

Ganesh Singh Vs. the State of Bihar

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Court : Patna

Decided On : Aug-13-2013

Appellant : Ganesh Singh

Respondent : The State of Bihar

Judgement :

IN THE HIGH COURT OF JUDICATURE AT PATNA Criminal Appeal (DB) No.490 of 2012 Against the

JUDGMENT / ORDER

of sentence dated 1.5.2012/ 4.5.2012 passed by Additional Sessions Judge, Fast Track Court No. IV, Siwan in Sessions Trial No. 357/2003.

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Ganesh Singh, S/O Late Rudal Singh, resident of Gangpur Siswan, Post and P.S.- Siswan, District- Siwan Appellant/s Versus The State of Bihar Respondent/s

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Appearance : For the Appellant/s : M/s. Srinandan Singh, Gyan Prakash Ojha, Sarvesh Kumar Singh, Ashok Kumar, Advocates For the State : Mr. S.C. Mishra, APP For the Informant : M/s. Surendra Kumar Singh, Sudha Chandra, Ganesh Prasad Singh, Advocates

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA and HONOURABLE MR.

JUDGMENT

(Per: HONOURABLE MR. JUSTICE V.N. SINHA) Date:

13. 08-2013 This appeal is directed against the

JUDGMENT / ORDER

of sentence dated 1.5.2012/ 4.5.2012 passed by Additional Sessions Judge, Fast Track Court. No. IV, Siwan in Sessions Trial No. 357 of 2003 whereunder the sole appellant has been convicted for the offence under Section 302 of the Indian Penal Code, Section 27 of the Arms Act and directed to undergo rigorous imprisonment for life and to pay fine of Rs. 25,000/-, in default of payment of fine to undergo further rigorous imprisonment for one year under Section 302 I.P.C. Under Patna High Court CR. APP (DB) No.490 of 2012 dt.13-08-2013 2 Section 27 of the Arms Act appellant has been directed to undergo rigorous imprisonment for 5 years and to pay fine of Rs. 3,000/-, in default of payment of fine to further undergo rigorous imprisonment for 3 months. Both the sentences have, however, been directed to run concurrently.

2. Prosecution case as set out in the fardbeyan of Kanak Malti Devi, P.W. 3 recorded by Sub-Inspector Laxman Prasad Officer in charge Siswan P.S. is that on 18.05.2002 at 6 in the morning accused no. 4 Rajesh Singh came to her house and informed her husband the deceased, that their agnate Rudal Singh, Ganesh Singh the appellant and Sudhir Kumar Singh had asked him to inform that measurement of the land is to be taken and to come to the field as they are already there. Husband of informant Baijnath Singh took his licensed gun, cartridges and then proceeded towards the field. Informant also followed her husband. Husband of the informant reached near the field of Nand Kishore Singh at about 6.30 A.M. Rudal Singh, Ganesh Singh, Sudhir Kumar Singh his co-villager began to altercate with her, husband. Sudhir Kumar Singh snatched his licensed gun, Rudal Singh then exhorted his son, the appellant to shoot Baijnath Singh, appellant shot at her husband from his licensed pistol causing injury which led to his fall. Appellant thereafter took the licensed gun of the deceased from the

hands of his son Sudhir Patna High Court CR. APP (DB) No.490 of 2012 dt.13-08-2013 3 Kumar Singh and shot at his son on his leg and also at himself in leg. After the assault informant raised alarm, ran towards the village and came back to the place of occurrence along with police party and saw her husband is profusely bleeding. In the concluding portion of the fardbeyan informant claimed that her husband has been killed by Rudal Singh, Ganesh Singh, Sudhir Kumar Singh and Rajesh Singh after they called him for measurement of the lands.

