

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1094 of 2013

(Against the Judgment of conviction dated 06.11.2013 and Order of sentence dated 12.11.2013 passed by the Adhoc Additional Sessions Judge-IV, Bettiah, West Champaran in Sessions Trial No. 289 of 2009)

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Ambeya Khatoon @ Ambeya Begum, Wife of Mustak Ansari, R/O Village-Jaralpur (Naya Tola) Shahi Bazar, P.O. Jaralpur, P.S.-Yogapatti, District-West Champaran.

..... Appellant.

Versus

The State of Bihar

..... Respondent.

with

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Criminal Appeal (DB) No. 1091 of 2013

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Mustak Ansari, Son of Late Nezamuddin Ansari, Resident of Village- Jaralpur (Naya Tola), Shahi Bazar, P.O.- Jaralpur, P.S. Yogapatti, District- West Champaran.

..... Appellant.

Versus

The State of Bihar

..... Respondent.

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Appearance :

(In CR. APP (DB) No. 1094 of 2013 and CR. APP (DB) No. 1091 of 2013)

For the Appellants : Mr. S.N.P. Sinha, Sr. Advocate.
Mr. J.N. Sinha, Advocate.
Mr. Rohit Kumar, Advocate.
Mr. Ajit Kumar, Advocate.
Mrs. Rashmi Bharti, Advocate.
Mrs. Renu Bala Sinha, Advocate.
Mrs. Rashmi Sinha, Advocate.
Mrs. Nita Kumari, Advocate,
For the State : Mr. D.K. Sinha, A.P.P.
Mr. S.B. Verma, A.P.P.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 04-04-2016



The Appellants have been convicted under Sections 302/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life and fine of Rs.20,000/-, in default of which, to undergo further rigorous imprisonment for one month and Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for three years and fine of Rs.3000/-, in default of which, to undergo further rigorous imprisonment for one month vide Judgment of conviction dated 06.11.2013 and Order of sentence dated 12.11.2013 passed by the Adhoc Additional Sessions Judge-IV, Bettiah, West Champaran in Sessions Trial No. 289 of 2009.

2. The case of the prosecution, according to the Fardbeyan of the Informant Kalamsun Nisha (P.W.11), is that, on 07.09.2007, Appellant Ambeya Khatoon fired at her husband on account of which he fell down dead sustaining injuries on his left side. Thereafter, both Appellants, reportedly, ran away. This matter was reported on the next day to the police at 12 noon after more than 12 hours of the occurrence.

3. During trial, the prosecution examined 13 witnesses whereas the defence examined 3 witnesses, two of them are appellants, who gave different version of the occurrence together.

4. P.W.1 Akbar Mian and P.W.2 Ali Hasan Mian are hearsay witnesses, who stated that on hearing the gun shot, they came

to the house of the deceased and saw the dead body of Allimullah where his wife told them that two Appellants had shot dead her husband. They conceded that earlier Appellant Ambeya Khatoon had instituted a case against the deceased and some witnesses. They also appear to be related to the deceased.

5. P.W.3 Sarimullah Ansari alias Bhutti Mian is the brother of the deceased, who stated that on the date of occurrence, he heard firing shots at which he came and saw the dead body of his brother in the courtyard. He surprisingly stated that he had seen the present Appellants with a small gun and also the Appellants having fired at the deceased. He was also a witness to the Inquest Report and seizure of certain articles.

In cross examination, he stated that he used to reside just next door of the deceased being his brother and also that earlier Appellant Ambeya Khatoon had instituted a case against the deceased and some others for rape.

It appears that, even though, he had stated that he had come to the place of occurrence on hearing gun shot but, later on, he stated that he was an eye witness to the occurrence though he was not mentioned in the First Information Report being an eye witness. The reason for such improvement and rejection of his story we shall discuss later.

6. P.W.4 Nejamuddin Mian, who is also next door neighbour, stated that when he came to the place of occurrence, he saw the deceased dead and learnt from the Informant that both Appellants had shot the deceased.

7. P.W.5 Alagu Chaudhary, who is an independent witness, stated that he learnt as to the murder of the deceased but he did not remember the names who were the perpetrators of the crime. He has not been declared hostile on the point of disclosure of names.

8. P.W.6 Guljar Mian is the uncle of the deceased, who also stated that when he heard gun shot firing, he came to the place of occurrence and learnt that the Appellants had caused the death of the deceased Allimullah. He also conceded the fact that earlier the Appellant Ambeyan Khatoon had instituted a case under Section 376 of the Indian Penal Code against the deceased, Sarimullah(P.W.3), Jamil Sher, Mohammad Mir Hasan, Namiullah etc.

9. P.W.7 Mir Hasan Mian stated that when he came home, he learnt about the occurrence and that the Appellants had shot the deceased. He also conceded that the Appellant Ambeya Khatoon had instituted a case of murder against himself, P.Ws.2 and 3 as also the deceased. It was suggested to him, in fact, the occurrence had taken place in another manner and, in fact, on the night of occurrence, the deceased was committing rape upon her but she caught hold of him

and when she did not leave him, Bhutti Mian(P.W.3) and Sher Mohammad fired at the Appellant Ambeya Khatoon but it hit the deceased on account of which he fell down dead.

10. P.W.8 Shayara Khatoon has supported the factum of the occurrence. She also conceded that earlier the Appellant Ambeya Khatoon had instituted a case of murder against the deceased and others and she is an immediate neighbour of the deceased. It was also suggested to her that the manner of occurrence was quite another and the firing had been resorted to by Bhutti Mian (P.W.3) when the Appellant Ambeya Khatoon refused to let go of the deceased while fleeing away after attempting to rape her.

