

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.294 of 2023**

Arising Out of PS. Case No.-19 Year-2018 Thana- MEHUSH District- Sheikhpura

SATYAM KUMAR @ RAM BABU son of Late Shankar Dani Singh Village
Ps- Mehus Dist- Sheikhpura

... .. Appellant/s

Versus

1. The State of Bihar
2. Mukesh Kumar @ Kallu Singh son of Late Bhaso Singh Village Ps- Mehus
Dist- Shaikhpura
3. Kanhaiya Kumar son of Vimal Singh Village Ps- Mehus Dist- Shaikhpura

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Advocate Mrs. Vaishnavi Singh, Advocate
For the Respondent/s	:	Ms. Shashi Bala Verma, APP

**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

and

HONOURABLE MR. JUSTICE RAJIV ROY

C.A.V JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJIV ROY

Date : 28-04-2023

The appellant is aggrieved by the order and judgment dated 17.01.2023 in Sessions Trial No. 10 of 2020 (arising out of Mehus P.S. Case No. 19 of 2018) passed by the learned District and Sessions Judge, Sheikhpura by which while convicting the accused Vivek Kumar under section 302



of the Penal Code & section 27 of the Arms Act and sentencing him to life imprisonment and fine of Rs. 10,000/- for the charge under Section 302 of the Indian Penal Code and five years simple imprisonment for the offence under Section 27 of the Arms Act (in default of payment of fine to undergo simple imprisonment for a period of one year), the accused persons namely, Kanhaiya Kumar son of Vimal Singh and Mukesh Kumar @ Kallu Singh son of late Bhaso Singh were acquitted of the charges under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act for lack of supportive/corroborative evidence and also by giving them the benefit of doubt.

2. The First Information Report (FIR) was lodged by the informant, Satyam Kumar @ Ram Babu (P.W.2) alleging therein that on 04.07.2018 at about 5:00 P.M., he had gone to Ramanbigha Chowk along with his father on a motorcycle and from there to their brick kiln. As the informant was going towards the brick kiln, he heard the scream of his father and when he turned around, he saw that Vivek Kumar, Chitranjan Kumar, Niranjana Kumar and Kanhaiya Kumar son of Pawan Singh and 3-4 unknown persons had opened fire upon his father, consequent up which he fell down. Thereafter,



Niranjan Kumar, Vivek Kumar and Kanhaiya Kumar son of Pawan Singh again fired upon him. Altogether 14-15 rounds were fired leading to death of his father on the spot. On hearing the gun shots, his uncle Shivdani Singh and other villagers gathered at the place of occurrence whereas the miscreants left the place.

3. After the completion of postmortem examination and the cremation of the body, next day the FIR was lodged. Accordingly, Mehus P.S. Case No. 19 of 2018 dated 05.07.2018 was registered under Sections 302, 120(B)/34 of the Indian Penal Code and Section 27 of the Arms Act.

4. The police investigated the case and submitted charge sheet whereafter cognizance of the offence was taken on 03.01.2020 of the offence punishable under Sections 302/34 of the Indian Penal Code and Section 27 of the Arms Act against the accused persons. Subsequently, charges were framed against them. As the accused persons pleaded their innocence they were put on trial.

