

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.117 of 2016

Arising Out of PS. Case No.-87 Year-2008 Thana- DURGAWATI District- Kaimur (Bhabua)

Vir Bahadur Singh @ Lakki Singh @ Bir Bahadur Singh Son of Jang Bahadur
Singh Resident of Village-Baduri P.s Durgawati, district Kaimur at Bhabhua.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. N.K. Agarwal, Sr. Advocate Mr. Viveka Nand Singh, Advocate
For the Respondent/s	:	Mr. Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 17-08-2023

Heard Mr. N.K. Agarwal, learned Senior Advocate

for the appellant and Mr. Sujit Kumar Singh, learned APP

for the State.

2. The appellant has been convicted under Section 302 of the IPC and Section 27 of the Arms Act *vide* judgment dated 07.01.2016 passed by the learned Additional Sessions Judge 1st -cum-Special Judge, Bhabua, Kaimur in Sessions Trial No. 02 of 2009/14 of 2015, arising out of Durgawati P.S. Case No. 87 of 2008 and *vide* order dated 13.01.2016 he has 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 R.I. for one year under Section 302 of the IPC and R.I. for seven years, to pay a fine of Rs. 5000/- and in default of payment of fine to further suffer R.I. for six months.

3. It appears that the learned Trial court has not indicated whether the sentences will run concurrently or consecutively.

4. The deceased (Gulab Sah) is the father of Mithai Lal (P.W. 4), who is the informant of this case. He has alleged in his fardbeyan recorded on 31.07.2008 in his village that the appellant and others had come to his house in the evening of 30.07.2008 and were abusing the family members. At that time, one Vijay Singh came and scolded the accused persons and sent them back to their respective homes. He has further alleged that the cause for abusing him and others was that he had filed a complaint before the Sub-Divisional Officer, Mohania about a month ago in which notice was issued and served upon one Kamla Sah



through a Chowkidar viz. Mahendra Rai. This had infuriated Kamla Sah, who had complained against the informant and others before the accused persons including the appellant.

5. At about 08:00 P.M. on the same day, the deceased was at his house whereas the informant and his nephew Uday Chandra Keshari (P.W. 3) also came to rest. Both P.Ws. 4 and 3 went inside the hut whereas the deceased lay on the cot in the sitting area. At about 11:00 O' clock in the night, five persons are alleged to have come from the northern direction. They flashed their torches and again started abusing the informant and others. P.W. 4 claims to have seen the appellant with a torch in his hand and a fire weapon in the other hand. He also saw the appellant firing from 10 feet distance at his father. He identified the other accused persons also who were accompanying the appellant. After the firing was over, P.W. 4 claims to have come to the place where the deceased had been hit and found him dead. P.W. 4 could



see that the deceased was hit in his chest. The members of the family and of the neighbourhood came. The female inmates of the house started wailing.

6. The P.W. 4 therefore, has alleged that because of the enmity with respect to a lane and the consequent dispute of ingress and egress, the accused persons including the appellant have killed the deceased.

7. On the basis of the aforementioned fardbeyan of P.W. 4 Durgawati P.S. Case No. 87 of 2008 dated 31.07.2008 was instituted for investigation under Sections 302/34 of the IPC and 27 of the Arms Act against five accused persons including the appellant. All the five accused persons were chargesheeted and were put on trial.

8. However, the Trial Court after examining six witnesses on behalf of the prosecution and one on behalf of the defence acquitted all other accused persons but convicted and sentenced the appellant as aforesaid.

9. Mr. Agrawal, learned Senior Advocate while defending the appellant has submitted that from the



testimonies of informant/P.W. 4, his nephew/P.W. 3 and the brother of the deceased viz. P.W. 2, it would become very clear that none of them had seen the occurrence and it was only because of old enmity that five persons were made accused and out of the five such accused persons, the role of firing was attributed to the appellant.

10. He has further submitted that if there was any enmity which had to be avenged, it was against P.W. 4 and not against his father, who was an old man and had nothing to do with the dispute between the parties.

11. The other ground on behalf of the appellant is that according to the eye witnesses, the deceased was shot at when he was sleeping on a cot. The post-mortem report indicates that the deceased received two gun-shot wounds, communicating with each other; the wound of entry being in the chest. It has been submitted that such an injury cannot be caused to a person who is lying on a cot. The sequitur of this argument is that none of the eye witnesses have actually seen the occurrence.



12. Lastly, it has been submitted that the appellant is alleged to have fired from a distance of 10 feet. This is too long a distance for causing the injuries as was found on the body of the deceased. Additionally, it has been urged that neither the source of identification *viz.* the torch nor the weapon of assault were seized.

13. Thus, the argument on behalf of the appellant is that the deceased may have died in some other transaction or by somebody else, but the opportunity was grabbed by the informant/P.W. 4 to frame all such persons who had raised a dispute regarding the ingress and egress through the lane for which a complaint was lodged by P.W. 4 before the Sub-Divisional Officer, Mohania.

