

**Samar Singh Vs. State of Bihar,**

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**SooperKanoon Citation :** [sooperkanoon.com/130375](http://sooperkanoon.com/130375)

**Court :** Patna

**Decided On :** Aug-21-2007

**Judge :** Chandra Mohan Prasad, J.

**Acts :** Indian Penal Code (IPC) - Sections 34 and 302; Arms Act - Sections 27; Code of Criminal Procedure (CrPC) - Sections 401 and 401(3)

**Appeal No. :** Criminal Revision No. 903 of 2001

**Appellant :** Samar Singh

**Respondent :** State of Bihar, Chunchun Yadav and Subodh Kumar

**Advocate for Def. :** Shakeel Ahmad Khan, Sr. Adv., Krishna Mohan and Praveen Kumar, Advs.

**Advocate for Pet/Ap. :** Kanhaiya Prasad Singh, Sr. Adv., S.N. Prasad, A.P.P., Anil Kumar Singh and Chandra Mohan Jha, Advs.

**Disposition :** Application dismissed

**Judgement :**

**Chandra Mohan Prasad, J.**

1. The petitioner was the informant in this case and he has filed this revision against the judgment dated 25th September 2001 of the 7th Additional Sessions

Judge, Bhagalpur under Sessions Trial No. 448 of 1999 whereby the Opp. Party No. 2 Chunchun Yadav and Opp. Party No. 3 Subodh Kumar who were tried under Section 302/34 I.P.C. and 27 of the Arms Act and were acquitted of the charge.

2. Briefly stating. the case of the informant in his fard-beyan (Ext-1) was that on 23rd September 1998 at about 1:00 P.M. a procession of RJD people being armed with Lathi, Bhala etc. had come to Variety Chowk, Sujaganj and the people in the procession had destroyed the bulbs and Jhalar in the Durga Pooja decoration by breaking the same by means of Lathi. The further allegation is that the deceased Amar Singh who was the member of Durga Pooja Samiti and was discussing some matters with the members of the Samiti requested on loudspeaker the Opp. Party No. 2 Chunchun Yadav who was the Ex-M.P. of the locality and who was in the procession, to control the mob and thereafter the deceased along with Awadhesh Kumar Jha (not examined) and Babban Singh @ Bablu Singh (P.W.9) came down from the Loudspeaker and went to Chunchun Yadav, OPP. Party No. 2 for talking with him (Chunchun Yadav) and that while the deceased was near a wall there and Chunchun Yadav was also standing there Chunchun Yadav, took out his licensed revolver and fired a shot hitting below the chest of the deceased. It was further alleged that body-guard of Chunchun Yadav also fired as a result of which the deceased fell down and he was removed to a doctor but he was declared there dead.

3. The Opp. party Nos. 2 and 3 were tried by the trial court on the charges, as above. The trial court discussed the evidence and other aspects and also detailed facts and circumstances of the case and came to the finding that the prosecution was not able to prove the charges hence, the accused (Opp. Party Nos. 2 and 3) were acquitted.

4. Learned Counsel for the petitioner tried to lead this Court through the evidence and the facts of this case and to impress that the evidence has not been correctly appreciated and the findings arrived at by the trial court is not correct.

5. Learned Counsel for the opposite party submitted that in this case the State has not preferred any appeal against the acquittal and that in this revision, this Court cannot go to appreciate the evidence as is required in an appeal filed against

acquittal. It was further submitted that in this revision which has been filed by the private party (informant) this Court can interfere with the impugned order only in the circumstances when this Court finds a glaring defect in procedure or manifest illegality in the judgment or a gross miscarriage of justice. Referring Clause 3 of Section 401 of the Code of Criminal Procedure, it was also pointed out that the provisions do not authorise this High Court to convert the findings of acquittal into a finding of conviction in a revision filed by said private party i.e. the informant.

6. During hearing, the impugned judgment was considered with a view to look into whether it indicates any of the grounds like glaring defect in procedure, manifest illegality or miscarriage of justice so as to enable this Court to interfere with the findings of the trial judge.

7. The learned trial court has mentioned that in this case, there were only two eye witnesses, namely, P.W.1 Arjun Singh, father of the deceased and P.W.2 Samar Singh, the informant who happens to be brother of the deceased. Referring the fard-beyan of the informant the learned trial court has rightly found that two persons, namely, Awadhesh Kumar Jha and Babban Singh @ Bablu Singh who were stated to be persons who had accompanied the deceased at the time of occurrence but Awadhesh Kumar Jha was not examined by the prosecution. It was argued that any reasonable explanation has also not been furnished for his non-examination. The trial court mentions in his judgment that Babban Singh @ Bablu Singh was examined as P.W.9 but he has turned hostile and he has not supported the prosecution case. The trial court further considered on discussing various points, facts and circumstances that P.W.1 Arjun Singh, the father of the deceased who had come to support the prosecution case was not named in the FIR and he was not reliable witness on the point of occurrence.