3. In the light of the fardbeyan of P.W. 3 Siswan P.S. Case No. 36/02 dated 18.05.2002 was registered for the offence under Section 302/34 of the Penal Code and Section 27 of the Arms Act. The Officer in charge of Siswan P.S., who scribed the fardbeyan, took up investigation. In course of investigation having recorded the statement of P.W. 3 he arrested the appellant, his father Rudal Singh and son Sudhir Kumar Singh from the place of occurrence itself and thereafter recorded the counter version of the occurrence by recording the fardbeyan of appellant Ganesh Singh vide Siswan P.S. Case No. 37/02 dated 18.05.2002, which has also been proved by the Investigating Officer, P.W. 5 vide Ext. A. Perusal of Ext. A indicates that appellant Ganesh Singh along with his father and son was measuring his own lands at about 6.30 A.M. During measurement of land his agnate Baijnath Singh came armed with his licensed double barrel gun and shot at his son Sudhir Kumar Singh from his gun with Patna High Court CR. APP (DB) No.490 of 2012 dt.13-08-2013 4 an intent to kill him which was objected to by the appellant exclaiming asserting that has he (Baijnath Singh) become mad and resorting to firing but Baijnath Singh attempted another shot at the appellant causing bleeding injury just below the knee of his left leg and thigh. It is further stated in the fardbeyan of the appellant that having suffered the injury his son fell down but the appellant remained standing and shot from his licensed pistol on Baijnath Singh who died at the spot.

4. On the basis of the aforesaid fardbeyan of the appellant the counter version was numbered as Siswan P.S. Case No. 37/02 dated 18.05.2002 under Sections 324/307 I.P.C. and Section 27 of the Arms Act. Officer in charge Siswan P.S. also simultaneously took up the investigation of the counter version.

5. During investigation of Siswan P.S. Case Nos. 36/02, 37/02 the Investigating Officer made seizure at the place of occurrence and its vicinity in connection with Siswan P.S. Case No. 36/02. The two seizure list are Exts. 5, 5/1. From perusal of seizure list, Ext. 5 it appears that Investigating Officer seized from near the dead body of deceased Baijnath Singh an empty of pistol bullet, front portion of the bullet fired from the pistol, one yellow rexin belt containing 23 cartridges of 12 bore and blood stained earth. From perusal of seizure list, Ext. 5/1 it appears that the Investigating Officer Patna High Court CR. APP (DB) No.490 of 2012 dt.13-08-2013 5 seized one regular pistol 7.65 MM/32 bearing no. SI-37 2058 with magazine and 3 live bullets. In connection with Siswan P.S. Case No. 37/02 Investigating Officer seized from the field of Rudal Singh i.e. the father of the appellant one 12 bore double barrel gun bearing no. 1629 with 12 bore empty cartridge and 12 bore misfired cartridge. Aforesaid seizure list has also been admitted in evidence of the present case and marked Ext. C, which is evident from the evidence of Investigating Officer himself, paragraph 40. The Investigating Officer having made seizure referred the deceased for post mortem and the two injured i.e. appellant, his son for treatment. It appears the two injured were first sent to Siswan Referral Hospital vide O.D. slip dated 18.05.2002, Exts. B/1, B. Medical Officer at the Referral Hospital, Siswan having examined appellant and his son on the same day further referred the two injured to Sadar Hospital, Siwan for management and determination of injuries suffered by them. After making reference of the injured to the hospital Investigating Officer recorded the statement of informant Kanak Malti Devi and statement of the other witnesses including Jitendra Kumar Singh, Dilip Singh, Surendra Singh, Amarnath Singh. In the light of the seizure list, the statement of the witnesses, Investigating Officer, P.W. 5 submitted charge-sheet against all the 4 accused persons named in the fardbeyan of Siswan P.S. Case No. 36/02. P.W. 5 also found true the prosecution Patna High Court CR. APP (DB) No.490 of 2012 dt.13-08-2013 6 case set out in Siswan P.S. Case No. 37/02. Cognizance was, however, taken for the offences alleged in the fardbeyan, found true during investigation of Siswan P.S. Case No. 36/02 and the case committed to the court of sessions. During trial accused Rudal Singh left for heavenly abode, his name was deleted from the array of accused facing trial.

