

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 553 of 2012

Arising Out of PS.Case No. -122 Year- 2006 Thana -null District- PATNA

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Upendra Rai S/o Late Brahmdeo Rai Resident of Village- Alipur Bihta, P.S.-
Bakhatiyarpur, District- Patna

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant : Mr. Rajesh Kumar, Adv. (Amicus Curiae)
For the Respondent : Mr. Abhimanyu Sharma, A.P.P.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 22-09-2015

Heard learned counsel for the Appellant and learned
counsel for the State.

The Appellant has been convicted under Section 302 of
the I.P.C., sentenced to undergo rigorous imprisonment for life as
also under section 386 of the I.P.C., sentenced to undergo rigorous
imprisonment for 10 years and under Section 27 of the Arms Act,
sentenced to undergo rigorous imprisonment for three years by
judgment dated 27.04.2012 passed by the VIth Additional Sessions
Judge, Barh in Sessions Trial No. 853 of 2008.

The prosecution case, according to the informant, Udit
Narayan Singh, on the basis of written statement is that at about 6.30
a.m. when he along with his brother deceased Ajab Sharma, nephew



Shiv Pujan Sharma (P.W.2) and Jay Prakash Sharma (P.W.3) was going towards Tarapur Champapur for cultivating his lands, the Appellant along with another unknown persons intercepted them. The Appellant stated that prosecution party would have to give Rs. 10,000/- as Rangdari for cultivating the land, failing which they would not permit him to cultivate the lands. The deceased Ajab Sharma protested to them saying that he was owner of the land and he has all documents relating to it and he would not give him Rangdari. Thereafter, the unknown person ordered the Appellant Upendra Rai to shoot at him at which the Appellant fired at the temporal region and stomach of the deceased. He immediately fell down and the accused persons ran away. The deceased was then brought to N.H. 30 but on the way he died.

The prosecution in all examined six witnesses, out of whom, the informant Udit Narayan Singh (P.W.1), Shiv Pujan Sharma (P.W.2), the nephew deposed as eye witnesses. Jai Prakash Sharma (P.W.3), another witness named in the first information report did not support the case and was declared hostile. P.W. 4, Dr. Niranjana Sharma held the postmortem report. P.W.5, Basawan Ram is Investigating Officer and P.W.6, Chowkidar Surendra Paswan is the person who brought the material Exhibit to the Court.

P.W.1 Udit Narayan Singh, who was aged about 85



years stated that at 29.05.2006 at about 6.30. a.m. while the deceased along with Shiv Pujan Sharma (P.W.2), Jai Prakash Sharma (P.W.3) was proceeding towards Chandpur and reached near the railway line on the fields of Krishna Yadav, two boys intercepted them, out of whom he identified Upendra Rai. Both of them asked that they would have to pay Rs. 10,000/- as Rangdari to which the deceased refused, then the unknown boy ordered Upendra Rai to fire at him so he pulled out his pistol from waist and shot at Ajab Sharma on the face and the stomach. When he started making a noise, none came on account of fear. When deceased Ajab Sharma was brought to Patna-Ranchi road on tempo, he died on the way. He identified Upendra Rai as also his signature is on the written report marked as Exhibit-1. He further stated that police recovered two cartridges of .315 and blood stained earth from the place of occurrence as also identified his signature on the two seizure lists, which is marked Exhibit-2, 2/1, 2/2 respectively.

In his cross-examination, we find that the evidence with regard to the credentials of the deceased and a suggestion has been given that the deceased was anti social element and had been killed on the previous night but the matter was reported later with false allegations. The attention of the witness has also been drawn on the place of occurrence but it is of no importance.



P.W.2 Shiv Pujan Sharma and another witness named in the first information report supported the informant and stated that on 25.05.2006 at about 6.30 a.m. he along with P.W.1 Udit Narayan Singh, Ajab Sharma deceased, Jai Prakash Sharma (P.W.3) proceeded towards Tarapur Champapur and reached near the railway line on the field of Krishna Yadav, they intercepted by Upendra Rai and unknown boy. Upendra Rai asked them as to where they were going and demanded Rangari of Rs. 10,000/- failing which they would not allow them to cultivate the lands. The deceased refused the said demand at which the unknown persons ordered Upendra Rai to shoot at him. On his orders, the Appellant took out a pistol and shot on the temple and twice on the abdomen of the deceased on account of which he fell down and died. He proves the Inquest Report as Exhibit-3. In his cross-examination, it was suggested to him that, in fact, the deceased had died earlier but the matter was reported belatedly implicating the Appellant.

