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BipIn Kumar Alias BipIn Singh Vs. State of Bihar

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Court : Patna

Decided On : Mar-31-1997

Judge : J.N. Dubey, Actg. C.J. and G.S. Chaube, J.

Acts : Arms Act - Sections 27; Indian Penal Code (IPC), 1860 - Sections 302, 307 and 323; Code of Criminal Procedure (CrPC) - Sections 144 and 313

Appeal No. : Cri. Appeal No. 498 of 1990

Appellant : BipIn Kumar Alias BipIn Singh

Respondent : State of Bihar

Advocate for Def. : Kamta Prasad Gupta, A.P.P.

Advocate for Pet/Ap. : Balbhadra Prasad Singh, Sr. Adv. and V.K. Rai, Adv.Rajendra Prasad, Sr. Adv., Pramod Kumar and Ritesh Kumar, Advs.

Disposition : Appeal dismissed

Prior history : G.S. Chaube, J. 1. Sole appellant Bipin Kumar alias Bipin Singh has been convicted under Sections 302 and 323 of the Indian Penal Code ('the Code' in short) and Section 27 of the Arms Act and has been sentenced to undergo imprisonment for life, R.I. for one year and R. I. for three years respectively. The sentences are, however, directed to run concurrently. 2. The appellant was put on trial before the 5th Addl. Sessions Judge of Nalanda at Biharsharif in Sessions Trial No. 122/194 of 1989/90

Judgement :

G.S. Chaube, J.

1. Sole appellant Bipin Kumar alias Bipin Singh has been convicted under Sections 302 and 323 of the Indian Penal Code ('the Code' in short) and Section 27 of the Arms Act and has been sentenced to undergo imprisonment for life, R.I. for one year and R. I. for three years respectively. The sentences are, however, directed to run concurrently.

2. The appellant was put on trial before the 5th Addl. Sessions Judge of Nalanda at Biharsharif in Sessions Trial No. 122/194 of 1989/90 on the allegation that at about 5.30 p.m. on 24-4-1988 when deceased Girish Prasad Singh of village Cheran within Harnaut police station in the district of Nalanda was outside a utensil shop at Harnaut Bazar accompanied; by his younger brother Ramesh Kumar Singh also known as Ramesh Singh (P.W. 1) the appellant went there accompanied by 4 to 5 of his associates, who could not be identified, whipped out a pistol suddenly and shot at the deceased. After shooting the deceased the appellant and his associates fled. The appellant was chased by the persons present there including one Binod Kumar Singh (P.W. 4) of Poray Jalalpur situated within the same police station. Even though the appellant fired back at his chasers, nobody was hit and he was overpowered by P.W. 4 in his bid to rescue himself. The appellant struck P.W. 4 on his face with the butt of his firearm but in the meantime he was overpowered by others and taken to Harnaul police station situated at a distance of 1/2 K.M. south-west of Harnaut Bazar where the occurrence of shooting had taken place. In the meantime, P.W. 1 and some others rushed the deceased to State Dispensary at Harnaut where he was given some medical aid and advised to be taken to Patna Medical College and Hospital. On way to Patna the deceased succumbed to the gun shot injury. Still he was taken to P.M.C.H. where he was declared dead. Inquest was held by an Officer of Pirbahon police station and postmortem performed by P.W. 10 Dr. Bishundeo Prasad who was then posted as Medical Officer in Department of Forensic Medicine at Patna Medical College and Hospital. According to the first information report lodged by P.W. 4 Binod Kumar Prasad at 6 P.M. on the same day with Harnaut police, the

deceased was shot at by the appellant with intention to kill him due to some previous enmity respecting property.

3. On such facts, the appellant was charged under Sections 302 and 307 of the Code for committing the murder of the deceased and attempting to commit murder of informant Binod Kumar Singh. He was further charged under Section 27 of the Arms Act for. possessing unlicensed firearm (Pistol) with intent to use the same for unlawful purpose. The appellant denied the charges and pleaded false implication due to enmity and land dispute between him and the family of the deceased. In course of his examination under Section 313 of the Code of Criminal Procedure he gave out that there was a dispute between the two families respecting 18 bighas of land for which earlier there had been a proceeding under Section 144, Cr.P.C. which was decided in favour of his father and that was the cause of enmity. At the time the shooting incident took place he was returning home from Harnaut Bazar and was overpowered by the informant and other witnesses and taken to the police station for falsely implicating him. It may be mentioned that the appellant is a resident of village Kalyan Bigha situated towards west of Harnaut Bazar and is son of late Ram Dahin Singh.

