

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.676 of 2012

Against the Judgment of conviction dated 08.06.2012 and Order of Sentence dated 13.06.2012 passed by 5th Ad hoc Additional Sessions Judge, Nalanda at Biharsharif, in Sessions Trial No. 98 of 2008 / 594 of 2009 arising out of Sarmera P.S. Case No. 47 of 2005.

Satwa Mahto, Son of Sri Asho Mahto, Resident of Village-Badi Tharthari, P.S- Sarmera, District-Nalanda.

.... Appellant

Versus

The State Of Bihar

.... Respondent

Appearance :

For the Appellant : Mr. Ajay Kumar Thakur, Advocate
Mr. Amit Kumar, Advocate
Mr. Nilesh Kumar, Advocate
Ms. Kiran Thakur, Advocate
Ms. Babita Kumari, Advocate
Mr. Pravin Kumar, Advocate
For the State : Mr. A.K. Sinha, A.P.P.

CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

And

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 29-08-2016

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This appeal is filed against the Judgment, dated 08.06.2012, whereby the sole appellant Satwa Mahto has been convicted under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act. For the offence under Section 302/34 of Indian Penal Code, he has been sentenced to undergo imprisonment for life with a fine of Rs. 10,000/- and in default of payment of fine, to undergo simple imprisonment for three years. He has been sentenced to undergo Rigorous Imprisonment for five years with a fine of Rs.

2000/- for the offence punishable under Section 27 of the Arms Act and in default of payment of fine, simple imprisonment for one year.

2. The prosecution case, as set out in the fardbeyan (Ext.1) of informant Ram Swaroop Mahto (P.W.3), Son of Late Garmu Mahto, Resident of Bari Dhariyari, P.S. Sarmera, District-Nalanda recorded by S.I. Santosh Kumar Singh (P.W.6) of Sarmera Police Station on 19.07.2015 at 12.00 Noon at camp Bari Ghariari, is that three years old daughter of appellant Satwa Mahto died on account of illness. However, Satwa Mahto was under the impression that his daughter has been killed by deceased Lavasi Devi, Munarki Devi and Mahtabiya Devi, who according to him all are *Daain*. On 18.07.2005 at 5.00 P.M., due to reasons, appellant Satwa Mahto and Radhe Tanti, armed with pistol, went to his house and calling *Daain*, assaulted his wife Lavasi Devi (deceased), Munarki Devi (P.W.6) and Mahtabiya Devi (P.W.5) and brought them north to the village near the bank of river. In the meantime, appellant Satwa Mahto shot at the head of his wife Lavasi Devi, who fell and died. Radhe Tanti also fired at Munarki Devi (P.W.6), which hit her right hand and right stomach on account of which she became injured and fell down. Thereafter, both the accused persons fled towards north. On hearing the sound of firing, many villagers reached and saw accused fleeing away. Thereafter, he brought the deceased to his house.

3. The prosecution, in support of its case, examined 07 witnesses. Out of these seven witnesses, P.W.1 Sashi Bhushan and

P.W.2 Chanchla Devi are son and daughter-in-law of the deceased. P.W.3 Ram Swaroop Mahto himself is the informant. P.W.4 Santosh Kumar Singh is the Investigating Officer of the case. P.W.5 Mahtabiya Devi and P.W.6 Munarki Devi have turned hostile. P.W.7 Dr. Anil Kumar Jang Bahadur has conducted Post-mortem examination on the deceased Lavasi Devi.

4. P.W.1 Shashi Bhushan is the son of the deceased and informant Ram Swaroop Mahto (P.W.3). He stated that on 18.07.2005 at 5.00 P.M., he was at his house. On hearing hulla, he came out of his house and saw appellant Satwa Mahto and Radhe dragging Munarki Devi (P.W.6) and Lavasi Devi (deceased) towards river side and also began to assault. The appellant Satwa Mahto and Radhe Tanti were armed with pistol. The appellant Satwa Mahto shot at Lavasi Devi on account of which, she fell down. Radhe also shot fire at Munarki Devi on account of which, she sustained injury on her stomach and hand, while Munarki Devi survived, but Lavasi Devi died. The accused used to call both women *Daain*.

In the cross-examination, he stated that on hearing hulla, he came and saw the accused carrying his mother Lavasi Devi (deceased). He did not go to the Police Station to give any information. The dead body of his mother was retrieved from the river. He further stated that on the next day at about 12.00 Noon, his father Ram Swaroop Mahto (P.W.3) had gone to the Police Station to give information and the Police came at about 12.00 Noon. The

Police also recorded his statement. He has denied the suggestion of the defence that he did not tell the Police that dead body of his mother was lying in the river and on hearing the sound of firing, he went there. He also stated that appellant Satwa Mahto and Radhe brought her away. He further stated that he told the Police that the accused persons shot at her mother.

It appears from the evidence of this witness that he is not an eye-witness of the occurrence, rather he saw the accused persons fleeing from the place of occurrence after the incident.

