

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.01 of 2015

[Against the judgment of conviction dated 20.10.2014 and order of sentence dated 31.10.2014 passed by the 3rd Additional Sessions Judge, Bhojpur at Ara, in Sessions Trial No.688 of 2007]

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1. Jabbar Singh, son of late Baijnath Singh, resident of village- Posawan, P.S. Garahari, District- Bhojpur

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Vikram Deo Singh, Advocate
Mr. Manoj Kumar, Advocate

For the Respondent/s : Mr. A. K. Sinha, APP

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

&

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 30-06-2016

The sole Appellant has been convicted under Section(s) 302/34 Indian Penal Code and Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for life with fine of ₹50,000/- under Section(s) 302/34 Indian Penal Code and in default of payment of fine simple imprisonment for six months and further rigorous imprisonment for three years with fine of ₹5,000/- under Section 27 of the Arms Act and in default of payment of fine simple imprisonment for three months by judgment of conviction dated 20.10.2014 and order of sentence dated 31.10.2014 passed by the 3rd Additional Sessions Judge, Bhojpur at Ara, in Sessions Trial No.688

of 2007.



2. The case of the prosecution, according to the Informant, Brameshwar Singh, is that on 08.06.2005 at about 7.45 PM, his son deceased Shankar Kumar Singh after relieving was sitting at a distance from the *Gumti* of Tinku Mahto, egg seller. One light was burning there. The Appellant, his sister Tara Devi, Balbir Singh and Tinku Mahto were also there. At 8.00 PM, he heard the sound of one firing at which he ran there and saw his son, Shankar Kumar Singh, lying injured. On his asking, he disclosed that the Appellant, Jabbar Singh, had fired at him at his chest. He saw the Appellant, Jabbar Singh, Balbir Singh armed with pistol and Tara Devi and Tinku Mahto running away from there. On sound of firing, Manoj Kumar Singh (PW 5) and his son Chitranjan Singh (PW 1) and several others came there. They took him to Sadar Hospital and on the way they gave information to Agion Police Station and also disclosed the name of the accused persons. However, on way to Sadar Hospital, his son died. Then, he gave this information at about 11.45 PM at the hospital itself before the Officer-in-Charge of Ara Town P.S.

3. During trial, the prosecution examined eleven witnesses.

4. PW 1 (Chitranjan Kumar Singh) is the son of the Informant, who stated that on the night of occurrence at about 8.00



PM when he reached the shop of Tinku Mahto, he heard sound of firing and saw Tinku Mahto, Appellant-Jabbar Singh, Balbir Singh and Tara Devi fleeing away from there. Allegedly, Appellant, Jabbar Singh and accused Balbir Singh were armed with pistols. When he reached there, the deceased disclosed that the accused had surrounded him, whereas, Appellant, Jabbar Singh, had fired at him. The reason for the occurrence was about eight days back accused Tara Devi, who is now dead, had come to take some articles from the shop of the deceased on credit, but he refused, so, she had threatened him.

In cross-examination, he stated that there was no dispute with the accused persons from before and the shop was running since last 8-10 years. His attention was drawn to the earlier statement that he had not stated about having seen the accused persons fleeing away from the place of occurrence but he denied the same.

On scrutiny of the evidence of the Investigating Officer (PW 10), we find that, indeed, this witness had not stated such a fact before him at an earlier point in time.

5. PW 2 (Veer Bahadur Singh) is another son of the Informant, who stated that on 08.06.2005 at 8.00 PM, he heard the sound of firing near the shop of Tinku Mahto and when he reached there he saw Tinku Mahto and Tara Devi running away towards



their house. The deceased Shankar Kumar Singh stated that Balbir Singh and Appellant, Jabbar Singh, had ran away towards east and it was they who had fired. His brother Shankar Kumar Singh disclosed in presence of his brother (PW 1) and the Informant that the Appellant, Jabbar Singh, had fired at him. The reasons for the occurrence was as stated by PW 1 that Tara Devi was aggrieved with the deceased on account of him not giving articles on credit and therefore, she had got this crime committed.