4. To prove the charges the prosecution examined ten witnesses and in support of his defence the appellant also examined one witness who proved a rent receipt respecting some land. He also adduced some other documents in support of his claim of enmity between his family and the family of the deceased, a fact which is rather admitted by the prosecution side as motive for the killing. On consideration of such evidence the learned Addl. Sessions Judge has found that it was the present appellant who had fatally wounded the deceased by firing a shot from his pistol. Therefore, he has held him guilty of murder and for possessing an unlicensed firearm for being used for unlawful purpose and has convicted and sentenced him under Section 302 of the Code and Section 27 of the Arms Act. The learned Addl. Sessions Judge doubted the correctness of the allegation that the appellant had shot at the informant (P.W. 4) with an intention to kill him. Therefore, he acquitted the appellant of the charge under Section 307 of the Code but in view of the simple injuries caused to him at the hands of the appellant using the butt of a firearm, he has convicted and sentenced the appellant under Section

323 of the Code for voluntarily causing hurt. Hence, this appeal.

5. Learned counsel appearing for the appellant has assailed the finding of conviction of the appellant and consequent punishments on the ground that the same is based on evidence of witnesses who are either partisan or inimical and their eyewitness account is in conflict with medical evidence according to which the wound of the gun shot injury had been found towards the back of the deceased; whereas the eye-witnesses have categorically stated that he was shot at from a very close range on his chest. Then the appellant had no immediate motive for committing the murder which was actually committed somewhere else in some other manner and went unnoticed. He has also submitted that the first information report purporting to have been lodged by P.W. 4 at 6 p.m. soon after the killing was actually a premeditated and fabricated document with a design to implicate the appellant because of enmity. Therefore, the point for consideration in the present appeal is whether the deceased was shot at in the manner alleged and the appellant was the shooter.

6. Even though there has been an attempt on behalf of the appellant to show that the deceased was not shot at the shop of P.W. 7 Lakshaman Sao (Thathera) as stated by the prosecution witnesses and was actually shot at or fatally wounded while he was sitting on a Chowki west of that shop, there is preponderance of evidence that the deceased was actually shot at in front of utensil shop of P.W. 7 and not at the place and in the manner suggested by the defence. There is consistent evidence of P.W. 1 Ramesh Kumar Singh who is full brother of the deceased, P.W. 2 Ram Rekha Singh; P.W. 3 Ram Chandra Singh, both of Kharura a neighbouring village; P.W. 4 Binod Kumar Singh, the first informant; P.W. 6 Deo Sundari Devi; and P.W. 8 Raj Kishore Singh, a co-villager of the deceased, that the deceased had been shot at in front of the utensil shop of P.W. 7, which is situated towards south of a road running from east to west. P.W. 9 Sheonath Choudhary who is the Investigating Officer, has stated that after registering a case on the basis of the first information report lodged by P.W. 4 he went to Harnaut Bazar and found blood fallen in front of the shop of P.W. 7. The place where he had found the blood was raised plinth or platfrom called 'Ote' and this explains the upward course of the bullet that hit the deceased. By the lime he

had gone there the injured/deceased had already been removed to hospital. Even though P. W. 7 does not claim to be an eye-witness to the occurrence of shooting as he was out of the Bazar, when he returned at about 7 in the evening on the same day he had found blood fallen outside his utensil shop. According to him, the police had arrived there and scraped blood-stained soil from that place and seized the same in his presence. Even the medical evidence to be discussed hereinafter does not support the defence theory that the deceased had been fatally wounded while sitting on a Chawki placed on an open space west of the shop of P.W. 7, because, according to P.W. 10, the direction of the fatal gun shot wound was from down to upwards, which was not possible in any case if the victim was sitting on a Chawki. Therefore, there is little scope to doubt the prosecution version that the deceased had been shot at while he was standing out side the untensil shop of P.W. 7 at Harnaut Bazar.

