

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Appeal (DB) No.728 of 2009**

(Against the judgment of conviction, dated, 28<sup>th</sup> May, 2009, and the order of sentence, dated, 29<sup>th</sup> May, 2009, passed by Shri Abdul Salam, Additional Sessions Judge (F.T.C.) Ist, Bhojpur, Ara, in Sessions Trial No.282 of 2001, arising out of Udwantnagar P.S. Case No. 36 of 2000 corresponding to G.R. Case No.481 of 2000).

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Gupteshwar Shah, Son of Julfi Shah, resident of Village Sakhua, P.S. Udwant Nagar, District Bhojpur

.... .... Appellant

Versus

The State of Bihar

.... .... Respondent

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**Appearance :**

For the Appellant : Mr. Baxi S.R.P. Sinha, Sr. Advocate  
Mr. Rahul Nath, Advocate  
Mr. Sanjay Kumar, Advocate

For the Respondent : Mr. Sujit Kumar Singh, APP

**Mr. Aruni Singh, learned Counsel as Amicus Curiae**

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**CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI**

**And**

**HONOURABLE MR. JUSTICE VIKASH JAIN**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)

Date: 27-04-2015

Under the judgment, dated 28.05.2009, passed, in Sessions Trial No. 282 of 2001, by learned Additional Sessions Judge, Fast Track Court No. I, Bhojpur, at Ara, the accused-appellant, Gupteshwar Shah, stand convicted under Section 302 of the Indian Penal Code. In consequence of his conviction, the accused-appellant stands, under the order, dated 29.05.2009, sentenced to suffer imprisonment for life.

**2.** The case of the prosecution, as unfolded by the First Information Report, may, in brief, be described as under:



**(i)** Amrendra Kumar, son of Singhasan Ram, (since deceased), had a quarrel, on 02.03.2000, at about 05.00 P.M., with Dipu Shah, son of accused Gupteshwar Shah, when they were playing. Following the quarrel, which the said two children had, Dipu beat Amarendra. On being so beaten, Amrendra returned his house and told his father, Singhasan Ram, that Dipu Shah had beaten him. Accompanied by his elder son, Manoj Kumar @ Manoj Ram, Singhasan Ram went, at about 7.00 P.M., to the house of accused Gupteshwar Shah to lodge a complaint regarding the conduct of Dipu Shah. When Singhasan Ram told Gupteshwar Shah that latter's son, Dipu Shah, had beaten Amrendra, Gupteshwar became angry and, on being asked by Gupteshwar Shah, his wife held Singhasan Ram by his waist and accused Gupteshwar Shah shot at Singhasan Ram from a country-made pistol by making his pistol touch the wearing apparels of Singhasan Ram.

**(ii)** On being shot by the bullet so fired from a country-made pistol, Singhasan Ram fell down and when his son, Manoj Ram (P.W.4), attempted to bend forward, accused Gupteshwar's brother, Arjun Shah, chased Manoj Ram with *lathi* in his hand saying that if he would not flee away, he (Manoj), too, would be killed.

**(iii)** On being informed by the village Chowkidar, Jitendra Yadav, R. S. Patel, Sub-Inspector of Police, came, on



02.03.2000 itself, at 10:00 P.M., to the place of occurrence. On arrival at the place of occurrence, the said Police Officer recorded, in writing, Manoj Kumar @ Manoj Ram's statement with regard to the occurrence and treating the said statement as First Information Report, Udwanthnagar Police Station Case No. 36 of 2000 was registered, under Sections 302/34 of the Indian Penal Code and Section 27 of the Arms Act, 1959, against accused Gupteshwar Sah, his wife and Arjun Sah.

**(iv)** During investigation, inquest was held over Singhasan Ram's dead body, and the *post mortem* examination, conducted on the said dead body revealed that Singhasan Ram had died because of bullet injury sustained by him on his chest.

**(v)** On completion of investigation, a *charge sheet* was laid, under Section 302 of the Indian Penal Code and Section 27 of the Arms Act, 1959, against accused Gupteshwar Shah.

**3.** At the trial, charges, under Section 302 of the Indian Penal Code and Section 27 of the Arms Act, 1959, were framed against accused Gupteshwar Shah. To the charges so framed, accused pleaded not guilty.

**4.** In support of their case, prosecution examined altogether 08 (eight) witnesses. The accused was, then, examined under Section 313 (1) (b) of the Code of Criminal Procedure, wherein the accused denied that he had committed

the offences, which were alleged to have been committed by him, the case of the defence being that of denial. No evidence was adduced by the defence.

**5.** Having, however, found the accused guilty of the offences, which he stood charged with, learned trial Court convicted him accordingly and passed sentence against him as mentioned above.

**6.** Aggrieved by his conviction and the sentence, which has been passed against him, the accused, as a convict, has preferred this appeal.

