

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.451 of 2009

Arising Out of Noorsarai PS.Case No.90 – Year 2008 District- NALANDA (BIHARSHARIFF),
giving rise to Sessions Trial No.436 of 2008

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Ram Chandra Ram @ Chhote Ram, son of late Devan Ram, resident of Village
Pariyona, P.S. Noorsarai, District Nalanda

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : Smt. Maruti Kumari, Amicus Curae

For the Respondent : Sushri Shashi Bala Verma, A.P.P.

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE AMARESH KUMAR LAL

ORAL JUDGMENT

(Per: **HONOURABLE SHRI JUSTICE AMARESH KUMAR LAL**)

Date: 10-04-2015

The appellant has preferred this appeal against the judgment of conviction dated 24.2.2009 passed by the learned Sessions Judge, Nalanda at Biharsharif in Sessions Trial No.436 of 2008. After hearing the appellant on the question of sentence on 27.2.2009, the learned trial Judge directed the appellant to suffer rigorous imprisonment for life and a fine of Rs. 2,000/- and in default of payment of fine to suffer simple imprisonment for one month under Section 302 of the Indian Penal Code and rigorous imprisonment for

three years and to pay a fine of Rs. 1,000/- and in default of payment of fine to suffer simple imprisonment for one month under Section 27 of the Arms Act. However, both the sentences were directed to run concurrently.

2. On 9.4.2015 no one appeared on behalf of the appellant. We requested Smt. Maruti Kumari, Advocate, who was present in the Court to appear in this case as Amicus Curiae on behalf of the appellant. She assisted the Court for two days.

3. The prosecution case in brief is that on 14.5.2008 at about 10 P.M. mother-in-law of the informant Karuna Devi (P.W.3) gave fish to her husband Lakshman Ram (deceased) to eat. Thereafter, the appellant Ramchandra Ram alias Chhote Ram started abusing his mother, which was protested by the deceased. The grievance of the appellant was that the amount of pension of his mother was being spent on the deceased. There was a hot altercation. The appellant threatened the deceased to face the consequences. Thereafter, the deceased went up to the roof of the house. The appellant armed with pistol followed and fired shot upon the deceased. The deceased became unconscious and succumbed to his injuries at the roof of the house itself.

4. While the appellant was escaping away from the place of occurrence, he was apprehended by the co-villagers and was beaten by them.. The fardbeyan of Karuna Devi, the informant

(P.W.3) was recorded by S.I. S.K.Mandal, the Officer-in-charge of Noorsarai Police Station on 15.5.2008 at 1 A.M. at the house of the deceased. After the trial, the appellant was convicted and sentenced as aforesaid.

5. Learned Amicus Curiae appearing on behalf of the appellant has submitted that it appears from the prosecution evidence that no one had seen the appellant firing shot upon the deceased. It has also come in evidence that the mother-in-law, father and brother of the informant were present at the time of occurrence but they have not been examined nor the co-villagers have been examined in this case.

6. The defence of the appellant is that the deceased was a notorious criminal and he was killed otherwise than alleged by the prosecution and he was also, in fact, indulged in criminal activities. It is also contended that the Investigating Officer (P.W.5) had also not found the firearm or empty cartridge at the place of occurrence. The blood stained clothes were also not sent to Forensic Science Laboratory for chemical examination.

7. Sushree Shashi Bala Verma, learned Additional Public Prosecutor appearing for the State has submitted that non-examination of mother-in-law, brother and father of the informant as also the co-villagers does not affect the merit of the prosecution case. The deceased and the appellant were full brothers and, as such, their mother had chosen not to report the police nor she had chosen to

depose in this case. The co-villagers have also not been examined as they do not want to depose in the quarrel of two brothers. Now- a-days, no one wants to depose in a case if he is not interested from either of the parties to give evidence. The ocular evidence has been supported by the medical evidence of P.W.1 who had also found gun shot injury near the nose of the deceased and the bullet had also been recovered from the head of the deceased. The evidence of the prosecution witnesses indicates that it was this appellant who had caused firearm injury as a result of which the deceased had died.

8. After hearing learned counsel for the parties and on perusal of the records, it appears that the prosecution has examined five witnesses, out of whom P.W. 2 Rajeev Kumar is the son of the informant, P.W. 3 Karuna Devi is the informant and the wife of the deceased, and P.W. 4 Chinta Devi is the wife of Mahajan Ram, the brother of the deceased as well as the appellant. P.W. 1 is the doctor and P.W. 5 is the Investigating Officer of the case.

9. P.W. 1 Dr. Shailendra Kumar had held the post-mortem examination on the dead body of the deceased and had found the following anti-mortem injuries:-

- (i) Tattooing of the whole face there is a lacerated wound like entry wound near the base of nose of the left side of size 2" X ½". Margin inverted. But in deposition cm has been typed in place of inches. No exit wound was found.

