

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.794 of 2015

Arising Out of PS.Case No. -220 Year- 2008 Thana -AGAMKUAN District- PATNA

1. Genda Mahto Son of Kailash Mahto, resident of village- Mokamatal Balwa Sarai, P.S.- Mokama, District- Patna

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Md. Imteyaz Ahmad, Advocate

For the Respondent/s : Mr. Ajay Mishra, APP

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 21-04-2016

Appellant Genda Mahto has been convicted and sentenced to R.I. for life and fine of Rs.10,000/- under Sections 302/34 I.P.C., in default of which rigorous imprisonment for another six months and R.I. for five years and fine of Rs.5000/- under Section 27(i) of the Arms Act, in default of which rigorous imprisonment for another three months by judgment dated 22.8.2015/28.8.2015 passed by the Additional District & Sessions Judge IV, Patna City in Sessions Trial No.1165 of 2009 arising out of Agamkuan P.S. case No.220 of 2008.

2. The case of the prosecution, according to one Uttam



Bind, the cousin brother of the deceased, is that on 01.10.2008 at 3.45 P.M. while he and the deceased Mukesh Kumar @ Gopi were returning home, Appellant Genda Mahto, who used to stay in the liquor shop, intercepted his brother and assaulted him a couple of times saying that he was becoming a big Hero. He then started to drag him and took him on top of the terrace and told him to sit there. At that point in time 3-4 more persons came there who he identified by face and they started to assault the deceased with fists and slaps and Appellant shot thrice at him. He was sought to be fired at but he jumped from the terrace into slush from where he was pulled out by bystanders. Just then the police came and took both of them to N.M.C.H., where his brother was declared dead and he himself was taken to P.M.C.H. during which treatment he gave the present fard beyan at 3.45 P.M. in the Emergency Ward.

It is notable that subsequently the Informant also died and therefore the First Information Report has not been brought on record.

3. During trial the prosecution examined seven witnesses. P.W.1 Dr. Radha Raman Singh conducted the postmortem of Mukesh @ Gopi, aged about 18 years and found the following injuries on his person :

On external examination :

- (1) Lacerated wound on left wrist on outer aspect size was 2 cm x 1 cm x muscle deep.
- (2) Penetrating wound on right side of chest wall situated 8 cm from mid sternal line and 3 cm above the right nipple size of wound was 2 cm x 1 cm x cavity deep with blackened margin and surrounded with tattooing on area 13 cm x 11 cm. This was wound of entrance.
- (3) Perforating wound of size 1/5 cm x 1 cm x abdominal cavity deep with black margin surrounded with tattooing on area 8 cm x 5 cm found on left side of abdominal wall situated 2 cm left from mid abdominal line 12 cm above and lateral from umbilicus. (This was wound of entrance)
- (4) Perforating wound of size 2 cm x 1 cm x cavity deep on left side of back situated 3 cm x left from mid vertebral line and 16 cm below lower angle of left scapula margin was red. (This was wound of exit).
- (5) Perforating wound one wound of entry 1 cm in diameter surrounded by tattoo marks on right palmar surface, was found on the base root of right thumb. Wound was directed out with one cm in diameter. The wound of exit was found on the dorsum of base of right thumb.

Internal examination :

(1) Thoracic cavity was full of blood. Right third inter costal space was perforated. One bullet like metallic object was recovered from right lung which was preserved in glass container, labelled sealed and handed over to the Hawaldar deputed.

(2) Abdominal cavity was full of blood and stomach contains which was digested food stocks. Stomach was perforated and under surface of liver was lacerated.

(3) All viscera were pale, heart chambers were empty, bladder was empty, trachea was pale.

He opined that injuries no.2, 3, 4 and 5 were caused by fire arm whereas injury no.1 was caused by hard and blunt substance. He proves the postmortem examination report as Exhibit 1. In cross examination there is nothing which is of note.

