

(2019) 01 PAT CK 0009

In the Patna High Court

Case No : Criminal Appeal (DB) No. 589, 657 of 2013

Siya Ram Bind @ Shiya Ram Bind

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 08-01-2019

Acts Referred:

Indian Penal Code, 1860 — Section 147, 148, 149, 201, 302

Arms Act, 1959 — Section 27, 27(i)

Code of Criminal Procedure, 1973 — Section 161, 313

Citation : (2019) 01 PAT CK 0009

Hon'ble Judges : Rakesh Kumar, J;Prakash Chandra Jaiswal, J

Bench : Division Bench

Advocate : Ajit Kumar Singh, Ajay Mishra

Final Decision : Dismissed

Judgement

PRAKASH CHANDRA JAISWAL

1. In both the appeals, total three appellants were tried together, convicted and sentenced by a common judgment passed by learned Adhoc Additional Sessions Judge 1st, Munger (hereinafter referred to as the "Trial Judge") and as such, both the appeals were taken up together and are being disposed of by this common judgment.

2. Two appellants in Cr. Appeal (DB) No. 589 of 2013 namely Ajay Bind and Hansa Bind by judgment dated 05-06-2013 passed in Sessions Trial No. 534 of 2008/Sessions Trial No. 137 of 2010 were convicted for commission of offence under Sections 147, 148, 201/149 and 302/149 of the Indian Penal Code, 1860 (hereinafter referred to as "I.P.C."), whereas by the same judgment, the sole appellant Siya Ram Bind {in Cr.Appeal (DB) No. 657 of 2013} was convicted for commission of offence under Sections 148, 201/149 and 302/149 of the I.P.C. and Section 27(i) of the Arms Act, 1959 (hereinafter referred to as "Arms Act"). By order dated 06-06-2013, all the aforesaid three appellants under Section 302/149 of the I.P.C. were sentenced to undergo imprisonment for life and to

pay a fine of Rs. 10,000/-(ten thousand) each. In default of payment of fine, they were directed to further undergo rigorous imprisonment for six months. Under Section 148 of the I.P.C., by the same order, all the three appellants were sentenced to undergo rigorous imprisonment for two years and under Section 201/149 of the I.P.C., all the three appellants were sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs. 5,000/-(five thousand) each. In default of payment of fine, they were directed to further undergo rigorous imprisonment for three months. The appellant Siya Ram Bind {in Cr.Appeal (DB) No. 657 of 2013} under Section 27(i) of the Arms Act was sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs. 2,000/- (two thousand) and in default of payment of fine, he has been directed to further undergo rigorous imprisonment for one month. However, no separate sentence was passed for offence under Section 147 of the I.P.C. All the sentences were directed to run concurrently.

3. Short fact of the case is that on 05-05-2007 at about 11:00, one Prem Kumar @ Chunnu (P.W.4) submitted a written report addressed to officer incharge, Mufassil Police Station, Munger. In the written report, it was stated that on the same date i.e. on 05-05-2007 in the morning at 07:00 through a boat, he alongwith his brother Anjani Kumar Singh @ Banti (deceased) had crossed river Ganga to Mauja Tarapur in Jarlahiya diyara with a view to plug vegetable (ijoy) from his field situated in the said diyara. While they were plucking ijoy (parwal), at about 8:30 AM - (1) Siyaram Bind (appellant in Cr. App. DB No. 657/13) carrying rifle in his hand, (2) Prakash Bind (since absconder) carrying gun, (3) Bigan Bind (since absconder) carrying gun, (4) Ajay Bind (appellant no. 1 in Cr. App. DB No. 589/13) carrying musket in his hand, (5) Hansa Bind (appellant no. 2 in Cr. App. DB No. 589/13) carrying country made pistol in his hand along with 8-10 unknown accused persons, who were also variously armed, arrived there and they asked the informant and his brother not to pluck ijoy (parwal) and he claimed that he will take away the entire crop and the informant and his brother were threatened by them to return back and never come to his land. The said action was opposed by both i.e. informant & deceased and thereafter, altercation started. Subsequently, Siyaram Bind (appellant in Cr. App. DB No. 657/13) using filthy language exhorted other accused persons and thereafter, Prakash Bind (absconder) fired from his gun on informant side, however the firing did not hit them. Again, Bigan Bind (absconder) from his gun fired, which did not hit them and only thereafter, Siyaram Bind (appellant in Cr. App. DB No. 657/13) fired from his rifle, which hit the neck of brother of the informant, namely Anjani Kumar Singh @ Banti (deceased), whereby he instantaneously died there. The informant, with a view to save his life, fled up to some extent and concealed himself in bush and started waiting for return of accused persons. After some time, he saw that Ajay Bind (appellant -1 in Cr. App. DB No. 589/13), Hansa Bind (appellant-2 in Cr. App. DB No. 589/13), Siyaram Bind (appellant in Cr. App. DB No. 657/13), Prakash Bind (absconder), Bigan Bind (absconder) with all unknown accused persons with intent to dispose of the dead body tied both legs of his

