

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Appeal (DB) No.887 of 2006**

Arising out of PS.Case No.-78 Year-2002 Thana-Amdabad District- KATIHAR

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Sahdeo Tanti @ Sahdeo Tati, Son of Late Gudri Tanti, Resident of Village  
Gopalpur, P.S. Amdabad, District Katihar.

.... .... Appellant

Versus

The State of Bihar

.... .... Respondent

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**Appearance :**

For the Appellant : Sri Rajendra Prasad Sah, Advocate  
Sri Ajay Kumar Verma, Advocate  
For the State : Sri Abhimanyu Sharma, APP

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**CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA**

**and**

**HONOURABLE SHRI JUSTICE GOPAL PRASAD**

ORAL JUDGMENT

**(Per: HONOURABLE SHRI JUSTICE GOPAL PRASAD)**

**Date: 12-02-2015**

This appeal is directed against the judgment of conviction dated 08.08.2006 and the order of sentence dated 09.08.2006 passed by Additional Sessions Judge, Fast Track Court No.-II, Katihar in Sessions Trial No. 307 of 2003 arising out of Amdabad P.S. Case No. 78 of 2002 by which the appellant has been convicted under Section 302 of the Indian Penal Code and 27 of the Arms Act and sentenced to undergo imprisonment for life under Section 302 of the Indian Penal Code and imprisonment for seven years under Section 27 of the Arms Act. However, it was ordered that both the sentences shall run concurrently.

2. The prosecution case, as alleged in the First Information Report by the informant Sanjay Mandal (P.W.7) was

that on 12.12.2002 at about 9 P.M. there was *Satya Narayan Puja* in his house. After the *Puja* having been finished, *Vishahari Gaan* (a song in prays of the snake god) was to be performed. In the meantime, Sahdeo Tanti the appellant, came to his *Darwaza* and said that he will not allow the *Vishahari Gaan* to be performed. The deceased Satan @ Satyanarayan Mandal, the brother of the informant, asked Sahdeo to allow the *Vishahari Gaan* to be performed but in the meantime, Sahdeo Tanti took out a pistol from his waist, started brandishing it and said that he will not allow the *Vishahari Gaan* to be performed and by saying so Sahdeo Tanti dragged Satan the brother of informant in the western *Gali* and shoot upon him by pistol which hit the mouth of the deceased due to which blood started oozing out and thereafter Sahdeo Tanti fled away. Satan @ Satyanarayan Mandal was carried to Amdabad Hospital on cot with the help of villagers and there he died. It is alleged that the occurrence was also witnessed by his sister Pato Devi (P.W.2) and Mehboob (P.W.3).

3. The *fardbeyan* was recorded by S.I. M.K. Sinha at Primary Health Centre, Amdabad at 11 P.M. The First Information Report was lodged on 12.12.2002 at 11.45 P.M. The investigation proceeded after lodging of the First Information Report, charge-sheet submitted, cognizance taken, case committed to the court of



sessions and after framing of charges trial proceeded. During trial nine witnesses were examined by the prosecution who are P.W.1 Fekan Mandal the son of the deceased, P.W.2 Putul Devi @ Pato Devi the sister of the deceased, P.W.3 Mahboob Alam the friend of the deceased, P.W.4 Naresh Mandal a co-villager, P.W.5 Munia Devi the wife of the deceased who on the date of occurrence was not in the village, P.W.6 Dr. Arun Kumar who conducted the post-mortem examination on the person of the deceased, P.W.7 Sanjay Mandal the informant, Kailash Paswan and Satyanarain Yadav P.Ws. 8 and 9 are formal witnesses who have formally proved the *fardbeyan* (Ext.3) and the case diary (Ext.4) respectively. During trial, the witnesses in their evidence deposed that appellant came and took the victim in pretext of talking of some special secret in the western Gali and shot him. The trial court taking into consideration the evidence of witnesses convicted and sentenced the appellant as mentioned above.

4. Learned counsel for the appellant, however, challenged the judgment of conviction and order of sentence recorded by the learned trial court on the ground that though the witnesses have supported the prosecution case but their evidence suffers from the infirmity regarding the genesis and the manner of occurrence mostly on the ground that they have deviated from the

initial version about the genesis of the occurrence. Hence, the prosecution case is not worthy for reliance nor the witnesses are trustworthy to maintain the conviction.

