24th Edn. 2011)* in Chapter 24 - Injuries by mechanical violence at *page 540*, it has been stated that:

“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.”



Evidently, the allegation of assault alleged against the appellant is inconsistent with the medical evidence available on record. At this point, we put reliance upon the case of ***Ram Narain Singh v. State of Punjab, (1975)*** reported in ***4 SCC 497: 1975 SCC (Cri) 571*** wherein the Hon'ble Supreme Court has held that inconsistency between the ocular and medical evidence is a most fundamental defect in the prosecution case and unless reasonably explained, it is sufficient to discredit the entire case.

Moreover, it has also been pointed out by Medical Officer (PW 12) in para 3 of his deposition that a hole could have been formed on the deceased cloth. The Informant (PW 10) also stated in her deposition that a hole was present on the deceased cloth. Contrary to this PW 3, PW 4 and PW 13 (Investigating Officer) categorically stated in their deposition that there was no hole on the deceased's cloth. Further, there is no finding of the hole on the clothes of the deceased in the Inquest report, i.e., marked as *Exhibit 3*. Thus, it is found that the manner of occurrence as alleged by the prosecution is not proved to the judicial satisfaction of the Court. The statement of an eye witness must be free from blemish and devoid of any ambiguity, uncertainty and loopholes. In the present case, it is quite manifest that there are material inconsistencies and contradictions in the testimony of



the prosecution witnesses. At this juncture, it is relevant to take note of the decision of the Hon'ble Supreme Court passed in the case of ***Sunil Kumar Shambhudayal Gupta and others versus State of Maharashtra***, reported in ***(2010) 13 SCC 657***, where in para no. 16 the following has been observed:

“The discrepancies in the evidence of eye witnesses, if found to be not minor in nature, may be a ground for disbelieving and discrediting that evidence. In such circumstances witnesses may not inspire confidence if the evidence is found to be in conflict and contradiction with the other evidence and the statement already recorded. In such a case, it cannot be held that the prosecution proved its case beyond reasonable doubt.”

In light of the legal position as discussed above, this Court is of the opinion that the prosecution has not been able to prove the manner of occurrence in accordance with the standard parameters of the criminal law.

Accordingly, the issue no. I, is decided in the negative.

9. With reference to issue no. II, it is found upon thorough examination of the case record that the Place of Occurrence is on the roof of the deceased's house. The PWs 1 to 5 categorically deposed during the course of trial that upon hearing the sound of gunfire, they came and saw the dead body of the deceased on the roof of his house. Additionally, these witnesses also deposed that



blood oozed at the place of occurrence. The Medical Officer (PW 12) also affirms in the para 4 of his deposition that this type of injury can result in significant blood loss. However, in stark contrast to such testimony, the Investigating Officer (PW 13) has stated in para 7 of his deposition that he did not find any blood at the said place of occurrence.

Furthermore, it is pertinent to note that according to the prosecution's case, it is alleged that the deceased went onto the roof carrying a teeth-cleaning twig (*Datun*) and sustained a single firearm injury. The allegation of single firearm injury has been substantiated by the postmortem report marked as *Exhibit 4*. However, the Investigating Officer did not discover any empty bullet cartridge or teeth-cleaning twig (*Datun*) at the specified place of occurrence. Thus, considering the facts of this case as indicated above, the place of occurrence as narrated by the prosecution is doubtful. Such a fundamental defect casts reasonable doubts as to the genuineness of the prosecution's case. In this regard, it is pertinent to take note of the decision of Hon'ble Supreme Court, passed in the case of ***Syed Ibrahim versus State of Andhra Pradesh***, reported in ***(2008) 10 SCC 601***, wherein it has been held that when the place of occurrence itself



has not been established, it would not be proper to accept the version of the prosecution.

In light of the facts of the case and considering the non-finding of any blood stain or bullet cartridges at the alleged place of occurrence makes the place of occurrence doubtful and is certainly fatal for the case of the prosecution.

Accordingly, the issue no. II is decided in the affirmative.

10. In view of the findings arrived at on the issues formulated hereinabove, it is evident that the prosecution has failed to establish both the place of occurrence and the manner in which the alleged incident transpired. In light of this critical deficiency in the prosecution's case, the Court finds itself compelled to withhold acceptance of the presented narrative. Consequently, after a comprehensive evaluation of the facts and circumstances surrounding this case, it is clear that the prosecution has not proven the charges against the appellant beyond a reasonable doubt. Therefore, the judgment of conviction is not tenable.

11. Therefore, the appeal is allowed. The judgment of conviction dated 15.12.1995 and the order of sentence dated 16.12.1995, passed by Sri Gopal Jee, 3rd Addl. Sessions Judge, Patna in Sessions Trial No. 470 of 1993, arising out of Dhanarua



P.S. case No. 197/91, are set aside. Since the appellant is on bail,
he is discharged from the liabilities of bail bonds.

(Sudhir Singh, J)

(Chandra Prakash Singh, J)

Pankaj/-

AFR/NAFR	NAFR
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