brother (deceased) and started dragging him to the bank of river Ganges and threw it. The informant claimed that the said occurrence was seen by other witnesses, who were also plucking ijoy (parwal) in their nearby fields, namely Sachidanand Singh (P.W.1), Rajesh Kumar (not examined), Murari Singh (P.W.3). The informant in his written report requested the officer incharge to take stringent legal action against accused persons and also for taking step for searching the dead body. The said written report was under signature of the informant Prem Kumar @ Chunnu (P.W.4). As a witness, Sachidanand Singh (P.W.1) and one Rajesh Kumar (not examined) put their signature.

4. On the basis of said written report, on the same date i.e. on 05-05-2007 at 11:00 AM, a formal F.I.R., vide Mufassil P.S. Case No. 89 of 2007, was registered for commission of offence under Sections 147, 148, 149, 302, 201 of the I.P.C. and Section 27 of the Arms Act against:

- (1) Siyaram Bind (appellant in Cr. App. DB No. 657/13),
- (2) Prakash Bind (absconder),
- (3) Bigan Bind (absconder),
- (4) Ajay Bind (appellant-1 in Cr. App. DB No. 589/13),
- (5) Hansa Bind (appellant-2 in Cr. App. DB No. 589/13) and 8-10 unknown accused persons.

5. During investigation, the accusation was found true and as such, on 16-10-2007 chargesheet was submitted against all the five F.I.R. named accused persons showing Siyaram Bind (appellant in Cr. App. DB No. 657/13), Prakash Bind and Bigan Bind as absconder. Thereafter, on 18-10-2007 learned Chief Judicial Magistrate, Munger took cognizance of the offences. Subsequently, on 15-05-2008, the case of Hansa Bind and Ajay Bind (both appellants in Cr. App. DB No. 589/13) was committed to the court of sessions. The case of Siyaram Bind (appellant in Cr. App. DB No. 657/13) was committed to the court of sessions on 23-01-2010 showing Prakash Bind and Bigan Bind as absconder. After commitment of case of two accused namely Ajay Bind and Hansa Bind (both appellants in Cr. App. DB No. 589/13), on 25-07-2008 against both of them charge was jointly framed under Sections 302/149, 201, 147 and 148 of the I.P.C. and subsequently, after commitment of case of Siyaram Bind (appellant in Cr. App. DB No. 657/13), on 16-09-2010 separately charge was framed against him under Sections 148, 302/149, 201/149 of the I.P.C. and Section 27 of the Arms Act. Thereafter, on 28-10-2010, both the cases were amalgamated and joint trial proceeded.

6. In the case, to establish its case on behalf of the prosecution, altogether six witnesses were examined. Out of six witnesses, P.W.1 Sachidanand Singh (uncle of the deceased), P.W.2 Chandra Shekhar Singh (another uncle of the deceased) and Murari Krishan Singh (independent witness) were examined as eye-witnesses to the occurrence. P.W.4 Prem Kumar @ Chunnu, who is informant and

brother of the deceased, too stood as eye-witness to the occurrence. Dr. Ram Preet Singh, who conducted post-mortem examination on the dead body, was examined as P.W.5 and the investigating officer Madan Mohan Prasad was examined as P.W.6.

