

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.473 of 2017

Arising Out of PS. Case No.-92 Year-2002 Thana- KHARHAGPUR District- Munger

Dina Goswami Son of Late Bishwnath Goswami, Resident of Village-
Barhouna, P.S. Haveli Kharagpur, District- Munger.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 507 of 2011

1. Narayan Goswami, son of Late Bishwanath Goswami
2. Madan Goswami son of Narayan Goswami
Both residents of village- Barhauna, P.S. Kharagpur, District- Munger

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 473 of 2017)

For the Appellant/s : Mr. Indu Bhushan Prasad, Adv.
Mr.Dhananjay Mishra, Adv.

For the Respondent/s : Mr. Binod Bihari Singh, APP

(In CRIMINAL APPEAL (DB) No. 507 of 2011)

For the Appellant/s : Mr. Indu Bhushan Prasad, Adv.
Mr.Dhananjay Mishra, Adv.

For the Respondent/s : Mr. Binod Bihari Singh, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and

HONOURABLE MR. JUSTICE SHAILENDRA SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 19-07-2023

1. Both the appeals have been heard together

and are being disposed of by this common judgment.
2. We have heard Mr. Indu Bhushan Prasad



assisted by Mr. Dhananjay Mishra, the learned Advocates for both the appellants and Mr. Binod Bihari Singh, the learned APP for the State.

3. Appellant Dina Goswami in Criminal Appeal (DB) No. 473 of 2017 has been convicted under Section 302 of the Indian Penal Code and Section 27 of the Arms Act and has been sentenced to undergo R.I. for the remainder of his life and to pay a fine of Rs. 25,000/- for the offence under section 302 of the Indian Penal Code and R.I. for three years and fine of Rs. 10,000/- for the offence under Section 27 of the Arms Act, the sentences having been directed to run concurrently vide judgment of conviction and order of sentence dated 25.02.2017/28.02.2017 respectively passed by the learned 5th Additional District and Sessions Judge, Munger in Sessions Trial No. 312 of 2011 arising out of Kharagpur P.S. Case No. 92/2002.

4. Appellants / Madan Goswami and Narayan Goswami in Criminal Appeal (DB) No. 507 of 2011



have also been convicted under Section 302/34 of the Indian Penal Code and have been sentenced to undergo R.I. for life, to pay a fine of Rs. 10,000/- and in default of payment of fine, to further suffer imprisonment for six months vide judgment of conviction and order of sentence dated 27.04.2011/30.04.2011 respectively passed by the 2nd Additional District and Sessions Judge, Munger in Sessions Trial No. 458 of 2004 arising out of Kharagpur P.S. Case No. 92/2002.

5. In the Sessions Trial No. 458 of 2004 pertaining to appellants/Madan Goswami and Narayan Goswami, the Doctor, who conducted the postmortem on the deceased and the Investigating Officer of the case have been examined whereas in Trial No. 312 of 2011, pertaining to appellant/Dina Goswami, neither the Doctor nor the I.O. have been examined.

6. Wakil Goswami, who has been examined as PW-4 in Sessions Trial No. 312/2011 and PW-7 in



Sessions Trial No. 458 of 2004 is the informant of this case, who has alleged that the occurrence took place on 07.06.2002 at about 2:30 in the afternoon.

7. The first information report reveals that there was a marriage in the family and some of the guests had overstayed. For feeding them, his nephew Pankaj Goswami (deceased) had gone to market to procure eatables and while returning home, was confronted by the appellants for their not having been invited in the marriage ceremony. Appellant/Dina Goswami is said to have assaulted Pankaj with fists and slaps. Pankaj thereafter came back home but was followed by the appellants. Dina was armed with a musket. Similarly, Narayan also was carrying a firearm weapon in his hand. Madan, however, is alleged to have been carrying a lathi. The discussion amongst appellant and the deceased continued. Thereafter, according to the allegation, Narayan Goswami exhorted the other appellants to kill Pankaj. The informant tried to intercede with



Narayan Goswami but in the meantime Madan Goswami assaulted his son Rajnikant with lathi which hit him in his elbow. It is alleged that thereafter appellant/Dina Goswami fired from his weapon which hit Pankaj in his chest as a result of which he fell down injured and started bleeding profusely. In the meantime, many persons of the village arrived and Pankaj in a severely injured condition was taken on a motorcycle to the nearby hospital but died on the way. He was declared to be dead by the Doctors in the hospital.

