

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.646 of 2019**

Arising Out of PS. Case No.-60 Year-2014 Thana- KASIMBAZAR District- Munger

SHANKAR PANDIT Son of Shri Jamun Pandit Resident of Mohalla-Sadar
Bazar Jamalpur, P.O and P.S.-Jamalpur, District-Munger.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 400 of 2019

Arising Out of PS. Case No.-60 Year-2014 Thana- KASIMBAZAR District- Munger

AKASH KUMAR @ AKASH KUMAR SINGH Son of Birendra Prasad
Singh Resident of Mohalla - Chhoti Kasheopur, P.S.- Jamalpur, Distt. -
Munger

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 646 of 2019)

For the Appellant/s : Mr. Dr. Pankaj, Adv.
For the Respondent/s : Mr.Ajay Mishra, APP
For the Informant : Mr. Pravin Kumar, Adv.

(In CRIMINAL APPEAL (DB) No. 400 of 2019)

For the Appellant/s : Mr. Abdul Mannan Khan, Adv.
For the Respondent/s : Mr. Ajay Mishra, APP
For the Informant : Mr. Pravin Kumar, Adv.



CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 23-08-2024

1. Both the appeals have been heard together and are being disposed of by this common judgment.
2. We have heard Mr. Abdul Mannan Khan, the learned Advocate for the appellant /Akash Kumar @ Akash Kumar Singh in Cr. Appeal (DB) No. 400 of 2019 and Dr. Pankaj, the learned Advocate for the appellant / Shankar Pandit in Cr. Appeal (DB) No. 646 of 2019 and Mr. Pranav Kumar, the learned Advocate for the informant. The State, in both the appeals, has been represented by Mr. Ajay Mishra, the learned APP.
3. Both the appellants have been convicted for the offences under Section 302 of the Indian Penal Code and Section 27 of the Arms Act vide judgment dated 25.02.2019 passed by the learned Additional



Sessions Judge -I, Munger in Sessions Trial No. 56/2015 (C.R. No. 122/2015) arising out of Kasimbazar P.S. Case No. 60 of 2014. By order dated 07.03.2019, they have been sentenced to undergo imprisonment for life, to pay a fine of Rs. 1,000/- and in default of payment of fine, to further suffer S.I. for three months for the offence under Section 302 IPC and imprisonment for three years along with a fine of Rs. 500/- and in default of payment of fine, to further suffer S.I. for fifteen days for the offence under Section 27 of the Arms Act.

4. One Sunaina Devi is said to have been killed on 11.04.2014 while she along with her son/Bibhash Kumar (PW2) were returning from Jamalpur jail after meeting her son/Ranjan Kumar, who at that time was in jail in connection with Jamalpur P.S. Case No. 15/2013.

5. The allegation of firing at the deceased is on appellant/Shankar Pandit and one Rahul Kumar, who



was not put on Trial. We have been informed that aforesaid Rahul Kumar has absconded.

6. Incidentally, appellant /Shankar Pandit is the nephew of the deceased and there is a long standing enmity between the two households.

7. For the felicity of the exposition of the facts, we must refer to fardbeyan of Bibhash Kumar (PW2), who on the same day i.e. on 11.04.2014 at 12.15 P.M. at Sadar Hospital, Munger. He has alleged that while coming back from jail after meeting his brother/Ranjan Kumar, the auto (a three wheeler vehicle) in which he and his mother (deceased) were travelling was overtaken by eight persons who were riding on four motorcycles. On the pointing of the appellant /Akash Kumar, appellant /Shankar Pandit fired at his mother while she was sitting in the said auto. Thereafter, it has been alleged that Rahul also fired from his weapon from behind which hit the deceased in her head. He could not identify the other accused persons. In order to



save himself, PW2 got down from the auto and hid himself behind the auto. Appellant/Akash Kumar, then leading the crowd, exited. While retreating, he had also fired in the air. When PW2 reached near her mother, he found her dead. Immediately after the occurrence, a vehicle of police administration arrived in which his mother was brought to Sadar Hospital, Munger, where she was declared dead. The main reason for the occurrence, according to PW2 is the pending land dispute with Shankar Pandit for last 12 years and because of that, Shankar Pandit and his associates had caused the murders of his father (Bharat Pandit) and brother (Rajesh Kumar) earlier. This was the reason for Shankar Pandit to arrange for time and manner of killing the mother of PW2.