7. P.W. 1 who is admittedly, a younger brother of the deceased has stated that he had gone to Harnaut Bazar with the deceased in the afternoon for purchasing a water pot (Lota) from the utensil shop of P.W. 7. The appellant and his 4 to 5 unknown companions also reached there, while the deceased was talking to the son of the shop owner (the latter not being present in the shop), the appellant approached the deceased and fired the fatal shot from a very close distance. He immediately took the deceased to Harnaut Hospital where he was given first aid and then referred to P.M.C.H. where he was declared dead. P.W. 2 Ram Rekha Singh and P.W. 3 Ram Chandra Singh, both of village Kharura, have stated that they were also present near the place of the occurrence where the shooting incident took place. While P.W. 2 did not claim to have identified the assailant of the deceased at the time actual shooting took place, P.W. 3 has stated that he saw the appellant himself firing the shot at the deceased. However, both of them have stated that when the assailant of the deceased fled after shooting, he was chased and overpowered.

8. P.W. 4, the informant in the case has stated that on the day of the occurrence in the afternoon he had gone from his village to Harnaut Bazar to participate in the Yagya which was being performed at the local Thakurbari. While proceeding to the Thakurbari he passed in front of the shop of P.W. 7, where he noticed the

deceased standing with PW. 1. He also saw the appellant and his 4 to 5 unknown companions loitering nearby. He proceeded westwards to reach near a place called Durga-Sthan and stayed there. While he was aimlessly standing there he saw the appellant taking out a country made pistol and shooting at the deceased who was then facing west and his brother was standing towards east of him. When the appellant fled towards west after shooting the deceased he was chased. He also joined the chasers and overpowered him at a short distance further west of Thakurbari near the medicine Shop/Clinic of one Dr. Choudhary. However, before he could catch hold of the appellant the latter fired at him but the shot missed. When he caught hold of the appellant, the latter hit on his face by using the butt of his firearm, in the meantime other witnesses arrived and overpowered the appellant. He immediately rushed to the police station and lodged his first information report. The appellant was also brought there by the local people a bit later. P.W. 8 Raj Kishore Singh who owns a house at Harnaut Bazar and runs a shop therein has stated that at the time the shooting look place he was at his shop. He rushed to the shop of P.W. 7 where the deceased was lying injured in pool of blood. There was an alarm of 'Pakro-Pakro'. People was chasing the assailant. He took the injured to Harnaut hospital with the aid of some others and therefrom he was taken to Palna but died on way thereto. After some time the appellant was brought at the police station on being overpowered on chase. P.W. 6 who is the mother of the deceased says that she was then at Harnaut when she heard hulla that his son Girish Prasad Singh had been shot at by Bipin Kumar (the appellant). She rushed to the Shop of P.W. 7 to find him lying in pool of blood. Therefrom his son was taken to hospital. Obviously, this witness had neither seen the deceased being shot at nor had seen the appellant being caught or brought to the police station subsequently.

9. Out of the witnesses, referred to above, P. W.2 is admittedly a distant cousin of P.W. 6. He has stated that he had gone to Harnaut Bazar to participate in a Yagya which was being performed at the local Thakurbari situated at a short distance towards west from the place of the occurrence. P.W. 3 has stated that he had gone there for purchasing some cloth. Both the witnesses do not appear to be truthful. Their presence was not mentioned in the first information report nor by any other witness including P.W. 1. Incidentally, these two witnesses are residents

of a village which was the original place of the residence of the family of the deceased, wherefrom they had shifted to and settled at Cheran on getting some 18 bighas land from the maternal grandfather of the father of the deceased. Therefore, omission of their names as witnesses, both in the first information report and in the evidence of P.W. 1, only created doubt regarding their claim of their presence at or near the place of the occurrence when the shooting took place and of seeing the appellant shooting or fleeing away before being overpowered. This apart, the evidence of these two witnesses of Kharuara goes ill with the version given by P.W. 1 and P.W. 4. According to P.W. 1, the deceased was talking to the son of P.W. 7, who was inside the shop situated south of the lane running from east to west, and was then facing south and the assailant/appellant was towards his west. That could be the only position in which the deceased could have been while talking to the son of P.W. 7 before being shot at. However, both P.Ws. 2 and 3 have stated that at the time the deceased was shot at by his assailant he was standing facing north and the assailant was west of him. The medical evidence completely rules out such state of affair. From the evidence of P.W. 9 it will appear that in course of investigation P.W. 3 had stated that before the shooting incident had taken place he had already purchased the cloth. However, in court he has stated that he purchased the cloth after the shooting incident and went home. Therefore, I am not inclined to place reliance on the testimony of P.Ws. 2 and 3.