8. On the basis of the aforementioned fardbeyan statement of Wakil Goswami, Khadagpur P.S. Case No. 92 of 2002 dated 07.06.2002 was instituted for investigation for offence under Section 302/34 of the IPC.
9. The police, after investigation, submitted charge-sheet whereupon cognizance was taken and the case was committed to the Court of Sessions for trial.



10. For the non-appearance of appellant/Dina Goswami, his trial was separated and he was tried in Sessions Trial No. 312 of 2011 in which a total of six witnesses were examined, all of whom are the relatives of the informant and the deceased. Appellants/ Madan and Narayan faced trial in Sessions Trial No. 458 of 2004 where fourteen witnesses including the Doctor and the I.O. were examined.
11. The appellants have been sentenced as aforesaid.
12. Mr. Indu Bhushan Prasad, the learned Advocate for the appellants in both the appeals has submitted that the prosecution has utterly failed to prove the prosecution case beyond all reasonable doubts
13. It has been argued that the case against the appellants is absolutely false and concocted. In fact, the prosecution party were the aggressors and an occurrence took place in front of the house of



appellant / Dina Goswami and not in front of the house of Vakil Goswami as claimed by him, which proposition finds supports in the deposition of witnesses particularly the I.O. of this case namely, Naresh Kumar Yadav (PW-8) in Sessions Trial No. 458 of 2004. He has further submitted that all the witnesses who have spoken about the appellants having participated in the occurrence are none else but near relatives of the informant and the deceased. Even though the occurrence had taken place in the afternoon in front of the villagers but no independent person has been put up on the witness-stand to support the prosecution case. On the contrary, it has been urged that according to the deposition of the I.O., the weapon of assault was handed over to the police by the informant himself.

14. Admittedly, appellant/Dina Goswami was not arrested on the spot. Taking this ground further, Mr. Indu Bhushan Prasad has argued that in the absence of any evidence by which the place of occurrence



could have been fixed and there being no evidence of the weapon so seized having been used in the occurrence, the prosecution has missed out on the vitals on which the edifice of prosecution could have rested. These two aspects not having been proved, the prosecution has staggered miserably for the Trial Court to have convicted and sentenced the appellants as aforesaid. Mere repetition of the allegation by the relatives does not prove the case. The circumstances depicted in the deposition of witnesses clearly reveal that even the manner of occurrence was not in concord with the allegations. Though no definite reason has been propounded by the appellants for having been wrongly framed in this case at the instance of the prosecution party, but a feeble attempt has been made to demonstrate that a complaint case was lodged against the prosecution party with respect to death of Pankaj with the allegation that the shot fired by one of the members of the prosecution party namely, Diwakar,



had hit Pankaj leading to his death. However, the
aforenoted defence of the appellants was
unfortunately not taken any further.

15. As opposed to the aforenoted arguments, Mr. Binod Bihari Singh, learned APP has argued that all the witnesses in both the Sessions Trials have made specific statements regarding the overt act played by the appellants. Some minor contradictions or difference in their deposition would not render the prosecution case doubtful. The act of firing at the deceased has been attributed to appellant/ Dina Goswami. Appellant/Madan has used his lathi in injuring Rajnikant, who is the son of the informant. The occurrence took place on the exhortation of Narayan who had ordered Pankaj to be killed. Thus, for all practical purposes, the appellants had come prepared with lethal weapons to the house of the informant to take revenge for them for not having been invited in a marriage ceremony which had taken place a couple of days ago where the



entire village had been invited. This perhaps was seen as insult to the appellants, who had button-holed Pankaj while he was returning home after purchasing chicken for feeding the guests who had over-stayed and carried the fight further till the house of the informant and the deceased. On basic particulars, the prosecution is consistent. A reasonable explanation appears on record regarding appellant/Dina not having been arrested by the villagers, even though he had fallen down while trying to flee away from the place of occurrence. Precisely for this reason, the weapon used by him was left behind which was seized by the villagers and handed over to the police. That the I.O. did not find any blood stains in front of the house of Wakil Goswami only reflects the casual approach of the investigator which does not in any manner makes the case doubtful.

