

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.658 of 2011

[Against the judgment and order of conviction dated 12th and 18th May, 2011, respectively passed by the Additional Sessions Judge, FTC V, Bhagalpur, in Sessions Trial No.1157 of 2007/ 38 of 2008/ Trial No.518 of 2009 arising out of Sultanganj P.S. Case No.58 of 2007]

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Pramod Sah, son of Jagi Sah, resident of village-Abjuganj, P.S.-sultanganj, District-Bhagalpur.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

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Criminal Appeal (DB) No. 532 of 2011

[Against the judgment and order of conviction dated 12th and 18th May, 2011, respectively passed by the Additional Sessions Judge, FTC V, Bhagalpur, in Sessions Trial No.1157 of 2007/ 38 of 2008/ Trial No.518 of 2009 arising out of Sultanganj P.S. Case No.58 of 2007]

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1. Karu Sah, son of Ram Narayan Sah, &
 2. Arbind Sah @ Futfutiya Sah, son of late Heera Lal Sah, both resident of village-Abjuganj, P.S.-Sultanganj, District- Bhagalpur.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

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Criminal Appeal (DB) No. 535 of 2011

[Against the judgment and order of conviction dated 12th and 18th May, 2011, respectively passed by the Additional Sessions Judge, FTC V, Bhagalpur, in Sessions Trial No.1157 of 2007/ 38 of 2008/ Trial No.518 of 2009 arising out of Sultanganj P.S. Case No.58 of 2007]

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1. Subodh Sah, son of late Ayodhya Sah, &
 2. Pankaj Sah, son of Subodh Sah, both resident of village-Abjuganj, P.S.-Sultanganj, District- Bhagalpur.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

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Criminal Appeal (DB) No. 550 of 2011

[Against the judgment and order of conviction dated 12th and 18th May, 2011, respectively passed by the Additional Sessions Judge, FTC V, Bhagalpur, in Sessions Trial No.1157 of 2007/ 38 of 2008/ Trial No.518 of 2009 arising out of Sultanganj P.S. Case No.58 of 2007]

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1. Shankar Sah, son of late Parmeshwar Sah, &
2. Anil Sah, son of Jageshwar Sah @ Jago Sah, both resident of village-Abjuganj, P.S.-Sultanganj, District- Bhagalpur.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance:

(In CR. APP (DB) No. 658 of 2011)

For the Appellant/s : Mr. Nawal Kishore Singh, Advocate
Mr. Jitendra Nath Tiwary, Advocate

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

(In CR. APP (DB) No. 532 of 2011)

For the Appellant/s : Dr. Manoj Kumar, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, APP

(In CR. APP (DB) No. 535 of 2011)

For the Appellant/s : Mr. Swapnil Kumar Singh, Advocate

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

(In CR. APP (DB) No. 550 of 2011)

For the Appellant/s : Mr. Uma Kant Pd., Advocate

For the Respondent/s : Ms. S. B. Verma, 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: 11-02-2016

1. Appellant, Pramod Sah, has been convicted under Section 302 Indian Penal Code and Section 27 of the Arms Act and sentenced to undergo imprisonment for life as also fine of ₹10,000/- in default of which further six months imprisonment under section 302 Indian Penal Code and three years imprisonment as also fine of



₹5,000/- in default of which three months further imprisonment under Section 27 of the Arms Act, whereas, rest of the Appellants have been found guilty under Section 302/34 read with Section 120-B Indian Penal Code and sentenced to undergo imprisonment for life as also fine of ₹10,000/- each in default of which further imprisonment for six months by a judgment and order of conviction dated 12th and 18th May, 2011, respectively passed by the Additional Sessions Judge, FTC V, Bhagalpur, in Sessions Trial No.1157 of 2007/ 38 of 2008/ Trial No.518 of 2009 arising out of Sultanganj P.S. Case No.58 of 2007.

2. The case of the prosecution, according to the Informant Baby Devi (PW 6), is that on 30.05.2007 at about 5.15 PM, Anil Sah and Shankar Sah came to call her husband while he was in the house saying that there was some work, so, he left with them. She was directed by her husband that child should be made ready for going to *Bhoj* in a *Sharadh*. However, she also came out and saw Shankar Sah and Anil Sah taking her husband towards the *Chura* Mill of Subodh Sah where she saw Vijay Sah, Subodh Sah, Pankaj Sah, Karu Sah, Futfutiya Sah, Pramod Sah were standing from before. Vijay Sah gave a pistol to Pramod Sah whereafter Shanker Sah ordered that he should be killed and then Pramod Sah had fired upon her husband Brahamdeo Sah on the back due to

which he fell down struggling for life. Number of persons gathered after which he was taken to the Referral Hospital but he died on the way.