4. P.W.2 Ashok Bind stated that on 01.10.2008 while he was going to Kumhrar he heard sounds of firing and the Appellant Genda Mahto fleeing away with fire arms along with Anuj Ram, Siya Sharan Manjhi and one unknown person. He described the place of occurrence being the terrace of L.I.G. flat and they were fleeing away after having fired at Mukesh Bind. He also saw Mukesh Bind and the



Informant Uttam Bind injured. Uttam Bind reportedly disclosed that the Appellant had fired thrice at the deceased. A number of persons gathered on hulla, whereafter he said that he went to the Police Station along with the father of Mukesh Bind and got the case instituted. He explained that he did not give any statement there and also that later on the deceased died at N.M.C.H., whereas the Informant was treated at P.M.C.H. In cross examination he explained that he was the brother-in-law of the deceased.

5. P.W.3 Chandeshwar Yadav was posted at Agamkuan Police Station on 01.10.2008 and had assumed investigation as also arrested Anuj Kumar and taken his confessional statement and prepared the seizure list of the articles, which were found at the place of occurrence. He proves the same as Exhibit 2. He also stated that he took the further statement of the Informant, who supported the case. Describing the place of occurrence he stated that it was located in L.I.G. Sector 3 Block I Flat No.57-72. It was on the terrace where the occurrence had taken place and he had found pellet and wads there. In cross examination he stated that none of the occupants of the flat gave any statement and there were other independent witnesses as well but not of the adjacent area.

6. P.W.4 Chando Devi stated that on the date of



occurrence she saw the deceased and the Informant being pulled by Appellant Genda Mahto along with 2-3 persons and taken to a building which they locked from inside. She heard cries of help help, so she ran towards a police Jypsy but she could not reach it. She then saw both the injured and the deceased being thrown from the terrace who were in injured condition. Just then the police jeep arrived and took the two injured to N.M.C.H., where Mukesh @ Gopi died but the Informant was referred to P.M.C.H. About 6 months to one year later the Informant also died. She further stated that when the Informant was alive she had heard about the occurrence from him. She specifically stated that the Informant had stated that it was the Appellant, who had shot at the deceased. In cross examination she stated that on the date of occurrence the parents of the deceased had gone to work nearby. She had also not entered the flat because she feared that she would also be killed.

7. P.W.5 Runti Devi stated that while she returned home she heard that the deceased had been killed whereas Uttam had been injured, so she went to Agamkuan Hospital but by then Gopi had died. However, Uttam was alive and disclosed that the Appellant and others dragged them inside the L.I.G. flat where the deceased was shot by the Appellant. She also confirmed that the Informant died

about one and half year later. In cross examination several questions have been directed with regard to the location of the place of occurrence but there is nothing which is of note.

8. P.W.6 Tuntun Bind stated that on the date of occurrence he learnt that the Appellant had pulled away the deceased and the Informant inside the Housing Colony and so he went there and saw a big crowd there. Both of them were crying in pain. Both of them were saying that it was the Appellant, who had fired. He also confirmed that the two injured were taken to N.M.C.H. and thereafter P.M.C.H. as also the general statements about the manner of occurrence. He proves the death certificate of the Informant as Exhibit 2. In cross examination there is nothing which is of note, which would turn the fate of the case.

9. P.W.7 Bablu Bind stated that on the date of occurrence he heard gun shots and thereafter saw some accused persons running away with pistols in their hands, out of which he identified the Appellant and Anuj. The accused persons allegedly fired at the deceased and the injured. Mukesh had died there and then whereas Uttam was taken by the police. In cross examination he stated that he was a labourer and not an eye witness to the occurrence.

10. We thus find from the discussions of the aforesaid

evidence that the sole eye witness, the Informant, died before trial. However, his statement is still admissible in view of Section 32 of the Evidence Act. There is further corroborative evidence that the Appellant was seen running away with fire arms by a number of witnesses, who had no cause to falsely implicate him and witnesses who had heard about the complicity of the Appellant from the Informant immediately after arrival. There is no suggestion that these facts were not disclosed by them earlier. The medical evidence also fully corroborates the prosecution case as to the nature of injuries and the Investigating Officer in respect to the place of occurrence.

11. In such circumstances, we find no merit in the appeal and hence the conviction and sentence of the Appellant is maintained. The appeal stands dismissed.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

Narendra/-

AFR/NAFR	NAFR
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