

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.832 of 2016**

Arising Out of PS. Case No.-363 Year-2015 Thana- LAKHISARAI District- Lakhisarai
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Churaman Singh @ Sri Ram Singh S/o Late Bhaso Singh resident of
village - Balgudar, P.S. Lakhisarai, District - Lakhisarai

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Santosh Kumar Singh, Adv.
For the Respondent/s : Mr. Abhimanyu Sharma, APP

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**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE KHATIM REZA**

**ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)**

Date : 04-04-2024

1. We have heard Shri Santosh Kumar Singh, the learned Advocate for the appellant/Churaman Singh @ Sriram Singh and Mr. Abhimanyu Sharma, the learned APP for the State.
2. The appellant has been convicted for the offence under Sections 302 of the IPC and Section 27 of the Arms Act vide judgment dated 21.06.2016 passed by the learned Sessions Judge, Lakhisarai in Sessions Trial No. 195/2015 arising out of



Lakhisarai P.S. Case No. 363/2015. By order dated 29.06.2016, the appellant has been sentenced to undergo imprisonment for life, to pay a fine of Rs. 5,000/- and in default of payment of fine, to further suffer simple imprisonment for six months for the offence under Section 302 IPC. For the offence under Section 27 of the Arms Act, the appellant has been sentenced for simple imprisonment for one year along with a fine of Rs. 1,000/- and in default of payment of fine, to further suffer simple imprisonment for one month. The sentences have been ordered to run concurrently.

3. One Bachchu Mistri is said to have been killed at the hands of the appellant and his brother, namely, Hiranman Singh @ Jairam Singh.
4. Both, the appellant and his brother (Hiranman Singh @ Jairam Singh) were chargesheeted but only the appellant was put on trial as the aforesaid Hiranman Singh @ Jairam Singh had absconded.
5. The F.I.R. has been lodged by one of the sons



of the deceased, namely, Dharmendra Kumar (PW4). He has alleged that on 18.05.2015 at about 8.30 P.M., the appellant and his brother / Hiran Singh @ Jairam Singh came to his house with pistol in their hands. They were firing in the air. Both the brothers were looking for the deceased/father of PW4. The deceased was not present in the house at that time. Both the persons then went away. When the father of PW4 did not come back home, PW4 sensed that something may have happened to his father. He along with his elder brother, namely, Arvind Kumar (PW3) went in search of his father. When both the brothers (PWs 4 and 3) reached near the house of one Bindu Singh, they heard the sound of cries of his father, who was asking for help. PW4 saw that his father had been captured by the appellant and his brother and the appellant fired from his pistol which hit his father in his chest. As a result of the said gunshot injury, the father of PW4 died instantaneously. PWs 3 and 4 tried to intervene



and in the process, Hiranman Singh @ Jairam Singh fired at PW4, as a result of which, he was hit in his finger. By then, many persons of the village had arrived and they also shouted for help. Seeing the villagers come around the place of occurrence, the appellant and his brother fled away. The deceased was taken to one Doctor Himkar on a motorcycle, where he was declared dead. The cause of occurrence as stated in the F.I.R. is the demand of protection money of Rs. Two Lakhs by the appellant and his brother from the deceased for his having purchased six kathas of land in the village from one Awadh Kishore Sinha about eight months ago. After the father of PW4 was declared dead, his dead body was brought to home. The elder brother of PW4, namely, Arvind Kumar (PW3) was also injured in the occurrence.

6. On the basis of the afore-noted fardbeyan of PW4, which was recorded at 11.00 P.M. at the village home by Pankaj Kumar (PW5), a case vide



Lakhisarai P.S. Case No. 363/2015 dated 18.05.2018 was registered for investigation for the offences under Sections 302/34 of the IPC and Section 27 of the Arms Act.