He stated that when he heard the sound of firing he was sitting at the door and on the way he met two accused persons whom he recognized. He conceded that till date he had not met anyone who stated that they had seen the Appellant, Jabbar Singh, and rest of the accused persons running away. He also conceded that accused Tara Devi was married and was in the maternal home.

His attention was drawn to the earlier statement that he had not stated that he had seen Tara Devi and Tinku Mahto running away towards their house or that the deceased had given oral dying declaration. He denied such a suggestion but we find from the evidence of the Investigating Officer (PW 10) that this witness had, indeed, not stated about the aforesaid facts.

6. PW 3 (Barmeshwar Singh) is the Informant, who repeated his version in the First Information Report that his son Shankar Kumar Singh was sitting at the shop of Tinku Mahto, egg



seller, when he suddenly heard the sound of firing. When he reached there, he saw four persons fleeing away including the present Appellant and saw his son in injured condition. His son disclosed that the Appellant had fired, whereas, Balbir Singh and others had run away. He then stated that they went to the hospital but his son died on the way. He proved his signature on the *fard-e-bayan* as Ext.1 and that of Ranjit Singh as Ext. 1/1. He repeats that the reason for the occurrence was the grouse of the accused Tara Devi against the deceased. He proved his signature on the Inquest Report as Ext.2 and the signature of Chitranjan as Ext.2/1. He explained the relationship between himself, PW 1, PW 2 and PW 4 and also that Tara Devi had given birth to a child just ten days back.

In cross-examination, he admitted that they had gone to Agion Garhani P.S. and had disclosed the name of the assailants there and thereafter left for the hospital. Before he informed the police, he had not talked with any other person. His attention was drawn to the earlier statement that he had not stated that PW 1 (Chitranjan Kumar Singh), his wife Tetri Devi (PW 4) and Veer Bahadur Singh (PW 2) were all sitting in the shop.

7. PW 4 is the mother of the deceased, who stated that that on *halla* she went to the place of occurrence and saw the Appellant, Tara Devi, Balbir Singh and Tinku Mahto running away and in the hand of the Appellant was a gun. Shankar disclosed to her

that the Appellant had fired at him. She then took him to the hospital but he died on the way. The motive for the occurrence was the grouse of Tara Devi against her son. She also explained that she was at her door when the firing had taken place and it is only on hearing the firing she had gone to the place of occurrence.

Her attention was drawn to the earlier statement that she had not stated that the deceased had disclosed about the Appellant having fired at him.

8. PW 5 (Manoj Singh) is an irrelevant witness.

9. PW 6 (Ramawatar Singh) and PW 7 (Krishna Singh @ Yadav) have been declared hostile.

10. PW 8 (Ram Sunder Prasad) is a formal Police Officer, who proved the *fard-e-bayan* as Ext.3, endorsement on the *fard-e-bayan* as Ext.4 and formal First Information Report as Ext.5. He took formal steps for arrest of the accused persons.

11. PW 9 (Syed Akhter Hussain) is also a Police Officer, who had assumed investigation for a certain period and had taken steps for arrest of the accused and submitted charge-sheet.

12. PW 10 (Mundrika Prasad) is the main Investigating Officer, who stated that on 08.06.2005 when he was at Agion Garahni P.S., he instituted the instant case *fard-e-bayan* which was scripted by another Police Officer posted at Ara Police Station. He proved the formal First Information Report as Ext.5



which was prepared by ASI Ram Sunder Prasad. He also proved the signature of Officer-in-Charge Asharfi Mahto on the formal First Information Report as Ext. 5/A and endorsement of Ram Sunder Prasad as Ext.5/B. He also proved the carbon copy of the Inquest Report as Ext.6. He stated that after assuming the investigation he visited the place of occurrence which was nearby the shop of accused Tinku Mahto where he found some blood stains. The place of occurrence was pointed by the local Chaukidar and Dafadar. He further stated that it had come to light that while the deceased was sitting at the shop of Tinku Mahto, the Appellant fired from back on account of which he fell down dead.