16. Thus, it has been argued that though the court below has wrongly sentenced appellant/Dina for the



remainder of his life which is not permissible but conviction under Sections 302/34 and 27 of the Arms Act as against all the appellants is justified and requires to interference by this Court.

17. In fact, we must state that the Trial Court exceeded his jurisdiction in sentencing the appellants for remainder of their lives which was not within his powers. A Sessions Court cannot pass a sentence under Section 302 I.P.C. beyond the two alternatives available before him, namely, death or R.I. for life (433 Cr.P.C.). In **Union of India vs. Sriharan @ Murugan and Others 2016 (7) SCC 1**, and **Vikash Choudhary vs the State of Delhi; 2023 SCC Online SC 472**, it has categorically been held that the powers of giving the third kind of punishment i.e. jail for a fixed term of more than 14 years without remission is available only with the superior Constitutional Courts, namely, Supreme Court and High Courts and not with the Trial Courts.

18. On an analysis of the evidence in both the



Sessions Trials, we find that though the narration regarding the event has been given in a lurid manner by all the witnesses but those appear to be, on sheer optics, to be meticulously painted. The deceased had gone to the market to fetch eatables and on his way back home, had met the appellants. He was charged for not inviting the appellants in the marriage function. There were some minor scuffle whereafter Pankaj (deceased) chose to come back home. He was followed by the appellants and thereafter killed. If this story of the fardbeyan and the witnesses supporting in their deposition before the Trial is to be accepted, the occurrence took place in front of the house of the informant and the deceased. The narrative, therefore, makes it certain that the deceased had received gun-shot in front of the house where the informant and the deceased resided. The I.O. not finding any mark of violence or blood stained earth in front of the house or any incriminating material, raises eye-brows. On the



contrary, the I.O. in Sessions Trial No. 458 of 2004 has categorically stated that he had found blood stained earth in the house of appellant/Dina Goswami which he had seized but did not send for any forensic examination. This only proves that either appellant/Dina had blood stains on his clothes after the occurrence and, therefore, when he attempted to flee from the place of occurrence, he came back home thereby leaving blood stains in his house or that appellant/Dina himself was assaulted at his house.

19. In both the instances, the prosecution version appears to be faltering. That appellant/Dina was not arrested on the spot, is again a factor which makes the prosecution case doubtful. The weapon of assault used by appellant / Dina was snatched by the public at large and it happened as explained during the trial as appellant/Dina fell down while fleeing. This was the best opportunity for the villages or the members of the family of the deceased to have



pounced upon him and confined him to be handed over to the police. The musket used by him is stated to have been left behind which was seized by members of the public.

20. What catches out attention is that none of the members of the public were produced as witnesses in support of the aforementioned fact nor the weapon was found by the I.O. at the place where the occurrence had taken place; rather the evidence is that the informant/Wakil Goswami brought it from his house and gave it to the I.O. The I.O. appears to have unsuspectingly accepted it as the weapon of assault used by appellant/Dina. The only way in which credence could have been lent to the story of the prosecution if an opinion would have been sought from the ballistic experts whether such weapon was used in the recent past and were there some traces of connection between the death of the deceased and the weapon used in the assault.

21. On the contrary, we have positive evidence



that during the postmortem, a bullet found entangled in the entrails of the deceased was taken out, sealed but not sent for forensic examination, which we do not conceive of as a lapse in the prosecution but a flaw in the prosecution version. Had it not been the case, all efforts would have been made to trace the death of the deceased because of firing resorted to by appellant/Dina with a weapon of assault which allegedly was handed over to the police by Wakil Goswami, the informant.