7. After completion of the prosecution evidence, the evidences and circumstances collected during trial were explained to accused persons (appellants) and their statement under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') was recorded on 01-03-2012, in which, they claimed to be innocent and they also examined one witness as defence witness namely Jagdish Singh (D.W.1). In defence, though at the stage of recording statement under Section 313 Cr.P.C., no such plea was taken, but at the defence stage, only one defence witness was examined with a plea of alibi. After examining entire evidence, the learned Trial Judge by the impugned judgment has convicted and sentenced the aforesaid appellants and the said judgment has been assailed by the appellants in appeals.

8. Sri Ajit Kumar Singh, learned counsel for the appellants in both the appeals, after referring to entire evidence, has highlighted that the prosecution case appears to be improbable. He submits that the witnesses, who have claimed to be eye-witness in their evidence, have stated that even after two firing, which were made by Bigan (absconder) and Hansa (appellant -2 in Cr. App. DB No. 589/13), they were not frightened nor they fled away and third shot given by the appellant Siyaram (in Cr. App. DB No. 657/13), hit the deceased. Sri Singh tried to persuade the Court that this situation appears to be not normal and it creates doubt on the presence of those witnesses at the place of occurrence. He has further argued that during entire evidence, prosecution has not brought any material to show as to what was the motive for committing such occurrence, however during trial, two witnesses have developed a case, as if, the appellants were demanding jaxnkjh (rangdari) from the informant and deceased, whereas during investigation, those witnesses had not stated those facts under Section 161 of the Cr.P.C.

9. Sri Ajit Kumar Singh, learned counsel for the appellants has argued that it appears that since the appellants were doing the work of cVbZnkj (bataidar) on the land of informant and informant was trying to dispossess them, in a case of 'no evidence', they have falsely been implicated. He submits that it appears that in the case, occurrence had taken place at some other place and subsequently, the present case has been instituted. He submits that the prosecution, to prove its case, has not brought any independent witness. Even one witness i.e. P.W.3, who has claimed to be eye-witness, was xksfr;k (gotiya) of the informant and in absence of any independent witness, according to Sri Singh, it would not be proper to rely on the evidence of interested witness. He has argued that the prosecution has miserably failed to establish as to how and from which place, dead body was recovered.

10. According to Sri Singh, learned counsel for the appellants, the medical

evidence does not corroborate the oral evidence. He submits that the witnesses, who have claimed to be eye-witnesses, are consistent on the point that shot given by the appellant Siyaram Bind (in Cr. App. DB No. 657/13) from his rifle hit the neck of the deceased, whereas as per post-mortem report, the bullet hit the backside and it exited from the neck. Besides this, it has been argued that though, it was case of the prosecution that after the brother of the informant was killed, his both legs were tied by rope and dead body was dragged for about more than 600 yards, even then, on the dead body, only entry and exit fire arm wound were noticed. Besides this, below knee, some scratches were noticed by the doctor. According to Sri Singh, non-finding of scratch on the whole body of the deceased demolishes the case of prosecution that after the death, dead body was dragged by tying his legs. On aforesaid ground, it has been argued that prosecution has failed to establish its case beyond all reasonable doubt and as such, it is a fit case, in which, this Court may interfere with the impugned judgment of conviction and sentence.

11. Sri Ajay Mishra, learned Addl. Public Prosecutor submits that it is consistent case of the prosecution that the occurrence was witnessed by at least four witnesses, who are consistent in their evidence. He submits that though, those witnesses were cross-examined at length, no apparent inconsistency has come on record, save and except some minor contradictions, that too relating to the case of prosecution by two witnesses that the appellants were demanding rangdari, otherwise according to Sri Mishra, in a case of specific ocular evidence, motive has got not much relevance. Besides this, he submits that motive can be gathered from the manner of incidence. He submits that it is case of the prosecution that while the informant and his brother were plucking vegetable, suddenly they were restrained by the appellants, which was opposed by them and thereafter, altercation took place and then, firing was made. According to him, this indicates regarding the motive.