8. Based on the afore-noted fardbeyan statement of PW2, a case vide Kasimbazar P.S. Case No. 60/2014 dated 11.04.2014 was registered for investigation for the offence under Sections 302/34



of the IPC and Section 27 of the Arms Act.

9. The police after investigation could send up only the appellants, who were tried.
10. The Trial Court, after having examined six witnesses on behalf of the prosecution, convicted and sentenced the appellants as aforesaid.
11. On perusal of the entire records, we find that there is only one eye-witness to the occurrence, namely, the informant (PW2), who is the son of the deceased.
12. Jagdish Prasad Yadav @ Jagdish Yadav (PW1) before whose house, the murder had taken place, has turned hostile.
13. Sunil Kumar @ Sunil Kumar Yadav and Umesh Kumar, (PWs 4 and 5 respectively) are only formal in nature.
14. Apart from these witnesses, Dr. Ajay Kumar Singh, who conducted the postmortem examination (PW3) and Rameshwar Mishra, the Investigating Officer (PW6) were examined at the Trial.



15. The postmortem report clearly reveals that the deceased had received two gunshots; one in the front of the chest whereas the other in the back of the head. There were corresponding wounds of entry and exit. The death was opined to have taken place within 24 hours of postmortem examination. The nature of violence was shooting from the fire-arm. This proves that the deceased died of gunshot injuries.

16. The doctor conducting the postmortem examination (PW3) has also confirmed that because of neurogenic shock, the deceased died.

17. The question, therefore, is who killed the deceased and where did the occurrence take place ? Perforce, we have gone through the deposition of Investigator (PW6) in some detail. He was posted as Sub-Inspector of Police in Kasimbazar Police Station on the relevant date. He had learnt through undisclosed source at the police station that in front of the house of one Jagdish Yadav situated on the



Jamalpur -Munger road, a woman has been killed. This information was reduced into an entry in the Station Diary, kept at the police station, and PW6, thereafter, proceeded to the place of occurrence. On reaching there, he found a woman lying dead on road. Her son (PW2) was present near her. The deceased and Bibhas Kumar (PW2) were brought to Sadar Hospital, Munger. This was around 10:40 A.M. in the day. Immediately on reaching the hospital, the Doctor had declared the deceased dead. Thereafter, he had recorded the fardbeyan Statement of PW2 (Exhibit 1/1). At the P.O., he had recovered two empty cartridges, some currency notes and an old spectacle for which a seizure list was prepared by him (Exhibit 4). The inquest was performed in the hospital. The inquest report is Exhibit-2/1. He himself took up the investigation and went to the P.O. again. Nothing incriminating could be found by him at the P.O. which he visited immediately after recording the fardbeyan. After arresting Shankar



Pandit, his mobile telephone No. 8540988651 was put on surveillance and the CDR of that telephone was obtained (Exhibit-5).

18. There is nothing on record to indicate whether such CDR was put to any use or it evinced any prior concert/planing of accused persons of arriving at a particular place and killing the deceased.

19. According to PW2, whose evidence would be referred to in the succeeding paragraphs, one Deputy Superintendent of Police had arrived at the P.O. and he had arranged for the police vehicle. However, the investigator (PW6) has said before the Trial Court that he never met any Dy.S.P. at the P.O. He was very specific in disclosing that the inquest was performed only in the hospital, even though the requirement under the Police Manual is of preparing the inquest at the P.O. He did not inquire about the vehicle in which the deceased was travelling and was shot dead and other fellow travelers. Though, he had sent the empty cartridges



for forensic examination but there is no reference of it in the police papers. The clothes of the deceased were also not seized. He never made any efforts to know as to in which case the other son of the deceased was in jail and whether the deceased and PW2 had ever gone to Jamalpur to meet him.

