

Umesh Singh Vs. State

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Court : Patna

Decided On : Aug-23-2013

Appellant : Umesh Singh

Respondent : State

Judgement :

IN THE HIGH COURT OF JUDICATURE AT PATNA Criminal Appeal (DB) No.144 of 1990 =====

1. Suresh Singh son of Late Tirath Narayan Singh 2. Vijay Singh son of Sheo Shankar Singh 3. Biran Singh @ Raj Kumar Singh son of Late Munshi Singh 4. Deolagan Singh son of late Tirath Narayan Singh All resident of village- Basti, P.S.- Harnaut, Distric- Nalanda Appellant/s Versus The State of Bihar.....

.... Respondent/s With Criminal Appeal (DB) No. 233 of 1990

===== Umesh Singh son of Deo Lagan Singh resident of village- Basti, P.S.- Harnaut, District- Nalanda..... Appellant/s Versus The State of Bihar Respondent/s

===== Against the judgment of conviction and order of sentence dated 16th April, 1990 passed by Shri B. N. Sinha, 7th Additional Sessions Judge, Nalanda in Sessions Trial No. 221 of 1981 / 17 of 1990.

===== Appearance : For the Appellant/s : Mr. Vinay Kirti Singh, Advocate Mr. Vijay Kumar Verma, Advocate For the Respondent/s : Mr. Ajay Mishra, APP

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CORAM: HONOURABLE MR. JUSTICE SHYAM KISHORE SHARMA And
HONOURABLE MR. JUSTICE AMARESH KUMAR LAL ORAL

JUDGMENT

(Per: HONOURABLE MR. JUSTICE SHYAM KISHORE SHARMA) Date:

23. 08-2013 Above noted both the appeals have been taken up together because both the appeals have been preferred by the above named appellants against the common judgment of conviction dated 16th April, 1990 passed by the learned 7th Additional Sessions Judge, Nalanda in Sessions Trial No. 221 of 1981 / 17 of 1990 holding all the appellants guilty under sections 302/149 Indian Patna High Court CR. APP (DB) No.144 of 1990 dt.23-08-2013 2 Penal Code and sentencing each of them to undergo rigorous imprisonment for life. Appellant Umesh Singh was further convicted for the offence punishable under section 302 of the Indian Penal Code and section 27 of the Arms Act for which he was sentenced to undergo rigorous imprisonment for life and five years respectively. Sentences were ordered to run concurrently.

2. The occurrence relates to afternoon i.e. at 3.30 PM of 4.11.1979 for which fard-beyan (Ext.

11) of the informant Muneshwar Singh (PW

5) was recorded at Harnaut Hospital at 5.00 PM wherein he stated that Nageshwar Singh, Vijay Singh, Suresh Singh and Arun Singh have uprooted one wooden electric pole and they were carrying it away which was objected by Lallo Singh (PW

2) whereupon the aforesaid four persons threw the electric pole and chased Lallo Singh who cried and ran for his safety towards eastern side. On hearing cry of Lallo Singh, the informant, his wife and several villagers came to that side and witnessed 25 accused persons- Umesh Singh, Yadunandan Singh, Biran Singh, Anil Singh, Jawahar Singh, Dev Singh, Arun Singh, Shankar Singh, Alakh Singh, Binda Singh, Surendra Singh, Gopal Singh, Nagina Singh, Umashankar Singh,

Deolagan Singh, Suresh Singh, Upendra Singh, Suraj Singh, Munak Singh, Sohan Singh and Tirath Singh variously armed and all the accused persons surrounded the informants house and at the behest of Deolagan Singh, Umesh Singh fired from his rifle which incidentally proved fatal to the informants wife Kamla Devi who at that time has fled to the house of Jato Singh (PW 13}. On account of injury, she dropped down on a cot Patna High Court CR. APP (DB) No.144 of 1990 dt.23-08-2013 3 kept there. On hue and cry, Lallo Singh (PW 2), Binod Singh (PW 8), Akhileshwar Singh (PW 3), Basudeo Singh (PW 6), Raja Singh (PW 9), Morwa Devi (PW 1), Anar Devi (PW

7) and Satish Singh (PW

4) came and witnessed the occurrence. The motive of alleged occurrence started since election of Mukhiya. It was alleged that the persons carrying pole had gone to their houses and returned armed. The accused persons escaped after the occurrence and while retreating they brick bated heavily.