12. Besides hearing learned counsel for the parties, we have minutely examined entire evidence on record. On going through the evidence on record, we are of the considered opinion that the prosecution has been able to establish its case beyond all reasonable doubt and as such, there is no reason to interfere with the judgment of conviction and sentence. Before proceeding, it would be necessary to cursorily refer the evidence.

13. The informant in the present case is none else, but own brother of the deceased, who was examined as P.W.4. In his evidence, he described as to how occurrence had taken place. This fact was categorically incorporated in the written report and the fact disclosed in the written report has been reiterated by this witness in his evidence. During his evidence, he proved the written report, which was in his writing and signature and it was marked as Ext.1. He also proved the inquest report, which was prepared on 07-05-2007 and it was marked as Ext.2. This witness in paragraph-2 of his evidence has stated that on 05-05-2007 at 08:30 in the morning, he along with his brother, namely Anjani

Kumar Singh @ Banti (deceased) was in field in Tarapur Mauja, Jarlahiya, Bahiyar. Along with him, other witnesses, namely Murari Singh (P.W.3), Sachidanand Singh (P.W.1), Chandra Shekhar Prasad Singh (P.W.2), Rajesh Kumar (not examined) were present and all of them were plucking vegetable from their field. In the meanwhile, Siyaram Singh (appellant in Cr. App. DB No. 657/13), Ajay Bind (appellant-1 in Cr. App. DB No. 589/13), Prakash Bind (absconder), Bigan Bind (absconder) and Hansa Bind (appellant-2 in Cr. App. DB No. 589/13) arrived there. Siyaram Bind (appellant in Cr. App. DB No. 657/13) was carrying rifle in his hand, Prakash Bind (absconder) carrying gun in his hand, Bigan Bind (absconder) carrying gun in his hand, Ajay Bind (appellant-1 in Cr. App. DB No. 589/13) carrying musket and Hansa (appellant-2 in Cr. App. DB No. 589/13) was carrying country made pistol. Besides them, there were about 8-10 unknown accused persons and they were also variously armed. All of them after arrival restricted the informant and his brother from plucking the vegetable with a claim that they were having right over the same and threatened informant to return back and never come back to the land. It was opposed by the informant and his brother, which resulted long altercation in between them. Thereafter, Siyaram (appellant in Cr. App. DB No. 657/13) exhorted with filthy language to kill. Accordingly, Parkash and Bigan (both absconder) fired from their gun, which did not hit the informant side. Only thereafter, Siyaram (appellant in Cr. App. DB No. 657/13) from his rifle fired, which hit the neck of Banti (deceased) and he fell down and instantaneously died. The informant anyhow could save his life and after fleeing away, he concealed himself in a nearby bush and from there, he started to wait about return of the accused persons. However, after some time, he saw that accused persons, by tying both legs of his brother, started to drag the dead body to the bank of river Ganga and threw it in the river. He stated that the occurrence was seen by Murari Singh (P.W.3), Sachidanand Singh (P.W.1), Rajesh Kumar (not examined) and Chandra Shekhar Singh (P.W.2). This witness was cross-examined at length, however in cross-examination, ofcourse certain minor contradictions were extracted, but those facts are not sufficient to see the evidence of this witness with any doubt, rather this witness in his cross-examination has further elaborately established its case. This witness was given suggestion by the defence that with a view to dispossess the appellants as bataidar, false case was instituted, however this suggestion was denied by P.W.4. Meaning thereby that the plea, which has been taken by learned counsel for the appellants at the time of hearing that with a view to dispossess the appellants as bataidar false case was instituted, is not sustainable.

14. Almost in similar manner, P.W.1 Sachidanand Singh, P.W.2 Chandra Shekhar Singh and P.W.3 Murari Singh have deposed in their evidences. They too were cross-examined at length, but nothing could be extracted to create doubt on their evidence, save and except some minor contradiction. It is true that during evidence, P.W.2 and P.W.3 had stated that the accused persons were demanding rangdari, however their attention was drawn to the previous statement, which was found not true, otherwise regarding entire evidence, they are consistent and

as such, their evidence cannot be ignored.