20. A detailed reading of the deposition of the Investigator renders the prosecution case doubtful for two reasons. He had himself taken up the investigation without any orders from any superior authority and that he had reached the P.O. and had found the deceased lying dead on the road. At that time, there were no other persons. Though PW2/son of the deceased has claimed that right after the occurrence, several people had arrived at the P.O. The Investigator in that case ought to have conducted the inquest examination there. There was no doubt by then that the deceased had died. If the occurrence had taken place there, then there was every possibility of presence of blood on the road.



There is no statement of the Investigator regarding finding of blood at the P.O. Two empty cartridges, some currency notes and an old spectacle ought to have been put to the forensics. It appears that the inquest was performed only in the hospital. Normally, this fact would not have raised eyebrows, but considering the fact that there is only one eye-witness, it is necessary that each and every step in the investigation need be looked at with care and circumspection, especially in the background of enmity between the parties for decades.

21. Though the proceedings for inquest under Section 174 of the Cr.P.C. has a limited scope of merely ascertaining whether a person has died under suspicious circumstance or has met an unnatural death and if so, what is the apparent cause of death. As also, under some circumstances the place where the dead-body was found and the time, the questions regarding the details as to how the deceased was assaulted or who assaulted him/her or



under what circumstances, he/she was assaulted is fallen to the ambit and scope of the proceedings under Section 164 of the Cr.P.C.

22. However, in the present case, if the inquest would have been performed on the Jamalpur-Munger road, the fact of the deceased having been shot at while travelling in an auto while coming from Jamalpur would have been proved. [Refer to ***Pedda Narayana & Ors. vs. State of Andhra Pradesh, 1975 (4) SCC 153; Sri. Sambhu Das @ Bijoy Das & Anr. vs. State of Assam, 2010 (10) SCC 324; Radha Mohan Singh @ Lal Saheb & Ors. vs. State of U.P., 2006 (2) SCC 450***].

23. We have nothing on record to conclusively hold that the deceased was shot in a moving vehicle and the miscreants ran away. The vehicle and the fellow travellers also were never to be found during the course of investigation. In fact, no attempt was made by the Investigator to trace the auto driver and the fellow travellers, which effort was not very



difficult.

24. It was argued on behalf of the appellants that the sole eye-witness, viz., PW2 is related and interested and, therefore, no implicit reliance could be placed on him.

25. A related witness cannot be termed as an interested witness per se. He can also be a natural witnesses. If an offence is committed in his presence, he assumes the position of a natural witness. If his evidence is clear, cogent and has withstood the rigors of cross-examination, it becomes sterling, not requiring any further corroboration. A related witness would become an interested witness only when he envisages a desire of implicating an accused on purpose.

26. In ***Dalip Singh vs. State of Punjab; AIR 1953 SC 364***, the Supreme Court has held that a witness is normally to be considered independent unless he or she springs from sources which are likely to be



tainted and that usually means unless the witness has caused, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, the Supreme Court has gone on to explain, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship, far from being a foundation is often assured guarantee of truth.

27. The Supreme Court in ***Dalip Singh (supra)*** clarify that there was no attempt at sweeping generalization, but each case must be judged on his own facts.

28. In ***Masalti vs. State of U.P.; AIR 1965 SC 202***, a five Judges Bench of the Supreme Court has



categorically observed as follows:-

A. '14. There is no doubt that when a criminal court has to appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence. Whether or not there are discrepancies in the evidence; whether or not the evidence strikes the court as genuine whether or not the story disclosed by the evidence is probable, are all matters which must be taken into account. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. Often enough, where factions prevail in villages and murders are committed as a result of enmity between such factions, criminal courts have to deal with evidence of a partisan type. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard-and-fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be



accepted as correct.'