7. As noted above, both, the appellant and his brother, namely, Hiranman Singh @ Jairam Singh were chargesheeted but only appellant was put on trial as Hiranman Singh @ Jairam Singh had absconded.
8. The Trial Court, after having examined six witnesses on behalf of the prosecution including the I.O. and the Doctor and two on behalf of the defense, convicted and sentenced the appellant as aforesaid.
9. According to PW4 (informant), he had seen the occurrence along with his brother. In the fardbeyan, he had not stated about his mother also having accompanied him and his brother in search of the deceased. However later, at the trial, he has stated that along with the two brothers, the mother also



went in search of the deceased.

10. In his cross-examination, it is very noticeable that he has stated that he followed the appellant and his brother while they were continuously firing in the air and were moving towards the village. Though, he has supported the prosecution case of the appellant and his brother having caught hold of his father (deceased) and the appellant having fired at the deceased leading to his death, but the sequence of events narrated by him before the Trial Court makes his testimony highly suspect. According to him, the occurrence had taken place in front of house of one Bindu Singh, who for some reason or the other, has not been examined at the trial. According to PW4, nobody from the family of Bindu Singh came to the place of occurrence. The deceased while he was still alive was taken on a motorcycle to one Doctor Himkar who too, has not been examined at the trial. The motorcycle which was used for carrying the deceased to the hospital, has also not



been produced for inspection before the Court.

According to PW4, the motorcycle also had become blood-stained because the deceased was being carried on that motorcycle by him and his nephew, namely, Sanjeev Kumar (PW2), to the Doctor.

11. The Investigating Officer had issued a requisition for the treatment of PW4 and PW3, both, and it appears that they had sustained simple injuries caused by hard and blunt substance.

12. The dead body of the deceased was taken from Doctor Himkar's clinic to home.

13. This sequence of events do not fit in with the basic kernel of the prosecution version.

14. We have examined the deposition of Pankaj Kumar (PW5), the Investigating Officer, who was in-charge of this case right from the time of recording of the fardbeyan till the submission of chargesheet. Before the Trial Court, he has stated that the place of occurrence was inspected by him in presence of the specialists from the F.S.L. Bhagalpur from



where the blood stained earth (Ext.-A) was lifted. He has further stated that he had taken up the investigation on 18.05.2015 only at 11.55 P.M. This was done at the police station. The inquest report, as is expected, was not prepared at the place of occurrence but at the house of the deceased. He had seen the dead body for the first time at the house of the deceased. The place of occurrence was visited by him thereafter on 19.05.2015 also.

15. However, before the F.I.R. was registered, he had received the information about the occurrence and on such information, he had proceeded to the P.O. It is not known as to what was the information received by him for him to proceed to the P.O. He was taken to the P.O. with the help of the local Chowkidar, namely, Bechan Paswan, who has not been examined at the trial. The dead body was not found there. It was learnt by him that the dead body has been kept at the home of the deceased. Thereafter PW5 proceeded to the home of the



deceased. From 9 P.M. onwards, the I.O. had been looking for the dead body along with the police party. Though, he has denied the suggestion that his investigation is faulty and that he had gone in collusion of the prosecution witnesses but there are many a things amiss in his deposition. Had he examined the independent persons of the village, those persons would have really competent witnesses to unravel the truth. There is no record of the informant which he received at the police station about the occurrence. The first information which PW5 must have received was very important to be disclosed before the Trial Court. The occurrence had taken place in the middle of the village and at 8.30 P.M. According to the deposition of many of the witnesses, villagers had assembled at the place of occurrence and had raised cries. Not examining the independent persons or at least Bindu Singh in front of whose house, the occurrence took place, makes the prosecution story highly doubtful.



16. In his cross-examination, he has admitted that the injury suffered by Dharmendra Kumar (PW4) and Arvind Kumar (PW3) were caused by hard and blunt substance and not by any fire arm.

17. It is strange that after the incident of shooting, the victim (deceased) was taken to a local Doctor, where he was declared dead. The dead body was brought back home. One of the witnesses has stated that the police had come to the clinic of the Doctor Himkar. No F.I.R. having been lodged at that time or the Investigator not having come to know about the assailants is strange and cringe-worthy. Precisely for this reason, a suggestion was given to him that the real assailant was someone else and a shortcut approach was adopted by him to chargesheet the appellant and his brother, whose names were taken by PW4.

