

**(2000) 04 PAT CK 0020**

**In the Patna High Court**

**Case No :** Criminal Appeal (DB) No. 476 of 1987

Ramgati Singh, Mahendra Singh and Mahesh Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

**Date of Decision :** 28-04-2000

**Acts Referred:**

Arms Act, 1959 — Section 27

Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 34

**Citation :** (2000) 3 PLJR 663

**Hon'ble Judges :** R.N. Prasad, J;M.L. Visa, J

**Bench :** Division Bench

**Advocate :** Rana Pratap Singh and Bindhyachal Singh, for the Appellant; Aswini Kumar Sinha, for the Respondent

**Final Decision :** Allowed

## Judgement

M.L. Visa, J.—This appeal is directed against the judgment and order dated 25.8.87 passed by the 2nd Addl. Sessions Judge, Patna in Sessions Trial No. 327 of 1983 convicting and sentencing all the three Appellants to undergo imprisonment for life u/s 302/34 of the Indian Penal Code (in short, I.P.C.) and to undergo R.I. for three years each u/s 27 of Arms Act. Both the sentences have been ordered to run concurrently.

2. The case of prosecution, in short, as disclosed from the fardbeyan (Ext. 3) of informant Lal Bihari Mistri (PW 3) is that on 3.5.82 his villager Jamun Musshar had engaged his men for working in a brick-kiln of one Sampat Singh of his own village. At that time one Naresh Singh armed with a gun came there and got the work stopped saying that labourers of the village had stopped working for the "kurmis" and, therefore, the labourers would not be allowed to work for Sampat Singh. There was a firing from both the sides but nobody was injured. On the next day, i.e., on 4.5.82 Appellant Mahesh Singh and Ramgati Singh from the roof of the house of Jai Mangal Singh and Appellant Mahendra Singh and co-accused Krishna Singh from the roof of house of Appellant Mahendra Singh

started firing from their guns and when Ganesh, son of informant, after opening the door of his house came out for urinating when one gunshot hit him on his chest as a result of which he fell down and died. At that time the informant was returning to his house from flour mill and had reached near the house of one Diwanjee from where he saw the occurrence. When he came to his house he saw his son Ganesh had already died. On the basis of fardbeyan (Ext. 3) a formal F.I.R. (Ext. 4) against all the three Appellants, co-accused Krishna Singh and some unknown persons was lodged under Sections 147, 148, 149 and 302 I.P.C. and 27 of Arms Act. After investigation charge sheet under the aforesaid sections was submitted and the case after taking cognizance was committed to the court of Sessions where the charges under Sections 302/149 of I.P.C. and 27 of Arms Act were framed against the Appellants and co-accused Krishna Singh. The case of defence as it appears from the trend of cross-examination of prosecution witnesses is that the deceased was shot at by some naxalites and Appellants have been falsely implicated in this case. After trial all the three Appellants were found guilty and were convicted and sentenced as indicated above. Co-accused Krishna Singh was not found guilty and he was acquitted.

3. In order to prove its case the prosecution has examined five witnesses. Lal Bihari Mistri (PW 3) the informant and Daulatia Devi (PW 2) the wife of informant, are said to be eye witnesses to the occurrence. Kuldeep Bhagat (PW 1) has been tendered. Dr. Jawahar Lal (PW 4) had conducted the post mortem examination on the dead body of the deceased. Deo Raj Singh (PW 5) is the I.O.

4. Dr. Jawahar Lal (PW 4) in his evidence has stated that on 5.5.82 he held post mortem examination on the dead body of the deceased and found one circular lacerated wound of 1/2" diameter with charred and inverted margin into thoracic cavity deep on the front of right side of chest just below the clavicle and surrounding skin was not tatooed and one circular lacerated wound of 1 1/4" diameter with irregular margin on right side of back just below the scapula and surrounding skin was not tatooed into thoracic cavity deep. According to him one injury was wound of entry and another injury was wound of exit and both the injuries were caused by fire arm and injuries were sufficient to cause death in ordinary course. His evidence shows that son of informant died of fire arm injuries. The defence has also not challenged that the death of son of informant was result of firing from fire arm because it is the own case of defence that son of informant was killed in firing by some naxalites.

5. Now on the point of commission of offence by the Appellants there are only two witnesses claiming to be eye witnesses who are informant (PW 3) and his wife Daulatia Devi (PW 2). Lal Bihari Mistri (PW 3) in his evidence has first stated that at the time of occurrence he was near his house and again he has stated that he and his wife both were outside his house, when he saw Appellants and co-accused Krishna Singh on the roof of Jai Mangal Singh carrying rifles and guns and when his son came out of the house for urinating all the four persons fired at him, as a result of which one shot struck the chest of his son and after crossing

his chest struck the plank of the door and his son went upto the "darwaja" where he fell down and died. He and his wife out of fear entered his house, in the evening police came and recorded his statements.