5. Learned counsel for the State, however, contends that the witnesses in their evidence claimed to be the eye witnesses and they are consistent in their evidence supporting the prosecution case regarding the implication of the appellant.

6. Now, taking into consideration the respective submissions of the parties, the question for consideration is whether the prosecution has been able to prove the charges beyond reasonable doubt.

7. However, the prosecution case as alleged in the First Information Report by the informant P.W.7 Sanjay Mandal is that the occurrence took place on 12.12.2002 at about 9 P.M. and after completion of the *Satya Narayan Puja*, *Vishahari Gaan* was going to be performed. In the meantime, Sahdeo Tanti came to the *Darwaza* of the house belonging to the informant and asked that he will not allow the *Vishahari Gaan* to be performed on which deceased Satan @ Satyanarayan Mandal asked him to allow to perform the *Vishahari Gaan* and then it is alleged that Sahdeo Tanti took out the pistol from his waist started brandishing it and said that he will not allow the *Vishahari Gaan* to be performed and thereafter

he dragged the deceased by catching hold of him to the west of the *Gali* and killed him by firing a shot in his mouth.

8. However, Sanjay Mandal (P.W.7) is the informant of the case and he in his evidence stated that after the performance of the *Puja* of *Satya Narayan Bhagwan*, they took the *Prasad*. Thereafter *Vishahari Gaan* was to be performed. After *Satya Narayan Puja* feast was going on and the party who had come to perform the *Vishahari Gaan* were taking their food outside the house in the meantime informant he heard the sound of explosion of a bomb and ran towards the sound then the informant saw his brother Satan @ Satyanarayan Mandal felling in the west of the *Gali* in injured state and also saw Sahdeo Tanti fleeing away. Thereafter the informant took his brother to the police station and from there the deceased was taken to the hospital as he was told to go to hospital first and when they reached to the hospital by that time his brother died. He has further stated that his brother the deceased at the time of occurrence was in the courtyard and he was at the *Darwaza* and his brother was taken by Sahdeo Tanti from the courtyard towards the *Gali*. In his cross-examination at paragraph-8, he stated that the persons who had come to sing the song were taking meal at one place in a line and the informant was there to feed them and on hearing the sound of firing, he ran towards the



sound and saw his brother in an injured state. He had no talk with his brother. He has further stated that none ran to catch hold of Sahdeo. Hence, from consideration of the evidence of this witness, it is apparent that this witness given a go bye to the prosecution story contained in the First Information Report that the appellant Sahdeo Tanti was not allowing the *Vishahari Gaan* to be performed and the appellant took out a pistol from his waist, started brandishing it and dragged the brother of the informant catching holding him to the western *Gali* and shoot him by firearm.

9. Fekan Mandal (P.W.1) is the son of the informant. He has also stated in his evidence that Sahdeo Tanti came to his house, called his father in pretext of special talk and took him to the western *Gali* and shot at him. However, P.W.1 claimed to be the eye witness of the occurrence as he claims to have gone behind him.

10. Similarly, Putul Devi @ Pato Devi (P.W.2) is the sister of the deceased stated that she gave food to the deceased and deceased had started taking meal and in the meantime Sahdeo Tanti came in the courtyard and asked his brother deceased to come out from the courtyard in the pretext of having some special secret talk thereafter shot at him in the western *Gali*. She also claimed to be eye witness. She claimed to have come two-three days prior to occurrence.



11. P.W.3 is Mahboob Alam, the friend of the deceased who claims to have his friendship from the time of their ancestors. However, he in his evidence has stated that after *Puja Prasad* was distributed and they went at the *Darwaza* and at that time Sahdeo Tanti called Satan @ Satyanarayan Mandal from the courtyard and took him in the southern *Gali* and then he heard the sound of firing. However, he is not an eye witness to the occurrence. However, this witness in his cross-examination at paragraph-5 has stated that *Puja* ended at about half past eight and after taking the *Prasad* they went to their *Darwaza*. However, this witness says that the distance of his village from the house of Satan is 2 Kms. This witness has further stated that there was no arrangement of feast at the house of Satan but again says that they remained there as *Vishahari Gaan* was to be performed after sometime. Hence, his evidence appears to be fluctuating that he says there was no arrangement for feast whereas P.W.7 the informant says that the person who had come for *Vishahari Gaan* were taking meal in a line.

