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**(2003) 11 PAT CK 0081**

**In the Patna High Court**

**Case No : Criminal Appeal (DB) No. 360 of 1999**

Baski Singh

APPELLANT

Vs

State of Bihar

RESPONDENT

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**Date of Decision : 28-11-2003**

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 302

**Citation :** (2004) 1 BLJR 306 : (2004) 1 PLJR 675

**Hon'ble Judges :** Sachchidanand Jha, J;Braj Nandan Prasad Singh, J

**Bench :** Division Bench

**Advocate :** Anjana Prakash, Rakesh Kumar Sinha and Shivendra Kumar Sinha, for the Appellant; Ashwini Kumar Sinha, APP, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

B.N.P. Singh, J.—Though appellant stood charged both under Sections 302 and 307 of the Indian Penal Code (IPC) he suffered conviction only on the first count, on being acquitted of the offence u/s 307, IPC, for insufficiency of evidence.

2. Put up briefly, essential facts are these. Sometime after midday on 24th May, 1995, while Jagarnath Singh was returning after selling vegetables, he was intercepted by four persons including the appellant, near Khadi Bhandar, Manihari, who asked him for payment of unauthorised toll. It was alleged that as he did not oblige them, appellant took out pistol, and on chase though fired shot on him, aim was lost. The alarms raised by Jagarnath Singh brought a number of persons there who chased appellant, and it was alleged that in the process of being chased, appellant fired shots on Dilip Singh when he was about to apprehend him, and said Dilip Singh eventually dropped dead on sustaining injuries on his hand and below neck. A police case at about 16 hours on 24th May, 1995, was instituted in the State Dispensary on behest of said Jagarnath Singh. Investigation followed in course of which statements of witnesses were recorded, inquest report over the dead body of Dilip Singh was prepared by the Police Officer who got autopsy held a doctor and on conclusion of investigation,

laid charge sheet before the Court.

3. After commencement of trial, the State examined seven witnesses to establish guilt of the appellant, and though two of them, namely, Kesho Singh (PW 6) and Pawan Kumar Misra (PW 7) had turned volte face to the State, the trial Court placing reliance on the testimony of the eye witnesses and also medical evidence of the doctor, recorded finding of guilt convicting appellant u/s 302, IPC and sentenced him to suffer life imprisonment on that count.

4. The defence of the appellant was that of bald innocence, and he ascribed his false implication for no good reason. Defence had, however, not chosen to examine any witness. We may first notice evidence of witnesses, some of whom are while ocular others were of ancillary nature. Though Masudan Singh (PW 3) denied preparation of inquest report over the dead body by the Police Officer in his presence, he acknowledged his signature on the inquest report. Raghunath Singh (PW 5) states that when he was grazing cattle over Pir Dargah, he heard sound of firing. He noticed many persons chasing Baksi Singh, the appellant. He too chased him for a while, and when he returned, he found Dilip Singh shot dead. Those who were chasing Baksi Singh informed him that the appellant had shot dead the deceased. Though he did not claim to be ocular witness to the killing of the deceased, he noticed Dilip Singh with firearms wounds, and that apart, he was informed also about killer of the deceased, who happened to be the appellant. Though PW 6 heard sounds of firing and noticed Dilip Singh dropped dead, he, did not claim to be an eye witness to the killing of the deceased. Pawan Kumar Mishra (PW 7) had expressed his complete ignorance about material particulars of the incident.

5. Reiterating his earliest version, Jagarnath Singh (PW 2), who was maker of fardbeyan, states that when he was returning from Manihari Market after selling vegetables, he met four persons including the appellant near Khadi Bhandar, who asked him for payment of unauthorised toll, and on his refusal, the appellant on chase, fired shots though the aim was lost. When he raised alarms, people, who collected there, chased appellant, and when Dilip Singh was about to apprehend him, he fired shots on him, who on sustaining injuries on neck dropped dead. He had given his fardbeyan to the Police, pursuant to which investigation had followed.

6. Yet another witness, namely, Baleshwar Singh (PW 4) too is a witness to the killing of the deceased, as he says that while he was sitting in Khadi Bhandar, he noticed appellant and three others committing extortion from Jagarnath Singh, who had resisted their move. However, when appellant fired shots on him, the aim was lost. When alarms were raised, the appellant, who held fire arms was chased and while Dilip Singh was about to nab him, the appellant fired shots on him from close range when Dilip Singh on sustaining injuries on hand and chest, dropped dead.

7. Dr. Sudhir Kumar Sinha (PW 1), who stated to have held autopsy over the

dead body of the deceased, noticed one punctured wound with lacerated edge over lower part of neck, and one wound over the back of neck. Though both the wounds were communicating to each other, the doctor also found a lacerated wound about 4" x 3" (covering half including left thumb of left hand) with blackening, all around the wound over left hand with absence of skin and portions of muscles also. The first and second injury in estimation of the doctor, were caused by a penetrating weapon, may be bullet (clean bullet), and as for injury No. (iii) too, finding of the doctor was that this injury too was caused by fire arm. Injury Nos. (i) and (ii) were sufficient in ordinary course of nature to cause death. This is all the evidence that has been adduced by the State.

