

(2015) 08 PAT CK 0070

In the Patna High Court

Case No : Criminal Appeal (DB) Nos. 479 of 1992 and 4 of 1993 and Govt.
Appeal (DB) No. 22 of 1993

Subhash Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 24-08-2015

Acts Referred:

Arms Act, 1959 — Section 27
Criminal Procedure Code, 1973 (CrPC) — Section 394
Penal Code, 1860 (IPC) — Section 148, 149, 302

Citation : (2015) 08 PAT CK 0070

Hon'ble Judges : V.N. Sinha, J; Jitendra Mohan Sharma, J

Bench : Division Bench

Advocate : Pramod Kumar Singh and Krishna Prasad Singh, for the Appellant;
A.K. Sinha, APP, Advocates for the Respondent

Judgement

V.N. Sinha, J.

1. Learned counsel for the appellant Ram Muni Singh @ Ram Muni Singh Yadav (in Cr. Appeal (D.B.) No. 04 of 1993) has filed petition under section 394 of the Cr.P.C. duly affirmed by Binod Yadav son of appellant Ram Muni Singh @ Ram Muni Singh Yadav annexing photo copy of his death certificate dated 19.07.2003 indicating the date of his death as 04.03.2001.

2. In the light of death of the appellant Ram Muni Singh @ Ram Muni Singh Yadav Criminal Appeal No. 4 of 1993 abates so far he is concerned.

3. The two Criminal Appeals and the connected Government Appeal arise out of the judgment and order dated 25th November, 1992 passed by the 3rd Additional District & Sessions Judge, Arrah Bhojpur in Sessions Trial No. 273 of 1988 with Sessions Trial No. 297 of 1988, whereunder appellants of Cr. Appeal (D.B) No. 04 of 1993 have been convicted for the offence under sections 302 and 148 of the Penal Code and section 27 of the Arms Act. The sole appellant in Cr. Appeal (D.B.) No. 479 of 1992 has been convicted for the offence under sections

302, 149 and 148 of the Penal Code and section 27 of the Arms Act. The appellants in both the appeals have been sentenced to suffer rigorous imprisonment for life, three and seven years respectively under the three counts. The Government Appeal has been filed assailing the acquittal of respondent accused Nos. 2, 3, 4 and 6 for the aforesaid offence.

4. Prosecution case, as set out in the First Information Report, lodged by the informant (P.W.7) before A.S.I. of Charpokhari Police Station in presence of Bhuvneshwar Singh, Sriram Singh, Harendra Singh, Ramlayak Singh and Shiv Bihari Singh, brother of village Chaukidar in the night of 06.02.1987 at 2 A.M. is that in the previous evening on 05.02.1987 around 8 P.M. while he was taking meal, his father Ramjeet Singh and cousin Devendra Singh were talking to each other in the outer room of the house. The informant heard sound of firing, took his torch and came out of the house identified in the torch, moon light Ram Muni Singh Yadav armed with rifle, Ram Bachan Singh Yadav and Rajdeo Singh Yadav both also armed with rifle, Subhash Singh Yadav armed with gun, Ramadhar Singh Yadav armed with lathi and gun, Nandji Singh Yadav armed with lathi and pistol, Suresh Singh Yadav armed with licensed gun and others unknown standing at some distance in his sahan. It is further stated that Ram Muni Singh Yadav, Suresh Singh Yadav shot several rounds on his father and cousin Devendra Singh inflicting injuries both fell down in the room. Other accused persons also resorted to firing several rounds. Ram Muni Singh asserted that they have succeeded in their work, whereafter the accused persons went towards north-east. Hearing firing sound, alarm co-villagers Bhuneshwar Singh, Sriram Singh, Harendra Singh, Ramlayak Singh, Ram Surat Singh, Chhathu Singh and others came to the place of occurrence and also saw the occurrence as also identified the accused persons. Father of the informant succumbed to the injuries soon after the occurrence in the room itself, his cousin Devendra Singh though badly injured and was twisting, with the help of the witnesses named in the fardbeyan was being taken to Charpokhari for treatment, accused persons, however, again appeared in the way and threatened, the informant and the witnesses returned with Devendra Singh to their house. After some time many villagers assembled, with their help and support the informant and the witnesses carried Devendra Singh to Charpokhari Police Station. In the way the informant and others met brother of chaukidar who also joined the informant, others and carried Devendra Singh to Charpokhari Police Station wherefrom he was taken to Charpokhari hospital but on way to hospital he succumbed to the injuries and declared brought dead in the hospital. The informant also claimed in the F.I.R. that there is long standing enmity between his family and the accused persons as there are several cases pending between them. The informant also stated in the F.I.R. that the accused persons killed his father and cousin by inflicting fire arm injury. The informant also stated that he recorded his statement in presence of his brother Harendra Singh and the same has been read over to him and finding the statement correctly recorded he put his signature over the F.I.R. A.S.I. Charpokhari Police Station registered the F.I.R. in the same night and

dispatched the same to the court through special messenger.

