

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.871 of 2008

Arising out of PS.Case No.-98 Year-2006 Thana-Mehshi District- EAST CHAMPARAN
(MOTIHARI)

Umesh Rai, Son of Ram Ekbal Rai, Resident of Village Bhimalpur, P.S. Mehshi,
District East Champaran.

.... Appellant

Versus

The State of Bihar

.... Respondent

Appearance :

For the Appellant : Sri Rakesh Ranjan, Advocate
For the State : Ms. Shashi Bala Verma, APP
For the Informant : Sri Sharda Nand Mishra, Advocate
Sri Dhananjay Kumar Gupta, Advocate
Sri Deepak Kumar Advocate

CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE AMARESH KUMAR LAL

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 25-03-2015

The solitary appellant, being aggrieved by and dissatisfied with the judgment of conviction and order of sentence respectively dated 11.06.2008 and 12.06.2008 passed by the learned 1st Additional Sessions Judge, Motihari in Sessions Trial No. 277 of 2007 has approached this Court in appeal. The appellant was convicted of committing offences under Section 302 of the Indian Penal Code and Section 27 of the Arms Act and after being heard on sentence was directed to suffer rigorous imprisonment for life as also to pay a fine of Rs. 5000/- on account of being convicted under Section 302 of the Indian Penal Code. In case of default in making the payment of fine

amounting to Rs. 5000/-, the appellant was directed to suffer simple imprisonment for one year. As regards the conviction of the appellant under Section 27 of the Arms Act, he was directed to suffer rigorous imprisonment for three years and was also required to pay a fine of Rs. 3000/- else, to suffer simple imprisonment for six months. The sentences were directed to run concurrently.

2. Deceased Kapildeo Sah was the full elder brother of informant Baldeo Sah (P.W.6). It was stated that the deceased Kapildeo Sah was going towards his cattle shade which was situated east of his house and the informant was coming from there after having milked the cattle. When the deceased had reached near the channel which was by the side of the road, this appellant Umesh Rai along with Dharmendra Rai, the brother-in-law of the present appellant, reached near Kapildeo Sah and this appellant is said to have asked him as to whether he had arranged the sum of Rs. 1,00,000/- from Gauhati which was required by him to be paid to him. It is stated that the deceased rejoined the present appellant by stating that it was not good that being a co-villager he was asking the deceased to pay *Rangdari* and the deceased further stated that the act of the appellant would not be tolerated. As soon as the deceased had uttered those words, it is alleged, the appellant pulled out a country made pistol and fired a shot at deceased Kapildeo Sah who was hit and fell on the



ground and breathed his last. The two accused, i.e., present appellant Umesh Rai and his companion and brother-in-law Dharmendra Rai started running towards north and both of them was followed by the informant Baldeo Sah (P.W.6), Birendra Sah (P.W.2), Harendra Sah (P.W.1) and others of his village. However, the accused persons succeeded in making good their escape.

3. It was stated by P.W.6 the informant that the present appellant as also his brother-in-law Dharmendra Rai were persons of criminal behaviour, who used to indulge in criminal acts in the village and the two were always demanding money from persons which was taken lightly by the informant and others because the accused persons belonged to the same village of the informant.

4. As may appear from the evidence of P.W.8 S.I. Mukul Parimal Pandey, he learnt about the commission of the offence on 05.11.2006 at about 9 a.m. and he came to the place of occurrence after entering the above fact into Station Diary Entry No. 89 dated 05.11.2006. The information was received by P.W.8 S.I. Mukul Parimal Pandey at 9.05 a.m. and he reached the place of occurrence and held inquest upon the dead body by preparing the inquest report (Ext.3) at 9.30 a.m. Thereafter, he recorded the *fardbeyan* (Ext.4) of P.W.6 Baldeo Sah on which basis, the First Information Report (Ext.5) of the case was drawn up. He thereafter took up the investigation of



the case and during that course he inspected the place of occurrence. He found a pair of slippers on the path way which was situated in the village and prepared the seizure memo after seizing the two slippers. The seizure memo has been marked Ext.6. He thereafter inspected the place of occurrence and it appears that he did not find any drop of blood on or around it. He recorded the statement of witnesses and sent the dead body for post-mortem examination and after procuring the copy of the post-mortem report and completing the investigation, sent the present appellant up for trial. The other accused Dharmendra Rai illuded the police and the trial also, on account of being absconded.

5. The defence of the appellant was of non-participation. His further defence was that Kapildeo Sah was a man of bad character and he had been murdered by someone in the dead of night or at some point of time which could not be seen by anyone. It was pleaded that it is a case of false implication on account of suspicion. It was also suggested by the defence that the man was murdered at some other place and his dead body was placed at the path way and that was the reason that no blood was found there.