11. P.W.9 Hasmun Khatoon has tried to depose as an eye witness saying that both Appellants had fired at the deceased but it appears that, in cross examination, she conceded that she had gone to the place of occurrence only after hearing the gun shot and was examined 5-6 days later. Her attention was drawn to the fact that in her earlier statement she had stated that she was not examined as an eye witness. It was suggested to her that the manner of occurrence was quite another which is the defence of the Appellants but she denied the same.

12. P.W.10 Nazma Khatoon, the mother of the deceased, has corroborated the fact of murder by the two Appellants and then

having fled away. She also conceded that Appellant Ambeya Khatoon had instituted a case of rape against her deceased son and some others and she had been examined three days after the occurrence. She also testified that the appellants lived next door and house was separated only with a cloth curtain.

From her cross examination, it is evident that she is not an eye witness to the occurrence. The counter version was also suggested to her but she denied the same.

13. P.W.11 Kalamsun Nisha is the Informant, who corroborated the place and manner of occurrence stating that on the date of occurrence because of flood water having entered the house, they were engaged in putting the grains on the top of the 'Chowki'. Meanwhile, the Appellants shot at her husband on account of which he died. It is on her 'hullah' her sister-in-law, mother-in-law and others came to the place of occurrence so also did the police.

To a court query, she replied that she did not know as to how the people traveled due to floods and whether it was by swimming or by foot. However, she had stated that the people could go outside the village only by using a boat due to flood water having entered the village. She also explained the place of occurrence and the fact that the Appellants lived absolutely next door and earlier a case had been instituted against her husband and others. The factum of

the counter version was also suggested to her but she denied the same.

14. P.W.12 is Dr. Om Prakash Shrivastava, who conducted the Post-Mortem Examination of the dead body of the deceased and found the following antemortem injuries on his person:

- (I). Lacerated wound over left arm.
- (II). Lacerated wound over left side of chest which is 1/2" oval shaped with inverted margin.
- (III). Lacerated wound over left side of back 1½" oval shaped with everted margin.

On dissection, he found injury no.I lacerated wound mentioned above communicated with the wound of thoracic cavity and to the wound over the back.

- (ii). Lacerated wound of left lungs.
- (iii). Left side of chest cavity was full of blood.
- (iv). Lacerated wound of left side of heart.

In his opinion, death was due to haemorrhage and shock due to abovementioned antemortem injuries caused by firearm.

Time elapsed since death was within 36 hours.

He proves the Post-Mortem Examination Report as Ext.2.

From the evidence of the doctor, we find that there is single firearm injury sustained by the deceased.

15. P.W.13 Bimal Kumar Verma is the Investigating



Officer of the case. He stated that on 08.09.2007, while he was posted at the police station, he recorded the Fardbeyan of the Informant, which he proves as Ext.3 and the First Information Report as Ext.4 and the Inquest Report as Ext.5 and the Dead Body Challan as Ext.6. He stated that he inspected the village of occurrence which was flood affected and there was flood water even inside the house. He also found the house of the Appellants next door to that of the deceased which was separated only by a cloth curtain.

From his cross examination, we are unable to find anything noteworthy. Importantly, he has not explained as to when he arrested the present Appellants. However, he stated that he had entered the house of the Appellants but did not find anyone there nor did he find any incriminating article and, later on, they had surrendered in the court below.

16. D.W.1 Rama Choudhary has stated that in the night of occurrence, in fact, the deceased had entered the house of Appellant Ambeya Khatoon and had forcibly attempted to commit rape on her in course of which she caught hold of him and then Bhutti Ansari (P.W.3) fired at her which hit the deceased on account of which he died. Similar is the statement of the two Appellants as D.Ws.1 and 2 and also in the statements of the Appellants recorded under Section 313 of the Code of Criminal Procedure.



17. From the evidence discussed above, it is notable that even though the occurrence had taken place at 11.00 P.M. in the night on 07.09.2007, the matter was reported to the police only 12 hours later on 08.09.2007 at 12 noon. From the suggestion given to the witnesses, it is admitted by them that Appellant Ambeya Khatoon had earlier instituted a case of rape against the deceased and some of the witnesses. It was also suggested to them that the occurrence had taken place in another manner version of which even the Appellants had the courage to state before the Court as D.Ws.2 and 3. The Appellants had taken a similar stand in their statements recorded under Section 313 Code of Criminal Procedure. These materials, evidently, create a reasonable doubt as to the veracity of the manner of occurrence. Another point which has struck this Court is as to why the Appellants, who were next door neighbours, were not arrested by the villagers and family members of the deceased who had gathered right from after the occurrence. This especially so since there was no possibility of them having escaped without the services a boat from the village which was flood affected.

Moreover, in the First Information Report, the allegation is that the Appellant Ambeya Khatoon had fired at the deceased whereas during evidence witnesses including the Informant have improved the case that both the Appellants had fired and caused the death of the

deceased. The Doctor however found a single firearm injury, which totally contradicts the prosecution case.

18. For the aforesaid reasons, we are unable to place absolute reliance upon the evidence of the prosecution witnesses and, hence, we are inclined to give the Appellants benefit of doubt.

19. Thus, the Appeals are allowed. The Judgment of conviction and Order of sentence passed against the Appellants, above named, is set aside. They are acquitted of the charges. The Appellant Ambeya Khatoon @ Ambeya Begum {in Criminal Appeal (DB) No. 1094 of 2013} is in jail custody, therefore, she is directed to be released forthwith, if not wanted in any other case. So far as Appellant Mustak Ansari {in Criminal Appeal (DB) No. 1091 of 2013} is concerned, he is on bail, therefore, he is discharged from the liabilities of his bail bonds.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

**A.B. Bhardwaj/Pradeep Srivastava/
A.F.R.**

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