

Ganesh Singh and Others Vs. the State of Bihar

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Court : Patna

Decided On : Jan-22-2014

Judge : I.a. Ansari & Samarendra Pratap Singh

Appeal No. : Criminal Appeal (DB) No.164 of 2013 & 214 of 2013

Appellant : Ganesh Singh and Others

Respondent : The State of Bihar

Advocate for Pet/Ap. : Mr. Vikramdeo Singh

Judgement :

I.A. Ansari, J.

1. These appeals have put to challenge the judgment, dated 20.02.2013, passed, in Sessions Trial Nos. 152 of 2011 and 344 of 2012, by learned Ad hoc Additional Sessions Judge-I, Bhojpur, Ara, whereby all the three accused-appellants stand convicted under Section 302 read with Section 34 of the Indian Penal Code. By the impugned judgment, dated 20.02.2013, the accused-appellant, Bishnu Singh @ Bishnu Shankar Singh, also stands convicted under Section 27 of the Arms Act, 1959. Following their conviction under Section 302 read with Section 34 of the Indian Penal Code, all the three accused-appellants herein have been sentenced to suffer imprisonment for life and pay fine of Rs. 25,000/- (twenty five thousand) each, and in default of payment of fine, suffer imprisonment for a period of six months. For his conviction under Section 27 of the Arms Act, 1959, the appellant,

Bishnu Singh @ Bishnu Shankar Singh, has also been sentenced to suffer imprisonment for three years and pay fine of Rs. 5,000/- (five thousand) and, in default of payment of fine, undergo simple imprisonment for a period of one month.

2. The case of the prosecution, as unfolded at the trial, may, in brief, be described as under:

(i) On 01.10.2010, at about 8 p.m., Uday Pratap Singh (since deceased), son of the informant, Sukhdeo Singh (P.W.5), standing at the door of his house, asked his mother, Kusum Devi (P.W. 1), to tie their buffalo. Kusum Devi replied to her son, Uday Pratap Singh, that she would tie the buffalo after an hour. In the meanwhile, three accused persons, namely, Bishnu Singh, Mahesh Singh and Ganesh Singh, who are co-villagers of the informant, came to the door of the informant, caught hold of his eldest son, Uday Pratap Singh, dragged him to some distance and while accused Mahesh Singh and accused Ganesh Singh caught hold of the two arms of Uday Pratap Singh, accused Bishnu Singh @ Bishnu Shankar Singh took out a pistol and shot at Uday Pratap Singh killing him on spot. The motive, which impelled the three accused to kill Uday Pratap Singh, was illicit relationship, which Uday Pratap Singh had allegedly maintained with the younger sister of accused Bishnu Singh @ Bishnu Shankar Singh.

(ii). Following death of his son in the manner as has been described above, a fardbeyan (Ext. 1) was lodged, on 01.10.2010 itself, at Gajrajganj Out Post, which falls under Udwananagar Police Station. Treating the said fardbeyan as First Information Report (hereinafter referred to as the F.I.R.), Udwananagar P.S. Case No. 218 of 2010 was registered, under Section 302 of the Indian Penal Code, against the three accused persons aforementioned. During the course of investigation, police visited the place of occurrence, held inquest over Uday Pratap Singh's dead body, which was also subjected to post mortem examination, and, on completion of investigation, a charge sheet was laid, under Section 302 read with Section 34 of the Indian Penal Code, against all the three accused aforementioned.

3. At the trial, while charges were framed against all the three accused persons aforementioned under Section 302 read with Section 34 of the Indian Penal Code, an additional charge was framed under Section 27 of the Arms Act, 1959, against accused Bishnu Singh @ Bishnu Shankar Singh. To the charges so framed, all the three accused persons pleaded not guilty.

4. In support of their case, prosecution examined altogether eight witnesses including the Investigating Officer. All the three accused persons were, then, examined under Section 313(1)(b) Cr.P.C. and, in their examinations aforementioned, all the three accused persons denied that they had committed offences, which were alleged to have been committed by them, the case of the defence being that of denial. No evidence was adduced by the defence.

5. Having come to the conclusion that the charges, framed against all the three accused persons, stood proved, learned trial Court convicted all of them accordingly and passed sentences against them as have been mentioned above. Aggrieved by their conviction and the sentences, which have been passed against them, all the three accused persons, as convicted persons, have preferred appeals.

6. While the appeal, which has been preferred by two of the convicts, Ganesh Singh and Mahesh Singh, has given rise to Cr. Appeal (DB) No. 164 of 2013, the appeal, which has been preferred by his co-convict, Bishnu Singh @ Bishnu Shankar Singh has come to be registered as Cr. Appeal (DB) No. 214 of 2013.

7. We have heard Mr. Vikramdeo Singh, learned counsel for the appellants, and Mr. A.K. Sinha, learned Additional Public Prosecutor, for the State.

8. While considering the present appeal, it may be noted, at the very outset, that it was, admittedly, on 02.10.2010 that deceased Uday Pratap Singhs dead body was subjected to post mortem examination by the doctor (P.W. 7), who found as follows:

œOn external examination of the dead body- Rigor mortis present, both eyes closed, mouth closed, skin pale, lacerated wound and inverted wound, blacking

around on right side of back below the right lower scapula, that is wound of entry of size 11?x1?- On dissection, I found scalp, brain, parenchyma “ Pale Thorax “ both sides of lung lacerated and contused, Chest cavity “ was full of blood and clot Heart- right chamber was full of blood and left chamber was empty. A bullet was recovered from left lung Parenchyma and handed to police. Abdomen- liver, spleen, kidney were pale. Stomach- 3 to 4? half digested juice present. Urinary bladder- was empty.?

