

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.920 of 2015

Arising Out of PS.Case No. -186 Year- 2012 Thana -BEGUSARAI TOWN District- BEGUSARAI

Sadhna Devi, W/o Late Rajesh Kumar @ Gugga, resident of Lohiya Nagar, PS
Nagar (Lohia Nagar), District Begusarai

.... Appellant

Versus

1. The State of Bihar
2. Kamal Kumar
3. Jayam Kumar
4. Priyam Kumar

.... Respondents

Appearance :

For Appellant : Mr. Vinod Gautam, Advocate
For the State : Mr. A K Sinha, APP

**CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH**

CAV JUDGMENT

(Per: HONOURABLE MR. CHAKRADHARI SHARAN SINGH)

Date: 30-11-2015

The appellant is aggrieved by the judgment and order of learned Additional Sessions Judge V, Begusarai, dated 24.06.2015, passed in Sessions Trial No. 924 of 2012, whereby learned Sessions Judge has recorded acquittal of *Kamal Kumar* (respondent No.2) who was charged with the offences punishable under Section 302 of the Indian Penal Code and Section 25 of the Arms Act, 1959. The appellant was the informant of Begusarai Town PS Case No. 186 of 2012,

which gave rise to the aforesaid Sessions Trial No. 24 of 2012. The appeal has been preferred under the proviso to Section 372 of the Code of Criminal Procedure, 1973. The appellant is the wife of the deceased and informant of the case.

2. The prosecution's case, as per the First Information Report, is that at the time of occurrence, the deceased was having a talk with his father outside his house. The informant (PW 6) and daughter of her sister, Seema (PW 3), were watching them from the verandah of the house. In the meanwhile, at about 8.15 PM, the said *Kamal Kumar* (respondent No.2), Jayam Kumar (respondent No. 3) and Priyam Kumar (respondent No. 4) came out of the room of her mother-in-law, wherefrom Jayam and Priyam caught hold of the deceased and *Kamal Kumar* fired by pistol on the right thigh of the deceased. The father-in-law of the informant, i.e., Raj Ballabh Kuer, fell on the body of the deceased in order to save him. However, Jayam Kumar also opened fire. The reason behind the occurrence has been described to be a land dispute between the deceased and *Kamal Kumar*. The deceased was taken to local Sadar Hospital from where, he was referred to Patna for treatment and on way to Patna, the deceased died of the injury so caused to him.

3. The police submitted *chargesheet* against the said *Kamal Kumar* keeping the investigation

pending against the rest two, i.e., Jayam Kumar and Priyam Kumar. The Chief Judicial Magistrate, having taken cognizance, transferred the case to the court of Judicial Magistrate 1st Class, Begusarai, who committed the case to the court of sessions for trial on 6.12.2012.

4. From the impugned judgment, we find that there were 7 witnesses examined and out of them, PW 1 was declared hostile to the prosecution. The mother of the deceased was examined as PW 2, who deposed that upon hearing bang of the gun, she came out of the house and found her son, i.e., the deceased, falling on the ground. She saw two persons fleeing away, but could not identify them. She also deposed that she had seen her son and stayed there for few minutes. At the time of cross-examination, she also deposed that there was none at the place of occurrence at that time. From her evidence, it also transpires that the informant is the second wife of the deceased. PW 2, mother of the deceased, further deposed that the deceased had killed his first wife.

5. PW 6, the informant, PW 3, the daughter of the sister of the informant, and PW 4, the mother of the informant, claimed to be the eye witnesses of the occurrence. PW 6 deposed that the said *Kamal Kumar* (respondent No.2) opened fire on the right thigh of the deceased whereafter the deceased made an attempt to flee



away. However, Raj Ballabh Kuer (father-in-law of the informant, DW 1), Jayam, Priyam and *Kamal* caught hold of him and Jayam Kumar fired two shots on the right thigh of the deceased. She supported the prosecution's case that the deceased was taken to Sadar Hospital, Begusarai, and thereafter, upon being referred to Patna for treatment, when he was being taken to Patna, he died. This is to be noted that Raj Ballabh Kuer is the father-in-law of the informant and father of the deceased. When she was confronted with her statement made before the police based on which the FIR was instituted, wherein she had stated that the deceased was talking to his father and when the deceased had fallen down, father of the deceased fell upon him in order to rescue the deceased, she denied to have made any such statement before the police in her deposition at the trial. PW 4, the mother of the informant, deposed that at the time of occurrence, she was in the western room of the house and was standing on the door, when she had heard the bang of the gun. PW 6 the informant, on the other hand, has deposed that after the death of the deceased, she had informed her mother (PW 4) at *maaike*.

