

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1047 of 2010

[Against the judgment and order of conviction dated 17.08.2010 and 20.08.2010 respectively passed by the Additional Sessions Judge, XI, Patna, in Sessions Trial No.853 of 2007 arising out of G.R. Case No.34 of 2005 (Dhanarua P.S. Case No.16 of 2005).]

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Arun Yadav @ Arun Kumar, son of late Budhan Yadav, resident of village-Bhaispur, P.S.-Dhanarua, District- Patna

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Pramod Mishra, Advocate
Mr. Sabal Kumar Jha, Advocate
For the Respondent/s : Mr. A. K. Sinha, APP
For the Informant : Mr. Satish Chandra, Advocate

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

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HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 05-11-2015

1. The sole Appellant has been convicted under Section 302 Indian Penal Code and sentenced to undergo rigorous imprisonment for life with a fine of ₹2,000/- and in default of which to further undergo three months simple imprisonment vide judgment and order of conviction dated 17.08.2010 and 20.08.2010 respectively passed by the Additional Sessions Judge, XI, Patna, in Sessions Trial No.853 of 2007 arising out of G.R. Case No.34 of 2005 (Dhanarua P.S. Case No.16 of 2005).

2. The case of the prosecution, according to the



Informant, Fulan Devi (PW 6), is that on the date of occurrence i.e. 17.01.2005 at about 7.00 PM, suddenly the accused persons named and two other unknown persons variously armed entered into her house and immediately thereafter Appellant fired on account of which Nitish Kumar, the deceased, aged about 5 years sustained gun shot injury and died and then accused Uma Yadav snatched away the ear rings of her daughter-in-law, Urmila Yadav, whereas, accused Awadh Yadav and Mandal Yadav assaulted her with the butt of the gun. The accused persons were looking for her son Jhanak Yadav and Dharmendra Yadav, who had scaled the wall and ran away. The reason for the occurrence was old enmity. This *fard-e-beyan* was given at 8.50 PM before the Officer-in-Charge, Dhanarua Police Station.

3. During trial, the prosecution examined eight witnesses. PW 1, Naresh Yadav, stated that he was standing near the place of occurrence when he saw the Appellant and rest of the accused persons coming and firing on account of which his son, Nitish Kumar, sustained injury, fell down and died. He asserted that it was the Appellant, who had caused the death of his son. He further stated that the accused persons were on litigating terms with Ram Babu on account of which this occurrence took place. In cross-examination, he stated that the accused used to live in the same village and he himself did not have any dispute with them but he was



a witness in the murder of the father of Appellant, Arun Yadav, which makes him to be of his party. He clarified that the husband of the Informant, Ram Babu, was an accused in the case and he has been convicted for life after trial and both the families were on litigating terms. It was suggested to him that he had not stated earlier that he was standing near the place of occurrence when the accused persons came there and fired on account of which he died and it was the Appellant, who had caused the death. In fact, he had stated that his elder son, Chunnu Yadav, had come running and told him about the occurrence and then he had gone there and found his son dead. There is nothing else which is of note in his evidence.

4. PW 2, Bharat Yadav, is a hostile witness and appears to be hearsay witness at an earlier point in time.

5. PW 3, Raj Kishore Prasad, has also been declared hostile.

6. PW 4, Sunil Kumar, has also not supported the case of the prosecution.

7. PW 5, Chunnu Kumar, the brother of the deceased and son of PW 1, stated that on the date of occurrence his brother had gone to the house of the Informant with vegetables and he himself was standing at the door when suddenly he saw the Appellant and other accused persons entering courtyard and firing indiscriminately. The firing of the Appellant hit his brother Nitish on account of which



he fell down and died. He then ran to his father (PW 1) and told him, who came to the place of occurrence. He describes the manner in which they had gone to the courtyard and the activities of the Informant and her daughter-in-law and that they were cooking at that point in time when this occurrence took place. In cross-examination, it was elicited from him that the accused persons were firing indiscriminately and the firing had been done with intent to kill. He further stated that the police came at the place of occurrence one hour after the occurrence and he had given his statement. He also stated that his family and the family of Arun Yadav are not on inimical terms. He did not know about the murder of the father of the Appellant or conviction of the husband of the Informant.

8. PW 6, Fulan Devi, stated that on 17.01.2005 while she was in her house the accused persons including the Appellant variously armed entered and started to look for her son Dharmendra and Janak, who scaled the wall and ran away. However, the Appellant fired at the deceased, who died there and then. The reason for the occurrence was that earlier accused persons had injured her husband and even after this occurrence the accused persons had fired at Janak on account of which he died for which another case was instituted and the same is going on. In cross-examination, she stated that her main door was towards east and the Verandah would be about 7-8 hands in length and 5-6 hands wide and her daughter-in-

law was cooking. At that time, a *Diya* was burning there. She further stated that wall on the south was about 6 feet of height which was covered with *Phoos* (dried *long* grass). She further clarified that as soon as her son heard sound of firing, he ran away. She further stated that he ran away by climbing the ladder. In cross-examination, she conceded that there was litigation between the families and in one case her husband was the Informant in which Appellant, Arun, was an accused and there was one other case which had been instituted against her husband in which he has been convicted and the appeal was pending before the High Court. It was suggested to her that on account of earlier case the present case has been instituted so as to save themselves.