3. *Fard-e-bayan* of the PW 6 was recorded at the Referral Hospital, Sultanganj by Sri N. S. Chauhan, Officer-in-Charge of Sultanganj P.S. (PW 7) at 10.30 PM.

4. During trial, the prosecution examined eight witnesses, whereas, the defence examined seven witnesses.

5. PW 1 (Shankar Prasad Sah) is the brother of the deceased, who stated that on the date of occurrence while he was getting shaved suddenly he heard that his brother had been shot at, so, he ran towards the place of occurrence and saw his sister-in-law, who disclosed the name of the eight accused persons, who had caused his death. He was then taken to the hospital but he died on the way. He conceded that he was not an eye witness and was giving only hearsay account.

6. PW 2 (Ashok Sah) stated that he heard the sound of firing while he was returning leaving the present Mukhiya Bhuneshwar Pandit in his house then he saw that the Appellant Pramod Sah fired at Brahamdeo Sah, the deceased, on the back. Arvind Sao @ Futfutiya had caught hold of the deceased with his towel, whereas, Karu Sao also pointed his pistol on the deceased

whereas rest of the accused persons were just standing there. Brahamdeo Sah, deceased then fell down. On *halla*, several persons including the wife of the deceased came whereafter the deceased was taken to the Referral Hospital but on the way he died. He proved his signature on the *fard-e-bayan* which is Ext.2. In cross-examination, he stated that on the date of occurrence, there was heavy traffic on the road because of the *Sharadh* ceremony being held in the village. He also stated that the wife of the deceased reached immediately after the occurrence. There is nothing else which is notable in his cross-examination.

7. PW 3 (Basudeo Sah), another brother of the deceased, is also a hearsay witness. He stated that he learnt that the present Appellants had killed his brother. He stated in regard to the earlier motive between Shankar Sah and the deceased on account of Mukhiya election. There is nothing else which is notable in the cross-examination.

8. PW 4 (Manoj Kumar @ Manish Kumar Sah) is a formal witness, who proved his signature on the Inquest Report Ext.3.

9. PW 5 (Dr. Sandeep Lal) held the Post Mortem Examination on the deceased and found following:

“One wound of entry with inverted and blackened margin of size 1” x ½” (1” lateral to

mid vertebral line) over left side of back.
Tattooing around the entry wound.

On dissection of body, projectile found to come out after piercing left lung and heart through an exit wound of size 1" x 1" over left side of front chest ½" above left nipple.

Opinion: Above noted injuries were ante mortem and caused by fire arm weapon.

Cause of death-Haemorrhage and shock.

Time since death- 6 to 24 hours."

10. PW 6 (Baby Devi) is the Informant and material eye witness. She stated that on 30.05.2007 at about 8.30 PM, while she was at home, Appellant Shankar Sah and Anil Sah both came to her house and called her husband. Thereafter, he was taken to the Mill of Subodh Sah where other Appellants, namely, Karu, Vijay, Pramod Sah, Subodh Sah, Pankaj Sah and Futfutiya Sah were also present, who surrounded him. Then Vijay Sah, who had pistol in his hand, gave it to Pramod and on the order of Shankar Sah, he fired on the back of her husband on account of which he fell down. She then ran towards her husband where other witnesses including Ashok Sah (PW 2) also came. In cross-examination, she stated that the place of occurrence was about 10-15 steps from her door and she saw the occurrence from her door. She also stated that Shankar Sah had spoken loudly and it may have been heard by others as well.

11. PW 7 (Narvadeshwar Singh Chauhan), the Investigating Officer stated that on 30.05.2007 while he was at the



Police Station, he got information on telephone that Brahamdeo Sah had been murdered in Abjuganj. He then registered the *Sanha* and left for Abjuganj. At 09.15 PM, he learnt that the deceased was in the Referral Hospital, Sultanganj, where he died. So, he reached the hospital when he recorded the *fard-e-bayan* (Ext.6) and drew the First Information Report (Ext.7). He inspected the place of occurrence and found it to be about 30 yards from the house of the deceased where plenty of blood was found. He made sketch in the case diary of the place of occurrence. He stated that he had also mentioned that the deceased had earlier given a *Sanha* bearing no.4020 of 2006 dated 23.08.2006. Attention of this witness was drawn to the statement of PW 3 (Basudeo Sah) that he had earlier stated that eight persons had committed the murder of the deceased without the names.

12. PW 8 (Vijay Kumar Mishra) was a Typist, who stated that on 24.08.2006 he had typed out a *Sanha* which was got recorded by the deceased on 24.08.2006 against the Appellants Shankar Sah, Pramod Sah, Arbind Sah (Futfutiya) and some others which is Ext.8.