On internal examination bone surrounding entry wound like frontal bone and nasal bone were found fractured. There was fracture of occipital bone and a bullet was removed from the brain mater which was preserved.

In the opinion of the doctor the above injuries were sufficient in the ordinary course of nature to cause death. The post-mortem examination report has been marked Ext.-1.

10. In his cross examination, P.W. 1 has stated that although he has not stated in the post-mortem examination report that the injuries were found anti-mortem but in his cross examination he has stated that injuries found on the dead body of the deceased were anti-mortem..

11. P.W. 2 Rajeev Kumar is the son of the deceased. He has also supported the prosecution case and has stated that at the time of occurrence he was at the roof of the house where his father and his uncle, the appellant, were there. He has stated that the appellant had shot fired at his father which caused injury near his nose and his father fell down and succumbed to his injuries. In his cross examination, he has stated that at the time of occurrence he was at the roof of his house and the blood which had fallen down was shown to the police at the place of occurrence. The clothes of his father were also wetted with blood.

12. P.W. 3 Karuna Devi is the informant and the wife of



the deceased. She has also supported the prosecution case and has stated that there was an altercation between the deceased and the appellant. Before the altercation her mother-in-law gave cooked fish to the deceased to eat. After the altercation the deceased went up to the roof of the house. She also went up to the roof of the house. She has also stated that the appellant fired shot causing injury near the nose of the deceased and he succumbed to the injuries. The appellant fled away from the roof. There is some variance in the statement of the P.W. 3 in her deposition in court and in her fardbeyan which appears to be minor and does not affect the prosecution case.

13. P.W. 4 Chinta Devi is the wife of Mahajan Ram, the brother of the appellant and the deceased. She appears to be related to the deceased and the appellant as well. She has supported the prosecution case and has stated that there was an altercation between the deceased and the appellant due to pension money of the mother. Thereafter Lakshman Ram, the deceased went up to the roof of the house and the appellant followed him and fired shot. She heard the sound of firing and thereafter she went up to the roof of the house and found that the deceased had fallen down at the roof and blood was oozing out from his nose. The appellant jumped from the roof and fled away. In her cross examination also she has stated that appellant had caused injury to the deceased and she saw pool of blood. She has also stated in paragraph 7 of her evidence that there was no other person

except the family member at the time of occurrence.

14. P.W. 5 is the Investigating Officer of the case. He has proved the fardbeyan (Ext.3) and the formal F.I.R.(Ext.4). He has stated that he inspected the place of occurrence which is in the village, house of the appellant and the deceased. He has stated the place of occurrence to be the roof of the house where the family of the four brothers including the appellant and the deceased were living but they had separate mess and business. He has stated that he had recorded the statements of P.Ws. 2 and 4 and had prepared the inquest report Ext.- 5. He has also stated that the appellant had criminal antecedents as mentioned in paragraph 8 of the case diary. In his cross-examination he has stated that there was no staircase for going over the roof of the house and a bamboo staircase was being used for going to the roof of the house and coming down in the courtyard which was being used by the members of the house. He has also stated in paragraph 10 of his cross-examination that blood stained clothes were received but they were not sent to Forensic Science Laboratory for chemical examination. He has also stated that the doctor had not given the cartridge to him which was recovered from the brain of the deceased nor he had asked from the doctor about it. He has also stated that he did not examine the neighbours of the deceased as the surrounding people were not ready to make statements against the appellant due to his fear.

15. On consideration of the evidence, it appears that the statements of P.Ws. 2,3 and 4 are reliable and convincing although P.W. 4 had not seen the appellant firing shot at the time of occurrence but they have stated that an altercation between the appellant and the deceased had taken place and thereafter the deceased went up to the roof of the house and the appellant followed him with firearm and soon thereafter they had heard sound of firing. Thereafter P.W.s 3 and 4 went up to the roof of the house and found the deceased injured and blood was oozing out. They had also seen the appellant escaping from the place of occurrence. The evidence of the prosecution witnesses is corroborated by P.W. 1 the doctor as also by P.W. 5 the Investigating Officer of the case. The evidence of these witnesses clearly suggests that it was this appellant who had fired shot causing the death of the deceased.

16. Considering the facts and circumstances stated above, we do not have any ground to interfere with the findings arrived at by the learned trial court. As such, the judgment of conviction and order of sentence are hereby upheld and the appeal is dismissed.

17. Smt. Maruti Kumari, learned Amicus Curiae has assisted us in this appeal for two days. We direct the Patna High Court Legal Services Committee to pay her fee of one hearing. Let a copy of first and last page of the present judgment be made over to the learned

Amis Curiae so that she may get a fee.

(Dharnidhar Jha, J)

(Amaresh Kumar Lal, J)

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