

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.268 of 2011

[Against the judgment and order of conviction dated 29th January & 3rd February, 2011, passed by the Additional Sessions Judge, 3rd, Naugachia, in Sessions Trial No.61 of 2009 arising out of Naugachia (Parbatta) P.S. Case No.399 of 2007]

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Jodhan Sahni, son of Bodhi Sahni, resident of village-Bahatra Navtoliya, Sainitola,
P.S.-Parbatta, District- Bhagalpur

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance:

For the Appellant/s : Dr. Alok Kumar Alok, Advocate
Mr. Surendra Kishore Thakur, Advocate
Mr. Ranjit Kumar Thakur, 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: 04-03-2016

1. The Appellant has been convicted under Section(s) 302/34 Indian Penal Code and sentenced to undergo rigorous imprisonment for life with fine of ₹5,000/- and three years rigorous imprisonment with fine of ₹500/- under Section 27 of the Arms and in default of payment of fine to undergo simple imprisonment for three months by judgment and order of conviction dated 29th January & 3rd February, 2011, passed by the Additional Sessions Judge, 3rd, Naugachia, in Sessions Trial No.61 of 2009 arising out of Naugachia (Parbatta) P.S. Case No.399 of 2007.

2. The case of the prosecution, according to Isho



Sahani, father-in-law of the deceased, Kishan Sahani, is that on 08.12.2007 at around 7.45 PM while the deceased was sitting with his daughter-in-law (PW 1) around the fire, two accused persons including the Appellant came there and started to ask for Tuntun Sahani (PW 3), his son. When they were told that he had gone to Hospital to get medicines, they came near the deceased and told PW 1 to go home. When she left, the Appellant fired at the deceased due to which he fell down there. The co-convict also fired while fleeing away. The reason for the occurrence was that there was some kind of financial dispute between the parties.

3. During trial, the prosecution examined nine witnesses. PW 3 (Tuntun Sahani), PW 5 (Achche Lal Sahani), and PW 6 (Binod Sahani) have given eye witness account that the Appellant had gone looking for PW 3 and thereafter not finding him had shot dead the deceased. However, their attention was drawn to their earlier statement given under Section 161 Cr. P.C. that they were not the eye witnesses, but the hearsay witnesses which fact was confirmed by the Investigating Officer, Sajjan Kumar, (PW 9). In view of such, we are not inclined to place reliance on the evidence of these three witnesses as eye witnesses.

4. PW 1 (Sudama Devi) is the lady, who was sitting with the deceased around the fire, and she stated that the Appellant and co-convict along three other persons came while father-in-law

of Kishun Sahani i.e. PW 2 was sitting there and asked for Tuntun Sahani (PW 3). Isho Sahani (PW 2) told them that he had gone to the Doctor, so, the accused came near them and told her to leave. As soon as, she turned round, the accused fired at the deceased. She stated that there was some kind of dispute and a Title Suit was pending between the father of Appellant and her family.

In cross-examination, she asserted that she had seen the occurrence and was examined within half an hour of the same. She also stated that the place of occurrence was only about 5 feet away from her house. There is nothing else which is of note in her cross-examination.

5. PW 2 (Isho Sahani) is the Informant. He repeated the *fard-e-bayan* saying that the Appellant and co-convict came to the place of occurrence where the deceased and PW 1 was sitting, fired at the deceased and ran away. He proved his signature on the *fard-e-bayan* as Ext.1 and signature of other witnesses as Ext.1/A and Ext.1/B.

In cross-examination, he stated that within one hour of the occurrence the police force had come. He also explained that the Appellant used to live adjacent to his house. In cross-examination, it was elicited from him that it was the Appellant, who had shot at the deceased, which fact he had not stated in his examination-in-chief. He also described that the place of occurrence was close to his

Verandah and there was no enmity with the deceased. He stated that the Appellant's house was fifteen minutes away and his verandah was opened.