3. Initially the formal First Information Report (Ext.

12) on the fard-beyan (Ext.

11) was registered as Harnaut P.S. Case No. 2 (11) of 1979 under Sections 147, 148, 149, 307, 324, 246 of the Indian Penal Code and Section 27 of the Arms Act and the investigation commenced. In course of investigation Kamla Devi died soon, so Section 302 Indian Penal Code was added. After investigation chargesheet was submitted by the Police. Accordingly, the court took the cognizance and committed the case to the court of Sessions where charges were explained to the accused persons who pleaded innocence and preferred to face trial.

4. Out of 25 accused persons Nageshwar Singh and Tirath Singh died and case against them was dropped.

5. Before the trial court the prosecution has examined PW 1 Morwa Devi, PW 2 Lallo Singh, PW 3 Akhileshwar Singh, PW 4 Satish Singh, PW 5 Muneshwar Singh, PW 6 Basudeo Singh, PW 7 Anar Devi, PW 8 Binod Kumar Singh, PW 9

Raja Singh, PW 1. Ram Kumar Pandey, PW 1. Dr. Suresh Kumar Sinha, PW 1. Dr. Ratnakar Prasad Srivastava, PW 1. Jaro Singh, PW 1. Baliram Patna High Court CR. APP (DB) No.144 of 1990 dt.23-08-2013 4 Singh, PW 1. Rajendra Singh, PW 1. Ashutosh Kumar Singh, the Investigating Officer PW 1. Irfan Lakra, Assistant Sub-Inspector of Police and Malkhana Incharge, PW 1. Ram Pukar Singh an Advocates Clerk and a formal witness and PW 1. Arjun Prasad Verma who partly investigated into the occurrence.

6. Names of PWs 1 to 9 have been mentioned as witness in the fard-beyan. PWs 3 and 4 are sons of the informant but they have been declared hostile by the prosecution. PW 5 is the informant. PWs 1, 2 and 6 were also declared hostile by the prosecution. PWs 7, 8 and 9 have supported the prosecution case. PW 1 was a constable. PW 1 has prepared the injury report and PW 1 has held the autopsy upon the dead body of the deceased. PW 13 though is a named witness in the fard-beyan, has merely supported the preparation of inquest report. PWs 14 and 15 are the seizure list witness. PW 1 is another formal witness.

7. Before taking up eye witnesses, it would be proper to discuss the evidence of the doctor PW 1 who was posted as Block Medical Officer on 4.11.1979 and on that date at 4.30 PM he examined Smt. Kamla Devi aged 45 years and found one round black margin lacerated wound of one inch diameter at the middle of right buttock. The patient was referred to the Patna Medical College and Hospital and age of the injury was within six hours. A pea size black elevated mole about 1 away to the left was on the injured. The condition of the patient was deteriorating. The doctor has prepared the injury report and has found that the firing might have been caused approximately at the distance of more than six feet. The Patna High Court CR. APP (DB) No.144 of 1990 dt.23-08-2013 5 injury was caused by a gun shot.

8. PW 1 has held the post mortem upon the dead body of Kamla Devi on 6.11.1979 at 1.00 AM at Patna Medical College and Hospital and has found one circular wound with charred inverted margin in diameter and pelvic cavity deep directed from right to left over the right buttock. The injured was having 300 cc blood with blood clots. One elongated bullet was found lodged on the inner side of

left hip bone. The firearm might have been the rifle and the death was affected within 12 hours. The bullet recovered from the body of the deceased was preserved in a glass phial duly sealed and sent with the post mortem report (Ext. 5).