P.W.3 Jai Prakash Sharma has given confusing statements in the cross-examination in chief on account of which he was declared hostile. Since his evidence does not turn the facts of the case either way, we are not inclined to discuss it at any further.

P.W.4 Dr. Niranjana Mishra stated that on 29.05.2006 at about 3.30 pm. he conducted postmortem of the deceased and found

the following injuries :

External :

Firearm injuries having following lesion;

1. (a) wound of entry through (R) ear lower part
1/2" x 1/2" x penetrating to deeper structures.

(b) wound of exit through (L) cheek molar
region 1" x 1 1/2" x penetrating to deep structures.

2. (a) wound of entry (R) lateral side of upper
abdomen 1/2" x 1/2" x abdominal cavity deep with
tattooing of skin (with no corresponding wound of
exit).

3. (a) wound of entry (R) flank of abdomen 1" x
1" x muscle deep.

(b) wound of exit (R) flank of abdomen below
and radial to (a) 1 1/2" x 1" x muscle deep)
(Superficial lesion).

Internal Examination :

Head & Neck

Skull, Temporal bone fractured on (R) and
maxilla on (L) side

Brain - Pale

Great Vessels of neck ruptured

Chest - Ribs intact, lungs-pale, heart both sides empty.

Abdomen - Full of blood, large intestine and small intestine ruptured. Stomach contained digested food materials. (Bullet found in pelvis and preserved).

On perusal of the postmortem report, I find that three injuries were found on the person of the deceased caused by fire arm and a bullet was recovered and found deep in pelvis under the skin of one of the injures. He stated that death had taken place within 24 hours and may be before 12 hours. He proved the postmortem report as Eexhibit-3.

Basawan Ram (P.W.5) is Investigating Officer, who stated that on 25.05.2006 at about 6.40 am. got information on telephone that somebody has been shot, upon which he went to the place of occurrence and received the written report of P.W.1. He also examined the body and proceeded to investigate the case. On inspection of the place of occurrence, he recovered two empty cartridges of .315 and blood stained earth. He also proved the Exhibit-2 series. In his cross-examination, we find that the unknown person was not identified or apprehended. There does not appear any cross-examination in the manner of occurrence in respect to the earlier statements of witnesses.

P.W. 6 Chaukidar, Surendra Paswan produced the blood stained earth, blood stained material and the cartridges, which he proves as Exhibits- 3, 4 and 5.

From the evidence of the aforesaid witnesses, we find that the occurrence is said to have taken place at 6.30 in the morning of 29.05.2006 and the matter was immediately reported to the Police at 6.40 am. The dead body was also sent for postmortem immediately thereafter, upon which the postmortem examination was held at 3.30 pm. on the same day. Thus, we find that there has been immediate report and action taken up after the occurrence. The evidence of P.W.1 and P.W.2 are consistent on the point that the two accused persons had intercepted them on their way to the fields, demanded Rangdari and on refusal, the deceased was shot at due to which he died. The place of occurrence is corroborated by Basawan Ram (P.W.5), Investigating Officer, who finds blood stained earth and empty cartridges there. The Doctor also fully corroborated the manner of occurrence, inasmuch as he finds three fire-arm injures, one on the face and two on the abdominal region. In conclusion, we find that there has been a prompt reporting of the incident, which has been further corroborated by the Investigating Officer and the Doctor by objective evidence and there is very little scope for doubting the veracity of the prosecution case.

In such circumstances, we are of the opinion that the prosecution has succeeded in proving its case beyond all reasonable doubts and hence, finding no merit in the appeal, the same is dismissed.

(Anjana Prakash, J.)

(Rajendra Kumar Mishra, J.)

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