8. On going through the discussion of the trial court over the evidence of this witness (P.W.1) I find no compelling reason to dislodge the findings of the trial court on this point. So far the evidence of P.W.2 Samar Singh, informant, brother of the deceased is concerned. the learned trial court has critically examined the evidence of this witness and has given a finding that he is also not a reliable witness on the point of occurrence. Here also I find no reason to interfere with the

findings of the trial court on this point.

9. The learned trial court took into consideration the various circumstances like the sequence and the manner of events which culminated into the alleged occurrence. The trial court discussed that the occurrence is said to have taken place as a result of the destruction of bulb and Jhalar having been broken by Lathi by the processionists and the I.O. visited the P.O. at 4:00 P.M. itself but he has not done any mention of the fact that he found any broken bulb and Jhalar. It was also discussed in the judgment that the deceased is said to be engaged in discussion with the members of the Durga Pooja Samiti just before the occurrence and he had also announced on loudspeaker asking the O.P.No. 2 to control the mob but the I.O. has not found any loudspeaker nor any member of the Samiti stated about such incident having taken place just before the occurrence. It was also mentioned that any member of the decorators was not examined to say that there was any decoration done by them.

10. Besides this, the learned trial court also discussed the medical report and discussed that according to the case of prosecution, the deceased and Chunchun Yadav (O.P.No. 1) were standing near a well and that the O.P.No. 2 took out his licensed revolver and fired the shot hitting the deceased on his chest.

11. In this context the learned trial court considered the P.M. Report showing the injury which showed a communicating injury caused by firearms and the injury i.e. the wound of entry and the wound of exit travelled from below to up i.e. the wound of entry was on the lower portion of the body and the wound of exit was on the higher portion of the chest. The learned trial court critically took into consideration that in the situation in which the occurrence is said to have taken place when the deceased and the assailant were standing on same surface, such nature of injury would not be caused and on this score a doubt over the manner of assault was found by the learned trial court. Here also, I find no ground to interfere with the findings of the trial court.

12. The learned trial court considered that according to the farad-beyan there were two assailants but while adducing evidence of P.Ws. 1 and 2 who are the only eye witnesses supporting the case of the prosecution on the point of occurrence came

up with their statement that it was O.P.No. 2 Chunchun Yadav took out his licensed revolver and fired shot hitting the deceased on his chest and that his bodyguard (O.P.No. 3) had fired shot hither and thither. Thus, even according to the evidence of P.Ws.1 and 2 whose evidence was also not found reliable by the trial court, O.P.No. 2 Chunchun Yadav was, the only assailant to the deceased.

13. During hearing the learned Counsel for thy opposite party argued that in this case the prosecution has not come up with clean hands and it has deliberately suppressed some materials which has caused great prejudice to the defence. In this context, the learned Counsel pointed to the order dated 15th March 1999 of the learned Chief Judicial Magistrate in the lower court records and indicated that this order shows that the firearms of the O.P. Nos. 1 and 2 were sent for examination to the F.S.L. for examination and a report has been received but the report was not proved by the prosecution on the record. The learned trial court has also considered this aspect in his judgment that the prosecution deliberately suppressed the report of the F.S.L. about the examination of the cartridge and the arms. Though the report of the F.S.L. has not been exhibited on the record but the learned Counsel for the opposite party tried to indicate from the F.S.L. report lying on the record that the fired cartridge found at the P.O. and the licensed revolver of the O.P.No. 2 which is said to have been fired for the fatal shot to the deceased has been examined by the F.S.L. which reported that the fired cartridge was not fired from the licenced revolver of the O.P.No. 2.

14. Thus hearing I find that at this stage this Court is not required to consider the evidence with a view to appreciate the same as required in an appeal filed against acquittal. In the instant case, the State has not preferred any appeal against acquittal. Under the provisions of Section 401(3) Cr.P.C. this Court has no authority to consider the impugned judgment for the purpose of converting the finding of acquittal into the finding of conviction. Whatever this Court can do is only this much that the impugned judgment can be interfered with when there is glaring defect or manifest illegality in the judgment or gross miscarriage of justice caused by the findings of the trial court.

15. In view of the discussion as made above, I fail to find any element which may require this Court to interfere with the judgment of the trial court. In such view of the matters, I find that there is no scope for making any interference with the impugned judgment. This revision application is found to be without any merit. Hence, the same is dismissed.

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