9. Evidence of the doctors have conclusively proved that Kamla Devi got one firearm injury on her buttock on 4.11.1979 at afternoon and that proved fatal. Once it has been established by the prosecution that Kamla Devi was killed on account of firearm injury, then the onus was upon it to show that the offence was committed by the accused persons and accused persons alone.

10. The trial court has held that the prosecution has succeeded in proving the charge against five accused only and, so they were found guilty who are before us through the appeals but 18 accused persons who were also named in the fard-beyan and subsequently charged were acquitted.

11. This Court is to see as to whether the prosecution has succeeded in proving the charge against the appellants beyond the shadow of all reasonable doubts or not.

12. Learned counsel appearing on behalf of the Patna High Court CR. APP (DB) No.144 of 1990 dt.23-08-2013 6 appellants submitted that no overt act at all has been alleged against Suresh Singh, Vijay Singh, Biran Singh and Deolagan Singh and their cases were identical with the accused persons who have been acquitted. The informant in his fard-beyan has named all the accused persons. He in his statement under section 161 Cr.P.C. has named all the 25 persons as accused and he has described their roles but at later stage during evidence he has confined his case only against five persons and this shows his bias and motivation to implicate the accused persons who are appellants of the case. Their cases were not at all distinguishable from the case of other accused persons who have been acquitted.

13. On behalf of appellant Umesh Singh it has been argued that he had no intention at all to cause death of Kamla Devi. Assault was not upon the vital part and had Kamla Devi been provided better treatment, then she would have been

definitely survived. At no stage of imagination, it can be held that the accused Umesh Singh had knowledge that such act would cause death of Kamla Devi. It has also been submitted that once the major portion of case was disbelieved by the trial court, then the entire case should have been doubted and benefit should have been given to the accused. On the other hand learned APP supported the judgment and has submitted that duty of the court is always to segregate the grain from the chaff and the trial court has applied the principle and distinguished the case of the accused persons who have been convicted and the accused persons who have been acquitted.

14. The simple defence of the accused persons was of Patna High Court CR. APP (DB) No.144 of 1990 dt.23-08-2013 7 false implication. They have no any defence and some of the accused, namely, Nagina Singh, Gopal Singh, Surendra Singh, Alakh Singh, Shanker Singh and Anil Singh claimed that they were not in the village at the time of occurrence. Deo Lagan Singh and Biran Singh and few others have stated that Hansh Raj Singh and Akhilesh Singh, who are sons of the deceased, were quarreling among themselves and the deceased Kamla Devi tried to separate them and in that process accidentally a shot was fired by Akhilesh Singh which proved fatal.

15. The prosecution has brought on record one Sanha Entry No. 73 dated 4.11.1979 (Ext.

1) which was recorded on the statement of Constable 287 Ram Kumar Pandey (PW

10) who was deputed in village Basti and he had lodged the information at the Police Station. PW 1.has proved Sanha Entry. He has stated that he was deputed there from 26.8.1979 to maintain law and order and peace. He further stated that on 4.11.1979, there was quarrel between two parties in connection with uprooting of electric pole and in which Deo Lagan Singh and his supporters were at one side and Muneshwar Singh and others were on other side. PW 1.tried to pacify but found himself ineffective, he rushed to Police Station and while in way he heard a sound of firing. The information was recorded by Arjun Kumar (PW

19) the officer who was incharge at that time. Though in cross-examination he has stated that brick bats were pelted but in Sanha Entry no. 773 it was not mentioned. The Sanha Entry indicated the existence of tension between the supporters of Deo Lagan Singh and Muneshwar Singh. It has also Patna High Court CR. APP (DB) No.144 of 1990 dt.23-08-2013 8 indicated about firing. Fard-beyan was recorded at hospital in the evening which indicated that four accused persons were carrying electric pole after uprooting it which has resulted into unlawful assembly of the accused persons and firing by Umesh Singh.