10. Having discarded the testimony of P.Ws. and 3 there remains the evidence of P.Ws. 1, 4 and 8 to rest the finding of the guilt of the appellant. Indeed, P. W. 8 has tried in his own way to help the defence when put to cross-examination, for the reasons best known to him. As he has himself admitted he had not seen the actual act of shooting at the deceased because he was then inside his shop situated adjacent to the shop in front of which the deceased had been shot at. It has come in the evidence that the utensil shop of P.W. 7 was part of the building of this witness. However, he has staled that when he came out of his shop he heard people chasing the assailant shouting 'Pakro-Pakro' and after some time the appellant had been brought to the police station. It is another matter that according to P.W. 4 this witness was one of the chasers and had taken the appellant to the police station. That he was present at the police station when the first information

report was lodged and recorded, is apparent from the fact that he put his signature thereon as an attesting witness. He himself stated that amongst the chasers of the assailant was a youth of village Korait (sic) and that youth had lodged the first information report in his presence on which he had put his signature. However, in course of his cross-examination he stated that, as a matter of fact, from the place of the occurrence he took the injured/deceased to Harnaut hospital and then went to the police station and again accompanied the injured to Patna. He has gone to the extent of saying that he put his signature on the first information report on the next day after his return from Patna. Indeed, witness appears to have put his signature on the inquest report which was pre-pared at the Surgical Emergency Ward of P.M.C.H. at Patna at 11 p.m. on 24-4-1988. But it is very difficult to accept his version that he put his signature on the first information report as an attesting witness after his return to Harnaut from Patna. Below his signature on the first information report he had himself put the date 24-4-88 (as per Ext. 1/3). There is no law requiring a first information report to be attested by any witness. Therefore, if the F.I.R. had already been lodged at about 6 in the evening on 24-4-88 itself in presence of this witness and he had not put his signature thereon, there was absolutely no occasion for anybody including the police officer concerned to obtain his signature thereon as attesting witness next day after his return from Patna. Because in absence thereof neither the document could have lost its authenticity nor validity. A literate person, as P.W. 8 appears to be blowing hot and cold in the same breath is beyond understanding and cannot be appreciated. Therefore, no significance need be attached to the statement of P.W. 8 made at the end of his cross-examination that: he had put his signature on the first information report next day after returning from Patna. For the same reason his statement made in course of his cross-examination to the effect that P.W. 1 was not present at the place of the occurrence when he reached there on hearing the sound of gun shot is to be ignored in face of consistent evidence of P.Ws. 1 and 4.

11. Taking a cue from the evidence of P.W. 10 who had held autopsy on the dead body of the deceased at Patna on 25-4-1988 and an attempt has been made on behalf of the appellant to show that as a matter of fact, P.Ws. 1 and 4 had not witnessed the occurrence of shooting. The doctor (P.W. 10) has stated that he had found one piercing wound on the post axillary line of right exilla of the deceased. It

measured 1/2' x 1/2'. The edge of the wound was inverted with some amount of blackening. The situs was 4' below the right exilla. He had found another wound measuring 1' x 1' on the front of the chest 3 1/2' above from the right nipple. On dissection, he had found that the right lung of the deceased was perforated from 5th to 6th intercoastal space up to sternal space. The wound, according to him, was through and through. No bullet could be found in the dead body. In his opinion, the cause of death of the deceased was the chest injury caused by firing. It was ante-mortem in nature. He specifically stated that the wound might have been caused by a pistol shot. However, when cross-examined, the witness made a statement not expected of a medicalman. Even though he stated in his examination-in-chief as also in the post-mortem examination report that the fatal wound had been caused by firearm, he was tempted or goaded to say that such piercing wound might have been caused by a Chhura; (dagger) or any other weapon. Such statement could have been made only by a person who had not seen a dagger which is a sharp pointed weapon; even its edge is sharp. Any wound caused by such a weapon shall invariably leave margin of the wound sharply cut. But in case of any other piercing weapon like bullet which has no sharp edge or point, the margin shall always be lacerated. Be that as it may, at the fag end of his cross-examination the doctor denied the defence suggestion that the injury was not caused by a firearm. The blackening found at the situs of the wound of entry found on the posterior aspect of the right axilla of the deceased leaves no scope to doubt that the fatal injury was caused by a firearm.