5. In support of the charge, altogether nine (9) witnesses were examined as follows :

1. P.W.1 - Sunil Singh

2. P.W.2 - Satyam Kumar @ Rambabu



3.P.W.3 - Tuntun Singh @ Pratap

Narayan

4. P.W. 4 - Dr. Vinay Kumar

5. P.W. 5 - Dr. K. Purushottama

6. P.W. 6 - Dr. Sarad Chand

7. P.W. 7 - Shivdani Singh

8. P.W. 8 - Sanjeet Kumar

9. P.W. 9 - Rishav Yadav.

6. Further, following are documents that were exhibited at the trial:

1. Ext. 1 - Signature and writing of informant on written report.

2. Ext. 2 - Signature and writing of Dr. Vinay Kumar on P.M. report.

3. Ext. 2/A- Signature of Dr. K. Purushottama on P.M. Report

4. Ext. 2/B - Signature of Dr. Sharad Chand identified by Dr. K. Purushottama.



5. Ext. 3 - Endorsement on written
report.

6. Ext. 4 - Formal F.I.R.

7. Ext. 5 - Inquest Report

8. Ext. 6- Signature of witness
Sanjeet Kumar on
seizure list.

9. Ext.7- F.S.L. Report No. 93/19
dated 20.01.2021

10. Ext. 8 - F.S.L. Report No. 22/19
dated 25.10.2019

11. Ext. 9 - Certified copy of formal
FIR including written
report and seizure list of
Sheikhpura (Sirari) P.S.
Case No. 378/2019 dated
23.08.2019.

12. Ext.10 Signature of S.I. Mithlesh
Kumar Chaudhary on
C.D.R.

7. Besides the aforesaid exhibits, the following
material objects were exhibited on behalf of the prosecution:



1. M-1 – Seven empty cartridges
recovered in this case,
(FSL No. A6 to A12).

2. M-2 - Five empty cartridges
recovered in this case,
(FSL No. A1 to A5).

3. M-3 - Two live cartridges.

4. M-4 - Seized pistol from accused
Vivek Kumar in
Sheikhpura (Sirari) O.P.)
P.S. Case No. 378/2019.

8. The defence chose not to put forward any
evidence in its favour and the only document that was
exhibited was Exhibit- A, the certified copy of the deposition
of Naresh Kumar in Sessions Trial No. 17/2021.

9. P.W. 1, Sunil Singh deposed that he was
returning home. As he reached near brick kiln, he saw repeated
gun fire by Vivek Kumar, Chitranjan Kumar, Niranjana Kumar
and Kanhaiya Kumar on Shankardani Singh @ Nepali causing
his death. According to P.W. 1, he fled away from the place of
occurrence. He further deposed that he recognized the accused
persons but accused Kanhaiya Kumar son of Vimal Singh



was not present at the place of the occurrence rather Kanhaiya Kumar son of Pawan Singh resident of village Rannu Bigha had committed the occurrence.

10. P.W. 2 Satyam Kumar @ Rambabu is the informant of the case and he deposed that at 5:00 P.M. on 04.07.2022, he along with his father had gone to brick kiln and as he reached towards the brick kiln, heard gun shot and saw Vivek Kumar, Chitranjan Kumar, Niranjana Kumar and Kanhaiya Kumar son of Pawan Singh and 3-4 unknown persons opening fire, as a result thereof, his father fell down and died. He chose to hide himself in the '*shrub*'. He further deposed that at the time of occurrence, he could not identify Kallu properly, so he did not name him. He further deposed that Kallu had concealed his face by a '*gamchi*'. He however, accepted that even in his re-statement before the police, he did not name Kallu.

11. P.W. 3, Tuntun Singh @ Pratap Narayan narrated the same story and further deposed that the miscreants had opened 14 rounds of fire causing injuries on the head and back of the Shankardani Singh @ Nepali, who died instantly. In his deposition, he stated that he also tried to chase the bikers but they escaped. Later, he informed the police. According to



him, Kanhaiya Kumar son of Vimal Singh was not involved in the occurrence.

12. P.W. 4 (Dr. Vinay Kumar), P.W.5 (Dr. K. Purshottama), P.W. 6 (Dr. Sarad Chand) and P.W.7 (Shivdani Singh) are the Doctors and members of the team, who performed postmortem examination of the deceased and opined that death was caused due to injuries inflicted on vital organs including brain and internal hemorrhage and shock due to fire arm injuries.

13. P.W. 7, Shivdani Singh, the brother of the deceased deposed that while returning from his field, as he reached near brick kiln, he heard the sound of gun fire. He stopped his motorcycle and saw three persons escaping and named them as Vivek Kumar, Chitranjan Kumar and Niranjan Kumar. Later, he saw his brother injured having four bullet injuries on his head, three on back as also on the neck. The deceased's son Satyam Kumar @ Rambabu, informant was also present. Again this witness deposed that Kanhaiya Kumar son of Vimal Singh was not part of the accuseds, who committed murder of his brother and he had not given his name under Section 161 of the Code of Criminal Procedure before the police.



