

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.427 of 2021

Arising Out of PS. Case No.-180 Year-2018 Thana- ALAMNAGAR District- Madhepura

Gajendra Singh, Son of Late Dorki Singh, Resident of Village- Khapur
Ratwara, Ward No.11, P.S.- Alamnagar, District- Madhepura.

... .. Petitioner

Versus

1. The State of Bihar
2. Sohan Singh, Son of Sri Jaikant Singh, Resident of Village- Khapur
Ratwara, P.S.- Alamnagar, District- Madhepura.
3. Sharwan Singh, Son of Netar Singh, Resident of Village- Khapur Ratwara,
P.S.- Alamnagar, District- Madhepura.
4. Ashok Singh, Son of Narayan Singh, Resident of Village- Parel Kapasiya,
P.S.- Alamnagar, District- Madhepura.

... .. Opposite Parties

Appearance :

For the Petitioner	:	Mr. Arjun Kumar
For the State	:	Md. Fahimuddin, APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 02-01-2024 Heard learned counsel for the petitioner in limitation
as well as in admission matter.

2. This revision application has been filed for setting aside the part of the judgment and order dated 08.03.2021 passed by learned Additional Sessions Judge-II, Madhepura in Sessions Trial No. 22 of 2019 arising out of Alamnagar P.S. Case No. 180 of 2018 registered for the offences punishable under Sections 302/120(B)/34 of the Indian Penal Code (in short 'IPC') and Section 27 of the Arms Act whereby and whereunder the learned court below has acquitted O.P. Nos. 2 to 4.

3. There is a delay of 22 days in filing of the revision



application. Learned counsel for the petitioner submits that because of the then pandemic situation, the delay has occurred. In view of the judgment of the Hon'ble Supreme Court in the case of *Suo Moto Writ (Civil) No. 5 of 2020*, the delay is liable to be condoned, hence, this Court condones the delay.

4. On merit, learned counsel for the petitioner submits that the learned trial court has committed a grave error in acquitting O.P. Nos. 2, 3 and 4. It is submitted that while the main accused Mohan Singh has been convicted under Section 302 IPC, O.P. Nos. 2 to 4 have been acquitted by holding that the allegation against them for an offence under Section 302 IPC has not been proved beyond all shadows of reasonable doubts.

5. The submission is that Mohan Singh could not have committed the offence without assistance from O.P. Nos. 2 to 4. Learned counsel has taken this Court through the deposition of the prosecution witnesses and submits that some of the prosecution witnesses have stated about the participation of O.P. Nos. 2 to 4 in the alleged occurrence.

6. This Court has gone through the learned trial court's judgment. The learned trial court has recorded the statement of prosecution witnesses in detail. PW-6, Gajendra



Singh, has in his examination-in-chief stated about the presence of Sohan Singh, Mohan Singh, Raben Singh, Sulo Singh, Ashok Singh, Shambhu Singh and Laddu Singh. According to him, all these accused persons were coming towards the feast place while firing from gun, rifle and three nutt. PW-6 is the informant of the case and father of the deceased who claims himself an eye witness. He has stated that when those accused persons came near the feast place, his son Shintu Kumar Singh raised his objection as marriage was going on there, so he asked the accused persons not to do firing as it may cause stampede. On this, Mohan Singh shot him on his head, due to which he bled. In his cross-examination, this witness has stated that in the written information submitted by him, he did not claim his presence at the place of occurrence and he cannot say about whether it is mentioned in the FIR or not. He has further stated that he did not see Shrawan Singh at the place of occurrence and he did not see him while firing.

7. The another witness Sandeep Kumar Singh (PW-1) has stated that he saw that the villagers Sohan Singh and Mohan Singh were chasing Jhapta Singh. Ravindra Singh, Jaikant Singh, Rituraj Singh, Shambhu Singh, Ashok Singh and Laddu Singh were standing in the front. Thus, this witness has not



supported PW-6 that all the accused persons were firing from their gun, rifle and three nutt. This witness has not attributed any role to other accused persons in the killing of Shintu Kumar Singh. It has also come in the cross-examination that this witness has no relation in that village and he could not say whether blood fell down on the ground while taking the deceased to the door of his house which was situated at a distance of about 400 meters from the place of occurrence.

8. PW-3 has also stated about the role of Mohan Singh who shot Shintu Kumar Singh but did not make any specific allegation against the other accused persons. He has simply said that other accused persons were also involved. About one of the accused Shrawan Singh he has stated in his cross-examination that he did not take the name of Shrawan Singh before police.

9. PW-4, Nabita Devi is the wife of the deceased Shintu Kumar Singh. She is not an eye witness to the alleged occurrence. PW-5, Sudesh Kumar Singh has supported PW-6. He is also not an eye witness. He heard the sound of gun shot and then came on the road. He saw Raju Singh @ Sandeep Kumar and Gopal Singh were bringing Shintu Kumar Singh in the lap and on being asked, they told that Sohan Singh and Mohan Singh have shot Shintu Kumar Singh. According to this



witness, meanwhile, Mohan Singh, Sohan Singh, Sulo Singh, Raben Singh, Shambhu Singh were coming while firing.

10. PW-7 is also a hearsay witness. PW-8 is Dr. Suman Kumar Jha, the Doctor who has conducted post-mortem examination on the dead body of Shintu Kumar Singh. He found that there was a hole between the eyebrows over the nose (left side) on forehead of size 0.3" × 0.3" margin lacerated, irregular and inverted. There was one entry wound and one exit wound.

11. PW-9, Sunil Kumar Singh is the SHO of Alamnagar Police Station who had lodged the FIR and had taken further statement of the informant. PW-9 had also inspected the place of occurrence and mentioned the same in the case diary. PW-9 has stated in his cross-examination that he did not find any empty cartridge and blood at the place of occurrence. He did not find any blood on the bed or soil where the deceased was laid.

12. On going through the entire materials discussed in the trial court's judgment, this Court finds that the learned trial court has rightly concluded in its finding that the prosecution had failed to prove the case beyond all shadows of doubts against O.P. Nos. 2 to 4. The manner of occurrence does not get support from the prosecution witnesses. The I.O. did not find



any empty cartridge at the place of occurrence and no blood was found at the place of occurrence.

13. This Court agrees with the conclusion reached by the learned trial court in paragraph '23' of the judgment that as per the prosecution case, the occurrence took place in the spur of the moment when the deceased was trying to pacify the accused persons for committing firing at the feast place. There is no evidence of pre-meeting of mind of the accused persons for committing the occurrence and the same was caused by one of the accused Mohan Singh.

14. This Court in exercise of its revisional jurisdiction against a judgment of acquittal finds no reason to entertain this revision application. It has no merit.

15. This revision application is dismissed.

(Rajeev Ranjan Prasad, J)

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