18. In this context, it would be necessary to see the evidence of the wife of the deceased (PW 1). If her evidence is to be believed, then perhaps nobody



had seen the occurrence of assault. We say so for the reason that PW 1 though supported the prosecution case of the deceased having been killed at the hands of the appellant because of non-payment of Rs. 2 lakhs as *rangdari* to the appellant, but her statement regarding the sequence of events reflects that she and her two sons, namely, PW 3 and PW 4 did not move together in search of the deceased.

19. In her cross examination, she has stated that she reached the P.O. first. Her sons had left home in search of his father before her, but reached the P.O. after she had reached there. She only told her son that somebody had killed the deceased. However, in the later part of her statement, she has tried to explain that when the deceased fell down on the ground on receiving the gunshot by the appellant, she clung on to the dead body of her husband and shouted that the appellant had killed the deceased. In the meantime, many persons of the



neighbourhood had arrived. She could not name any one of those persons. A suggestion was given to her that there was some dispute between her two sons, namely, PW 3 and PW 4. PW 4 had given a *lathi* blow to Arvind (PW3) as a result of which Arvind got injured in his finger; whereafter, Arvind (PW3) grappled with Dharmendra (PW4). When the father (deceased) came to pacify his two sons, Dharmendra (PW4) fired which hit the deceased. This suggestion was vehemently denied by her.

20. However, such suggestion did not appear to be completely off the grid. This could have been the reason for the injuries on PW3 and 4 by hard and blunt substance especially when there is no specific case of their having been assaulted by the appellant and his brother. In fact, if PW 4 is to be believed, he was shot at by Hiranman, the absconding appellant, there should have been gunshot injury on anyone of the two brothers.

21. That apart, what is again very important to



note is that even the place of occurrence could not be proved. The local Chawkidar/Bechan Paswan had accompanied the I.O. to the place of occurrence and which place was that remains unknown. It must be somewhere in the village where the occurrence had taken place. Till the time, the I.O. had reached the house of the deceased, there was no information with respect to the shoot-out in which the deceased was killed. Obviously, the name of the perpetrator of the crime was also not known to the I.O.

22. However, the I.O. has categorically stated in his cross examination that he had learnt about a person having been shot at and on such information he had proceeded to the P.O. Had the appellant and his brother been involved in the occurrence, their names would have been agog in the air by that time as both the appellants and his brother are the residents of the same village.

23. The nephew of P.W. 4 does not claim to be an eye witness to the occurrence but has expressed



before the Trial Court that he saw the appellant and his brother running away towards western direction. According to him, PW 1, 3 and 4, all three of them, started running behind the appellant and his brother. Villagers were shouting about the deceased having been caught by the appellant. The *hulla* by the villagers was at the house of the deceased only. The house of the deceased is surrounded by the houses of his agnates. He had accompanied PW 4 along with the injured (deceased) to Dr. Himkar where all of them reached at 09:00 pm. No treatment was given to the injured as he had already died by that time. The dead body according to him was taken back home.

24. A somewhat different story has been narrated by Arvind Kumar/PW 3, the elder son of the deceased. He says that no information was given to the police by any one of the family members of the deceased. Even when the deceased was taken to the clinic of Dr. Himkar, no information was forwarded



to the police for any further action. This is really surprising because the police station is located just next to the clinic of Dr. Himkar. The normal course of conduct would have been to bring the dead body to the police station and get the F.I.R. lodged as by that time, the deceased had already died. According to his version, which is very different from the deposition of other witnesses, at the clinic of Dr. Himkar, the police had arrived. In fact, PW 3 goes to the extent of stating that even the S.P. himself had come to the Dr. Himkar's clinic on learning about the occurrence. A request was made to the police party to allow the deceased to be taken to his home and it was only when the same was allowed, the dead body was brought back. At the instance of police, he and his brother (PW4) had gone to get themselves treated.