14. P.W.8, Sanjeet Kumar (Investigating Officer) prepared the inquest report and sent the body for postmortem and recorded the statement of amongst other the informant. He deposed that while recording the statements of the witnesses, the name of Kanhaiya Kumar son of Vimal Singh, resident of village Mehus did not come up. In fact, he deposed that none of the eye witnesses named Kanhaiya Kumar son of Vimal Singh. According to him, he gathered information from the spy.

15. P.W. 9, Rishav Yadav (2nd Investigating Officer), had submitted charge sheet against the accused persons. He sent seized cartridges and empty cartridges to the Forensic Science Laboratory (henceforth the short 'the FSL'). He further deposed that subsequently, he came to know that Vivek Kumar, Mukesh Kumar @ Kallu along with some other accused persons were arrested by S.T.F., Patna with the help of Sirari O.P. Police which resulted into lodging of Sirari O.P. P.S. Case No. 378 of 2019 dated 23.08.2019. During interrogation, Vivek Kumar accepted his participation in the present occurrence with further acceptance that the seized revolver was also used in the commission of murder of Shankardani Singh @ Nepali and named Mukesh Kumar @



Kallu and Kanhaiya Kumar as his accompish.

16. This witness further accepted that Kanhaiya Kumar son of Vimal Singh was not named in the FIR and the other witnesses also did not name him but his name cropped up in the statement of the spy and further Kanhaiya Kumar son of Vimal Singh and Kallu Singh @ Mukesh Kumar had made conversation on the mobile so on suspicion, they were made accuseds. He further deposed that accused Mukesh Kumar @ Kallu is also not FIR named accused and his name was not given by the informant in his restatement.

17. Learned Defence counsel for the accused Mukesh Kumar @ Kallu and Kanhaiya Kumar son of Vimal Singh submitted before the Trial Court that none have named them in course of investigation and further the informant neither in the FIR nor in his re-statement before the police gave their names. It was further submitted by him that informant has rather taken the name of Kanhaiya Kumar son of Pawan Singh, who ironically was not named as accused in this case.

18. It was his further submission that the occurrence took place on 04.07.2018 at 5:00 P.M. and almost 24 hours later, the FIR was lodged on 05.07.2018 at 14:30



hours after the postmortem was conducted and the body was cremated. This almost 24 hours delay definitely created distortion of facts and got time to the informant to implicate the persons with whom he had inimical terms either by himself or on behest of his uncle Shivdani Singh. Still, Mukesh Kumar @ Kallu and Kanhaiya Kumar son of Vimal Singh were not named in the F.I.R.

19. Learned P.P. on the other hand, supported the prosecution story and further stated that the arrest of the accused, seizure of empty cartridges and also used revolver corroborates his confession before the police and in that background, Mukesh Kumar @ Kallu and Kanhaiya Kumar son of Vimal Singh were rightly made accuseds and put on trial.

20. The learned Trial Court thereafter took note of the fact that the P.W. 2, informant claimed himself to be an eye witness who was with his father and further claimed to have seen the entire occurrence. He named Vivek Kumar who is facing trial but did not name either Mukesh Kumar @ Kallu or Kanhaiya Kumar son of Vimal Singh. The learned Trial Court further noted that rather in the FIR, the name taken was that of Kanhaiya Kumar son of Pawan Singh.



21. The Trial Court observed that the informant being an eye witness having not named them in the FIR as also in his re-statement, implicating these two accused persons without showing overt act on the basis of suspicion is distortion of facts.

22. The learned Trial Court further took note of the deposition made by the other witnesses, as stated above, to observe that all the witnesses specifically stated in the chief examination that accused Kanhaiya Kumar son of Vimal Singh was not involved in the occurrence.

23. The Trial Court also took note of the deposition of the Investigating Officer that none of the eye witnesses named these two accused persons rather they were implicated on the basis of the statement of the spies.