5. P.W.2 Chanchala Devi is the daughter-in-law of the deceased. She stated that the occurrence took place five years ago at about 5.00 P.M. At the relevant time, she had gone towards the river side and saw appellant Satwa and Radhe dragging her mother-in-law and calling her *Daain* also. They were holding pistol in their hands. They had taken them towards the river side, 50 yards away from the village. Her mother-in-law was shot at her head by Satwa and Radhe. Tanti shot at Munarki Devi (P.W.6), which hit her stomach and she became injured. She further stated that she along with her father-in-law Ram Swaroop Mahto (P.W.3), Shashi Bhushan (P.W.1) and Ramjee, not examined, carried her mother-in-law and Munarki Devi (PW 6) to the hospital, however, her mother-in-law died. The Police recorded her statement on the next day. She stated in her cross-examination that when her mother-in-law was being carried, she raised hulla, but no person came for help. She stated that her mother-



in-law was called from her house by the accused and thereafter, they took her away and she also followed them. She stated that there was no person at the river side. She saw both the ladies, sitting at a distance of 10 hands. She stated that her mother-in-law was shot from 7-8 cubits. She stated that her father-in-law P.W.3 Ram Swaroop Mahto went to the Police Station on next day, as it was already dark on the date of occurrence. Thereafter, the Police came and made enquiries from her. She denied the suggestion of the defence that she reached at the river, after hearing the sound of firing. She also denied the suggestion that on hearing hulla, she had not gone to the river side and that Satwa and Radhe were not having pistol in their hands.

6. P.W.4 Santosh Kumar Singh, who is the Investigation Officer of this case, in his evidence, has confirmed that PW 2, Chandra Kala Devi stated that she came towards the river, situated north of the village on hearing sound of firing, where Lavasi Devi was found dead having sustained fire arm injuries. As such this witness is not an eye-witness of the occurrence, rather she reached later, after hearing the sound of firing at the river side.

7. P.W.5 Mahtabiya Devi, who is said to be one of the three women, who was dragged by the appellant and others to the river side, has not supported the case of prosecution and has been declared hostile.

8. P.W.6 Munarki Devi, who sustained fire arm injury,

stated in her evidence that she went to answer the call of nature, where she sustained fire arm injury. However, she admitted that she did not see as to who fired at her. As such, this witness has not supported the case of prosecution and she was declared hostile by the prosecution.

9. P.W.3 Ram Swaroop Mahto is the informant of the case and the husband of the deceased. He has stated in his evidence that the occurrence took place in the year 2005 at about 5.00 P.M. At that time, he along with his daughter-in-law Chanchala Devi (P.W.2), son Shashi Bhushan (P.W.1) and others were at his house. At that time, the appellant Satwa and Radhe came armed with pistol. Appellant Satwa told that her daughter died and Lavasi Devi (deceased) has killed her by means of witch craft practices. Both the accused took Lavasi Devi towards the river side to the north of the village. The informant and others also followed them. The appellant Satwa shot fire at the head of Lavasi Devi, who fell and died and at that time Radhe Tanti was also there. They brought the dead body from the river. Munarki Devi (P.W.6) was also shot at by Radhe Tanti. On hearing hulla, the villagers came and the accused fled. He gave his statement to Darogajee at his house. The Darogajee prepared inquest of the dead body and also sent the dead body for Post-mortem examination.

In cross-examination, he stated that he has given brief description stating that the house of Saudi was situated north to his



house and in south there is a field and in east there is house of Birju and vacant land on west. He further stated that at the time, the accused carried the women, 4-5 persons were present and they protested. Even on hulla, Chowkidar did not come. He stated that the accused took his wife to the river side and after some time, he along with his son and daughter-in-law followed them. He also stated that the houses of Batoran Tanti (not examined), Kapil and Rakesh (not examined) are near to the river. He stated that the river is just adjacent to the village and the dead body was taken out from the river. He heard the sound of firing thrice. Thereafter, 10-15 persons came from the village, but he could not say their names. He further stated that the clothes of his wife was not changed. He carried the dead body to his house. In cross-examination, he expressed ignorance whether a case under Section 107 is going on with the accused persons or not. He stated that he informed the Police that his wife died on account of fire arm injury and the dead body was thrown in the river.

From the evidence of this witness, it is apparent that he has substantially deviated from the prosecution case narrated in the F.I.R. In the F.I.R., he stated that his wife and two others i.e. P.W.5 Mahtabiya Devi and P.W.6 Munarki Devi were dragged by the accused persons towards the river side, but in evidence before the Court, he stated that only his wife was dragged by the accused persons, who was shot at the river side. Furthermore, he has not

stated about presence of his son P.W.1 Sashi Bhushan and daughter-in-law P.W.3 Chanchala Devi in his fardbeyan (Ext.1), but he developed the case to show their presence and also to have followed the accused persons to the river side.