22. Seen in this context, the absence of any blood stained earth in front of the house of informant, the main place of occurrence and presence of blood stains in the house of appellant Dina assumes great significance.

23. As noted above, appellant/Dina surrendered to the process of law much later and, therefore, his Trial was separated. Where was he ? Did he run away from the process of law or when he learnt about his accusation, he came back or did he try to



delay the process of law, or was he not present at the P.O.

24. Thus three situations can be conceived of to explain the non-arrest of appellant /Dina immediately after the occurrence. Had appellant /Dina been at the P.O., he would have used his weapon to scare away the villagers. If he was not in a position to do that, the villagers would have got the better of him and would have confined him. The weapon of assault had already fallen from his clutches for whatever reason. All these lapses point to one fact only that the story of appellant /Dina trying to run away from the place of occurrence, leaving behind the weapon of assault and not being caught by the villagers, is all a tissue of falsehood.

25. That apart, we find that in the Sessions Trial No. 312 of 2011, neither the post-mortem has been proved as the Doctor has not been examined nor the I.O. has come forth to give his deposition.

26. There is yet another fact which makes the



prosecution case doubtful. Rajnikant, the son of Wakil Goswami was assaulted by Madan with a lathi. No injury report has been brought on record. Appellant /Narayan Goswami though is said to have been armed with a firearm weapon but that has not been seized nor is there any explanation. If not Narayan and Dina, Madan would surely have been apprehended if all three were present in the village in front of house of the Wakil Goswami. If Dina had fallen down while fleeing, Narayan ought to have taken the fort for providing cover for all the accused persons, to run away. Nothing of this kind appear to have happened and that makes the case inexplicable.

27. We do reckon that the defense taken by the appellants by way of a complaint case against the members of the prosecution party has not been taken to any logical conclusion but the facts narrated therein do make the present prosecution case doubtful. There was some scuffle in front of the rice mill of appellant/Narayan where one Diwakar is said



to have fired which resulted in a blue over blue. We do not have any means to test the correctness of this version. Nonetheless, the background facts that we have stated, makes the prosecution case highly unbelievable.

28. One Sergeant Major has been examined in Sessions Trial No. 458 of 2004, who has only testified to the fact that the weapon namely, the musket allegedly held by Dina, was in a working condition. This proves nothing. For bringing home a prosecution of this kind, it was required to be proved that the weapon in question was in a workable condition and was used. A ballistic expert could have very easily found out whether the weapon had been used in recent past.

29. The recovery of the bullet from the dead body of the deceased, if matched with the weapon, would have been a definite indicator of the same weapon having been used in the offence. Very conveniently, such pieces of evidence were ignored.



30. Thus, to tie the strings together, we find that the story propounded in the fardbeyan and in the deposition of witnesses contains a cloying repetition which makes the prosecution case very doubtful; the investigation has not been conducted properly; there is no explanation for the villagers not having held back Dina; non-examination of the I.O. and the Doctor in Sessions Trial No. 312 of 2011; no stain of blood or any incriminating sign having been found at the suggested place of occurrence; blood stains having been found in the house of Dina. All these factors if taken together, make us disbelieve the prosecution case.

31. For the reasons aforestated, we set aside the judgment of conviction and order of sentence of the appellants in both the appeals.

32. All the appellants are acquitted.

33. Appellant/Dina in Cri. Appeal (DB) No. 473 of 2017 is in custody since 24.01.2010 and has spent 13 years behind the bars. He is directed to be



released from jail forthwith, if not required or detained in any other case.

34. We have been informed that the appellants Narayan Goswami and Madan Goswami in Cr. Appeal (DB) No. 507/2011 are on bail, their liabilities under the bail bonds are discharged.

35. Both the appeals stand allowed.

36. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail for compliance and record.

37. The records of this case be also sent back to the concerned Trial Court forthwith.

(Ashutosh Kumar, J)

(Shailendra Singh, J)

sunilkumar/-
Rajiv

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	21.07.2023
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