13. The defence also examined several witnesses. DW 1 (Savitri Devi) is on the point that Anil Sah was innocent, whereas, DW 2 (Ashok Sah) is on the point of *alibi* of Appellant Shankar Sah

and that he saw Appellant Shankar Sah in injured condition and was admitted in the hospital from 31.05.2007 to 06.10.2007.

14. DW 3 (Chandrika Sah) is also on the point that Shankar Sah had been injured and taken to the hospital.

15. DW 4 (Nem Narain Singh) has stated about the *alibi* of Shankar Sah being present at the Sharadh Ceremony.

16. DW 5 (Ram Vilesh Singh) is one of the signatory of the *fard-e-bayan*, who disclosed that Informant had got instituted the *fard-e-bayan*, and he proved his signature on the same as Ext.B. He further stated that unknown persons had committed murder of Brahamdeo Sah.

17. DW 6 (Pradeep Singh) has stated that on the date of occurrence he was at the door of Ram Bilesh Singh where Bhuneshwar Pandit, Mukhiya Jee along with 2-4 persons came with Gauri Singh. He was told by the Sarpanch to escort Mukhiya Jee to Abjuganj Chowk. So, they proceeded with a torch since it was a dark night and there was no electricity. When they reached Abjuganj Haat, two unknown persons told the Mukhiya that Brahamadeo Sah has been murdered. In cross-examination, he stated that he had never been examined earlier.

18. DW 8, Manju Devi, is the wife of Appellant, Pramod Sah, who stated that her husband and the deceased

Brahamdeo Sah had very good relation and there was no dispute at any point in time earlier. She also stated that she had not given any statement earlier.

19. We, thus, find that earlier the deceased had filed a *Sanha* against some of the Appellants in the Court of the Chief Judicial Magistrate which shows that there was real apprehension to him at the hands of some of the Appellants. When we examine the evidence of PW 2 (Ashok Sah), we find that when he heard the sound of firing he saw in the light of bulb that Appellant Pramod Sah shot at the deceased Brahmddeo Sah, whereas, Appellant Arvind Sah @ Futfutiya had wrapped his towel around the neck of the deceased and Karu Sah had pointed a pistol on him, whereas, rest of the accused persons were merely standing nearby. Baby Devi (PW 6), wife of the deceased, who is another eye witness, merely stated that when her husband was called away, she saw him being surrounded by the accused persons including the Appellants and it was then on the order of Shankar Sah that the Appellant Pramod Sah shot at her from back taking the pistol from Vijay Sah.

20. We, thus, find that there is no overt act attributed to Arbind Sah @ Futfutiya Sah or to Karu Sah, whereas, PW 2 does not say anything about the orders being given by the Shanker Sah but PW 6 says so specifically in her evidence. PW 2 also does not



say anything about Vijay Sah carrying any arm which was taken by Pramod Sah for using it on the deceased. Hence, there appears major contradiction in regard to the roles assigned to the accused persons. However, we find from the *fard-e-bayan* of the Informant that she had consistently stated about the Appellant Shankar Sah having called away the deceased and thereafter having ordered to Pramod Sah to kill him. This role is consistently attributed to the two Appellants who are before us.

21. In view of such consistency and medical corroboration thereof, we are inclined to maintain the conviction of Appellant Pramod Sah (Cr. Appeal (DB) No.658 of 2011) and Shankar Sah (Cr. Appeal (DB) No.550 of 2011). As for rest of the Appellants, since they were co-villagers and their presence at the place of occurrence could be for other reasons as well, we are inclined to give them benefit of doubt.

22. Accordingly, Appellants, namely, **Karu Sah and Arbind Sah @ Futfutiya Sah** (Cr. Appeal (DB) No.532 of 2011), **Subodh Sah and Pankaj Sah** (Cr. Appeal (DB) No.535 of 2011) and **Anil Sah** (Cr. Appeal (DB) No.550 of 2011) are acquitted of the charges leveled against them. They are also discharged from the liabilities of their respective bail bonds.

23. Conviction and sentence of the Appellant **Pramod**

Sah (Cr. Appeal (DB) No.658 of 2011) and **Shankar Sah** (Cr. Appeal (DB) No.550 of 2011) are hereby upheld. Appellant Shankar Sah, who is on bail, is directed to surrender before the Court below to serve out the remaining part of the sentence.

24. In the result, Cr. Appeal (DB) No.658 of 2011 is **dismissed**. Cr. Appeal (DB) No.532 of 2011 and Cr. Appeal (DB) No.535 of 2011 are **allowed** and Cr. Appeal (DB) No.550 of 2011 is **allowed in part**.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

AFR
J.Alam/-

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