

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 835 of 2009

Against the judgment of conviction, dated 23.07.2009, and order of sentence dated 28.07.2009 passed by Shri Thakur Prasad Singh, learned Additional Sessions Judge, VI, Begusarai, in Sessions Trial No. 42 of 2007 arising out of Ballia P.S. Case No. 92 of 2006

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Md. Ishlam, Son of Md. Habib, resident of village – Chhoti Ballia, Uper Tola, Police Station – Ballia, District - Begusarai

.... Appellant

WITH

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Criminal Appeal (DB) No. 819 of 2009

Fucho Thakur, Son of Fulena Thakur, resident of village - Chhoti Balia (Uper Tola), Police Station – Balia, District – Begusarai

.... Appellant

WITH

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Criminal Appeal (DB) No. 701 of 2009

Md. Shamsheer, Son of Ghulam Rasool, Resident of village – Saidanchak, Chhoti Balia, District – Begusarai

.... Appellant

Versus

The State of Bihar

.... Respondent (In all the Appeals)

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Appearance :

(In CR. APP (DB) No. 835 of 2009)

For the Appellant : Shri Asoka Jang Bahadur, Advocate
Shri Md. Rashid Alam, Advocate

(In CR. APP (DB) No. 819 of 2009)

For the Appellant : Shri Binod Kumar, Advocate

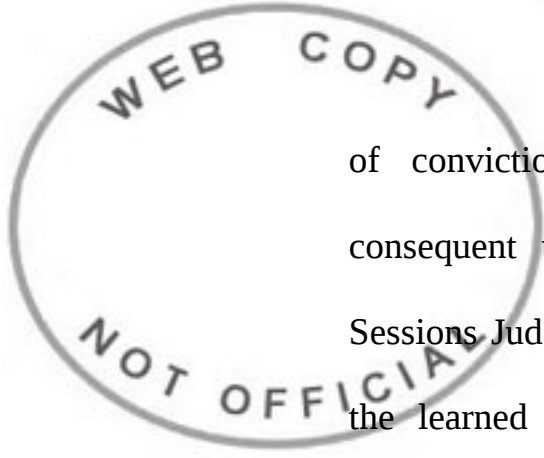
(In CR. APP (DB) No. 701 of 2009)

For the Appellant : Shri Ajay Kumar Thakur, Advocate
Shri Md. Imteyaz Ahmad, Advocate
Shri Ravi Ranjan, Advocate
Shri Malay Kumar Choudhary, Advocate
For the Respondent : Shri Dilip Kumar Sinha, A.P.P.
(In all the Appeals)

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA
and
HONOURABLE SHRI JUSTICE GOPAL PRASAD
ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)
Date: 14-07-2015



The present batch of three appeals arise out of judgment of conviction dated 23.07.2009 and order of sentence passed consequent upon it on 28.07.2009 by the learned 6th Additional Sessions Judge, Begusarai in Sessions Trial No. 42 of 2007 by which the learned Judge held the three appellants guilty of committing offences under Sections 302/34 of the Indian Penal Code and Section 27 of the Arms Act and directed each of them to suffer rigorous imprisonment for life as also to pay a fine of Rs.5,000/- each, else to suffer rigorous imprisonment for one year under Sections 302/34 of the Indian Penal Code and rigorous imprisonment for two years under Section 27 of the Arms Act.

2. The informant was not the eye-witness to the occurrence. He very fairly stated that Md. Katlu (P.W. 1) came running to his house, where he had come to take his dinner, to inform him that his son Bablu had been shot dead by appellant Fucho Thakur in conspiracy with the three appellants. It was stated that the three appellants were in the orchard of *lichhi* and mangoes, the fruits of which had been purchased by him as also by appellant Md. Islam and appellant Md. Shamsheer. It was stated that in his absence the three had taken toddy where his son Bablu was also present and in that course the incident had occurred.

3. Thus, what appears from the written report is that the incident had been seen only by P.W. 1 Md. Katlu and the version which had been narrated by him to the informant (P.W. 4) had been reiterated by him before the Officer who recorded his *fardbeyan* on 28.05.2006 at 09:15 P.M. in respect of the occurrence of the same day which had taken place sometimes in between 08:30 and 09:00 P.M.

4. We are not going to discuss all the details of the prosecution as well the details of the evidence. Suffice it to mention that except P.W. 1 Md. Katlu, all the witnesses were either hearsay or had been declared hostile as is the case with P.W. 9 Md. Mansoor. However, what we found after being taken through the evidence of P.W. 1 was that the evidence of P.W. 5 also could not be said to be trustworthy. P.W. 1 had stated that the three appellants were taking toddy where the deceased Babalu was also sitting. He had been asked to bring water by the appellants and he had gone away to bring water and when he came the incident had taken place. We may have very well accepted the evidence of P.W. 1 but for his evidence appearing in paragraph 13 of his deposition. He stated that he was also taken into custody by the police just after the incident and he was kept in police lock-up for six days and, thereafter, he was brought for production into the Court. He was pressurized by the police during his confinement and was asked to make the same statement which was planted into his mind.

P.W. 1 was very honestly stating in his evidence in the last line of paragraph 13 that whatever evidence he had given in Court was the statement tutored to him by the police.

Thus, what appears to us is that the solitary eye-witness Md. Katlu was not telling the truth as regards the murder of deceased Babalu. Not only that, when it came to judging the evidence of P.W. 1 as regards the veracity of the prosecution case of informing the informant, we again found that he could not have been either a witness to the real part of the occurrence or if he had been there, he was not conveying the truth about the incident to the informant. This appears more prominently coming out of his evidence not only in paragraph 13 but also in paragraph 14 and other previous paragraphs, like, 11 and 12 from which it appears that when the incident had taken place he might not have been present at the scene of occurrence on account of having gone to fetch water. Thus, on appraisal of evidence of P.W. 1 what we find is that it is dangerous to act upon the evidence of the witness to uphold the conviction of the appellants recorded by the learned trial Judge.

5. We have already pointed out that other witnesses right from the informant to anybody who had been produced by the prosecution in support of its preliminary version were either hearsay or had been declared hostile. The evidence of doctor Gopal Mishra does

indicate that Babalu was shot dead but the nature of evidence which is available to us makes it utterly unsafe to act upon it so as to uphold the conviction of the appellants.

6. In the result, the three appeals succeed. They are hereby allowed by setting aside the judgment of conviction and order of sentence passed upon each of the three appellants. They are acquitted of the charges they had been held guilty of. Appellant Md. Islam, of Cr. Appeal (DB) No. 835 of 2009 is in jail while other appellants, like, Md. Shamsheer and Fuchao Thakur are on bail. Let Md. Islam be released from custody forthwith, if not wanted in any other case and other appellants shall stand discharged from the liabilities of their respective bail bonds.

(Dharnidhar Jha, J)

(Gopal Prasad, J)

S.A./Kundan

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