10. P.W.4 Santosh Kumar Singh is the Investigating Officer of this case. He has stated in his evidence that on 19.07.2005, he was posted as Sub-Inspector in Sarmera Police Station. On the said day, he recorded the fardbeyan of (P.W.3) Ram Swaroop Mahto at about 12.00 Noon in his own handwriting and proved the same as Ext.1. On the basis of fardbeyan of P.W.3 Ram Swaroop Mahto, Sarmera P.S. Case No.47 of 2005, dated 19.07.2005, under Section 302/34 of I.P.C., Section 3/4 of Daain Act and Section 27 of Arms Act was instituted, which has been marked as Ext.1/1. He further stated that the formal F.I.R. was drawn by the then Head Constable on which he proved his signature, which has been marked as Ext.2. In course of investigation, he took restatement of the informant and prepared the Inquest Report on 19.07.2010 at 12.30 Noon and also inspected the place of occurrence. He proved the Inquest Report, which has been marked as Ext.3. He inspected the place of occurrence, which is vacant land of Brij Tanti, situated north to Vilalge Bari Ghariari near the bank of river, where the deceased was said to be assaulted. He stated that south of the place of occurrence, there is a house of Ghaseran Tanti (not examined) and in the east at a distance of 50 feet, there is a river, which is the place of occurrence.



He did not record the statement of the persons living near the place of occurrence as they had not come forward to make their statements. He prepared the Inquest Report at the place of occurrence. He stated that the dead body of the deceased was taken out from the water before he reached there and was kept near the river. He further stated that Shashi Bhusan (P.W.1) told him that on hearing the sound of firing, he reached at the place of occurrence. He also stated in his cross-examination that Shashi Bhushan (P.W.1) stated that he saw the accused persons only in fleeing condition and saw the dead body lying in the river, whereas Munarki Devi was lying injured. He stated that P.W.2 Chanchala Devi stated before him that she reached the place of occurrence near the river on hearing the sound of firing. According to the Investigating Officer, the place of occurrence is a field of Brij Tanti, situated 50 feet away from the river, where the dead body was found. However, from Ext.5, it would appear that the dead body was found in the courtyard of the informant P.W.3 Ram Swaroop Mahto.

11. P.W.7 Dr. Anil Kumar Jang Bahadur at the relevant date, was posted as Medical Officer at Sadar Hospital, Biharsharif. On 19.07.2005, he conducted the Post-mortem of the deceased Lavasi Devi, wife of Ram Swaroop Mahto of village- Barhi Ghariyari, P.S. Sarmera, District-Nalanda and found the following ante mortem injuries on her person:-

‘1. Lacerated wound on right elbow joint

measuring 1 ½" X ½" X subcutaneous tissue deep with blood clot and with black margin.

2. Lacerated on right heap measuring 4" X 3" subcutaneous tissue deep near linear frest'.

According to the doctor, the cause of death was hemorrhage and caused by fire arm and time lapse since death within 24 hours. He proved the Post-mortem as Ext.3.

From the evidence of this witness it appears that the deceased died on account of fire arm injury.

12. From the evidence, as discussed above, it is evident that P.W.1 Shashi Bhushan and P.W.2 Chanchala Devi, who are son and daughter-in-law, respectively, of the deceased, are not the eye-witnesses of the occurrence. However, P.W.5 Mahtabiya Devi and P.W.6 Munarki Devi, who are said to have been forcibly taken by the accused persons to the river side, have not supported the prosecution case. P.W. 5, in fact, has been declared hostile.

13. Thus, the evidence of the prosecution depends only upon P.W.3 Ram Swaroop Mahto, husband of the deceased. According to this witness, accused persons dragged his wife as well as P.W.5 Mahtabiya Devi and P.W.6 Munarki Devi to the river side, where two of the women, in her evidences, stated that only his wife was dragged by the accused persons. According to him, the place of occurrence is situated near river, whereas as per P.W.4 Santosh Kumar Singh, I.O of this case, the place of occurrence is field of Brij

Dhano. On the other hand, as per Inquest Report (Ext.5), it would appear that the place of occurrence is the courtyard of the informant himself, as disclosed by Shashi Bhusan (P.W.1), the son of the deceased himself. As such, though it is true that the deceased died due to fire arm injuries, but prosecution has miserably failed to prove that it is appellant, who had committed her murder at the river side. The prosecution, at the same time, has not been able to establish the place of occurrence beyond reasonable doubt.

14. In the result, the appeal is allowed. The impugned Judgment of conviction dated 08.06.2012 and Order of sentence dated 13.06.2012 passed by the 5th Ad hoc Addl. Sessions Judge, Nalanda at Biharsharif in connection with Sessions Trial No. 98 of 2008 / 594 of 2009 is set aside. The appellant, who is in jail custody, is directed to be released forthwith, if not wanted in any other case.

(Samarendra Pratap Singh, J.)

(Rajendra Kumar Mishra, J.)

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