16. PW 5 Muneshwar Singh is the informant of the case and his evidence is required to be dealt firstly, so that facts would come. He has stated that his wife Kamla Devi died on Sunday, an auspicious day of Kartik Purnima, and 3.30 PM was the time. The informant was present in his house. The informant heard some noise coming from the southern side of his neighbour Jaro Singh (PW 13). Accused persons were carrying electric pole after uprooting it. Lallo (PW

2) objected to it, saying that it was a public property, so why the accused persons were taking it. Lallo was chased by the culprits who threw the electric pole. On hearing cry, the informant, his bhabhi Anar Devi (PW 7), his wife Kamla Devi (deceased) came. Tirath (died), Suresh Singh (appellant no. 1), Deo Lagan Singh (appellant no. 4), Umesh Singh (appellant), Vijay Singh (appellant no.

2) and Vijay Singh (appellant no.

3) were identified and could not identify other accused persons. Suresh Singh was having Garansa, Umesh Singh rifle, Tirath lathi, Vijay and Biran Gun. At the behest of Deo Lagan Singh to shoot and kill, Umesh Singh fired which caused injury to the informants wife Kamla Devi who dropped down on a cot which was available there. The accused persons, thereafter, escaped. The injured was brought to hospital. The Police met in the way. The injured was referred to Patna. The informants statement was taken at the Police Station and he found the fard-beyan to be correct and Patna High Court CR. APP (DB) No.144 of 1990 dt.23-08-2013 9 then appended his signature. The informants wife died in Patna and inquest report was prepared. Though the informant has been crossed extensively but nothing came out upon which any opinion could be formed that his evidence

was either motivated and attracted at the accused persons/appellants rather he in natural way has faced the entire cross-examination and has remained consistent.

17. PWs 7, 8 and 9 are other witnesses named in the FIR and they have supported the informants version that in their presence at 3.30 PM on 4.11.1979 the accused persons formed unlawful assembly and Umesh Singh fired which caused injury to Kamla Devi. Subsequently she succumbed to her injury.

18. PWs 1 and 2 are named as witness in the fard- beyan but they have not supported the prosecution case. PWs 3 and 4 are sons of the informant and deceased but they have also not supported the prosecution case. PWs 3 and 4 have stated that while deposing they were in jail custody in connection with another case in which the accused persons and their family members were the prosecution witnesses.

19. Even on one witness the order of conviction can be upheld, if it comes that the witness is consistent. But in the present case, the informant has been fully supported by other FIR named witnesses 7, 8 and 9. Their natural presence at the place of occurrence cannot be doubted. They are the members of vicinity where the occurrence has taken place. The Investigating officer has found quantity of blood on the cot and beneath it on the earth. He has seized the blood containing soil. Patna High Court CR. APP (DB) No.144 of 1990 dt.23-08-201

20. There are two criminal appeals. In one appeal i.e. Cr. Appeal No. 233 of 1990, Umesh Singh is the appellant, whereas, in another criminal appeal i.e. Cr. Appeal No. 144 of 1990, four persons are appellant. The case against the appellants of these two sets of appeal cannot be said to be identical. Appellants Suresh Singh, Vijay Singh, Biran Singh and Deo Lagan Singh have been figured to be members of mob though it has been submitted that Deo Lagan Singh exhorted to assault but there is nothing that he has also caused any overt act of assault. Allegation against these four appellants and others who have been acquitted by the trial court was initially identical, even during investigation before the Investigating Officer the witnesses have given identical role to these four appellants and the persons who have been acquitted by the trial court but at later stage it appears that there was some development and the informant amended his evidence which would suit

some of the accused persons who have been identically described as those with the appellants of Cr. Appeal No. 144 of 1990. The Investigating Officer has been examined and he has stated that the informant and other witnesses have named the appellants of Cr. Appeal No. 144 of 1990 in the similar capacity as that against the accused who have been acquitted. On that basis it has been argued by the learned counsel for the appellants that the case against appellants of Cr. Appeal No. 144 of 1990 can be equated with those who have been acquitted as no overt act has been alleged against any of the accused. Learned APP has submitted that during entire investigation the allegation against these four appellants were identical to them who have been Patna High Court CR. APP (DB) No.144 of 1990 dt.23-08-2013 11 acquitted.

