

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

**Criminal Appeal (DB) No.528 of 2016**

Arising Out of PS.Case No. -107 Year- 1995 Thana -GOPALPUR District- BHAGALPUR

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Gauri Shanker Kumar @ Gauri Shanker Kuwar, son of Late Giro Kumar, resident of village-Saidpur, P.S.-Gopalpur, District-Bhagalpur.

.... .... Appellant

Versus

1. Tuntun Yadav @ Mantri Yadav, son of Rajendra Yadav, resident of village-Tintanga Karari, P.S.-Gopalpur, District-Bhagalpur.
2. The State of Bihar.

.... .... Respondents

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**Appearance :**

For the Appellant/s : Mr. Kamlesh Kumar Pathak, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, A.P.P.

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**CORAM: HONOURABLE THE CHIEF JUSTICE**

**and**

**HONOURABLE DR. JUSTICE RAVI RANJAN**

**ORAL JUDGMENT**

**(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)**

**Date: 30-09-2016**

Heard parties.

2. The appellant is the brother of the deceased Bamshankar Kumar and, on the basis of *fardbeyan* of the injured Bamshankar Kumar, who died subsequently, Gopalpur P.S. Case No. 107/1995 was registered. He has filed this appeal assailing the judgment of acquittal, dated 22.02.2016, passed by 4<sup>th</sup> Additional Sessions Judge, Naugachia, in Sessions Trial No.276 (A)/2000, by which the prosecution's case, as set out in the aforesaid Gopalpur P.S. Case No.107/1995, has been disbelieved and the private respondent, namely, Tuntun Yadav @ Mantri Yadav, has been acquitted of the charges framed under Sections 147, 148, 149, 302 of the Indian Penal Code and Section 27 of the Arms Act, 1959.

3. The prosecution's case, is based on the *fardbeyan* of



deceased Bamshankar Kumar, is that on 17.08.1995, when the informant of this case was sleeping on '*Machan*' (i.e., the place for rest) at his '*Basa*' (i.e., the place where cattle is kept and feed), the accused Amod Yadav, Tuntun Yadav, Murari Yadav, Chano Kumar, Pappu Kumar, accompanied by two unknown persons, surrounded him at about 1:00 A.M., and ordered to come with them, but when he was not ready to leave, the accused persons dragged him towards south side to some distance from '*Machan*'. Thereafter, accused Pappu Kumar and Chano Kuwar ordered to kill him, whereupon, accused Amod Kumar, Tuntun Yadav and Murari Yadav started indiscriminate firing and as a result thereof, he sustained gunshot injuries on chest, head, both legs and backside of his body, he fell unconscious and remained unconscious for sometime and when he regained his senses, he narrated the incident to some villagers, who came to attend the call of nature. He further alleged that the occurrence took place due to previous enmity with the accused persons.

4. On the basis of the aforesaid *fardbeyan* of the informant, the present case was lodged as Gopalpur P.S. Case No.107/95 under Sections 147, 148, 149, 341, 307/326 of the Indian Penal Code and Section 27 of the Arms Act, 1959, and later on, Section 302 IPC was added, when the informant had died in the course of his treatment.

5. After investigation, the police submitted *charge sheet*

against the respondent No.1 under the aforesaid provisions of law. Thereafter, *cognizance* was taken under the aforesaid penal provisions and the case was committed to the Court of Session, where charges were framed, to which, the accused person pleaded not guilty. Thereafter, trial started.

6. During trial, the prosecution has examined altogether eight witnesses in support of its case. P.W.1 is Shobhakant Yadav, P.W.2 is Guneshwar Prasad Yadav, P.W.3 is Suresh Prasad Yadav, P.W.4 is Bipin Kumar, P.W.5 is Dasarath Mandal, P.W.6 is Kailash Mandal, P.W.7 is Vinod Yadav and P.W.8 is Gauri Shankar Kumar.

7. From perusal of the impugned judgment, it appears that P.Ws. 1 to 7 have been declared hostile by the prosecution as they did not say anything against the accused persons. They have denied that police had recorded their statements and have further deposed that their houses are about 3-4 K.M. away from the house of the accused persons. The appellant, who has been examined as P.W.8., though has stated, in his examination-in-chief, that he knew the occurrence, he, however, at the same time, as recorded in the judgment, stated that he was sleeping at a distance of 20-25 cubits from his brother and that police did not record his statement during investigation. The aforesaid fact raises a serious doubt about the claim of prosecution that PW 8 was an eye witness. That apart, he did not turn up for his cross-examination even though, according to the learned trial Court, he was provided sufficient opportunity. The

veracity of the evidence of PW 8 could not, therefore, be tested by cross-examination and, thus, remained valueless.

8. The deceased, before his death, had recorded his *fardbeyan* before the police, on which, first information report was registered; but, during trial, no evidence has surfaced indicating the involvement of the accused persons. Even the appellant, who has been examined as PW 8, could not establish that he had seen the occurrence and since he did not turn up for cross-examination, his evidence has become valueless.

9. In view of the aforesaid facts duly discussed by the learned trial Court, we are of the considered opinion that the view, taken by the learned trial Court, is plausible one and does not require any interference by us in appeal.

10. This appeal is, therefore, not admitted and shall accordingly stand dismissed.

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

**(Dr. Ravi Ranjan, J)**

V.K. Pandey/-

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