25. All this reflects a very different story.

26. The Doctor/PW 6, who had conducted the post-mortem examination on 19.05.2015 had found



charring gunshot injury. The cause of death in the opinion of PW 6 was due to hemorrhage, shock and gunshot injury.

27. The deceased definitely would have been shot at from a close distance but who did it, is the question which Trial Court was beset to answer.

28. In this context, it would be profitable to examine the deposition of the two defence witnesses who have categorically stated that both the brothers, namely, PW 3 and PW 4 were fighting amongst themselves and when their father (deceased) came to pacify, he was shot at by one of his sons. It may appear to be bizarre that a son would attempt to kill his father but the circumstances reflects from the prosecution case do create some doubts about the veracity of the statements made by PWs 1, 2, 3 and 4. If the deceased would have been shot at in front of the house of Bindu Singh, it may be natural that Bindu Singh or his family members would not have come out in the rescue of the deceased out of fear



but their not coming forward to state about the occurrence at the trial means a lot. No villager has been brought to the witness-stand to prove the prosecution case.

29. To collate all the facts, an occurrence took place sometimes at 08:30 pm. The deceased was taken to Dr. Himkar's clinic by around 09:00 pm. It was precisely at that time that the police had come to know about a shooting incident and had proceeded to the place of occurrence. We have already noted that there is no unanimity with respect to the place of occurrence. It becomes even more stark when the I.O. claimed that the P.O. was inspected in the presence of members of FSL team, Bhagalpur, where blood stained earth was picked up. There is a surprising twist in the case where one of the sons has claimed that while the family was at the clinic of Dr. Himkar, the police party had arrived. This does not appear to be in consonance with the deposition of other witnesses including the I.O. If



this be so, then perhaps, the F.I.R. ought to have been registered at the clinic of Dr. Himkar. The regular procedure is that if the police arrives at the place where the dead body is found, inquest report is prepared there only.

30. All these, therefore, suggest that perhaps the I.O. went in cohorts with the prosecution witnesses and went along with the accusation of the appellant having killed the deceased.

31. Who brought the motorcycle to take the deceased to the hospital also remains unknown. The motorcycle has not been shown to the Investigator.

32. Though conviction has been recorded under Section 27 of the Arms Act, but the weapon of assault was not recorded. One empty cartridge which was recovered from the P.O. was never put to any forensic/ballistic test. The seizure therefore is rendered absolutely useless and has not aided the prosecution in any manner.

33. The sons not having received any gunshot



injury though claimed by them further adds to the confusion about the prosecution version. The injuries on their persons by hard and blunt substance, juxtaposed with the allegation of one of the accused person firing at the injured, further confounds the issue.

34. It is in this contest that the suggestion to the witnesses that perhaps the deceased was killed while he was trying to pacify his two sons was made to the witnesses, which of course has been denied. All this clearly reflects that the occurrence had taken place in a different manner than what has been projected by the prosecution.

35. The motive for the occurrence is stated to be non-payment of Rs. 2,00,000/- which has been demanded by appellant for the deceased having purchased 6 kathas of land in village. No investigations were made with respect to either such purchase or the demand of money by the appellant. The purchase was made around eight months ago.



There was no complaint whatsoever by the family of the deceased about such threats by the appellant earlier.

36. The only persons who have deposed in favour of the prosecution are the wife, the two sons and the maternal grand son of the deceased.

37. The accusation against the appellant therefore becomes very doubtful.

38. Thus, giving benefit of doubt to the appellant, we reject the opinion of the Trial Court.

39. The appellant is acquitted of the charges.

40. The conviction of the appellant is set aside.

41. Since the appellant is in custody since 20.06.2015, he is directed to be released forthwith, if not required in any other case.

42. The appeal stands allowed.

43. The Interlocutory Application/s, if any, also stands disposed of.

44. Let a copy of this order be dispatched to the Superintendent of concerned jail for record and



compliance.

45. Let the records of this appeal be also returned
to the concerned Trial Court.

(Ashutosh Kumar, J)

(Khatim Reza, J)

sunilkumar/-

AFR/NAFR	NAFR
CAV DATE	N/A
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