

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1142 of 2011

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Birendra Bind S/o Chhotan Bind Resident of Village - Vir, P.S. - Dhanarua, Distt. - Patna.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Criminal Appeal (DB) No. 485 of 2014

Arising Out of PS.Case No. -101 Year- 2008 Thana -DANARUA District- PATNA

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1. Arvind Bind, Son of Chotan Bind
2. Rameshwar Bind, Son of Budh Lal Bind, Both Resident of village- Beer, P.S.- Dhanarua, District- Patna

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

---with---

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Criminal Appeal (DB) No. 968 of 2011

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Chhotan Bind S/o Late Karu Bind Resident of Beer, P.S. Dhanarua, Dist.Patna

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Krishna Prasad Singh, Sr. Adv. Mrs. Meena Singh.
For the State	:	Mr. Ashwini Kumar Sinha Mr. S.B. Verma, A.P.P. Mr. Ajay Mishra, 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: 11-03-2016

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



2. All the above Appellants have been convicted under Sections 302/34 of the I.P.C. and sentenced to undergo Rigorous Imprisonment for life and further Rigorous Imprisonment for one year under section 354/34 of the I.P.C. and two years under section 379 of the I.P.C. passed by the Additional Sessions Judge-IX, Patna and Adhoc Additional Sessions Judge-VI, Patna on 18/27.08.2011 and 30.04.2014 respectively in Sessions Trial No. 2452/(A) of 2008 arising out of Dhanarua P.S. Case No. 101 of 2008.

3. The case of the prosecution, according to P.W. 2, Shanti Devi, is that on 16.04.2008 at about 09.00 pm, the present Appellants came to her house and started to snatch her personal belongings, when her son, Uday Bind, deceased intervened, on the orders of Arbind Bind, Birendra Bind fired, which hit at his stomach. This statement was given by P.W.2, Shanti Devi, at 7.30 pm. in Kankarbagh Police Station, which was forwarded to S.H.O. Dhanarua P.S. District- Patna, upon which the First Information Report was instituted on the next day, i.e. 17.04.2008 but the investigation started only on 28.04.2008 when the Police personnel of the concerned Police Station received the First Information Report.

4. During trial, the prosecution examined 9 witnesses; out of whom P.W.4, Surendra, has been declared hostile, whereas

P.W. 1, Mukesh Kumar @ Mukesh Bind is brother of the deceased. P.W.2, Shanti Devi, is the Informant and mother of the deceased. P.W. 3, Doman Bind, is the father of the deceased, whereas P.W.6, Badamia Devi, is the aunt and P.W. 7, Shivilali Bind is the uncle and P.W.8 Parsuram Bind, is the cousin brother.

5. P.W. 5, Dr. Ashok Kumar Yadav, conducted the Postmortem of the deceased, who died on 20.07.2008 i.e. more than three months after the occurrence. P.W. 9, Dashrath Prasad Singh, is the Investigating Officer of the case.

6. After going through the evidence on record, we have come to the conclusion that the present case does not come within the ambit of section 302 of the I.P.C. that would come within the purview of section 304 Part-II of the I.P.C. for the reasons which we enumerate herein after.

7. P.W. 1 Mukesh Kumar @ Mukesh Bind states that on the date of occurrence, when there was *Hulla*, he went to the house and saw the accused persons abusing his mother and an altercation going on between them. In course of same, the Appellant, Birendra Bind is said to have fired on the order of Arbind Bind at the deceased. In cross-examination, he stated that his brother was moved to N.M.C.H., where he stayed for about a month as also that he had tried to pacify the parties physically. A

suggestion was given to him that, in fact, his brother was a person of a criminal nature and earlier at the instance of present Appellants, Police had recovered fire arms from his house, which he admits.

7. P.W. 2 Shanti Devi, is the Informant and mother of the deceased, who stated that what she did in the First Information Report. In her cross-examination, it was suggested to her that her son was of a criminal nature and had been killed in another occurrence. She concedes that the deceased was treated about three months, out of which, for two months, he was in a private nursing home and one month in the Government Hospital.

8. P.W.3, Doman Bind, is the father of the deceased, who stated that on the date of occurrence, the accused persons had tried to molest his wife and when the deceased intervened, he was shot dead by Appellant Birendra Bind.

In cross-examination, he denied that the deceased was a criminal and had gone to jail in a case of robbery and Arms Act. He stated that he was a vegetable vendor making the motive for the occurrence of snatching and committing theft from the possession of the Informant highly doubtful.