5. In the light of contents of the F.I.R. A.S.I. Rajendra Paswan proceeded to conduct inquest on the dead body of Devendra Singh in the police station itself on 06.02.1987 around 4 A.M. in presence of Ram Layak Singh and Hare Ram Singh. Perusal of inquest report indicates that the deceased died as a result of fire arm injury. Inquest report of another deceased Ramjeet Singh is not on the record though the same has been marked as exhibit. Postmortem report of Ramjeet Singh is at page- 81-82 of the paper book, from which it appears that his dead body was received in the Sadar Hospital on 06.02.1987 around 1 P.M. and postmortem was also conducted almost at the same time. Other postmortem report of Devendra Singh is not on the record. Perusal of postmortem report of Ramjeet Singh, however, confirmed that he was done to death by inflicting fire arm injury. In the light of contents of the F.I.R. further statement of the informant, police statement of the witnesses as also contents of inquest report, postmortem report, scribe of the F.I.R. and investigating officer of the case submitted charge sheet against the seven accused persons named in the First Information Report. After submission of charge sheet cognizance of the offence was taken and after supply of police papers case committed to the court of Sessions. The Sessions Court framed charges against seven accused persons under order dated 09.02.1989 to which the accused persons pleaded not guilty and claimed to be tried.

6. In support of the charges ten prosecution witnesses have been examined. P.W. 2 Parsuram Singh is not named in the F.I.R. as witness but supported the case of the prosecution as also complicity of the accused persons. P.Ws. 1, 3, 4, 5, namely, Ram Surat Singh, Chhathu Singh, Sri Ram Singh, Ram Layak Singh are the eye witnesses named in the F.I.R. P.W. 6 Muneshwar Singh has been tendered. P.W. 7 Hare Ram Singh is the informant, son of deceased Ramjeet Singh. P.W. 8 Harendra Singh is also named as eye witness in the F.I.R, has also attested the same. P.W. 9 Rajendra Paswan is scribe and investigating officer of the case. P.W. 10 Dr. Akhauri Kailash Bihari is the Civil Assistant Surgeon posted in Arrah Sadar Hospital who conducted postmortem on the dead body of the deceased.

7. Learned counsel for the appellants submitted that the occurrence took place in the night of 05.06.1987 when the informant (P.W.7) was taking his dinner inside the house and the two deceased Ramjeet Singh and Devendra Singh were talking to each other in the outer room of the house, assailants came and resorted to firing on the two deceased when they were inside the room. The informant hearing firing sound came out of his house, claims to have identified the miscreants in the torch, moon light, which identification according to the learned counsel for the appellants does not inspire confidence as claim of identification made by the informant though stated in the F.I.R, the initial version of the occurrence recorded in the same night around 2 A.M appears to have been given up in Court deposition where emphasis is laid on oral dying declaration made by

Devendra Singh to the informant and witnesses. The informant and other witnesses who supported the occurrence and identification of the assailants having seen the findings of Autopsy surgeon in the postmortem report that both were shot from close range come out with the theory of dying declaration made by Devendra Singh. It is further submitted that from postmortem report of the two deceased it is evident that both the deceased must have suffered instant death no sooner they were shot from close range leading to bursting of the jaw of Devendra Singh which is evident from the evidence of Dr. Akhauri Kailash Bihari (P.W. 10) in paragraph- C & F at page-76 of the paper book as the doctor agreed with the suggestion put forth on behalf of the appellants that both the deceased suffered instant death and after receiving such injury Devendra Singh may not be in a position to speak even if he has remained alive for some time. The learned counsel further submitted that even otherwise it would appear from a bare perusal of the F.I.R. that the informant himself had come out of his house after several rounds were fired on the two deceased, in such circumstances if the two deceased had suffered the attack and killed there was no occasion for Devendra Singh to have disclosed the names of the appellants. It is submitted that the trial court itself did not rely on the identification made by informant and the prosecution witnesses, and relied on the statement made by the deceased Devendra Singh to the informant which in the light of the evidence of P.W. 10 referred to above may not be prudent for this Court to accept that the deceased Devendra Singh disclosed names of three appellants to the informant.

8. Learned counsel for the State though supported the judgment but accepted the fact that theory of dying declaration made by the deceased Devendra Singh having not been stated in the F.I.R. appears to be an after thought only with a view to enable the prosecution to stand bereft of the evidence of identification by the witnesses which otherwise does not inspire confidence.

9. We have considered the evidence of eye witnesses. P.Ws. 1, 2, 3, 4 and the informant (P.W.7), all of them had categorically deposed in Court that it was Devendra Singh who disclosed the names of three appellants as the assailants. Medical evidence of Dr. Akhauri Kailash Bihari (P.W. 10) referred to above being such that it is not possible for us to accept the claim of the prosecution that Devendra Singh was in a position to disclose the names of three assailants. The other evidence which is left for consideration is identification made by the informant and the witnesses which otherwise does not appear to be probable in view of the fact that informant on his own showing was taking meal inside the house and having heard firing sound came out of the house and claims to have identified the assailants in the sahan of the house. The assailants shot the two deceased from a very close range inside the room. The shots were fired from inside of the room, the informant had no occasion to identify the assailants in the sahan. In any case trial court itself not relied upon the identification made by informant and others it may not be safe for us to place reliance over the same in this appeal.

10. In the circumstances, we have no option but to set aside the impugned judgment of conviction and sentence and to discharge the three appellants from the charges. Subhash Singh (appellant in Cr. Appeal (D.B) No. 479 of 1992) and Suresh Singh @ Suresh Singh Yadav (appellant in Cr. Appeal (D.B) No. 04 of 1993) are discharged from the liabilities of bail bonds. Both the Criminal Appeals are allowed and Govt. Appeal (D.B.) No. 22 of 1993 is dismissed.