

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.907 of 2023

Arising Out of PS. Case No.-201 Year-2016 Thana- DIGHWARA District- Saran

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Umesh Singh @ Umesh Kumar Singh, male, aged about 61 years, S/O Late Jay Narayan Singh, R/O Village- Gopalpur, P.O.- Naraon, P.S.- Awtar Nagar, Distt.- Saran.

... .. Appellant/s

Versus

1. The State of Bihar.
2. Manu Singh @ Abhimanue Singh, S/O Dilip Singh, R/O Azad Nagar, P.S.- Chapra Muffasil, Distt.- Saran.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. M.N. Parbat, Sr. Adv.
For the Respondent No.2: Mr. Chandra Mohan Jha, Adv.
For the State : 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 : 14-03-2024

Heard Mr. M.N. Parbat, the learned Senior Advocate for the informant/appellant, who is the father of the deceased and Mr. Chandra Mohan Jha, the learned Advocate for respondent No. 2, who has been



acquitted by the judgment in appeal.

2. The State has been represented by Mr. Abhimanyu Sharma, the learned APP.

3. The present appeal has been preferred against the judgment and order dated 30.06.2023 passed by the learned Additional District and Sessions Judge-IX, Saran, Chapra in Sessions Trial No. 659 of 2017, arising out of Dighwara P.S. Case No. 201 of 2016 registered for the offences under Sections 302, 379, 120-B and 34 of the Indian Penal Code and Section 27 of the Arms Act, whereby the respondent No. 2 has been acquitted of the charges levelled against him.

4. The appellant is alleged to have fired from his weapon at the deceased, which was witnessed by P.W. 3, who is the brother-in-law of the brother of the deceased.

5. The F.I.R. has been lodged by the father of the deceased, namely, Umesh Singh (P.W. 5), who



has alleged that respondent No. 2 had earlier committed burglary in his house. However, no case was lodged against him for the reason of his being a neighbour. However, when a complaint was raised by the deceased and the informant, the respondent No. 2 and his parents got infuriated and threatened that the appellant would be killed one day. Two days prior to the occurrence also, the informant had lodged a case against the respondent for having fired at his house. On the day of the occurrence, *i.e.*, on 24.11.2016, the deceased had gone to attend the marriage of his cousin and while returning, when he stopped over for the purposes of changing the cover of his mobile telephone, the respondent and three unknown persons got into scuffle with the deceased. The deceased was divested of his personal belongings and was shot at by the respondent, as a result of which he died.

6. On the basis of the afore-noted *fardbeyan* statement of P.W. 5, a case *vide* Dighwara



P.S. Case No. 201 of 2016, dated 24.11.2016, was registered for the offences under Sections 302, 379, 120-B and 34 of the Indian Penal Code.

7. The police, after investigation, submitted charge-sheet against the appellant only, who was put on Trial.

8. The Trial Court, after having examined nine witnesses on behalf of the prosecution, did not find the accusation against the respondent to be proved and acquitted him of all the charges.

9. Shwetpurna Sharan @ Shwetpunj Sharan (P.W. 1) and Md. Jhangir @ Jhangir Alam (P.W. 2) did not support the prosecution case and were declared hostile.

10. Kundan Kumar @ Kundan Kumar Singh (P.W. 3) is the lone eye-witness of the case. He has stated before the Trial Court that on 24.11.2016, while he was sitting in the Bolero vehicle at the time of returning from *Kanakpur*, the deceased asked him to



wait for him and he himself went to fetch a cover for his mobile telephone. While sitting in the vehicle, P.W. 3 claims to have heard the sound of firing. He along with Deobrat Tiwary (P.W. 8) and Abhay Tiwary ran towards the direction from which the noise of firing was coming. When he reached near the P.O., he found that the deceased had fallen on the ground. In his presence, the respondent is said to have fired from his weapon which hit the deceased in his head. The first shot fired by him had actually hit the deceased in his stomach. The deceased died at the spot. The respondent is then said to have run away along with his associates on a motorcycle.

11. P.W. 3 claims to have chased the miscreants. The police personnel of Dighwara Police Station were also there. P.W. 3 and his associates reached the house of one Mahobia, but did not find the respondent No. 2 or any one of his associates. The cause of occurrence, according to him, is that in the



past, there had been a theft in the house of the deceased and when a complaint was raised by the deceased and his parents insinuating that the respondent had committed the offence, the deceased was threatened of dire consequences. It is only after that incident that the occurrence had taken place.