6. PW 4 (Phulo Devi) is the wife of the deceased, who stated that she was also sitting with the deceased and PW 1 around the fire when the Appellant and co-convict came there and started to altercation with the deceased. On protest by him, the Appellant fired at the deceased on account of which he died. In cross-examination, her attention was drawn to the earlier statement that she had not stated that she was with the deceased and PW 1 and this fact has been confirmed by PW 9 (Sajjan Kumar), the Investigating Officer. However, this fact does not contradict her having witnessed the occurrence.

7. The Investigating Officer in cross-examination corroborates the witnesses that information was given on telephone to him at which he arrived at the place of occurrence. He also stated that he examined PW 1, an important eye witnesses, within half an hour of the occurrence and there is no major contradictions in the evidence of PW 2, the Informant.

8. PW 7, Dr. Arun Kr. Rai, performed the Post Mortem Examination on the deceased and found the following injuries:

External Injuries:

- i. Abrasion on right ear 2" x ½"

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- ii. Lacerated wound left upper eye lid 1" x 1/4" x skin deep.
 - iii. Lacerated wound left shoulder joint 1" x 1/2" margin inverted, tatooing marks around the wound.

On dissection of the above noted injuries: clotted blood found underneath the tissues, Fracture of head of the humerus, rupture of upper part of lungs, rupture of heart, rupture of liver, Chest cavity filled with dark blood, abdominal cavity full of dark blood, Other abdominal viscera NAD, Bladder empty, one metallic substance (Bullet) found lodged in between 7th & 8th rib right side. Taken out and sealed in a vial.

We, thus, find that the medical opinion corroborates the prosecution case and is in conformity with it.

9. PW 8 (Nacho Sahani) stated that on the date of occurrence while PW 1 and the deceased were sitting near the fire, Jodhan Sahani came looking for Tuntun Sahani and was abusing. The deceased told him not to abuse since his mother and sister were within ear-shot. Then PW 1 started to go towards her house when Jodhan Sahani fired at the deceased on the neck and ran away. The deceased died immediately thereafter. His attention was drawn to the earlier statement that PW 1 had disclosed to him about the occurrence and that he himself was not an eye witness. However, the prosecution did not draw the attention of the Investigating Officer to this aspect of the evidence and hence, this account has remained unshaken.

10. PW 9 (Sajjan Kumar) is the Investigating Officer,



who stated that on 08.12.2007, he recorded the *fard-e-bayan* of the Informant which he proved as Ext.3 and instituted the First Information Report which is Ext.4. He further stated that the place of occurrence was under a tree near a fire place where the dead body was found. He had examined all the witnesses and thereafter prepared the Inquest Report.

In cross-examination, he stated that he stayed the entire night at the village of occurrence and PW 1 was examined half an hour after his arrival. PW 3 was a hearsay witness nor had the PW 4 (Phulo Devi) stated that she was also around the fire with the deceased and daughter-in-law (PW 1). PW 5 (Achche Lal Sahani) and PW 6 (Binod Sahani) had also given a hearsay account of the occurrence.

11. Learned counsel for the Appellant submits that since PW 3, 5 and 6 have given eye witness account even though they were merely hearsay witnesses, the prosecution case should be rejected on this ground alone.

The counsel further submits that since PW 1 had not named specifically the Appellant as shooter of the deceased, the Appellant should not be convicted under Section 302/34 Indian Penal Code. On the contrary, even if such allegation is not directly leveled against the Appellant, fact remains that he was one of the two persons, who had caused death of the deceased, he would be

punishable under Section 302/34 Indian Penal Code.

12. We also find that the evidence of PW 1 (Sudama Devi) is very natural and supported by the Informant Isho Sahani (PW 2), Phulo Devi (PW 4) and Nacho Sahni (PW 8), who have given a consistent and reliable account of the occurrence. The Investigating Officer to whom the report was without any delay has well-proved the place of occurrence. Further, the Doctor (PW 7) also found a corresponding fire arm injury which was the cause of death further fully corroborating the prosecution case and hence, there appears no scope for interference.

13. In the result, we see no merit in the appeal and, accordingly, it is **dismissed**.

(Anjana Prakash, J)

AFR
J.Alam/-

(Rajendra Kumar Mishra, J)

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