14. As opposed to the aforementioned contentions Mr. Sujit Kumar Singh, learned APP has submitted that in view of the categorical assertion of three of the eye witnesses that the appellant fired from his weapon hitting the deceased, all other infirmities in the prosecution case are reduced to insignificance. The houses in villages are not so



big that it will take long time for any body in a room situated beyond the place of occurrence to come forward and see the act himself.

15. Apart from this, it has been submitted that if there was any intention on the part of the prosecution to take advantage of the death of the deceased, the best person to have been chosen for being framed was Kamla Sah, against whom notice was issued and served on the day of the occurrence.

16. This, therefore, pre-supposes that it was not any concerted effort of the prosecution to frame Kamla Sah but the prosecution aimed at bringing to the book the guilty person, who in the present case is the appellant. Merely because the source of identification *viz.* the torch was not seized and the weapon of assault was not recovered, the prosecution case cannot be discarded.

17. Three of the eye witnesses having no special enmity with the appellant would not otherwise name him as the main assailant of the deceased.



18. It is a trite law by now that no body would avoid naming the correct person as the assailant and framing innocent person in his place.

19. On the aforementioned grounds, Mr. Sujit Kumar Singh, APP submits that the judgment of trial court needs no interference.

20. P.W. 4 has specifically stated during the trial that he, P.W. 3, P.W. 2 and the wife of the deceased had witnessed the occurrence. The cause of occurrence according to him was a dispute with respect to a lane near his house. A suggestion was given to him during the trial that his father (deceased) was an accused in a case of murder of his own uncle but the same was denied by him.

21. However, in the same breath, he has further stated that there was no land dispute with the accused persons. The dispute was only with respect to the lane.

22. However, what is important to note is that in his cross-examination, P.W. 4 has specifically stated that there is no electric connection in his village. In this



context, Mr. Agarwal for the appellant has drawn the attention of this Court to the deposition of P.W. 2, who also, according to P.W. 4, had seen the occurrence. He in his examination-in-chief has stated that on the sound of firing, he came out of his room and switched on the electric light in which he saw the appellant shooting at the deceased. If this be the correct version, then obviously P.W. 4 had not made a true statement with respect to the source of light for other witnesses, especially eye witnesses, to have identified the appellant as having shot at the deceased.

23. Contextually, while commenting upon the veracity of the prosecution case, Mr. Agrawal has also pointed out that P.W. 3, who is the grand-son of the deceased and nephew of P.W. 4 has stated in his cross-examination that after the occurrence, P.W. 4 called P.W. 2 on telephone. If the nephew (P.W. 3) of the informant is to be believed, then perhaps P.W. 2 had not seen the



occurrence and had come to the P.O. only after being informed by P.W. 4.

24. Thus, it appears that there are some doubts about P.Ws. 2 and 4 having witnessed the occurrence.

25. If tested from another angle, we have further found that P.W. 2 in his cross-examination has admitted that when he came out of his room and saw the accused persons including the appellant, his brother and nephew had run away by that time and came back to the P.O. only after the deceased was dead. This further creates doubt about P.W. 2 having witnessed the occurrence.

26. However, we have found that the informant (P.W. 4) and his nephew (P.W. 3) were all along present when the occurrence had taken place and it is precisely for this reason that the FIR was also lodged by P.W. 4.

27. P.W. 4 though has asserted that the firing was resorted to from a distance of 10 feet but the nature of injuries suffered by the deceased does not conform to



such a long distance firing. That apart, the deceased according to P.W. 4 was sleeping when he was shot at.

28. Did the deceased get some idea that he was the target that he got up from cot or he fell down from the cot on receiving the gun-shot when he was again shot at leading to the injuries?

29. In this context, it would be necessary to refer to the deposition of P.W. 3, who in his cross-examination has stated that when he went to the P.O. after the deceased had already been shot at, he found him to have fallen from the cot on the ground.

30. This, therefore, satisfies us that the deceased may not have been shot at while he was sleeping on the cot but sometimes later, either when he would have got up or when he would have fallen down from the cot.

31. In this context, we have also taken note of the statement of the I.O. that he had received telephonic information at the police station that there was firing between two groups of people in the village. This,



therefore, could be because of several rounds of firing by the accused persons. *Inter se* firing between the prosecution and the defence does not appear to be the case, as there is no evidence confirming that there was cross-firing between the parties. Even otherwise, the attempt of the defence has been to demonstrate that the appellant was not present at the P.O. and therefore, perhaps, a witness on behalf of the defence has been examined *viz.* the Doctor who has testified to the fact that the appellant was admitted in the hospital.

32. However, such an alibi has not been believed by the Trial Judge and rightly so on the ground that there is no mention of any disease or immediate necessity of hospitalization of the appellant at the time when D.W. 1 claims it to be.

33. That there was dispute with respect to the ingress and egress to a lane stands proved. But for the aforementioned dispute, there was no other dispute. Some of



the accused persons come from the same village, as it appears from the evidence on record.