In cross-examination, he stated that he assumed investigation on 09.07.2005 (probably he meant 09.06.2005) and it was only thereafter that the witnesses were examined. As noted earlier, PW 1 (Chitranjan Kumar Singh) had not stated about having seen the Appellant with a pistol and Tara Devi running away and had not stated that the Appellant and Tara Devi had surrounded him and fired.

Similarly, PW 2 (Veer Bahadur) had also not stated about the deceased having given oral dying declaration. PW 4 (Tetri Devi) had not stated that the Appellant had shot at the deceased along with rest of the accused. He confirmed that no eye witness appeared before him during the entire investigation. He had also

checked the criminal history of the Appellant and did not find any incriminating thing against him.

13. PW 11 (Dr. Abdul Qayyum) held the Post Mortem Examination of the deceased on 09.06.2005 and proved the Post Mortem Examination Report as Ext.7. He found following injuries on his person.

- “(i) Lacerated wound over back in right side dorsal region. Size- $\frac{1}{2}$ ” x $\frac{1}{2}$ ” chest cavity deep. Margin is inverted black and charred (wound of entry).
- (ii) Lacerated wound over right side chest. Size- 1” x 1” x chest cavity deep. The margin is everted (wound of exit).

Both the wounds communicated to each other.

Dissection:

Skull- Brain and Meningitis and pale.

Thorax: Heart and lungs are pale. Right side of lungs lacerated and torn. Chest cavity full of blood and blood clot.

Abdomen: Liver, Spleen and kidney are pale. Stomach contain about one ounce of semi digested food. Urinary bladder contains small amount of residuary urine.

Time Elapsed since death: Within four to twenty four hours since the time of Post Mortem.

Cause of death: Haemorrhage and shock due to above mentioned injuries.

Injury was caused by fire arm.”

He also found some semi digested food in the stomach which belies the prosecution case that it was just after having relieved himself that the deceased was sitting nearby egg shop when the occurrence took place. Also even though allegedly the deceased

disclosed that the Appellant had fired at his chest, the injury is from the back and, thus, totally contradictory to the story.

14. On a fair assessment of the evidence adduced on behalf of the prosecution, we find that there is no eye witness to the actual occurrence. The prosecution rests its case on the alleged oral dying declaration which is not corroborated by the witnesses *inter se* and, in fact, contradicted by them. All the family members of the deceased had rushed to the place of occurrence where the deceased told them about the complicity of the Appellant. We find that the deceased was shot at from back and it is not known how he had come to know of the fact whether it was the Appellant or Balbir, who was also allegedly armed with pistol, had fired at him.

15. The other circumstance that the accused persons were seen fleeing away from the place of occurrence also appears doubtful since the means of identification has not been pointed out by the prosecution. If at all, they were seen fleeing away from the place of occurrence, it was quite natural because they also belonged to the same village and resided nearby.

16. We also find the Informant specifically stated they had gone to the Agion Police Station and disclosed the names of the accused persons but that information given at the earliest point in time has been suppressed by the prosecution which renders the subsequent disclosure unreliable.



17. Under such circumstances, we are inclined to give benefit of doubt to the Appellant. Accordingly, the Appellant is acquitted of the charges levelled against him and the judgment of conviction dated 20.10.2014 and order of sentence dated 31.10.2014 passed by the 3rd Additional Sessions Judge, Bhojpur at Ara, in Sessions Trial No.688 of 2007 is hereby set aside.

18. The Appellant, Jabbar Singh, who is in custody, is directed to be released forthwith, if not required in any other case.

19. In the result, the appeal is **allowed**.

(Anjana Prakash, J)

J.Alam/-

(Rajendra Kumar Mishra, J)

AFR/NAFR	
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