29. In ***Darya Singh vs. State of Punjab; AIR 1965 SC 328***, it has been held as follows:-

B. '7. There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield actual culprit and falsely implicate the accused.'

30. Keeping the afore-noted principles in mind, we have attempted to view the evidence of PW2 with a clear prism.

31. The claim of PW2 appears to be doubtful for the reason that consistently, PW2 has claimed that the deceased was shot at, when she was sitting in the corner seat of the auto and there were many other persons as fellow travellers. Only PW2, out of fear, came down of the vehicle and hid himself behind the same vehicle. For all practical purposes, he was exposed from all sides. There were eight persons on four motorcycles who had come to



execute the killing. P.W.2 has also asserted that when he was surrounded, he never made any attempt to run away from the place or to overpower his cousin or others. The story, therefore, of PW2 being an eye-witness to the occurrence is rendered very doubtful.

32. If enmity was the reason for eliminating the deceased, the other more important target was PW2, who was around the deceased. He claims to have hid himself only behind the auto which would have provided no cover to him and he would have been exposed from all sides and within the firing range of the miscreants.

33. Why such sympathy was shown to him is the question which remains unanswered.

34. Let us test it from another angle. The father and brother of PW2 were supposedly killed at the hands of Shankar Pandit and his associates. This could have been a good reason for Shankar Pandit to



have killed the deceased, who was a senior lady of the house, but it could have also provided a good opportunity for PW2 to frame Shankar Pandit and his associates. It is almost a cliché now to say that enmity is a double edged sword.

35. Talking about enmity between the parties, a suggestion was given to PW2 that Rahul Kumar, the person who has absconded, had masqueraded as the step-brother of PW2 and had sold the family property. In this act of Rahul, Shankar Pandit supported him. This could also have been the reason for PW2 to have avenged his enmity.

36. Keeping the afore-noted factors into account, we say that if there would be plurality of witnesses notwithstanding that no particular number of witnesses in any case is required for the proof of any fact as evidences weighed and not counted, (refer to ***Vadivelu Thevar vs. State of Madras; AIR 1957 SC 614***), we find the evidence of PW2 to be not reliable.



37. We say so not only on the basis of speculation but keeping in mind the indicators about the prosecution not being very truthful on several counts, namely, (i) No inquest having been performed at the P.O. where the I.O. had found the deceased dead; (ii) Only PW2 being the witness to the occurrence when the killing was effected at about 10:40 A.M. on a public road and in a vehicle in presence of the fellow travellers; (iii) neither the auto driver nor the fellow travellers were attempted to be searched by the Investigator; (iv) the reference of the presence of a Dy.S.P., who had actually arranged for a police vehicle for PW2 and the deceased to be taken to the hospital, having not been examined; (v) and the suggestion to PW2 about Shankar Pandit and Akash having supported the evil design of Rahul, who has absconded, in taking away the family property of PW2 as also a decade long enmity with the appellants and the earlier murders of the father and brother of the PW2



in which the role of appellant/Shankar Pandit was suspect.

38. On these grounds, we are in a quandary whither to place complete reliance on the evidence of PW2 that he had seen the appellants fire at the deceased.

39. We have yet not been able to digest the fact that PW2 was unarmed and he never ran for shelter; rather he remained within the firing range of the accused persons. When he was present along with his mother, surprisingly only the mother was chosen as the target.

40. Mr. Pravin Kumar, the learned Advocate for the informant, on such observation of the Bench, has tried to explain that only the criminal would know the motive as nobody-else could plumb the depths of the mind of the perpetrators of the crime.

41. However, we found hat it would be unsafe thus to rely upon the sole eye-witness in this case, who



has reasons to falsely implicate the appellants.

42. We are aware of the position of law that only because there is enmity and a witness is closely related to the deceased, he should always be viewed with mistrust. But the background facts and the surrounding circumstances make us somewhat wary of placing implicit reliance on PW2.

43. For the afore-noted reasons, giving benefit of doubt to the appellants, we set aside the Judgment of conviction and order of sentence and set the appellants at liberty.

44. Both the appellants are in jail. They are directed to be released from jail forthwith, if their detention is not required in any other case.

45. The appeals are allowed.

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

47. Let a copy of this judgment be communicated to the Superintendent of concerned jail for record



and compliance.

48. Let the records of these appeals be also
returned to the concerned Trial Court forthwith.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

Sunilkumar/-
manoj kumar

AFR/NAFR	NAFR
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