**7.** We have heard Mr. Baxi S.R.P. Sinha, learned Senior Counsel, appearing for the appellant, and Mr. Sujit Kumar Singh, learned Additional Public Prosecutor, appearing on behalf of the State. We have also heard Mr. Aruni Singh, learned Counsel, appearing as Amicus Curiae.

**8.** While considering the present appeal, it may be pointed, at the very outset, that according to the evidence of Dr. Rohit Ram Kanaugia (P.W.8), who had, on 03.03.2000, admittedly, conducted *post mortem* examination on the dead body of Singhasan Ram, he found as follows:

*"(1) Rigor Mortis in all limbs was present. Mouth was open and both eyes were closed.*

*(2) External injuries:*

*(i) 1 1/2" x 1/2" chest cavity deep wound margin over irregular and under ruined*

*inverted with charring over and surrounding the wound over in front of right side chest wall.*

(3) *On dissected, intercostals muscle and subcutaneous tissues found lacerated right side of lung was lacerated. Great vessels were damaged withy full of blood in chest cavity. Heart was empty. One metallic foreign body resembling bullet recovered during dissection from the back of right side of chest wall and the bullet was preserved.*

*Skull- Brain was found pale.*

*Abdominal cavity- All visceras were pale, stomach contained semi digested food. Urinary bladder contained about 200 ml. of urine."*

**9.** It is in the evidence of the doctor (PW 8) that the above injuries were *ante mortem* in nature, time being elapsed since death being within 36 hours.

**10.** In the opinion of the doctor (PW 8), death was caused due to *haemorrhage* resulting from the damage to the vital organs of the body, the injuries having been caused by fire-arm. The *post mortem* report has been proved and marked as Exhibit 2.

**11.** Neither the finding of the doctor nor his opinion, with regard to cause of death of the said deceased and/or his opinion with regard to the nature of weapon, which might have been used, for causing assault on, and death of, the said deceased, were disputed either by the prosecution or by the

defence. This apart, we, too, do not notice anything inherently incorrect or improbable in the evidence given by the doctor (PW 8).

**12.** The question, however, remains is: whether the accused-appellant was the one, who had caused the death of Singhasan Ram and thereby committed the offence of *murder* punishable under Section 302 of the Indian Penal Code?

**13.** In order to prove its case that the accused-appellant was the assailant, the prosecution examined, as already indicated above, as many as 8 witnesses. Out of these 8 witnesses, the informant, Manoj Kumar (P.W.4), who is the brother of the deceased, has turned hostile and did not support the case of the prosecution. Similarly, Ramawati Devi (P.W.5), widow of deceased, Singhasan Ram, Kaushal Yadav (P.W. 3) , Dharmendra Kumar (P.W. 7), son of deceased Singhasan Ram, and Mukesh Ram (P.W.6), a neighbour of deceased, Singhasan Ram, who had been examined as independent witnesses, have all turned hostile. None of these witnesses, namely, P.Ws.3, 4, 5, 6 and 7, had given any incriminating evidence against the accused-appellant.

**14.** What is also necessary to bear in mind is that the Investigating Officer has not been examined in the present case with the result that statements, which were said to have been made by P.Ws. 3, 4, 5, 6 and 7, to the police, have

remained unproved. Consequently, there is nothing in the evidence on record to hold that any statement had been made by any of these witnesses implicating the present accused-appellant as the assailant of Singhasan Ram.

**15.** The case of the prosecution, therefore, comes to rest on the evidence of Butan Ram (P.W.1), and Ram Pravesh Singh (P.W.2), coupled with the medical evidence on record as adduced by the P.W.8.

**16.** Let us, now, consider the evidence of Butan Ram (P.W.1). According to this witness, on the day of the occurrence, at about 7.00 P.M., a quarrel had taken place between the son of Gupteshwar Shah and the son of Singhasan Ram and, following the quarrel, Singhasan Ram went to accused Gupteshwar Shah to lodge complaint and when Singhasan Ram reached the house of accused Gupteshwar Shah, accused Gupteshwar Shah and his wife came out of their house, wife of Gupteshwar Shah held Singhasan Ram by his waist and accused-appellant Gupteshwar Shah fired at Singhasan Ram from a close range by means of a country-made pistol and when Manoj Ram (P.W.4), who was treated as informant of this case, tried to catch hold of Gupteshwar Shah, Arjun Shah, son of accused Gupteshwar Shah, attempted to assault Manoj Kumar and Manoj fled away.

**17.** Though P.W.1 has, at one place of his evidence,



claimed that he saw the entire occurrence, he buckled under the pressure of cross-examination and deposed that when he, first, saw Singhasan Ram, Singhasan Ram was already dead. It is also in the evidence of P.W.1 that after he (P.W.1) reached the place of occurrence, Kaushal Yadav (P.W.3) and Awadhesh Singh (not examined) reached there meaning thereby that if PW 1 had not seen shooting of Singhasan Ram by accused Gupteshwar Shah, the question of Kaushal Yadav (PW 3) having seen accused Gupteshwar Shah shooting Singhasan Ram could not have arisen at all. What is also relevant to note is that the evidence of P.W.1 does not show the presence of Ram Pravesh Singh (P.W.2) at the time and place of occurrence.

