

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.862 of 2009

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(AGAINST THE JUDGMENT OF CONVICTION, DATED, 29TH JULY, 2009, AND THE ORDER OF SENTENCE, DATED, 31ST JULY, 2009, PASSED BY SHRI SHEO SHANKAR GIRI, 2ND ADDITIONAL SESSIONS JUDGE, MADHEPURA, IN SESSIONS TRIAL NO. 199(A) OF 1999, ARISING OUT OF CHOUSA (PURAINI) POLICE STATION CASE NO. 124 OF 1996, CORRESPONDING TO G.R.NO.1262 OF 1996).

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Ambika Sharma, son of late Prayag Sharma, resident of village Fulpur, Police Station Chousa (Puraini), District Madhepura.

.... Appellant

Versus

The State of Bihar Respondent

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Appearance:

For the Appellant : Mr. Ajay Kumar Thakur, Adv.
Md. Imteyaz Ahmad, Advocate.
Mr. Nilesh Kumar, Advocate.

For the Respondent: Mr. Ajay Mishra, APP

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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: 22-06-2015

By the judgment, dated 29.07.2009, passed, in Sessions Trial No. 199(A) of 1999, by learned 2nd Additional Sessions Judge, Madhepura, the accused-appellant, Ambika Sharma, stands convicted under Section 302 of the Indian Penal Code and Section 27 of the Arms Act, 1959. In consequence of his conviction, the accused-appellant stands, under the order, dated 31.07.2009, sentenced to suffer

imprisonment for life, under Section 302 of the Indian Penal Code, and rigorous imprisonment for a period of seven years under Section 27 of the Arms Act. Both the sentences having been directed to run concurrently.

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

(i) Tilo Devi was aunt of the informant, Bechan Sharma (PW 3). She used to live in a room separated from the room, where Bechan Sharma (PW 3) and his wife, Bina Devi (PW 4), used to live. On 01.12.1996, at about 11.00 PM, while Tilo Devi was sleeping in her room on a gunny bag spread over the straw lying at the floor of the room, along with Jitni Devi and Sanchu Sharma, i.e., parents of the informant, the accused persons, namely, Ambika Sharma, Bilash Yadav, Nahli Sharma @ Nageshwar Sharma, Jai Chandra Sharma, armed with fire-arms, entered into the house of the informant. Having entered into the room, where Tilo Devi was sleeping, accused Ambika Sharma, on being exhorted by accused Bilas Yadav, shot at Tilo Devi by opening his fire-arm. Having so shot at Tilo Devi, the assailants fled away. On *hulla* being raised, neighbours of the said deceased assembled and Bechan Sharma informed them about the occurrence.

(ii) On the following morning, police arrived and



Bechan Sharma's statement was recorded, at his house, as his *fardbeyan* and treating the said *fardbeyan* as the First Information Report, Chausa (Puraini) Police Station Case No. 124 of 1996, under Sections 302/448/34 of the Indian Penal Code and Section 27 of the Arms Act, 1959, was registered, on 27.06.2005, against accused persons, namely, Ambika Sharma, Bilas Yadav, Nahali Sharma @ Nageshwar Sharma and Jai Chand Sharma.

(iii) During investigation, inquest was held over Tilo Devi's dead body, which was also subjected to *post mortem* examination, and, on completion of investigation, a *charge sheet* was laid, under Sections 302/448/34 of the Indian Penal Code and Section 27 of the Arms Act, 1959, against accused persons, namely, Ambika Sharma, Bilas Yadav, Nahali Sharma @ Nageshwar Sharma and Jai Chand Sharma.

3. At the trial, a charge, under Section 302 of the Indian Penal Code, was framed against accused Ambika Sharma. A charge was also framed, under Section 302 read with Section 34 of the Indian Penal Code, against accused Jai Chand Sharma. A charge, under Section 27 of the Arms Act, 1959, was further framed against accused Ambika Sharma and Jai Chand Sharma. All the accused pleaded not guilty to their respective charges.