12. However, during cross-examination, P.W. 3 has categorically stated that he along with his associates was seated in the Bolero vehicle and on hearing the sound of firing, he went on foot to the P.O. When he had reached the P.O., he had found that the deceased had already fallen on the ground. Blood was present on the floor. About nine steps from where P.W. 3 was standing, the accused persons including the respondent were running away towards eastern direction. In paragraph 25 of his deposition, he has said that he and his associates did not chase the respondent then.

13. Many persons had assembled at the



place of occurrence. After he had seen the occurrence, he had telephonically informed the uncle of the deceased, who came to the P.O. Shortly, thereafter, the father of the deceased (P.W. 5) also arrived. However, before P.W. 5, the local police had also arrived there. He along with the police party then went to the house of Mahobia. At the Police Station, the Investigator inquired from him only, which statement given by him was reduced in writing, but not read over to him. Two days prior to the occurrence, the respondent had fired at the house of the deceased for which a Station Diary Entry was recorded.

14. Attention of P.W. 3 was drawn to his statement to the Investigator about the presence of Deobrat Tiwary @ Deobrat Kumar (P.W. 8) and Abhay Tiwary (not examined), but P.W. 3 claims to have denied that their references were not taken when he had made the statement before the I.O.

15. The Doctor, who conducted the *post-*



mortem examination, has been examined as P.W. 4. He had found three gunshot wounds and two other injuries, which were because of the impact of the gunshot on the deceased.

16. The father of the deceased has been examined as P.W. 5. As noted-above, he has categorically stated that he learnt about the occurrence and the assailants from P.W. 3 only. He was telephonically informed by P.W. 3 about the occurrence.

17. The statement of P.W. 3 of his having witnessed the occurrence has been completely denied by the Investigator (P.W. 6), who, in his cross-examination, has said that he had recorded the statement of Kundan Kumar, not as an eye-witness, but as a person who learnt about the occurrence.

18. One Vikash Kumar, who was examined as P.W. 7, has also not supported the prosecution case. So is the case with Deobrat Kumar @ Deobrat Tiwary



(P.W. 8).

19. The FSL report regarding the blood stained pellets was exhibited and Dr. Sunil Kumar, who was posted as Assistant Director, Biology at R.F.S.L., Muzaffarpur, has been examined as P.W. 9, who has testified that blood was detected over small areas on the exhibit marked 'B'. However, the serological report of the origin and group of blood was not provided, which was stated to be given later. There was no corresponding matching of the blood of the deceased.

20. The Trial Court, after having perused the deposition of the witnesses, came to the conclusion that the charge against respondent No. 2 was not made out. The reason suggested by the Trial Court is that there is no eye-witness to the occurrence and only later, at the Trial, P.W. 3 claimed to have seen the occurrence. However, the sequence of events narrated by him completely belied the main prosecution version and if his statements were to be taken into account,



the Trial Court observed, he would not be considered a reliable witness. From the sequence of events narrated by him, it was very clear to the Trial Court that if at all he was narrating the correct version, he had reached the P.O. only after the assault was over.

21. That apart, we have found the reason assigned by the prosecution for the murder, to be absolutely meaningless, especially, in view of the fact that no time had been given by P.W. 5 about an earlier incident of theft in the house of the deceased in which suspicion veered around the respondent. Had that been true, the deceased or his parents would not have been content by only raising a protest before respondent No. 2 and his parents. The earlier case lodged by P.W. 5 against respondent ended in acquittal, which fact has also been admitted by P.W. 5 during his cross-examination.

22. Thus, it appears that the relationship between the appellant/P.W. 5 and respondent No. 2



had been far from cordial and the possibility of such false implication cannot be ruled out.

23. For the paucity of any direct evidence of the deceased having been killed at the hands of respondent No. 2, the charge against respondent No. 2 could not be proved.

24. We do not find any perversity in the judgment of the Trial Court in acquitting respondent No. 2 of all the charges.

25. The judgment, under appeal, does not require any interference.

26. There is no merit in this appeal and the same is, therefore, dismissed.

(Ashutosh Kumar, J)

(Khatim Reza, J)

Praveen-II/-

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