9. PW 7, Dr. Arun Kumar Singh, held post mortem examination of the deceased on 18.01.2005 and found following injury:

“One entry wound $\frac{3}{4}$ ” x $\frac{1}{2}$ ” on front of left side of chest from midline to left and $4\frac{1}{2}$ ” above from umbilicus and $4\frac{1}{2}$ ” below sternal notch, margin lacerated inverted and blackened and tattoo present in 10 ” x $5\frac{1}{2}$ ” surrounding the entry wound,

One exit wound of 1 ” x $\frac{3}{4}$ ” on right side of back of abdomen 1 ” right from midline. $10\frac{1}{2}$ ” below from right shoulder tip, margin lacerated and everted.

On dissection- Blood was found in the abdominal cavity. Xiphisternum was found fractured, stomach, liver and omentum were found lacerated transverse process of 1st lumbar vertebra was found fractured. Stomach contained about 50 gr. Semi-

digested food material. Heart was empty. Bladder was found empty. In general all viscera were found pale.

Opinion-

(1) Time since death 12 to 24 hours approximately at the time of post mortem examination.

(2) Cause of death- Hemorrhage and shock.

(3) Nature of violence-fire arm.”

We, thus, find that there was one fire arm injury on the persons of the deceased which was the cause of death.

10. PW 8, Bali Sharma, is the Investigating Officer, who stated that on 17.01.2005 the Officer-in-Charge, Rajesh Sharan, recorded the *fard-e-beyan* and handed over the investigation to him. He proved the *fard-e-beyan* Ext.2. He stated that they have received information on 17.01.2005 at 7.30 PM which was recorded and thereafter they proceeded towards the place of occurrence where *fard-e-beyan* was recorded and he started investigation. He described the place of occurrence being the house of the Informant of which the main door faced east and on the west it was covered and a ‘*Chula*’ was there. It was stated that it was the place of occurrence where the deceased had been shot at and found lying there. On the north was a short wall which was covered with bamboo and on the west was the house of the Appellant. He further proved the formal First Information Report (Ext.4) and stated that he examined the witnesses and that on account of insufficient light Inquest Report was not prepared at the house itself. The dead body was then taken to the



Police Station and Inquest was prepared which is Ext.5. In cross-examination, he stated that he did not lift the blood or blood stained earth from the place of occurrence nor did he mention about the same in the Case Diary. He had not found anything there except the dead body. From his cross-examination, it appears that PW 1, Naresh Yadav, father of the Informant was, indeed, a hearsay witness as claimed by him. Rest of his cross-examination is of no importance.

11. Learned counsel for the Appellants submits that identification of the Appellant was highly doubtful since it was quite dark as admitted by the witnesses themselves since a '*Diya*' was burning there. Further submission is that nothing was found at the place of occurrence which makes the same doubtful. Further, the manner in which there was indiscriminate firing, it suggests that the Appellant had no intention to kill the deceased. As for the witnesses, they all are interested and should not be believed.

12. On the other hand, counsel for the State submits that there is consistent evidence by way of PW 5, Chunnu Kumar, and PW 6 (Fulan Devi), who appear to be completely truthful and hence, they should not be disbelieved.

13. Counsel for the Informant submits that after this occurrence Appellant, Arun Yadav, killed Janak Yadav, son of the Informant, on account of which present occurrence had also taken place which makes the persecution story even more authentic.



14. On going through the evidence of the witnesses, I find that Chunnu Kumar (PW 5), brother of the deceased, has given a very natural narration of the manner in which they were present at the place of occurrence. He stated that both the brothers had gone to give some vegetables to the Informant and how the brother was detained by the daughter-in-law of the Informant on some pretext which appears to be a very normal conduct. There was no reason why Chunnu Kumar would have implicated the Appellant, since he being a young boy had no axe to grind with the accused persons. He is a completely independent witness and had no concern with litigation between the accused persons and the Informant. He has specifically stated that the accused persons entered into the courtyard and started firing indiscriminately with intent to cause death.

15. Whereas, Fulan Devi (PW 6) is concerned, no doubt her husband was convicted for the murder of the father of the Appellant, but that cannot be the lone reason for rejecting her evidence. From her narrative, we find that the occurrence had taken place at about 7.00 PM and *fard-e-beyan* was recorded at 8.50 PM i.e. immediately thereafter. There was no time gap which would give scope for embellishment or improvement in the manner of occurrence or the complicity of the accused persons.

16. It is a well known principle of law that motive is a double edged weapon. Even while the Informant may have had the

reason to implicate the Appellant, but then he also had reason to kill her son which was not accomplished on that day. We find also that later on the Appellant succeeded in doing so and is presently facing trial for the act as is admitted by the counsel for the Appellant.

17. Further, we find that the Doctor (PW 7) corroborated the manner of occurrence, inasmuch, as he found one fire arm injury which was the cause of death of the deceased as alleged.

18. As for the question of identification, even if there was partial darkness at the time of occurrence since the Appellant was well known to the witnesses, there was no chance of a mistake.

19. Hence, finding no merit in the appeal, the same is **dismissed.**

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

AFR
J. Alam/-

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