6. There are, thus, material contradictions between the evidence of PW 4 and PW 6. Further, PW 4, the mother of the informant, deposed that the accused persons had opened



fire and out of shots so fired, two bullets hit the waist and the left chest of the deceased, whereafter the deceased fell down. We take note of evidence of PW 5, the doctor, who had performed the post mortem examination on the dead body of the deceased and found only one firearm projectile wound of entry 1/2" in diameter in right groin. PW 3, the daughter of the sister of the informant, also claimed to be an eye witness. She deposed that *Baba* and Priyam caught hold of the deceased and *Kamal* and Jayam opened fire, which hit on the thigh and shoulder of the deceased. PW 3, PW 4 and PW 6 were consistent in their evidence that they were the eye witnesses and they saw bullets being fired at the chest and thigh of the deceased. We have noticed the evidence of the Medical Officer and it appears therefrom that no injury was found on the chest of the deceased.

7. It appears that PW 3 has described Raj Ballabh Kuer, father of the deceased, as *Mausa Baba*. On the one hand, PW 3, PW 4 and PW 6 (wife of the deceased) have attributed specific overt act in their deposition against the father of the deceased, Raj Ballabh Kuer, alleging his involvement in commission of the crime, the mother of the deceased (PW 2) has specifically stated that she did not recognize the persons, who were seen fleeing away after commission of the crime.

8. Raj Ballabh Kuer was examined as DW 1. He deposed that the deceased was his younger son. He stated that it was a dark night and the miscreant had covered his face because of which he did not identify him.

9. The learned trial Court, upon analyzing the evidence on record, disbelieved the evidence of PW 4, the mother of the informant, who had claimed herself to be an eye witness since at the state of cross-examination, she admitted that she had received the information with respect to the death of the deceased from the informant. The learned trial Judge did not find the evidence of the informant trustworthy as she had deposed, in her examination-in-chief, that respondent No. 2 had shot at the right shoulder of the deceased, but no injury was found on the chest of the deceased. Her deposition was apparently in conflict with her statement before the police, which was the basis for registration of the FIR. She has not been found to be truthful, at the trial, as regards her first marriage, that is, prior to her marriage with the deceased.

10. The Investigating Officer, in his evidence, deposed that statement of PW 4, the mother of the informant, was recorded by him 20 days after the occurrence, whereas PW 4, in her deposition, has stated that her statement was recorded by the police on the very next day of the occurrence at Lohia Nagar.

11. PW 9, the doctor, gave his evidence that only one fire-arm injury was found on the body of the deceased. There is, thus, apparent contradiction between the medical evidence and the ocular evidence as given by PWs 3, 4 and 6.

12. Inconsistencies in the evidence of PWs 3, 4 and 6 are apparent and material and, thus, create reasonable doubt over the veracity of their evidence. This fact, coupled with the fact that their evidence are not corroborated by the evidence of other witnesses on record as well as the medical evidence, the prosecution case against said *Kamal Kumar* comes under serious shadow of doubt. The mother and the father of the deceased have not supported the evidence of PWs 3, 4 and 6.

13. It also transpires from the materials on record that the deceased was accused in 10-20 criminal cases. PWs 3, 4 and 6 have implicated the family members of the deceased as perpetrators of the crime, whereas father and mother of the deceased have completely denied involvement of respondent No.2 in commission of the offence.

14. In view of the inconsistent statements of PWs 3, 4 and 6 and contradictions between the ocular and medical evidence, the learned trial Court has recorded acquittal of said *Kamal Kumar* giving him the benefit of doubt. The view taken by the learned trial Court cannot be said to be wholly

unreasonable requiring interference by this Court in exercise of appellate power under the proviso to Section 372 CrPC.

15. We find from the record that evidence of PWs 3, 4 and 6 were not reliable. Their depositions were not only contradictory to each other but at times self-contradictory. We do not find any infirmity in the judgment under appeal, whereby respondent No. 2 has been acquitted giving him the benefit of doubt.

16. We do not find any merit in this appeal which is accordingly dismissed.

(Chakradhari Sharan Singh, J)

I A Ansari, ACJ I agree.

(I A Ansari, ACJ)

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