

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 5 of 2010

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Ram Awadhesh Rai son of Sri Sidhnath Rai resident of Village- Surhuriya, P.O.-
Agrer Kala, P.S.- Suryapura, District- Rohtas

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant : Mr. Ashutosh Ranjan Pandey,
Mr. Rakesh Narayan Singh and
Ms. Archana Sinha, Advocates

For the Respondent : Ms. Shashi Bala Verma, APP

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CORAM: HONOURABLE MR. JUSTICE DHARNIDHAR JHA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 3 - 07- 2015

The present appeal is directed against the judgment of conviction dated 28.10.2009 and order of sentence dated 04.11.2009 passed by the learned Additional District and Sessions Judge, Fast Track Court-1, Sasaram in Sessions Trial No. 53 of 1986 by which the appellant has been convicted under Sections 302 of the Indian Penal Code and 27

of the Arms Act and sentenced to undergo rigorous imprisonment for life and to pay fine of Rs. 50,000/- and in default to suffer simple imprisonment of one year under Section 302 of the Indian Penal Code and rigorous imprisonment for three years under Section 27 of the Arms Act.

2. As per the informant Ram Barai Ram (Chamar) on 04.05.1985 at about 9:30 A.M. his brother Chhotai Ram and younger son Dhanji Ram, Gyanchand Ram and Ayodhya Ram had taken the cattle for grazing in the western field near the boring of Ramnath Rai where Dhanji Ram picked up unripe mangoes which had fallen from the tree upon which Pappu Rai, son of Ramashish Rai objected and asked why the same was being picked up. The brother of the informant had replied that he had only picked up the fallen unripe mangoes and Pappu Rai is said to have gone towards the village using abusive language. The informant at that time had reached near the '*mahua*' tree. After that co-villagers Ram Awadhesh Rai with double barrel gun, Birendra Rai with countrymade gun, Sidhnath Rai and Fatingan Rai with spear in their hands, Shivji Rai with rifle in his hand and Satyadeo Rai with a single barrel gun, Bhikhari Rai with stick, Doman



Rai with spear, Shiv Bihari Rai with single barrel gun and Rajbansh Rai with one small pistol came shouting “*maro, maro chamar ko*”. Upon this, the brother of the informant and his younger son who were tending to the cattle started running towards the southern side. Seeing this, Ram Awadhesh Rai told that one person was running away upon which Fatingan Rai told while running to shoot at the younger brother of the informant Chhotai Chamar. On such exhortation, Ram Awadhesh Rai made one fire on the brother of the informant which did not hit him, then the brother of the informant stood there and with folded hands asked to be forgiven. Then, Ram Awadhesh Rai fired due to which the brother of the informant was injured and he fell down and the injury was below the right armpit on the chest. When wife of Laxman Ram came to save from the firing, Fatingan Rai gave a blow on the back by the stick of the spear and the other accused went away firing. The informant watched the incident after hiding near a tree and after the brother of the informant had fallen down, the accused ran away in various directions. The women of the village then took the brother of the informant to the hospital where the doctor declared him dead.

3. The aforementioned fardbeyan was recorded



by Sub-Inspector M. Jha of Suryapura P.S. on 04.05.1985 and the F.I.R. was thereafter lodged on the same day at 3:15 P.M. bearing Suryapura P.S. Case No. 34 of 1985. Altogether, as per the fardbeyan, there were nine accused. Upon submission of chargesheet, cognizance was taken and charges were also framed against the nine accused under Sections 302, 302/149 of the Indian Penal Code and 27 of the Arms Act. During trial, Fatingan Rai and Shivji Rai died. Upon trial, out of the seven accused, only the appellant Ram Awadhesh Rai has been convicted.

4. The prosecution has altogether examined 14 witnesses namely, Barai Ram (P.W.-1), who is the informant; Ram Ayodhya Ram (P.W.-2); Dhanji Ram (P.W.-3); Paras Ram (P.W.-4); Gyanchand Ram (P.W.-5); Ganga Vishun Ram (P.W.-6); Laxman Ram (P.W.-7); Lachhominia Devi (P.W.-8); Dropadi Devi (P.W.9); Shiv Bachan Ram (P.W.-10); Kariman Ram (P.W.-11); Sri Kishun Ram (P.W.-12); Dr. Devendra Nath Sharma (P.W.-13) and Sri Kishun Ram (P.W.-14). Out of the aforesaid, P.Ws. 8, 9, 11, 12 and 14 turned hostile whereas P.W.-10 has been tendered. P.Ws. 2, 3 and 5, though supported the occurrence, have not named the appellant. Thus, basically the case of the prosecution is based

on the testimony of P.Ws. 1, 4, 6 and 7.

5. Learned counsel for the appellant has pointed out the discrepancy between the version given in the fardbeyan by the informant P.W.-1 and his deposition in Court and also in the case of the prosecution as has unfolded during depositions of P.Ws. 4, 6 and 7.