4. In support of its case, prosecution examined



altogether 6 (six) witnesses. The accused were, then, examined under Section 313 (1)(b) of the Code of Criminal Procedure, 1973, wherein the accused denied that they had committed the offences, which were alleged to have been committed by them, the case of the defence being that of denial. No evidence was adduced by the defence.

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

6. Aggrieved by his conviction and the sentences, which have been passed against him, Ambika Sharma, as a convict, has preferred this appeal.

7. We have heard Mr. Ajay Kumar Thakur, learned Counsel, appearing on behalf of the appellant, and Mr. Ajay Mishra, learned Additional Public Prosecutor, appearing on behalf of the State.

8. In order to correctly appreciate the evidence, which has been adduced by the prosecution against the accused-appellant, it is imperative to take note of what Dr. Anant Kumar Bhagat (PW 6) has deposed. According to the evidence of the doctor (PW 6), who had, admittedly, conducted, on 03.12.1996, at about 12.00 noon, *post mortem*

examination on Tilo Devi's dead body, he found following injuries:

"External Examination:

"(i) Lacerated wound of nearly 1" x 1" x 2" with charring around it over left side middle neck. Direction of wound left to right. Margin were inverted.

Internal Examination:

On opening Chest:- (i) Fracture of one thoracic vertebrae corresponding to above wound;

(ii) Laceration of lower part of right lung;

(iii) Piercing wound on right part of diaphragm;

(iv) Heart pale and empty. Lungs were pale.

On Opening of Abdomen:

(i) Lacerated entry wound of 2" x 2" over internal surface of limb right-side;

(ii) Lacerated exit wound of 2¹/₂" x 2¹/₂" over external surface of liver. Right side corresponding to just above injury.

(iii) Lacerated wound of 2¹/₂" x 2¹/₂" over internal surface of right side chest corresponding to just above injury. This was entry wound with margin inverted.

(iv) One bullet found from external surface just below skin corresponding to just above injury.

(v) Stomach with semi-solid dirt

and pale, spleen, kidneys, intestine were pale.

On opening scalp and skull:

Brain was pale."

9. In the opinion of the doctor (PW 6), death was caused due to shock and haemorrhage resulting from the fire-arm injuries sustained by the said deceased.

10. Neither the findings 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 6).

11. Situated thus, it becomes clear that Tilo Devi's death was *homicidal* in nature.

12. What is, now, important to note is that according to the evidence of Bechan Sharma (PW 3), at about 9.00 to 10.00 O'clock in the night, while he was, along with his wife, warming himself sitting by the side of fire, accused Ambika Sharma armed with fire arm and accused Bilas Yadav carrying a torch light in his hand, accompanied by two other persons armed with *lathis*, entered into the house, and accused Ambika Sharma shot Tilo Devi, who died. As PW 3 shouted for help, Jaji Sharma (PW 2) and Bhairo Sharma came there. It

is also in the evidence of PW 3 that the police came in the following morning and recorded his statement. This statement has been proved as Exhibit-3. It is also in the evidence of PW 3 (Bechan Sharma) that the accused, who came with *lathis*, were Jai Chand and Nahli Sharma.

13. Close on the heels of the evidence of PW 3, his wife (PW 4) has deposed that at about 9:00/10.00 PM, in the night of the occurrence, while she was sitting with her husband by the side of fire in her room, accused Bilas Yadav, Nahli Sharma, Ambika Sharma, Jai Chand Sharma came to their house and while Ambika Sharma and accused Bilas Yadav entered into the house, the other two accused remained outside the house. It is in the evidence of PW 4 that accused Ambika Sharma was armed with a fire-arm and he shot Tilo Devi dead, whereupon she (PW 4) raised *hulla* and Suro Sharma, Arun Sharma and Jaji Sharma came, but the accused persons fled away.

14. While considering the evidence of PW 3 and PW 4, it may be noted that according to the evidence of PW 4, Arun Sharma went, on the following morning, to the police station to inform the police about the occurrence and the evidence of PW 3 is that he and Arun had gone to police station on the same day. Surprisingly enough, PW 3 has said that he does not know what he had reported to the police. When the



evidence, so given by PW 3 and PW 4, is considered in the light of the evidence of Investigating Officer (PW 5), it transpires that according to the evidence of Investigating Officer, Parsuram Singh (PW 5), who was, on 02.12.1996, posted as the In-Charge of Puraini outpost, he heard, at about 7.30 AM, a rumour about a woman having been shot dead and, having made entry, in this regard, in Station Diary being Entry No.16, dated 02.12.1996, he went to the place of occurrence and recorded the statement of Bechan Sharma i.e., PW 3.