12. Taking advantage of the medical evidence that the wound of entry caused by gun shot was on the rear part of the body of the deceased and not on chest, as stated by P.Ws. 1 and 4, it has been contended rather vehemently that these witnesses had not seen the shot being fired at by the assailant. It has been further contended that the medical evidence being inconsistent with the ocular version, the conviction of the appellant cannot be sustained. Reliance has been placed on the decision of our Apex Court rendered in the case of Ram Narayan v. State of Punjab, AIR 1975 SC 1727 : (1975 Cri LJ 1500), in which it has been held that where the evidence of the witnesses for the prosecution is totally inconsistent with medical evidence or the evidence of the ballistic expert, this is a most fundamental defect in the prosecution case and unless reasonably explained it is sufficient to

discredit the entire case.

13. It is true that both P.Ws. 1 and 4 have stated that they had seen the deceased being shot at by the appellant on his chest. In the circumstances the deceased was shot at only the nature of injury found by P.W. 10 could be possible. Consistent evidence of P.Ws. 1 and 4 is that at the time the deceased was shot at he was standing in front of the utensil shop of P.W. 7 which is situated south of the road running from east to west. The shop opened towards North. At that time the deceased was talking to the son of P.W. 7, who was inside. The deceased was out side the shop. The assailant of the deceased was standing towards north-west. P.W. 1 has stated that even though the appellant and his some companions were standing there he became suspicious only when the appellant moved towards the deceased with pistol in his hand. Therefore, he warned the deceased. At that time P.W. 4 was further west to the place of the occurrence near Durga-Sthan. From the evidence of the prosecution witnesses one finds that Patna-Ranchi National Highway runs towards east of Harnaut Bazar from North to South. A road takes off from the said National Highway and goes towards west across Harnaut Bazar. It is south of the said Bazar road that the shop of P.W. 7, where the occurrence took place, is situated in the middle of the Bazar. That road goes further west. At a close distance from the P.O. shop a lane goes towards south. West of that lane and south of the Bazar road was situated a shoe-shop and adjacent west thereto was a shop of pesticides. Then lies Durga-Sthan intervened by a well. Durga-Sthan is a structure in which idol of goddess Durga is installed. Incidentally, that locality is also known as Durga-Sthan. P.W. 4 has stated that at the time the deceased was shot at, he was standing on road in front of Durga-Sthan (the structure) aimlessly. When the appellant took out his pistol and shot at the deceased, he could notice the act of shooting. However, according to him, at that time the deceased was facing west. The assailant was also towards west. Therefore, in normal course the wound of entry was expected on the front part of the body; and incidentally, both P.Ws. 1 and 4 have asserted that they had seen the deceased being shot at on chest. The medical evidence is, certainly, not corroborative in this behalf.

14. The evidence of P.W. 4 read with that of P.W. 1 gives rise to two possibilities. The first is that when warned by P.W. 1 the deceased who was initially standing facing south, turned towards west and seeing the appellant approaching him menacingly with a firearm in his hand, turned back to escape being shot at and thereby exposed rear part of his body to the bullet, instead of his chest. The second possibility is that when P.W. 1 warned the deceased regarding the imminent danger, he might have looked towards the assailant who was to north-west of him and in the process his remaining part of the body including chest remained facing south. It is but natural that if some one suddenly tries to look either side of himself on being warned of any imminent danger or even being called, he immediately turns his face in that direction not the whole of the body. However, in both the situations persons standing nearby could have taken the shot having hit the deceased on his chest, especially when the blood first of all could have gushed through the wound of exit with bullet and not through the wound of entry. This appears to be one reason why P.Ws. 1 and 4 have stated that the deceased had been hit on his chest by the bullet fired by his assailant, namely, the present appellant. Crime is an event in real life and not a stage managed affair in which every participant acts according to the direction given by the Director and the spectators have sufficient time to observe every movement. How-. ever, in the event like the present one, which had occurred like a flash, it was not possible for any by-stander to watch and then subsequently reproduce every minute detail of the occurrence. In such circumstances such errors are likely to occur. Therefore, I find that in the circumstance of the present case, the inconsistency between medical evidence and eye-witness account is sufficiently and reasonably explained.