6. In court prosecution examined five witnesses i.e. P.W. 1 Bhagwan Singh, P.W. 2 Surendra Singh & Suren Singh, P.W. 3 informant Kanak Malti Devi, P.W. 4 Dr. Prasanna Kumar Mishra who conducted post mortem on the body of the deceased Baijnath Singh and P.W. 5 Laxman Prasad who is the Investigating Officer of both Siswan P.S. Case No. 36, 37 of 2002. Out of these five witnesses 3 are eye witnesses i.e. P.Ws. 1, 2 and 3. P.W. 2 is also a witness on the seizure list Exts. 5 & C.

7. Defence has also examined four witnesses, namely, D.W. 1 Dr. Arun Kumar who examined the appellant and his son Sudhir Kumar Singh at Siswan Referral Hospital. D.W. 2 Dr. Bhagwan Lal Singh who examined the appellant and his son at Sadar Hospital, Siwan. D.W. 3 Dr. Bishnu Kant Pandey who attended Sudhir Kumar Singh, son of appellant while he was being treated for the injuries suffered during the occurrence at P.M.C.H. D.W. 4 Deepak Singh who submitted bond in connection with surgery of Patna High Court CR. APP (DB) No.490 of 2012 dt.13-08-2013 7 Sudhir Kumar Singh at P.M.C.H.

8. Besides the ocular evidence of prosecution and defence witnesses there are documentary evidence exhibited in the trial, namely, the fardbeyan, F.I.R. and seizure list of Siswan P.S. Case Nos. 36/02, 37/02 as also the post mortem report of the deceased Baijnath Singh, Ext. 3 the injury report of the two injured i.e. appellant and his son, Exts. B, B/1, D E series.

9. From the prosecution evidence it appears that P.Ws. 1, 2 and 3 are the eye witnesses. They have supported the prosecution case that appellant, his father and son called the deceased through Rajesh Singh at about 6 A.M. on 18.05.2002 for measurement of the land. At 6.30 A.M. the deceased arrived in the field of Nand Kishore Singh where there was altercation between the deceased on one side and appellant, his father and son on the other. During altercation Sudhir Kumar Singh, son of the appellant snatched the DBBL gun from Baijnath Singh deceased, whereafter father of the appellant Rudal Singh exhorted the appellant to shoot the deceased, who took out his licensed pistol and shot him dead. Having shot at the deceased appellant took the DBBL gun of the deceased from the hands of his son Sudhir Kumar Singh and then first shot at his son on his left leg

causing injuries below the knee, thigh and thereafter shot himself in the leg. The three eye witnesses i.e. the wife of the Patna High Court CR. APP (DB) No.490 of 2012 dt.13-08-2013 8 deceased informant Kanak Malti Devi (P.W.

3) and two other co- villagers, P.W. 1 Bhagwan Singh, P.W. 2 Surendra Singh have consistently supported the aforesaid version.

10. Defence refuted the aforesaid prosecution version by categorically stating in their statement under Section 313 Cr.P.C. that the version put forth by the prosecution is only half truth as the assault was first made by the deceased from his DBBL gun causing injury to Sudhir Kumar Singh and the appellant, whereafter the appellant shot at the deceased Baijnath Singh from his pistol thrice killing him on the spot. In this connection, it was also submitted that the same version the defence has also raised in the counter case vide Siswan P.S. Case No. 37/02 on the date of occurrence itself, soon after the present prosecution case was lodged vide Siswan P.S. Case No. 36/02. In the light of the aforesaid defence version put forth by the accused appellant the defence also examined the three doctors D.Ws. 1 and 2 who attended the appellant and his son at Siswan Referral Hospital and Siwan Sadar Hospital as also D.W. 3 who attended the son of the appellant at P.M.C.H. In the light of the counter version, the material exhibit seized in connection with counter case i.e. Siswan P.S. Case No. 37/02 vide Ext. C by P.W.