15. P.W.5 Dr. Ram Preet Singh on 07-05-2007 was posted as Medical Officer in Sadar Hospital, Munger and on the same date at 2:40 P.M., he conducted post-mortem on the dead body of the deceased and noticed following facts:

"Rigor Mortis absent. The body was swollen & putrified & decomposed. Eyes & tongue - protruding.

1. (a) Wound of entry - ½" x ½" left scapular region.

(b) Wound of exit - 2" x 2" in front of neck.

2. On dissection - Blood & blood clots were found under-neath above mentioned injuries. Left scapular was fractured. Blood & blood clots were found in left chest cavity & lungs was lacerated. Muscle of neck & trachea was injured with blood & blood clots.

Opinion:- Death was caused by severe shock & haemorrhage as a result of above-mentioned injuries caused by fire-arm.

Time elapsed since death - Within 32 hours (about)."

16. This witness has proved the post-mortem report, which was marked as Ext.3. In his cross-examination in paragraph-5, he stated that firing was made from some distance. It was not close range firing. Meaning thereby that evidence of P.W.5, who conducted post-mortem examination, also corroborates the prosecution case. It is consistent case of the prosecution that firing was not made from close range. During post-mortem examination, it is evident that fire-arm injury was noticed and there were some scratches near the knee of the deceased also.

17. Sri Madan Mohan Prasad, on 07-05-2007 was posted as Sub-inspector of Police, Mufassil Police Station, Munger and was examined as P.W.6. He was entrusted investigation by the officer incharge of the said police station. During evidence, he proved signature of officer incharge on the written report, which was marked as Ext. 1/1 and formal F.I.R., which was marked as Ext.4. He also proved inquest report, which was marked as Ext.2/1. In his evidence, in paragraph-1, he has described regarding inspection of place of occurrence. While he visited the place of occurrence, he could notice blood mark at different place and also mark of dragging of the deceased, ofcourse no seizure list was prepared by him. The investigating officer during investigation had recorded statement of witnesses including aforesaid witnesses, who have been examined as P.W.1 to P.W.4. In paragraph-7 of his cross-examination, contradictions were taken in respect of evidence of P.W.1, P.W.2 and P.W.3, particularly on the point of demand of rangdari by the accused persons and after going through his evidence, it is evident that those witnesses in their statement recorded under Section 161 of the Cr.P.C. had not stated regarding demand of rangdari. Meaning thereby that during evidence, those witnesses had tried to develop story

regarding demand of rangdari by the appellants.

18. It is true that during entire evidence, this fact has not been categorically established as to how and from where dead body was recovered, but on examination of evidence of investigating officer, it is evident that the dead body was tried to be located in the river, in which twice fishing was done, but all efforts went in vain. Subsequently, investigating officer on 07-05-2007 could gather an information that dead body was lying on a tractor near hospital, then he visited the hospital and he prepared inquest report. The post-mortem report makes it clear that dead body was recovered from water. Since dead body had swollen and in the evidence of doctor, this fact has also come, merely on the ground that prosecution to some extent has not established the fact regarding recovery of the dead body, the entire evidence, which is otherwise credible, cannot be ignored.

19. After going through the entire evidence, we are of the opinion that the learned Trial Judge has committed no error in passing the judgment of conviction and sentence and as such, the judgment of conviction dated 05-06-2013 and sentence dated 06-06-2013 passed by Shri Ashok Kumar Shrivastav-II, learned Adhoc Additional Sessions Judge- 1st, Munger in Sessions Trial No. 534 of 2008/ Sessions Trial No. 137 of 2010 (arising out of Mufassil P.S. Case No. 89 of 2007) is, hereby, approved and both the appeals are dismissed.

20. Both the appellants in Cr. Appeal (DB) No. 589 of 2013 were directed to be released on bail during pendency of the appeal. Since their appeal has been dismissed, their bail-bonds are hereby cancelled and both appellants, namely Ajay Bind & Hansa Bind are directed to surrender before the learned court below forthwith, failing which, the learned court below may take appropriate step for securing their attendance for serving the sentence.