

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1310 of 2007

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AGAINST JUDGMENT OF CONVICTION DATED 09.05.2007 AND THE ORDER OF
SENTENCE DATED 11.05.2007 PASSED BY ADDITIONAL SESSIONS JUDGE- VII,
BHAGALPUR IN SESSIONS CASE NO. 203 OF 2004/TR.NO. 546 OF 2006, ARISING
OUT OF SHAHKUND POLICE STATION CASE NO. 12 OF 1992 DATED 28.01.1992

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Bagulia Kahar

.... Appellant

Versus

State of Bihar

.... Respondent

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Appearance :

Amicus Curiae : Mr. Neeraj Kumar @ Sanidh, Advocate

For the Respondent : Mr. S.N.Prasad, Addl.Public Prosecutor

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

and

HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 08-04-2015

Earlier on 27.11.2007, Mr. Prabhat Kumar was appointed as Amicus curiae to assist the Court. Today, in spite repeated calls, neither Mr. Prabhat Kumar is available nor the counsel on record appeared on behalf of the appellant. As such, we are left with no option but to appoint Mr. Neeraj Kumar @ Sanidh, who is present in the Court, as Amicus curiae to assist the Court.

2. The sole appellant Bagulia Kahar has filed this appeal against the judgment of conviction under section 302 of the Indian Penal Code (herein after referred to as the IPC) and section 27 of the Arms Act, whereby he has been sentenced to life imprisonment and rigorous imprisonment for three years respectively by

Additional Sessions Judge VII, Bhagalpur in Sessions Trial No. 203 of 2004 bearing Tr.No.546 of 2006. However, both the sentences were directed to run concurrently.

3. The prosecution case, as made out in the fardbeyan of Md. Ajim of village Sajour, Tola Garhi, Police Station Sahkund (Sajour), district Bhagalpur recorded by the Sub inspector of Sajour OP on 28.01.1992 at 6 PM at Jawaharlal Nehru Medical College and Hospital, Bhagalpur, in short, is as follows:-

4. On 28.01.1992 the informant Md.Ajim was selling potato at Sajour Hatia along with his son Md.Chand alias Chanoo. In the meantime, at about 2.30 PM accused/appellant Bagulia Kahar and Matra Yadav of Sajour police station started quarreling with each other, in front of the sweets shop of Hardeo Sao of village Sajour. In course of the fight, the accused Bagulia Kahar fired on Matra Yadav. However, the fire shot missed Matra Yadav, instead pierced the chest of Mushhra Chaudhary @ Baba jee and hit informant's son Md. Chand on his head. Both the persons became severely injured. The muscular portion of the head of informant's son also bulged out on account of fire arm injury. Thereafter, the informant with the help of others carried both the injured persons to the Sabour Hospital but as there was no doctor, they brought them to Jawahar Lal Medical College & Hospital

(herein after referred to as 'the JLMCH), Bhagalpur. The injured were in unconscious state where treatment started. It was alleged that the accused Bagulia Kahar intentionally fired at his son and Mushhara Chaudhary @ Baba jee with an intention to commit murder.

5. On the basis of fardbeyan of Md. Ajim (who was not examined), Sajour police station case no.12 of 1992 dated 28.01.1992 under section 307, 326 of the IPC and section 27 of the Arms Act was registered. Injured Md. Chand died during treatment and as such section 302 IPC was added to the First Information Report. Police after investigation submitted charge sheet against the accused Bagulia Kahar under sections 302 & 307 of the IPC and section 27 of the Arms Act on 31.03.1992. Cognizance of the offence was taken on 20.05.1992 and the case was committed to the court of sessions on 29.01.2004. Charge was framed under sections 302 and 307 IPC and section 27 of the Arms Act on 19.07.2004.

6. Out of 12 charge sheet witnesses, the prosecution examined only four witnesses. PW 1 Md Anwar is a relative of the deceased. PW 2 Mansoor Ahmad has been declared hostile. PW 3 Md. Mansoor Ali is a hearsay witness who is said to have arrived at the place of occurrence after the incident. PW 4 is Matra Yadav

alias Anil Yadav, who was originally fired upon by the accused, also became hostile at the trial.