8. Criticising the positive findings recorded by the doctor, learned counsel would urge that the doctor's finding was not with the tune of the evidence of the ocular witness, as projectile discharged from firearms were not expected to cause punctured wound, which is essential feature of wounds caused by sharp edged weapon. Contentions were raised that fardbeyan of Jagernath Singh too was a tainted and anti dated document which was brought into existence simply to modulate the finding of the doctor. Grievance of the learned counsel was that to impeach credibility of this document which was shown to be sheet anchor of the prosecution, volley of questions could have been put to the Investigating Officer, but as the Police Officer was not examined, the defence was seriously prejudiced on that count. Credibility of this document was criticised also in the backdrop of evidence of none else but Jagernath Singh (PW 2) and it was submitted that if narration made by this witness was to be given credence, his statement was recorded at the Police Station and not State Dispensary, which is in contrast to the case of the State that fardbeyan of Jagernath Singh was recorded at State Dispensary at 16 hours on 24th May, 1995.

9. Unable to find any meaningful criticism the other submission was that taking the prosecution case to be true on face value, the intention of the appellant would not have been to kill Dilip Singh, as even if sequence of events led by the prosecution, preceding the incident, was accepted, appellant had some sort of altercation only with Jagarnath Singh, and he had no axe to grind against the deceased, and that apart, quite a good number of persons had allegedly chased the appellant and there was no good reason as to why he would have picked up the deceased for killing. At first blush though this argument appears to be attractive, but is bereft of merit.

10. True it is that though usually projectiles discharged from firearm would cause lacerated wounds, if we give consideration to the finding of the doctor, it would be noticed that apart from punctured wound, he had noticed that the wounds had lacerated edge which prominently signifies feature of laceration. To a pointed question by the trial Court, the doctor expressed his opinion that when projectile hits at a place and after reflecting, it hits at another place, injuries will be termed to be caused by "clean bullet" and though such terms may not be found in medical jurisprudence equivalent word lie "richo chetting" bullet can be found.

HWV Cox, a celebrated author of Medical jurisprudence and Toxicology, says that factors such as range and gas penetration greatly modify the size of the wound. At certain distance - which varies greatly according to circumstances, there will be no central hole, only a diffuse peppering with shot and this state of affairs will continue until maximum penetrating range of the weapon is reached, and that apart, in India particularly infinite variety of old and home made weapons such as country made guns make interpretation of gun shot injuries some times extremely difficult unless particular weapon can be obtained for test firing. In view of these views expressed by the author, injuries found on the deceased by discharge of the projectile, cannot be said to be unusual feature of fire arm wounds.

11. True it is that if sequence of events alleged by the prosecution were to be given any significance, the deceased had some sort of wordy duel only with Jagernath Singh, preceding the incident, when appellant and his associates had been insisting on him for payment of unauthorised tolls, but evidences available on the record, which are unimpeachable, amply suggest that the appellant had chosen Dilip Singh for shoot out because it was Dilip Singh, who was about to apprehend him, and hence, apprehending his apprehension by Dilip Singh, he had chosen to eliminate him and there appears to be nothing unusual about it and the offence allegedly committed by the appellant, in our opinion, would squarely fall within the mischief of Section 302, IPC.

12. We are not oblivious that some stray statement had been made by Jagernath Singh (PW 2) about his statement having been recorded at the Police Station, which admittedly runs counter to the fardbeyan which shows recording of statement of this witness by the Police Officer at State Dispensary. But we are of the view that such stray statement cannot be the sole criterion for eroding the probative value of entire testimony of witnesses who have been found otherwise credible. The Investigating Officer, as has been urged on behalf of the defence, was not examined at trial, and we have noticed that though attention of Baleshwar Singh (PW 4) had been drawn by the defence to show that narrations made by this witness was not in consonance with his earlier version which he rendered before the Police, but on this score we find that those questions were not on material particulars of the incident to discredit the witness. Had the Investigating Officer been examined true it is that some questions would not have remained unanswered, which, we find, are not for much significance. Our attention has also been drawn by the learned counsel for the appellant to the evidence of Jagernath Singh (PW 2) and it is submitted that as evidence of this witness remained inconclusive due to he being not available for further cross-examination by the defence, his evidence could not be taken into consideration in entirety to judge culpability of the appellant. However, we find that this witness was cross examined by the appellant and simply because his cross examination was not conclusive, his entire evidence available on the record should be wiped out, was not a valid ground. Other ground canvassed before us was that the appellant had remained in custody for a considerable period but once the offence

alleged against him falls entirely within the four corners of Section 302, IPC, we are afraid, that this circumstance even if considered to be mitigating, can be taken into consideration to reduce the sentence.

12. In the circumstances, while upholding the findings recorded by the Court below, we find that there is not even little scope for interference. This appeal is accordingly dismissed.

S.N. Jha, J.

13. I agree.