34. However, we have not been able to find out the relationship between Kamla Sah and the appellant. Kamla Sah was the person who was served with a notice from the Sub-Divisional Magistrate, Mohania against a complaint made by P.W. 4 against Kamla Sah and others. According to the prosecution version, Kamla Sah got infuriated because of such notice and he along with his companions came to the house of P.W. 4 and abused him. With the intervention of one Vijay Singh, the immediate fight between the parties could be avoided. It is required to be noted that aforesaid Vijay Singh has not been examined at the trial. He would have been the most impartial person to state about these skirmishes which ultimately led to the killing of the deceased.

35. The appellant along with Kamla Sah and about four others are then said to have come to the house of the informant at about 11 O' Clock in the night. Either



the appellant was very close friends with Kamla Sah or related to him for him to accompany the accused persons to the house of the informant. Who would have been the target, if at all there was an intention of the accused persons to commit some crime? The answer is obviously the informant and no body else with whom Kamla Sah would only be interested in avenging the enmity.

36. In this fact-scenario, if at all, the informant would have chosen to falsely implicate any one of the accused persons, the natural choice would have fallen on Kamla Sah and not the appellant, unless it were shown that it was at the instance of the appellant that this crime was executed or that the appellant also was somehow or the other concerned with the dispute regarding the lane. Kamla Sah was present at the place of occurrence, if P.Ws. 2, 3 and 4 are to be believed. There were others also who were armed with garasa etc. There does not appear to be any premeditation or else other members of the house also would have been harmed.



37. In such a situation, it was the sole act of the appellant in opening fire.

38. Could such injuries have been caused by firing resorted to from such a distance is the question that troubles us.

39. We, however, are of the view that the assessment of P.W. 4 of the distance from which firing has been made was only a ballpark assessment.

40. Thus disputing the homicidal death of the deceased because of firing cannot be rejected only on the aforementioned assessment of P.W. 4 about the distance from which the firing was resorted to.

41. There are some other points on which the prosecution version could be doubted. To name some; the village had safety teams operating in the night. In such a situation, if murder is committed by a group of villagers of a co-villager, there is every likelihood of the accused persons being nabbed by the village safety team. If not,



the weapon of assault would have been recovered. The police is stated to have come to the village in the night.

42. We have no evidence on record to indicate that any search was made in the houses of the accused persons including the appellant. There is no evidence either that the appellant and the other accused persons retreated. From where were they arrested has not been brought in evidence.

43. True it is that in the absence of weapon of assault, when the same could have been easily recovered and the torches in the light of which the identification primarily was made, the prosecution case stands weakened but these cannot be the grounds for rejecting the prosecution case altogether.

44. The reason for our saying so is that many a times, investigation is conducted in a faulty manner. For the fault and unprofessionalism of the I.O., the case of the prosecution cannot be jettisoned.



45. Taking the totality of the circumstances, we find that these lapses do not make the prosecution case any doubtful for it to be rejected forthrightly.

46. The I.O. of this case has been examined as P.W. 6. The description of the place of occurrence given by him makes it very possible for the informant/P.W. 4 to have seen the occurrence, if he were there at the time of the occurrence. The deceased was sleeping on the veranda on a cot whereas P.Ws. 4 and 3 were sleeping inside a room, adjoining the veranda. No sooner was the sound of firing heard by both of them, they came out to see the appellant and others assembling at their house and appellant firing from his weapon. It would have been extremely naive of P.Ws. 3 and 4 to have waited for them to have been harmed or to have challenged the accused persons when they themselves were not armed. The natural conduct therefore, was that they went for a cover for themselves and came back only when the occurrence



was over, to find the deceased dead with a gun-shot wound.

47. Lastly, we have found that there was no reason strong enough for falsely attributing the role of firing to the appellant. If P.W. 4 was attempting at feeding fat the old grudge, the appellant was not the person. The appellant has not been named in the first part of the occurrence, when supporters of Kamla Sah had come to his house in the evening to complain against such case having been lodged by P.W. 4.

48. We have also wondered, as to why the accused persons stopped after firing at the deceased, leaving the main person *viz.* the informant alive. Not that they were challenged by the inmates of the house or the villagers that they fled away.

49. Not every question but can be answered but in this scenario, we have found that to the extent of the allegation that the appellant had fired which hit the deceased, P.W. 4 is required to be believed.



50. These above noted aspects have persuaded us to ratify and affirm the judgment and order of conviction by the Trial Court.

51. As noticed by us, the sentences imposed upon the appellant under Section 302 of the IPC and Section 27 of the Arms Act have not been directed to run concurrently. In our estimation, this appears to be an inadvertent mistake. Even otherwise also, we find that the sentences imposed upon the appellant under two different sections are required to run concurrently.

52. We order accordingly.

53. For the reasons aforementioned, the judgment and order of conviction is affirmed and the appeal is dismissed.

(Ashutosh Kumar, J)

(Alok Kumar Pandey, J)

krishna/vasudha

AFR/NAFR	NAFR
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