15. in any event, the evidence of P. W. 4 cannot be disbelieved. As he has stated, he was present at. very snort distance towards west from the place of the occurrence when the deceased was shot at. immediately the assailant fled towards west in which direction his village is situated. He was chased. P.W. 4 has slated that he also joined the chasers. However, since he was west of the assailant from before, it was natural that he came on the fore of other chasers. I find no substance in the contention of the learned counsel for the appellant that in that event the witness (P.W. 4) could have fried to accost the assailant from the

front instead of chasing him from behind. As the story goes, alter firing shot at the deceased the assailant fled towards west with firearm in his hand. No fool could have tried to catch hold of him from the front. Therefore, naturally when the assailant crossed the line of Durga-Sthan for fleeing towards west, P.W. 4 started chasing him. He was shot at but escaped unhurt. Then he caught hold of him by his waist to be hit with the butt of the pistol on his face. That he had received such injuries at the hands of the person whom he overpowered is sufficiently borne out in the evidence of P.W. 5 who has stated that ho had examined P.W. 4 Binod Kumar Singh on 24-4-1988 itself at 6.20 a.m. and found a lacerated wound 3/4' x 1/2' x 1/4' on the right lower part of forehead and another lacerated wound 1/2' x 1/4' x 1/6' on the right side of face below the right eye. Both the injuries had been caused injuries an hour by some hard and blunt substance, like butt of pistol.

16. Indeed, some-how or the other the firearm which had been used by the appellant for shooting the deceased and injuring P.W. 4, could not be produced before the police. As evidence goes, while the appellant was being taken to the local people who helped P.W. 4 in overpowering him, the informant ran to the police station ahead of them for lodging the first information report. In the melee that had taken place the weapon appears to have got lost. The evidence of witnesses is that at the time of the shooting the appellant was accompanied by a few other companions who had also fled helter-skelter after the shooting incident. The possibility of some of them joining the crowd and laying his fingers on the weapon and disappearing therewith cannot be ruled out. Therefore, simply because the firearm which had been used for shooting the deceased and injuring P.W. 4, could not be produced before the police nor could the same be retrieved by the police subsequently, the version of, at least, P.W. 4 cannot be discredited.

17. In this context it is worth mentioning that the first information report was lodged very promptly within half an hour of the shooting incident. The informant was none else but the person who chased the assailant and overpowered him and in the process sustained some injuries on his face at the hands of the assailant. He had certainly no malice for falsely implicating the appellant for the shooting incident which later, led to the death of the deceased He had no sort of connection or friendship with the deceased or anybody of his family. Taking advantage of the

statement of this witness that he had been implicated in an incident of shooting which had taken place at Jamshedpur where he was residing with his father during his childhood, and the evidence of P.Ws. 1 and 8 that the deceased had been convicted in a murder trial and was on bail and was facing some other cases, an attempt has been made on behalf of the appellant to suggest that this witness (P.W. 4) was an associate of the deceased and, therefore, he has falsely implicated the appellant. There is nothing on the record except the suggestion that P.W. 4 was in any way connected or associated with the deceased or anybody of his family. Moreover, there is nothing on the record to show that this witness had met anybody of the family of the deceased before lodging the first information report after the shooting incident so that there could have been any deliberation between them for concocting a story for falsely implicating the appellant.

18. Therefore, taking a broad view of the matter the version of, at least, P.W. 4 that he saw the appellant shooting the deceased, chased and overpowered him and in the process received two blows at the hands of the appellant cannot be disputed even if in course of his cross-examination he appears to have made some inconsistent statements here and there which are quite ignorable. The result is that the finding of conviction of the appellant recorded by the trial Court requires no interference. The appeal is accordingly dismissed.

J.N. Dubey, Actg. C.J.

19. I agree.

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