5. It was submitted in the trial court as also before us that from the facts of the present case it is quite evident that assault was first made by the Patna High Court CR. APP (DB) No.490 of 2012 dt.13-08-2013 9 deceased himself from his DBBL gun on Sudhir Kumar Singh, the son of the appellant causing injury not only to Sudhir Kumar Singh but also to the appellant, appellant in self defence shot the deceased dead. In this connection, it is also pointed out that son of the appellant having suffered gun shot injury, may be in knee, thigh as also punctured wound in the stomach, chest, appellant had genuine apprehension that deceased may further cause injury killing both father and son and to prevent such assault by Baijnath Singh he shot at him in exercise of the right of private defence as is available to him under clause first, secondly of Section 100 I.P.C.

11. Learned counsel for the appellant further submitted that prosecution case as supported by the three eye witnesses that it was the appellant who shot at his son and thereafter on himself does not appear to be probable as no father would shoot his son for creating a defence for himself causing injury to the son not only in knee, thigh but also punctured wound on the stomach, chest. In this connection, he referred to the injury report of Sudhir Kumar Singh, Ext. B/1 as also the injury caused on the person of the appellant, Ext. B. For ready reference the injury found on their person is quoted hereinbelow : Ext. B/1 - Examined Sudhir Kumar Singh, aged 35 years, S/o Ganesh Singh of Vill.- Gangpur, P.S. Siswan, Dist. Siwan Patna High Court CR. APP (DB) No.490 of 2012 dt.13-08-2013 10 vide ERM 8.dated 18.05.2002 at 7.30 A.M. and noted following injuries over his body : (1) Round puncture wounds of c.m. dia present on (i) Left side of chest below left axilla-two (2) in number (ii) Inner border of left forearm - two in number (iii) Palmar surface of right hand - four in number (iv) Dorsal surface of right hand - Four in number (v) Lower abdomen on left side - Eleven (11) in number (vi) Lateral aspect of upper thigh of left side -Thirty-two (32) in number All wounds are surrounded by black areas. M/I - A old scar mark on right side of forehead A/I - Within 6 hours C/I - Firearm injury N/I - Opinion reserved as patient is being sent to Sadar Hospital for management and for determination of nature of injuries. Ext. B - Examined Ganesh Singh aged about 64 years, S/o Rudal Singh of Vill. Gangpur, P.S. Siswan, Dist. Siwan vide ERM 8.dated 18.05.2002 at 7.30 A.M. and noted following injuries over his body. (1) Round puncture wounds each of c.m. diameter with blacked Patna High Court CR. APP (DB) No.490 of 2012 dt.13-08-2013 11 area around wounds present on (i) Lower third part of front of left thigh - One in number (ii) Below left knee - One in number M/I - A mole on right side of lower chest on costal margin A/I - Within 6 hours C/I - Firearm injury N/I - Opinion reserved as patient is being referred to Sadar Hospital, Siwan for management and for determination of nature of injuries.

12. Learned counsel for the appellant next referred to the seizure list made in connection with Siswan P.S. Case No. 37/02 and submitted that along with double barrel gun no. 1629 of the deceased an empty and misfired cartridge also seized from the vacant field of father of appellant Rudal Singh near the place of occurrence. With reference to aforesaid seizure list, Ext. C it is submitted that the

story that two shots were fired by the appellant from the gun of the deceased after the gun was snatched by Sudhir Kumar Singh from the deceased and taken by the appellant does not appear to be probable as from the seizure list, it is quite evident that one fired, another misfired cartridge was recovered along with the gun. In this connection, it is further submitted that the injuries caused on the person of the appellant and his son suggests that both suffered injury from one shot Patna High Court CR. APP (DB) No.490 of 2012 dt.13-08-2013 12 made from the opposite direction as the cartridge containing pellet after being shot from gun while discharging, spread and then cause injury. It is also submitted that in the event shot from the gun was fired from close range pointing the same downwards aiming at knee of Sudhir Kumar Singh could not have caused injury to the appellant.