21. We have heard the submissions and we feel that the informant in his fard-beyan as well as statement during investigation has named the four appellants in identical capacity with those who have been acquitted by the trial court. No overt act of causing any injury has been levelled against them. Therefore, the cases of these four appellants of Cr. Appeal No. 144 of 1990 (DB) are on different footing from that of Umesh Singh appellant of Cr. Appeal No. 233 of 1990 (DB). In view of the different statement of the informant in his fard-beyan, during investigation and before the trial court as a witness, it can be said that their roles were almost identical to those who have been acquitted by the court below, so they deserve to be acquitted.

22. So far as appellant Umesh Singh of Cr. Appeal No. 233 of 1990 (DB) is concerned, it is apparent that his firing caused injury which ultimately led to death of Kamla Devi. Learned counsel for the appellant submitted that Umesh Singh had no knowledge that his such act would cause death. It has also been submitted that he had no motive at all to cause injury or death to Kamla Devi as no evidence has come that he had any grudge against her. It has also been submitted that part of case has been doubted, so he is entitled to be acquitted.

23. The death of Kamla Devi is on account of use of firearm by Umesh Singh which has been stated by the witnesses and the doctors version has supported the death was on account of injury which has been attributed solely to Umesh Singh

but fact is Patna High Court CR. APP (DB) No.144 of 1990 dt.23-08-2013 12 that the injury was only one and that was on the buttock. It can be said that the accused was not having any intention to cause death of Kamla Devi though he was having knowledge. The firing itself was an indication that he was having knowledge as such firing may cause death but no evidence has come that he had any intention to cause death or cause such bodily injury as is likely to cause death.

24. In view of the discussions made above, it can be said that the accused Umesh Singh does not require conviction under section 302 Indian Penal Code. It has been submitted that he remained in custody for about six years in criminal appeal and during trial also he remained in custody considerably for a longer period. The occurrence is of 34 years earlier and now he is not capable to make his day to day work.

25. We have heard the submissions. In view of the discussions made above, it can be said that the accused/appellant Umesh Singh of Cr. Appeal No. 233 of 1990 (DB) had no intention to cause death of Kamla Devi, so his conviction to section 302/149 IPC and section 302 IPC is altered to conviction under section 304 Part II of the Indian Penal Code. Conviction under section 27 of the Arms Act remains untouched.

26. Since the appellant Umesh Singh has remained in custody considerably for longer period and his conviction under section 302 and 302/149 IPC is altered to section 304 Part II Indian Penal Code, the period undergone by him in custody shall be deemed to be sufficient for the ends of justice. The conviction under section 27 of the Arms Act remains untouched. He has undergone his Patna High Court CR. APP (DB) No.144 of 1990 dt.23-08-2013 13 sentences which were to run concurrently. The period undergone by him during trial and appeal shall be deemed to be sufficient for the ends of justice. Since he is on bail, no order is required to be given for his release.

27. In the result, with the aforesaid modification in conviction and sentence Cr. Appeal No. 233 of 1990 (DB) is dismissed and Cr. Appeal No. 144 of 1990 (DB) is allowed and the appellants of this appeal are acquitted from the charges. They are on bail. They are discharged from the liabilities of their bail bonds. (Shyam Kishore

Sharma, J) (Amaresh Kumar Lal, J) Patna High Court Dated 23rd August, 20123
Avin/N.A.F.R.

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