6. Upon appraisal of the statement made in the fardbeyan by the informant P.W.-1 and his deposition in Court it transpires that the allegation against the appellant is that he had a double barrel gun in his hand and co-accused Shivji Rai had rifle in his hand and the postmortem shows that there was one bullet found in the body and the wound of entry is above the right nipple. It has been alleged that both the appellant and Shivji Rai had fired. It has also been stated in the fardbeyan that women of the village took the deceased to the hospital whereas in the examination-in-chief it has been stated that the informant was also among those who had taken the deceased initially to the police station. However, in cross-examination it has been stated that from the hospital the informant did not go to the police station and also that in his knowledge nobody had gone to the police station and also that he was not aware as to who informed the police about the



death of his brother. He has also stated that no incident took place in the orchard and that the '*mahua*' tree where he is said to have been hiding is at a distance of 2-4 '*bigha*' west of the orchard. He has categorically stated that there was only one firing by rifle which had hit the deceased in the chest due to which the deceased had fallen down and after that nobody else had fired on him. He has further stated that there was no hole in the vest which the deceased was wearing. He has also stated that when his brother was standing with folded hands he was fired upon but he could not say as to who all were standing near him except for Fatingan Rai. However, at paragraph-39 he has stated that Fatingan Rai had given the rifle to the appellant. Thus, we find that though the appellant may have been one of the persons who was present at the time of occurrence and may also have had firearm in his possession but the genesis and manner of occurrence as narrated by the informant P.W.-1 does not exclusively pinpoint the appellant as the one whose gunshot had hit the deceased resulting in his death.

7. Coming to the deposition of P.W.-4, Paras Ram, he also claims to be an eye witness but at the time of initial firing he says that he was at his house eating breakfast



and that when he came out of his house he did not find any other person around him. At paragraph-7 he has stated that he reached the place of occurrence where Chhotai Ram was lying dead and the wife and other womenfolk of the locality were present but he did not recognize them and further that no male member was present there. He has further stated that he did not see who had taken the deceased from the place of occurrence. He has also stated at paragraph-11 that he had run away due to fear upon seeing the dead body of the deceased and had hidden in the bullock-shed and from there had watched the incident and further that he did not remember as to who had fired. This is a departure from his earlier statement about seeing the appellant and Shivji Rai firing on the deceased. His deposition is further indicative of there being past enmity between his family and that of the accused.

8. Ganga Vishun Ram, P.W.-6 has stated that when he heard firing he was washing his hand after having breakfast and that the appellant along with Shivji Rai had fired on the deceased. He has further stated that after coming out of his house and going into the passage he heard another firing but he did not meet anyone in the way. He has stated at paragraph-8 that both shots were fired at the same time and



after that there was no second firing. He has stated that after the incident, people of the locality came but besides him and the informant, P.W.-1 Barai Ram, no other male member had come. He has also stated that he was one of the persons who took the deceased to the hospital and on the way there was police station but nobody had gone there. From the above, it appears to us that the said witness is not credible as by stating that only he and P.W.-1 and no other male member was present at the place of occurrence, he has in effect made the presence of P.Ws. 4 and 7 also doubtful since P.W.-7 had also claimed that he was present at the spot whereas P.W.-4 had claimed that besides him there was no other male member.

9. As far as Laxman Ram, P.W.-7 is concerned, he has also stated that he was at his house having breakfast and on shouting had come out of the house and is said to have witnessed the occurrence alleging that the appellant and Shivji Rai had fired which hit the deceased Chhotai Ram due to which he fell down and died. He has claimed that the dispute arose on account of grazing of the buffaloes. Thus, we find that he has given a new cause for the dispute and has also not specifically stated that the appellant was responsible for causing the gunshot wound to the deceased leading to his

death.

10. Dr. Devendra Nath Sharma, P.W.-13 who has performed the autopsy has found only one wound of entry on the right side above the nipple and bullet embedded in the fourth thoracic vertebra and has opined that death was due to shock and haemorrhage with ante-mortem injury caused by firearm.

11. On a careful consideration of the prosecution story and the testimony of the witnesses, we find that witnesses being eye witness to the occurrence has not been satisfactorily proved and further that consistently it has come that the appellant was having gun in his hand whereas co-accused Shivji Rai had a rifle and in the postmortem only one bullet injury as also recovery of a solitary bullet from the dead body persuades us to come to the conclusion that the prosecution has not been able to bring home the charges against the appellant beyond reasonable doubt. Accordingly, giving benefit of doubt to the appellant, he stands acquitted of the charges framed against him and the impugned judgment of conviction dated 28.10.2009 and order of sentence dated 04.11.2009 passed against him by the learned Additional District and Sessions Judge, Fast Track Court-1, Sasaram are

set aside. The appeal stands allowed.

12. The appellant, who is in custody, shall be released forthwith, if not wanted in any other case.

(Ahsanuddin Amanullah, J)

Dharnidhar Jha, J - *I agree*

(Dharnidhar Jha, J)

NAFR/Anjani/-

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