6. Daulatia Devi (PW 2), wife of informant, has stated that the Appellants and co-accused Krishna Singh were at the roof of the house of Jai Mangal Singh and all were carrying guns and when her son Ganesh came out of his house for urinating the Appellants and Krishna Singh fired at him and one shot hit the chest of her son and after crossing his chest struck the plank of door of her house and her son fell down and died.

7. The informant in his fardbeyan has stated that the Appellants Mahendra Singh and Ramgati Singh were on the roof of house of Jai Mangal Singh and Appellants Mahesh Singh and co-accused Krishna Singh were on the roof of house of Appellant Mahendra Singh from where they all fired but in his evidence has stated that all four accused persons were at the roof of the house of Jai Mangal Singh. The informant in his fardbeyan has stated that one day prior to occurrence there was firing between two groups in his village but in his evidence he has denied any firing prior to occurrence. He has further stated that all his villagers are in league with the Appellants and are his enemies. Deo Raj Singh (PW 5), the I.O., in his evidence has admitted that one day prior to occurrence he had received information that naxalites were firing in the village of informant and on the date of occurrence when he reached the village of informant he found that senior police officers had already reached the village but he does not know in what connection they had gone there. He has further stated that he did not investigate the matter whether from the roof of the houses of Jai Mangal Singh and Mahendra Singh it was possible to fire at a person standing near the "darwaja" of the house of informant. He has also admitted that he does not know whether surrounding the houses of Jai Mangal Singh and Mahendra Singh there are other high houses. In para 19 of his evidence he has admitted that when he reached the place of occurrence all the villagers were absconding except the witnesses of this case. He has admitted that the informant before him had stated that the Appellants fired from the roof of houses of Jai Mangal Singh and Appellant Mahendra Singh.

8. Considering the evidence of record we find that the informant has given different account of firing before police in his fardbeyan and in his evidence. As stated above, in fardbeyan he has stated that the Appellants fired from the roof of the houses of Jai Mangal Singh and Appellant Mahendra Singh whereas in his evidence he has said that all fired from the roof of Jai Mangal Singh. Jai Mangal Singh has not been examined in this case. Besides this in fardbeyan the informant has stated that at the time of occurrence he was returning from a flour mill and when he reached at the house of Diwanjee he saw the Appellants but in his evidence he has stated that at the time of occurrence he was out side his house.

9. The defence has drawn the attention of Daulatia Devi (PW 2) that before I.O.

she did not tell that firing on her son was made from the roof of the house of Jai Mangal Singh and she also did not tell that all the three Appellants and co-accused Krishna Singh had fired from the roof of house of Jai Mangal Singh. She has denied both the suggestions but then Deo Raj Singh (PW 5), I.O., in his evidence has deposed that this witness had not stated before him that her son was fired at from the roof of house of Jai Mangal Singh and has also not stated that all accused persons including the Appellants fired from the roof of the house of Jai Mangal Singh and had simply stated that when her son came out of her house for urinating he received one gunshot injury. In view of this fact the evidence of Daulatia Devi (PW 2) that she saw the Appellants firing at her son from the roof of house of Jai Mangal Singh cannot be accepted. Now there remains the evidence of informant only which is also not convincing because of the contradictions in his evidence and in the fardbeyan as discussed above. The evidence of Dr. Jawahar Lal (PW 4) that he found the wound of entry with charred margin negatives the case of prosecution that the deceased was shot at from the roof of a house because in that case margin of wound would not have been charred, which is possible only when the firing is from a closed range. The evidence of Deo Raj Singh (PW 5) that during the course of investigation he came to know that in the village firing was continuing since one day prior to the occurrence and before his arrival at the place of occurrence, senior police officers had already reached there and his evidence that he does not know why he had gone to the village of informant are indicative of supporting the case of defence that firing in the village of informant had started one day prior to the occurrence. The informant also in the fardbeyan has admitted that there was firing between two groups of his village one day prior to occurrence but he has not given any reason that why on the next day the Appellants all of a sudden fired at his son when on the previous day they were not among the persons who were engaged in firing. The case of defence that son of informant died in firing made by some naxalities which was started one day prior to the occurrence and which continued till the date of occurrence and the evidence of I.O. admitting firing from one day prior to occurrence and the contradictory evidence of informant make the case of prosecution wholly unreliable and we find that the prosecution has not been able to prove its case against the Appellants beyond all reasonable doubts.

10. In the result, this appeal is allowed. The Appellants are acquitted and the judgment and order of the court below convicting and sentencing the Appellants is hereby set aside. As the Appellants, are on bail they are discharged from the liability of their bail bonds.

R.N. Prasad, J.

11. I agree.