24. The Trial Court accordingly held that all the witnesses have named Vivek Kumar as one of the accused committing murder of Shankardani Singh @ Nepali and the pistol used was also recovered while arresting him in connection with Sirari O.P. P.S. Case No. 378/2019 him and as such, held Vivek Kumar guilty of committing murder of Shankardani Singh @ Nepali. It further recorded that the prosecution has miserably failed to prove charges against



accused persons namely, Kanhaiya Kumar son of Vimal Singh and Mukesh Kumar @ Kallu Singh.

25. Accordingly, Kanhaiya Kumar son of Vimal Singh and Mukesh Kumar @ Kallu Singh were acquitted of the charges under Sections 302/34 of the Indian Penal code and Section 27 of the Arms Act for lack of supportive/corroborative evidence and giving the benefit of doubt.

26. Vivek Kumar, as stated above, was convicted under Sections 302/34 of the Indian Penal Code and Section 27 of the Arms Act.

27. Aggrieved by the acquittal of Kanhaiya Kumar son of Vimal Singh and Mukesh Kumar @ Kallu Singh, the informant, Satyam Kumar @ Rambabu preferred the present appeal.

28. Heard Mr. Ajay Kumar Thakur, learned counsel for the appellant and Ms. Shashi Bala Verma, learned Additional Public Prosecutor for the State.

29. It has been contended by learned Counsel that the Trial Court while convicting Vivek Kumar erroneously set the accused Kanhaiya Kumar son of Vimal Singh and Mukesh Kumar @ Kallu free of the charges under Sections 302/34 of



the Indian Penal code and Section 27 of the Arms Act. It has further been contended by him that Vivek Kumar having been arrested by the S.T.F. and the pistol/empty cartridges recovered/seized, sent to 'the FSL' and found to be the same pistol that was used in the killing of Shankardani Singh @ Nepali, his confession that Mukesh Kumar Kumar @ Kallu Singh and Kanhaiya Kumar son of Vimal Singh were part of the alleged killing should have been taken into consideration by the learned Trial Court.

30. It is his further submission that the Investigating Officer (P.W.9) had also supported the charges against the aforesaid two acquitted persons on the basis of the statement of the spy and the report of the 'the FSL'. He thus, submits that the learned Trial Court erred in acquitting the respondents—second set herein of the charges and need interference by this Court.

31. Ms. Shashibala Verma, learned Additional Public Prosecutor for the State, on the other hand, submits that all the prosecution witnesses consistently deposed that the person, Kanhaiya Kumar son of Vimal Singh present in the dock was not that person, who was present at the place of occurrence. She further submits that when the two acquitted



persons were not even named in the FIR by the informant, the P.W. 2 who was son of the deceased, an eye witness who was accompanying his father (deceased) and further did not give their names in his re-statement before the police, the Trial Court was fully justified in passing the order of acquittal against them.

32. Having gone through the facts of the case as also the submissions put forward by the learned counsels, we are of the considered view that the consistent depositions of all the prosecution witnesses, some of whom were present at the place of occurrence as also the family members of the deceased clearly deposing about the non involvement of the Kanhaiya Kumar son of Vimal Singh as also Mukesh Kumar @ Kallu, the order of the learned Trial Court cannot be faulted upon.

33. Thus, this Court is in full agreement with the findings/observations put forward by the learned Trial Court that there being lack of supportive/corroborative evidence so far as Kanhaiya Kumar Son of Vimal Singh and Mukesh Kumar @ Kallu are concerned, they are/were entitled for being given benefit of doubt. Thus, they were rightly acquitted in the case.



34. No interference is required in the order and judgment dated 17.01.2023 in Sessions Trial No. 10 of 2020 arising out of Mehus P.S. Case No. 19 of 2018 passed by the District and Sessions Judge, Sheikhpura by which the respondent nos. 2 and 3 were acquitted.

35. The appeal fails and is accordingly dismissed.

(Rajiv Roy, J)

(Chakradhari Sharan Singh, J)

(Chakradhari Sharan Singh, J)

Jagdish/Neha-

AFR/NAFR	NAFR
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