

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1048 of 2010

[Against the Judgment of conviction dated 17th day of April, 2010 and order of sentence dated 20th April, 2010 passed by the 3rd Additional Sessions Judge, Bhagalpur, in Sessions Trial No. 829 of 2006/T.R. No. 56 of 2009 arising out of Akbarnagar P.S. Case No. 189 of 2004, G.R. No. 2659 of 2004]

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Pramod Yadav

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ranjan Kumar Jha, Adv.

For the State : Mr. A.K. Sinha, 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: 27-06-2016

Heard learned counsel for the Appellants and learned counsel appearing on behalf of the Public Prosecutor.

2. The Appellant has been convicted under Section 302 Indian Penal Code and Section 27 Arms Act and sentenced to undergo imprisonment for life under Section 302 Indian Penal Code and a fine of Rs.5,000/- in default of which R.I. for six months as also three years rigorous imprisonment under Section 27 of the Arms Act, passed by the 3rd Additional Sessions Judge, Bhagalpur, by a Judgment of conviction dated 17th day of April, 2010 and order of sentence dated 20th April, 2010 in Sessions Trial No. 829 of 2006/T.R.

No. 56 of 2009 arising out of Akbarnagar P.S. Case No. 189 of 2004, G.R. No. 2659 of 2004.

3. The case of the Prosecution according to the Informant PW 1 (Md. Hassan Raza) is that on 4.10.2004 he had gone in the morning along with his brother deceased Md. Noor Alam @ Dabbu to buy fish. When he was returning, he met Md. Siraj who said that they should go with him since there were some criminals sitting on the way, so, he and his brother proceeded whereas Md. Siraj and Md. Iliyas followed them. When he walked to a certain distance, suddenly, the Appellant and two other named accused persons and five unknown persons surrounded them and then the Appellant Pramod Yadav shot at his brother at close range on his head. The second shot was fired by accused Manta Yadav on the stomach. Son of Dasrath Paswan also fired at him but it did not hit him. He ran home and told the villagers and when he returned, he saw his brother dead. This information was given to the Officer-in-Charge, Akbar Nagar Police Station at 10:15 A.M. on the same day at the place of occurrence.

4. During Trial, the Prosecution examined six witnesses out of whom PW 1 Informant (Md. Hassan Raza) is the eye witness. The Informant once again reiterates the statement given in the Fard-beyan and gives in detail the reason for going to the market.



He also stated that on the way, he met Md. Siraj who has not been examined and that he disclosed that there were 7-8 Criminals sitting on the way and so, they should leave together. However, he and his brother deceased Noor Alam proceeded whereas PW 2 Md. Iliyas and Md. Siraj followed them. On the way, Manta Yadav, Laxman Yadav and 7-8 unknown accused armed with pistol, surrounded both the brothers. Then the Appellant Pramod Yadav fired at a close range at his brother whereafter Manta Yadav fired on his stomach. Laxman Yadav fired at him but it did not hit him. He ran away screaming and informed the villagers, whereafter, they all returned and saw the deceased dead. Somebody from the village informed the Police at which it came and then recorded his Fard-beyan which is Ext. 1.

In cross examination he explained that they were four brothers of which one was the deceased. He also explained the exact topography that it was between fields and the village was also situated close by. He confirmed that the Police came immediately and recorded the Fard-beyan and also sent the dead body for Postmortem examination.

5. PW 2 (Md. Iliyas) is named in the First Information Report as one of the persons who is stated to have been following the deceased Noor Alam and his brother Hassan Raza (Informant) and when they reached Kasmabad, from among the

groups, 4-5 accused persons came out and then Appellant Pramod Yadav shot at the deceased. The next shot was fired by Tatwa Yadav which hit on the stomach. The Informant Hassan Raza ran at which accused Laxman fired at him but it did not hit him. He was signatory to the inquest report which he has proved as Ext. 2.

6. PW 3 (Md. Taiyab) is hear say witness who stated that on the night of the occurrence, when he reached the place where the dead body was lying, the Informant disclosed to him the names of the Assailants including the Appellant. He was signatory to the inquest report and he proves his signature as Ext. 2/1 and the signature on the seizure list as Ext. 3.

He stated that his village was about 3 KMs from the place of occurrence and it had taken half an hour for him to reach the same. Surprisingly, in his further cross-examination, he stated that when he reached the place of occurrence, no one was disclosing the names of anyone and he had not found out that it was the Appellant and the other co-accused persons who had caused the death of the deceased.

7. PW 4 (Rajesh Kumar Tiwari) is a formal Police Officer submitted the charge sheet.

8. PW 5 (Sanjay Kr. Gupta) is the Investigating



Officer who was posted at Akbar Nagar Police Station and had recorded the statement of the Informant on 4.10.2010 and assumed the investigation. He identified his handwriting and signature on the Fard-beyan and proves the First Information Report. He inspected the place of occurrence being a village road amidst some fields. He further stated that he examined the Informant, PW 2 (Md. Iliyas) PW 3 (Md. Taiyab) and others whereafter he was transferred. He also prepared the inquest report which is Ext. 4 and the seizure list of the cartridges which is Ext. 5, on both of which he was a signatory.

In cross examination, he stated that he had been informed on telephone about the occurrence but the caller had not disclosed the name. It was suggested to him that in fact, there was some dispute between the parties on account of the previous Mukhiya election, but he denied the same.

9. PW 6 (Dr. Yogesh Prasad Saha) performed the postmortem on the person of the deceased and proves the postmortem examination report as Ext. 6. He found the following injuries on the person of the deceased:-

“(i) *Entrance wound with inverted margin of ½” x ½” size was found on left side of chest 1” away from the mid line at ninth enter coastal space. The margin of wound was found black. There was tattering around the margin. The bullet entered the chest cavity and came out by exit wound*

within inverted margin $\frac{1}{4}$ " x $\frac{1}{2}$ " size on mid line of back at level of 10th thoracic vertebra. The liver and was found lacerated. The blood clot was present in abdominal cavity.

(ii) Entrance wound 1" x 1" size with inverted and blacken margin was found on forehead at right side $\frac{1}{2}$ " from midline and 4" above glabella. The blood entered the skull cavity and came out from exit wound $\frac{1}{2}$ " x $\frac{1}{2}$ " size with inverted margin on upper part of occipital area. The brain matter was found lacerated, right parietal bone and occipital bone was found fractured.

Opinion:

The above noted injuries were grievous and dangerous to life and were caused by firearm.

Cause of death – Haemorrhage and shock and injury to brain due to above injuries.

Time – Within 12 to 36 hrs. from the time of P.M. examination".

10. It is evident that there are two firearm injuries, one on the head and the other on the front of the deceased.

11. The counsel for the Appellant submits that PW 2 is not an eye witness and PW 3 (Md. Taiyab) has stated that he did not learn the names of the accused when he went to the place of occurrence. Therefore, the sole eye witness is fit to be disbelieved. Also there is a suggestion that the Appellant had been falsely implicated on account of last Mukhiya election.

However, we are not inclined to accept such submissions.

Importantly we find that PW 1 (Md. Hassan Raza) gave his Fard-beyan right after the occurrence within a very short time. There is a specific allegation against the Appellant of having fired on the head of the deceased and such injury was found on the person of the deceased by an independent witness. We further find that none of the witnesses have contradicted themselves on any material particulars thus leaving their evidence completely reliable. The Investigating Officer also found objective signs of firing at the place of occurrence. The evidence of PW 1 is consistent and trustworthy and hence in such circumstances, we find no merit in the Appeal. The same is dismissed.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

S.Ali/-

AFR/NAFR	NAFR
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