6. In support of the charges, the prosecution examined nine witnesses. Harendra Sah (P.W.1) and Birendra Sah (P.W.2) were not eye-witnesses to the occurrence and they had merely stated that after hearing the sound of firing of a shot, they rushed from the other



side of the *Bandh* after crossing it and found that the present appellant was being chased by the informant and they also joined him in an attempt to arrest the appellant. Kishore Kumar Sah (P.W.3) was a witness of formal character as he appears to have signed the inquest report. Shivji Rai (P.W.4) was not a material witness. He had simply spoken on the good character of the deceased which was not relevant in the trial. Mohan Sahni (P.W.5) was also a witness who had spoken on good character of the deceased. It was the solitary witness, the informant (P.W.6), who had supported his case as an eye witness.

7. While perusing the evidence both oral and documentary, what we found appearing from the evidence of the Investigating Officer was that after having registered Station Diary Entry No. 89 dated 05.11.2006, P.W.8 has rushed to the place of occurrence and after his arrival what he did was to hold inquest upon the dead body of the deceased. The inquest report indicates that it was prepared at 9.30 a.m. and the *fardbeyan* of the informant, i.e., Ext.4 was given by P.W.6 at 9.45 a.m. Thus, there was a complete lull in between the recording of the *fardbeyan* and holding of the inquest and preparation of report as no one was coming forward to tell the police as to what had really happened and how Kapildeo Sah had been murdered. P.W.8 had stated that he after recording the *fardbeyan* had gone back to the police station to draw the First Information Report



and had thereafter come back to the place of occurrence for continuing the investigation, but what we find is that holding inquest being one of the steps in the investigation, had already preceded the recording of the *fardbeyan*. Thus, the *fardbeyan* and the First Information Report which was Ext.5 which was instituted on the basis of it, were both hit by the mischief of Section 162 Cr.P.C. Those were not admissible records. In spite of that the same could be looked into to find out as to what was the prosecution case. But, as we have already found, there was a complete silence for about 15 minutes or more than that as no one was coming forward to narrate any story to P.W.8 as to how Kapildeo Sah had been murdered and who were the persons who had committed the murder. The informant of the case had claimed that he was coming from his cattle shade after milching the cattle and the deceased Kapildeo Sah was going to the same cattle shade from his house and the murder had been committed on the path way leading to the cattle shade. The post-mortem report indicates that there was a wound of entry followed by a wound of exit and as appears from the description of the wound, there would have been profuse bleeding from the dead body and the blood ought to have been found on the path way. What we find from the evidence of P.W.8, the Investigating Officer is that he did not find a single drop of blood on the path way. Thus, all these circumstances which appear from the evidence of



witnesses as also the Investigating Officer lead to one conclusion that no one was sure as to who had committed the murder of Kapildeo Sah and that was the reason that no one had come forward initially when P.W.8 had arrived at the scene of occurrence to tell him the story which was subsequently told by P.W.6.

8. The case diary was perused by us and we found that it had been antedated by P.W.8 so as to justifying the actions by virtue of section 157 Cr.P.C. which empowers the Officer-in-Charge of a police station to investigate an information, even of suspicious commission of any cognizable offence if there are reasons to suspect the commission of that offence. There was a definite information to P.W.8 that a murder had been committed in Bhimalpur and he had reduced the Station Diary Entry No. 89 dated 05.11.2006 and as we have already noted, as soon as he had arrived at the scene of occurrence, he must have found most of the family members of the deceased and the villagers assembled there. But, as we have already noted, nobody was coming forward to tell the true story disclosing the manner in which and the persons by whom Kapildeo Sah was murdered. This is the reason that no villagers had come to support the incident as eye-witnesses and probably the reputation of the appellant and his brother-in-law Dharmendra Rai was raising a suspicion in the minds of the informant and others that it could be the present appellant

and Dharmendra Rai, his brother-in-law, who had committed the offence. The very *fardbeyan* and the story appears suspicious and considering that aspect of the matter, we find that it was a case in which the defence had not succeeded in bringing the charge home to the accused. The case was beset with serious suspicion and doubt which we have already pointed out earlier and due to that the benefit of that doubt which was coming out of the record of the case, the present appellant ought to have been acquitted.

9. In the result, the appeal succeeds and the same is allowed. The judgment of conviction dated 11.06.2008 and the order of sentence dated 12.06.2008 passed in Sessions Trial No. 277 of 2007, arising out of Mehshi P.S. Case No. 98 of 2006 by the learned 1st Additional Sessions Judge, Motihari upon appellant Umesh Rai is hereby set aside. He is acquitted of the charges, he had been held guilty of. Appellant Umesh Rai is in custody. He shall be released forthwith if not wanted in any other case.

(Dharnidhar Jha, J.)

(Amaresh Kumar Lal, J.)

Sanjay/N.A.F.R.

U		T	
---	--	---	--