9. P.W.6, Badamia Devi, is the aunt of the deceased, who stated that on the night of the occurrence, she heard that the

accused persons had entered into the house of the Informant and attempted to molest her and when her son deceased intervened, he was shot dead by Birendra Bind on the order of Arbind Bind. In cross-examination, she stated that her house was situated about 50 yards away from the place of occurrence. There is nothing further of note.

11. P.W.7, Shivilali Bind, is the uncle of the deceased, who stated that on *Hulla*, he went to the house of the deceased and saw him there and even the deceased came and tried to intervene but he was shot dead by Appellant Birendra Bind. It was suggested to him that the deceased was of criminal antecedents and the Police had raided his house because of his antecedent, which he denied. He admitted that the brother of the deceased Mukesh Kumar had been put behind the bars in the case of kidnapping and Doman Bind (P.W.3), father of the deceased, had also gone to Jail in a case of 436 I.PC.

12. P.W. 8, Parsuram Bind, is the cousin brother of the deceased, who stated that on the night of occurrence, he saw the accused persons entered in the house of the Informant and then fired at the deceased. He also denied the suggestion that the Police had raided the house of the deceased on account of his criminal antecedent.



13. P.W. 9, Dashrath Prasad Singh, is the Investigating Officer, who stated that on 28.04.2008, he received the *fardbeyan* of Shanti Devi (P.W. 2), which was recorded by S.I., A.K. Singh, who has not been examined. He further stated that Dhanarua P.S. Case No. 101 of 2008 was instituted on such statement by the Officer-in-Charge, Rajesh Ranjan, who also has not been examined. He proves his own endorsement as Exhibit-2. He further stated that the formal First Information Report was drawn up by Umesh Paswan, who has also not been examined. He proved the same as Exhibit-3. On 18.05.2008, he reached the Hospital and recorded the statement of the deceased, which is marked as Exhibit-4. Upon his death on 28.07.2008, he prepared the Inquest Report and one Renu Devi recorded the statement of Shanti Devi (P.W.2), which he proves as Exhibit-5 and her signature is marked as Exhibit-6. In cross-examination, there is nothing of note.

He did not explain as to why the First Information Report reached Court on 29.04.2008 i.e. more than 13 days after the occurrence.

14. One Defence witness namely, Malti Bind, has also been examined but she had not been examined by the Police and hence, it is irrelevant.

15. According to us, the most relevant evidence is that

P.W.5, Dr. Ashok Kumar Yadav, who stated that he performed the Postmortem on 20.07.2008 and found the following injuries on the person of the deceased :

- 1) *One wound of entry ½” diameter filled pus, wound oozing blood fanged pus over the back on 1st sacral area. The wound was cavity deep.*
- 2) *One operated stitched open infected wound found over the abdomen on left side just left to umbilicus. After opening the thoraco-abdominal cavity the pus was found filled in the abdominal cavity with filthy smell. The abdominal lumen adhered to each.*

He stated that he could not give definite opinion as to how the injury was caused, which could be obtained only from the previous Doctor who has not been examined. He further testified that death was on account of Hemorrhage, Septicemia and Shock. We have also noticed that there was pus in the abdominal cavity.

16. The manner of occurrence suggests that the Appellant Birendra Bind fired at the deceased in the midst of an altercation when he intercepted. He was not the target.

17. The other notable point is that there was no investigation of the case between 16.04.2008 to 24.08.2008 i.e. for

initial 8 days if at all, it has to be believed that the statement was given on 16.04.2008. None of the Police Officers who had instituted the First Information or recorded the *fardbeyan*, has been examined, in which situation, we are left in doubt as to the authenticity of the First Information Report especially since the First Information Report reached Court on 29.04.2008 i.e. 13 days after the occurrence.

18. It also appears that deceased died about 3 months latter which was on account of Septicemia. Whether the death was direct result of the injury sustained by the deceased or whether the injury was caused by firearm or any other weapon is not known.

19. However, in view of the consistent oral evidence of the eye-witnesses alleging that the Appellant Birendra Bind had caused injury to the deceased, we dismiss the Appeals but convert the conviction of the Appellants under section 304 Part-II of the I.P.C. in the facts of the case and reduce the sentence to the period already undergone by them.

(Anjana Prakash, J.)

(Rajendra Kumar Mishra, J.)

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