9. In the opinion of the doctor (P.W. 7), death was due to shock and hemorrhage arising out of chest injury, which was caused by fire-arm.

10. Nothing has been elicited from the cross-examination of the doctor (P.W. 7) to show that his findings or his opinion, with regard to the cause of death, are incorrect or untrue. This apart, we, too, do not notice anything inherently incorrect or improbable in the findings of the doctor (P.W. 7) and/or his opinion with regard to the cause of death.

11. Situated thus, we agree with the conclusion reached by the learned trial Court that Uday Pratap Singh was put to death on being shot by a fire-arm on his chest.

12. Keeping in view the medical evidence on record, when we turn to the evidence of the remaining witnesses, what attracts our attention, most prominently, is that out of the eight witnesses, who have been examined by the prosecution, P.Ws. 1, 2, 3, 4, 5 and 6 have been examined as eye witnesses to the occurrence. However, out of the six witnesses so examined, prosecution has cross-examined P.Ws. 2, 3, 4 and 6 on the ground that they have turned hostile. Nothing has, however, been elicited from their cross-examination to show that any of the present accused-appellants was involved in the occurrence, which had resulted into the death of Uday Pratap Singh.

13. Though the previous statements of the hostile witnesses have been confirmed by the Investigating Officer (P.W. 8), the fact remains that there is nothing in the evidence on record to show that the facts, stated by the hostile witnesses, in their previous statements, were true. This apart, the previous statements of these witnesses, recorded under Section 161 Cr.P.C., cannot be regarded as

substantive evidence and can, therefore, be used, at best, for the purpose of contradiction.

14. Conscious of the fact that the prosecution had failed to bring out any incriminating material by examining P.Ws. 2, 3, 4 and 6, we, now, come to the evidence of the informant (P.W. 5), father of the deceased.

15. While considering the evidence of P.W. 5, it may be noted that P.W. 5 was the informant of the case and though in his examination-in-chief, he described the occurrence projecting himself as an eye witness, he did not withstand the test of cross-examination and did not claim in his cross-examination that he had himself witnessed the occurrence. This position becomes clear, when we notice that in his examination-in-chief, P.W. 5 had deposed that his son, Uday Pratap Singh, asked his mother (P.W. 1) to tie buffalo and, in the meantime, accused Ganesh Singh, Mahesh Singh and Bishnu Singh @ Bishnu Shankar Singh came there, caught hold of his said son, took him to the road and while Ganesh Singh and Mahesh Singh caught hold of both the arms of Uday Pratap Singh, Bishnu Singh @ Bishnu Shankar Singh shot at Uday Pratap Singh causing Uday Pratap Singhs death. However, in his cross-examination, P.W. 5 has deposed that at the time of the occurrence, he was sleeping in his hutment and it was on hearing halla that he went to the place, where halla was raised, and saw his son lying dead on the ground and about 20 to 25 persons, who had assembled there, told him (P.W. 5) that Bishnu Singh @ Bishnu Shankar Singh had shot at Uday Pratap Singh. What is also important to note, in the cross examination of P.W. 5, is that he also admits that his wife and other family members arrived at the scene of occurrence later than him meaning thereby that his wife (P.W.1) had not seen the occurrence.

16. From the above evidence of P.W. 5, it is impossible to hold, and ought not to have been held, that P.W. 5 was an eye witness to the occurrence or that he had seen any of the accused aforementioned shooting and killing Uday Pratap Singh.

17. In the backdrop of the above state of the evidence of P.W. 5, father of the deceased, when we turn to the evidence of Kusum Devi (P.W. 1), mother of the deceased, we find that the state of her evidence is not different from that of her husbands evidence inasmuch as in her examination-in-chief, even P.W. 1 claimed

that she had seen the said three accused persons catching hold of her son, Uday Pratap Singh, dragging him to the road and, then, accused Bishnu Singh @ Bishnu Shankar Singh shooting at him. Notwithstanding these assertions, P.W. 1 buckled in her cross-examination and admitted that the night of occurrence was a dark night, visibility was poor and while she was inside her house after having asked her son, Uday Pratap Singh, to tie buffalo, people from the locality came and told her that the said three accused had taken away her son. What is, however, of immense importance to note is that P.W. 1 has deposed, in no uncertain words, in her cross-examination, that she had not seen her son being shot.

18. Situated thus, it is clear that the prosecution did not derive any support for the case, which it had been set out against the three accused persons from the evidence of P.W. 1 and/or P.W. 5. If the evidence of three witnesses is treated to have not proved the case of the prosecution, as we must hold, there remains not even a particle of evidence on record fastening any of the accused-appellants with the shooting of the death of Uday Pratap Singh. The various aspects of the case, which we have discussed hereinbefore, are not seen to have been noticed by the learned trial Court.

19. In the result and for the foregoing reasons, both the appeals are allowed. The impugned conviction of the accused-appellants and the sentences passed against them by the judgment and order, under appeal, are hereby set aside. All the appellants are held not guilty of the respective offences, which they have been convicted of, and are accordingly acquitted of the same.

20. Let the accused-appellants be set at liberty forthwith unless they are required to be detained in connection with any other case.

21. Send back the L.C.R. along with a copy of this judgment and order.

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