**18.** The evidence of P.W.1 cannot be believed and this conclusion gets support from the fact that he has conceded, in his cross-examination, that it is for the first time, at the trial, that he has given his evidence. P.W. 1 has claimed that at the place, where Singhasan Ram had fallen, there was pool of blood, but the Investigating Officer having not been examined, no corroborative evidence is found to have been adduced by the prosecution.

**19.** Coupled with the above, one cannot ignore the fact that the First Information Report, claimed to have been lodged by P.W. 4 (Manoj Kumar), son of deceased Singhasan Ram, has not been proved by Manoj Kumar (PW 4) and/or by

the Investigating Officer.

**20.** It has surfaced from the evidence of P.W.2 that it was the village Chowkidar, Jitendra Yadav, who had informed the police.

**21.** Incumbent therefore, it was, on the part of the prosecution, to bring on record as to what information the said Chowkidar had given to the police at Udwanthnagar Police Station. If the said information was with regard to the death of Singhasan Ram and if it was this information, which had brought the police to the place of occurrence, then, the information, lodged by the said Village Chowkidar, would be the First Information Report inasmuch as the information, so given to the police, would relate to the commission of *cognizable offence* and, in consequence thereof, the contents of the *fardbeyan* of Manoj Kumar (PW 4), even if proved, would, at best, be a statement of Manoj Kumar (PW 4) recorded under Section 161 of the Code of Criminal Procedure during the course of investigation of the case.

**22.** Close on the heels of the evidence of PW 1, the evidence of Ram Pravesh Singh (PW 2) is that on the day of occurrence, at about 6.30/7.00 P.M., while he was at the shop of one Deo Kumar, he heard *hulla* raised from the direction of the house of accused Gupteshwar Shah and when he (PW 2) went there, he (PW 2) found that altercation was on between



accused Gupteshwar shah and Singhasan Ram, whereupon accused Gupteshwar Shah told to catch Singhasan Ram and, immediately, thereafter accused Gupteshwar Shah shot, by means of pistol, at the chest of Singhasan Ram. Nowhere, in his evidence, P.W.2 has deposed that accused Gupteshwar Shah's wife had caught hold of Singhasan Ram by his waist, when accused Gupteshwar shah had shot Singhasan Ram on his chest. This apart, as we have already indicated above, the evidence of P.W.2 gives no indication at all that P.W. 2 was present at the place of occurrence, when Singhasan Ram was shot dead by accused Gupteshwar Shah,.

**23.** It is worth pointing out that in his cross-examination, P.W.2 has conceded that his statement was recorded *suo motu* under Section 164 of the Code of Criminal Procedure without any application having been filed in this regard and that the said statement was not recorded at the instance of the police. What can also not be ignored, while considering the evidence of P.W. 2, is that according to him, when he went to the place of occurrence on hearing *hulla*, *marpit* i.e. the mutual assault, had not started and that it was only after his arrival that *marpit* (i.e. mutual assault), had started. At the same time, and in the same breath, P.W.2 has claimed that before he reached the place of occurrence, Singhasan Ram had already fallen down meaning thereby that

before he reached the place of occurrence, Singhasan Ram had already been shot at.

**24.** Because of what has been discussed and pointed out above, we do not find that the evidence of P.W.1 and P.W.2 could have been regarded as reliable evidence and their evidence could not have been made foundation for conviction of the accused-appellant. This apart, what was the information given to the police, which brought the police to the place of occurrence, remains a mystery. The question as to whether the accused-appellant's name has been revealed to the police, as the assailant, at the first point of time, is also not answered by the evidence on record.

**25.** Situated thus, we are clearly of the view that in the facts and attending circumstances of the present case, the accused-appellant, Gupteshwar Shah, deserves to be accorded the benefit of doubt.

**26.** In the result and for the foregoing reasons, we allow this appeal. The impugned conviction of the accused-appellant and the sentence passed against him by the judgment, under appeal, are hereby set aside. The accused-appellant, Gupteshwar Shah, is held not guilty of the offences, which he stood convicted of, and he is hereby acquitted of the same under benefit of doubt.

**27.** As the accused-appellant, Gupteshwar Shah, is

in custody, he is directed to be released forthwith, if not required to be detained in connection with any other case.

**28.** Let the *Amicus Curiae* be paid a fee of Rs. 5,000/-.

**29.** Registry shall, forthwith, send a copy of this judgment and order to the learned trial Court along with the Lower Court Records.

**(I. A. Ansari, J.)**

**(Vikash Jain, J.)**

B.T/Md. Ibrarul/  
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