7. The defence did not examine any witness in support of its case. The defence of the appellant under section 313 of the Code of Criminal Procedure is complete denial of the occurrence. On consideration of the materials on record, the trial court convicted the sole appellant under section 302 IPC and 27 of the Arms Act and sentenced him as already noticed in the earlier paragraphs. However the appellant was acquitted of the charge under section 307 IPC as the injured Mushhara Chaudhary @ Baba jee was not examined. Being aggrieved, the sole appellant has filed the instant appeal.

8. Mr. Neeraj Kumar alias Sanidh, learned Amicus curiae submits that the case is virtually of no evidence. He submits that neither the informant, the doctor, nor the Investigating officer of the case was examined. He further submits that the post mortem examination report and the inquest report were also not brought on record. The prosecution has also miserably failed to establish the place of occurrence and the manner of occurrence.

9. Heard Mr. Neeraj Kumar @ Sanidh, learned Amicus curiae as well as Mr. S. N. Prasad, learned Additional Public Prosecutor for the other side.



10. We find that the prosecution has examined four witnesses, out of which PW 2 Mansoor Ahmad and PW 4 Matra Yadav alias Anil Yadav were declared hostile. It is relevant to state here that as per the FIR itself, the appellant is said to have fired at Matra Yadav, which fire shot accidentally pierced Mansoor Ahmad first and then the son of the informant Md. Chand. PW 3 is a hearsay witness who stated that he arrived at the place of occurrence after the incident on hearing sound of fire shot. He is a witness on the point of seeing the accused fleeing away with pistol after commission of the occurrence. This leaves alone PW 1 Md Anwar who has claimed to be an eye witness of the occurrence. He, in fact, in his evidence, has supported the prosecution case mentioned in the FIR.

11. Mr. Satya Narain Prasad, learned Additional Public Prosecutor stated that the conviction can be fastened on the sole testimony of this witness as he appears to be a truthful witness. There is no dispute as to the proposition of law that conviction can be based on solitary evidence of a witness if his evidence is free from doubts.

12. In view of the fact that the solitary eye witness on which the prosecution has relied is also a close relative, his evidence needs to be scrutinized very cautiously in absence of non-



examination of the Investigating Officer, Medical officer and the informant. We find that though this witness has supported the case so far as manner of occurrence is concerned, however in his evidence he also stated that just after occurrence, the injured Md.Chand was taken to Sajour Hospital from where he was taken to the other hospital by which time he had already died. This particular statement of this witness is in conflict with the statement of the informant narrated in the FIR and the statement of PW 3. Both the informant and PW 3 stated that the injured were brought to JLMCH after the incident, where Md. Chand died of the injuries, after a day. However, PW 1 in his statement has stated that Md. Chand died before he reached the hospital. We find that this witness has not even correctly stated about the hospital where the deceased was taken for treatment. This apart, we do not find any corroboration on point of manner of occurrence from any other prosecution witnesses. Even the informant (Ajim s/o Tetar Mian), as well as the I.O., and the Medical officer who conducted post mortem examination report have not been examined. Even the inquest report has not been proved. Besides this, according to Mr. Neeraj Kumar @ Sanidh the appellant is in jail since last 12 years in the instant case.

13. Because of what has been discussed and pointed out above, it clearly emerges that there is no credible, clinching and reliable evidence on record, adduced by the prosecution, which could have been made foundation for convicting the accused-appellant Bagulia Kahar. At any rate, in the face of evidence on record, which was nothing, but an admixture of half-truth and untruth, the accused-appellant ought to have been accorded, at least, benefit of doubt.

14. The appeal succeeds and the same is allowed. The appellant Bagulia Kahar is acquitted of the charges he had been held guilty of by setting aside the judgment of conviction and the order of sentence. The appellant is in jail. He shall be released forthwith, if not wanted in any other case.

15. Send back the Lower Court Records.

(Samarendra Pratap Singh.)

(Kishore Kumar Mandal, J)

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