12. Naresh Mandal (P.W.4) in his evidence has stated that they had been provided food in the courtyard and thereafter Sahdeo Tanti came, put some cooked vegetable on the head of Satyanarayan Mandal and thereafter there was some

altercation and then Sahdeo Tanti took Satyanarayan Mandal in the *Gali* and shot him there hence the prosecution has developed this new story at the subsequent stage.

13. Munia Devi (P.W.5) is the wife of the deceased. From her evidence it is apparent that she was not present at the place of occurrence on that very date and she has stated that she got the information of murder of his husband and hence, she is not an eye witness. She has stated that Sahdeo Tanti had threatened to make her widow some days back.

14. P.W.6 is the doctor who conducted the post-mortem examination and has found the following ante-mortem injuries:

- (i) Clotted blood on both nostrils blood was present at floor of mouth.
- (ii) A stellate wound about 2" x 1" was present at the right side of upper lip near angle of mouth. The margin of wound was inverted inwards.
- (iii) Tattoo marks were present on the verge of wound margin. There was no other external injury present.

On dissection of the face:

- (i) There was fracture of maxilla, hard palate breaking all premolar and molar teeth on right side.

On dissection of head and neck:

- (i) Brain and meninges were mixed with blood on right cerebral hemisphere.

On careful dissection- Bullet was recovered. There was no exit wound.

Neck on dissection:

All vessels and structures were found intact.

Bullet recovered was sealed properly after handing over to the custodian. The cause of death is due to haemorrhage and shock. The result of the injury sustained due to fire arm injury. Time elapsed since death within 24 hours as the post-mortem was conducted on 13.12.2002.

15. The Investigating Officer has not been examined in this case to say specifically about the place of occurrence and the objective finding about the place of occurrence.

16. Hence, taking into consideration the entire evidence, it is apparent that though the prosecution story in the First Information Report was that Sahdeo Tanti came and objected the performance of *Vishahari Gaan* and there on the request of Satan @ Satyanarayan Mandal for allowing to performing the *Gaan*, he took out the pistol from his waist started brandishing it and dragged Satan @ Satyanarayan Mandal catching hold of him in the western *Gali* and shoot him. However, during trial, the witnesses have given a go bye of the prosecution story in the First Information Report of brandishing of the pistol, about the manner of occurrence specially about its genesis, the appellant brandishing of the pistol catching hold of deceased and dragged from courtyard to western *Gali*. There is nothing in the First Information Report or *fardbeyan* about any feast. They developed story during trial that a feast was going on in the house of the informant and while the feast was going on the informant was busy outside the house at *Darwaza* giving food to the *Vishahari Gaan* party and then in the meantime, heard sound of firing then he went and saw the deceased in injured state and hence given a go bye to prosecution case hence P.Ws. 1



and 2 have developed a new story claiming to be eye witnesses with a new theory that appellant took Satan the deceased in pretext of some special talk from the courtyard and took him in the *Gali* and alleged to have shot and hence, the genesis of the case as alleged in the First Information Report that Sahdeo Tanti came in courtyard brandished pistol and dragged the deceased to the western *Gali* has been given go bye and the prosecution has developed a different story about the genesis of the occurrence.

17. Regard being had to the fact that the initial version, as mentioned in the First Information Report, just after the occurrence has not been supported by the prosecution during the trial and had developed a fresh story about the feast and taking the victim in the pretext of telling some secret information or special talk amounting to give a go bye of the prosecution story of brandishing of a pistol and dragging of the victim and hence, the conviction is not sustainable.

18. In the result, we are of the considered view that the prosecution has not been able to prove the charges beyond all reasonable doubt. The judgment of conviction dated 08.08.2006 and the order of sentence dated 09.08.2006 passed by Additional Sessions Judge, Fast Track Court No.-II, Katihar in Sessions Trial No. 307 of 2003 arising out of Amdabad P.S. Case No. 78 of 2002

is hereby set aside and the appeal is allowed. The appellant is acquitted of the charges, he had been found guilty of. He is in jail. He shall be released forthwith, if not wanted in any other case.

**(Dharnidhar Jha, J.)**

**(Gopal Prasad, J.)**

Sanjay/N.A.F.R.

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