13. Learned counsel for the appellant further submitted that the testimony of the three eye witnesses is also not worth placing reliance. According to him informant, P.W. 3 being a lady had no occasion to come to the field for measurement of land and in fact P.W. 3 arrived at place of occurrence with Officer in Charge, Siswan P.S. So far other two eye witnesses i.e. P.Ws. 1 and 2 are concerned, from their testimony itself it will appear that they are not only chance witnesses but have been deposing for the deceased in the earlier civil litigation filed by his son in law Sambhu Nath Singh vide Title Suit No. 56 of 1994 claiming title over the land over which measurement was being taken preceding the occurrence but the suit was dismissed under judgment dated 31.03.2001, Ext. F. In the said title suit also both Bhagwan Singh and Surendra Singh deposed in favour of Sambhu Nath Singh son in law of the deceased.

14. In support of the aforesaid submissions learned counsel for the appellant placed reliance on the judgment of the Supreme Court in the case of Khuddu and others Vs. State of U.P., Patna High Court CR. APP (DB) No.490 of 2012 dt.13-08-2013 13 AIR 199.Supreme Court 1538, State of Rajasthan Vs. Sughad Singh and others, AIR 199.Supreme Court 1593, paragraph 3 and Vijayan alias Vijayakumar Vs. State Rep. by Inspector of Police, AIR 199.Supreme Court 1311, paragraph 25 and submitted that from the conjoint reading of the injury report of the son of the appellant, appellant together with the seizure list, Ext. C, there should not be any difficulty in holding that the appellant while exercising his right of

private defence in order to prevent Baijnath Singh from causing further injury to him resorted to firing by his own licensed pistol causing death of Baijnath Singh.

15. Counsel for the State, informant supported the judgment of conviction of the appellant and submitted that in view of the consistent evidence of P.Ws. 1, 2 and 3 that Sudhir Kumar Singh snatched the gun from the deceased and was holding the same until appellant having shot at the deceased with his pistol, took the gun from his son and first shot at his son and then on himself, there is no reason for this Court to accept the submission of the appellant that he exercised right of private defence qua the deceased.

16. They further referred to the three seizure list, Exts. 5, 5/1 and C prepared by the Investigating Officer, P.W. 5 and submitted that DBBL gun, one fired, another misfired cartridge of 12 bore was recovered from the vacant land of the father of the appellant Patna High Court CR. APP (DB) No.490 of 2012 dt.13-08-2013 14 which is not the place of occurrence, as according to him the place of occurrence is the field of Nand Kishore Singh. They further submitted that there is no ocular evidence to suggest that it was the deceased who first resorted to firing from his licensed DBBL gun causing injury on the person of Sudhir Kumar Singh, the appellant whereafter the appellant shot at him from his licensed pistol. They also submitted that from the fardbeyan lodged by the appellant as also his 313 Cr.P.C. statement it would appear that two shots were fired by the deceased from his DBBL gun but such fact is not appearing from the material exhibits seized vide seizure list, Ext. C.

17. Having perused the prosecution case as set out in the fardbeyan of P.W. 3 and the evidence of the eye witnesses, P.Ws. 1, 2 including the informant, P.W. 3 it is quite evident that Rajesh Singh on behalf of appellant, his father and son requested the deceased on 18.05.2002 at 6 A.M. to come to the place of occurrence for measurement of land, soon thereafter at about 6.30 A.M., he came to the field of Nand Kishore Singh, altercation took place between the appellant, his father and son on the one side and the deceased on the other. During altercation the appellant shot at the deceased from his licensed pistol being not in dispute the question which we are called upon to determine is whether the

appellant having shot the deceased took his DBBL gun from the hands of his son Sudhir Kumar Singh Patna High Court CR. APP (DB) No.490 of 2012 dt.13-08-2013 15 who had earlier snatched the gun from the deceased and then appellant fired two shots from the gun, first on his son and the other on himself.