15. So far as the evidence of PWs 3 and 4 is concerned, it becomes clear, in the light of the evidence of the Investigating Officer, that though PW 3 and PW 4 have claimed that PW 3, accompanied by Arun Sharma, went to the Police Station and informed the police about the occurrence, the evidence of the Investigating Officer (PW 5) shows that no information was given by Bechan Sharma (PW 3) with regard to the occurrence. On the other hand, PW 3 has stated, in his cross-examination, that he does not remember what he had told the police.

16. From a combined reading of the evidence of PWs. 3, 4 and 5, it transpires that though PW 3 went to the police Station, he did not reveal the names of the assailants to the police. Clearly, therefore, the assailants have been named by PW 3 as a measure of after-thought and such a belated



disclosure, in absence of any convincing explanation, cannot be readily accepted and relied upon. Though PW 3 got recorded his *fardbeyan* naming all the four accused persons and though PW 4 also supported the evidence of her husband (PW 3), the fact remains that it is the evidence of PW 4, i.e., wife of Bechan Sharma, that accused Ambika Sharma entered into the room and shot dead Tilo Devi. It is also in the evidence of PW 4 that Nahli Sharma @ Nageshwar Sharma and Jai Chandra Sharma had not entered into the house, but they were standing outside the house. How PW 4 came to learn that accused Nahli Sharma @ Nageshwar Sharma and Jai Chandra Sharma were standing outside the house remains a mystery. The evidence on record offers no explanation at all in this regard. Necessarily, therefore, the evidence of PW 4 has to be discarded as utterly unreliable.

17. Moreover, the description of the occurrence, as given by PW 3 and PW 4, shows that both of them were inside their room at the time, when Tilo Devi was shot dead in her room and, hence, it is impossible to believe that sitting inside their room, they had seen the assailants and could have named them.

18. On no better footing stands the evidence of PW 1 (Suresh Sharma) inasmuch as it is the evidence of PW 1 that he heard the sound of firing and, then, he also heard *hulla*



raised by Bechan Sharma, whereupon he came out of his house and saw Ambika Sharma and Bilas Yadav fleeing away and, then, he went to the house of Bechan Sharma. It is not reasonable to believe that though PW 1 did not, immediately, come out of his house on hearing sound of firing and he came out of the house only after he had heard the *hulla* raised by Bechan Sharma (PW 3), he would have still seen Ambika Sharma, Bilas Yadav and others fleeing away. The evidence of PW 1 is unsafe to place reliance upon inasmuch as it becomes evident from the fact that in his statement made to the police, he did not make any such statement and this position has not been disputed by the prosecution. On the same footing rests the evidence of Jaji Sharma (PW 2) inasmuch as PW 2 has deposed that on hearing the noise, he woke up and when he come out, he saw some persons running away and, amongst them, he saw Ambika Sharma, Bilas Yadav, Nahli Sharma @ Nageshwar Sharma and Jai Chand Sharma and, then, he went to the house of Bechan Sharma and saw the dead body. Even this witness had not made any such statement to the police during the investigation.

19. Situated thus, the evidence of PW 1 and PW 2 cannot be safely relied upon.

20. What crystallizes from the above discussion is that none of the incriminating circumstances, which the

learned trial Court has relied upon, could have been held to have been proved legally and convincingly. In the face of such a state of evidence on record, the accused-appellant ought to have been acquitted.

21. 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 and order under appeal, are hereby set aside. The accused-appellant is held not guilty of the offence, which he stands convicted of, and he is hereby acquitted of the same.

22. As the accused-appellant, namely, Ambika Sharma, is in custody, he is directed to be released forthwith if not required to be detained in connection with any other case.

23. 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.)

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