18. True it is that ocular evidence of the three eye witnesses is consistent about the aforesaid prosecution story but such consistent prosecution ocular evidence is required to be analyzed in the light of the medical evidence as also the material exhibits collected by the Investigating Officer, P.W. 5 from the place of occurrence vide Exts. 5, 5/1 and C together with the conduct of the appellant of narrating his side of the story regarding the manner of occurrence in categoric terms right at the beginning by lodging his fardbeyan just 20 minutes after the fardbeyan of P.W. 3 on the basis of which Siswan P.S. Case No. 37/02 was registered on 18.05.2002 itself. Appellant in his statement under Section 313 Cr.P.C. also asserted that it was the deceased who first shot at his son causing pellet injury not only near his knee, thigh but also punctured wound on the stomach, chest of his son and then took another shot on him causing two pellet injuries on the appellant. The appellant shot the deceased by his licensed pistol in self defence only with a view to restrain the deceased from taking any further shot either on his son or himself. Pistol used by the appellant was also recovered by the Investigating Officer from the hands of the appellant from the place of Patna High Court CR. APP (DB) No.490 of 2012 dt.13-08-2013 16 occurrence itself, vide Ext. 5/1 together with one empty cartridge, the front portion of the used cartridge, rexin belt of the deceased containing 23 cartridges of 12 bore was also recovered from the place of occurrence near the dead body of the deceased vide seizure list, Ext.

5. 19. The material exhibits recovered from the place of occurrence and its vicinity vide seizure list, Exts. 5, 5/1 if considered along with the injury suffered by the son of the deceased vide Ext. B/1 as also the injury of the appellant, Ext. B is indicative of the fact that son of the appellant Sudhir Kumar Singh and the appellant suffered fire arm injury surrounded with black area and not charring, in the circumstances, there is no difficulty in holding that shot causing injury to them was fired from distance and opposite direction. It further appears that two shots were fired but only one of the two shots caused injury on the person of Sudhir Kumar Singh son

of appellant and the appellant. The other shot which was fired, perhaps misfired and the fired, misfired cartridge, both were recovered from the place of occurrence along with gun vide seizure list, Ext. C. In this connection, we would like to observe that material exhibits seized Vide Ext. C is indicative of the fact that the prosecution story that two shots were fired from DBBL gun, one causing injuries to the son of the appellant and the other to the appellant, does not appear to be true, probable as Patna High Court CR. APP (DB) No.490 of 2012 dt.13-08-2013 17 from the material exhibit seized from the place of occurrence it is quite evident and probable that only single shot was fired from the DBBL gun of the deceased. Single gun shot from the DBBL gun of the deceased from near distance could not have caused the nature of injuries found on the person of Sudhir Kumar Singh and the appellant. Such injuries as found on the person of Sudhir Kumar Singh and appellant by single gun shot is possible if shot is fired from distance and there is opportunity for the pellet to disburse before it strikes the target. The case of the appellant that deceased fired first shot causing injury to his son and on protest by the appellant fired another shot causing injury to him is perhaps for the reason that in the heat generated during altercation the appellant noticed the first shot fired by the deceased causing injury to his son but perhaps misunderstood the sound created by the misfired shot to be the second shot. The injuries caused on the person of Sudhir Kumar Singh, appellant and the material exhibits recovered by the Investigating Officer, P.W. 5 from the place of occurrence persuade us to hold that the prosecution story as set out by the informant, P.W. 3, the two eye witnesses in the fardbeyan as also in court is not wholly probable persuading us to further hold that the appellant fired from his pistol in exercise of right of private defence as he had genuine apprehension of being grievously injured by the deceased from his DBBL gun. Patna High Court CR. APP (DB) No.490 of 2012 dt.13-08-201

20. In view of our findings above, judgment/ order of sentence dated 1.5.2012/ 4.5.2012 passed in Sessions Trial No. 357 of 2003 is set aside. Appellant is acquitted as he was justified in exercising right of private defence. He is directed to be released forthwith, if not wanted in any other case. (V.N. Sinha, J) AFR Rajesh/- (Rajendra Kumar Mishra, J)