

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 722 of 2015

Arising out of P.S. Case No. -181 Year- 2008 Thana -
DANAPUR District- PATNA

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Sunil Choudhary Son of Late Bhuneshwar Chaudhary Resident of
Mohalla - Gola Road, Gajadharchak, Police Station-Danapur, Dist.-
Patna.

..... Appellant/s

Versus

The State of Bihar.

..... Respondent/s

with

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Criminal Appeal (DB) No. 761 of 2015

Arising out of P.S. Case No. -181 Year- 2008 Thana -
DANAPUR District- PATNA

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Arun Kumar @ Arun Thathera, Son of Sri Kedar Thathera, resident
of Village+ Post- Danapur Takiyapar, Khagri Road, P.S.- Danapur,
District- Patna, at present Danapur, Nasriganj, Chaii Tola, P.S.-
Danapur, District- Patna.

..... Appellant/s

Versus

The State of Bihar.

..... Respondent/s

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Appearance :

(In CR. APP (DB) No. 722 of 2015)

For the Appellant/s : Mr. A.K.K. Sahay, Adv.

For the Respondent/s: Mr. S.C. Mishra, APP.

(In CR. APP (DB) No. 761 of 2015)

For the Appellant/s : Mr. Manish Kumar No. 13, Adv.

: Mr. Rohit Kumar, Adv.

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

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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: 08-04-2016

01. The Appellants have been convicted under

Section 302/34 of the Indian Penal Code and sentenced to R.I. for life and fine of Rs. 10,000/- in default of which R.I. for six months by a judgment of conviction and order of sentence dated 20/25.08.2015 by the Additional District & Sessions Judge-III, Danapur, Patna in Sessions Trial No. 1488 of 2010 arising out of Danapur P.S. Case No. 181 of 2008 (G.R. No. 1563 of 2008).

02. The case of the prosecution according to P.W. 10, Janki Devi is that on 14.06.2008 at about 8.30 P.M. the present Appellants and one Sunny asked her son the deceased, Bunty to accompany them to a birthday party so they all left altogether. At about 1 P.M. the father of Sunny came and informed her that her son was lying injured with a bullet injury on his stomach. Hearing this they along with Pramod Singh, P.W. 13, Prem Prakash, P.W. 7, Naresh Prasad, the father and mother of accused Sunny reached the place where her son was lying injured. Her son was lying and crying for water and disclosed that the present two Appellants had called him whereas accused Sunny had fired on his stomach. While he was being taken to the hospital he lost his consciousness and died on 15.06.2008. This information was given at PMCH on 15.06.2008 at 2.30 P.M.

03. During trial the prosecution examined thirteen witnesses whereas the defence examined one witness.

04. P.W. 1, Rajesh Kumar Jaiswal, P.W. 2, Deo

Baran Rai, P.W. 3, Binod Sao, P.W. 4, Munni Devi, P.W. 5, Ganauri Sao, P.W. 6, Manoj Sao, P.W. 8, Munna Sao and P.W. 9, Sanjay Sao did not support the case of the prosecution and were declared hostile.

05. P.W. 7, Prem Prakash named in the First Information Report as having accompanied the Informant has not supported the case but has not been declared hostile. He stated that he was informed by the Informant that her son had been injured so he told her to leave for the place and he would follow later. However, when he reached there they had already left so he returned home. He learnt that the deceased died the next day at PMCH.

06. P.W. 11, Raju Nandan is a formal witness who has proved the fardbeyan (Exhibit-2) whereas P.W. 12, Umesh Prasad Chaudhary has proved the Post-mortem Report as Exhibit-3.

07. Before, we discuss the evidence of the Informant, we would like to discuss the evidence of P.W. 13, Pramod Singh who stated that on the date of occurrence his brother was called away by three boys but he did not know any of them. Later, someone came to inform them that his brother had sustained injuries so he went there along with his mother and Prem Prakash thereafter he was taken for treatment but he died. He also stated that deceased while asking for water had died whereafter his last rites were performed. He identified

the Appellant, Sunil Choudhary in the dock. Later on explained that he was unwell and under treatment.

08. He did not state anything about oral dying declaration on the basis of which the Appellants have been convicted.

09. P.W. 10, Janki Devi is the sole witness on the material point of dying declaration. She stated that on 14.06.2014 at 8.30 P.M. the present Appellants had called her son who left with them later at night Budhan Thathera father of Appellant and Sunil Choudhary informed her that her son had sustained bullet injuries on the stomach and had fallen near "Khagari". When she reached along with her son Pramod Singh, P.W. 13 and some others she found the parents of Sunny as well as the Appellant also there. The deceased allegedly asked for water and disclosed that while the present Appellants had called him the accused Sunny had fired at him. He was then removed to PMCH where he died. During treatment she proved the fardbeyan as Exhibit-1 and signature of her son, Pramod Singh as (Exhibit- 1/1). In cross-examination, she stated that her son (the deceased) was not employed and that no information was given by any one till his death the next day. She also stated that her son Pramod Singh, P.W. 13 had accompanied her to the hospital.

10. We, thus, find that P.W. 13, Pramod Singh directly contradicts P.W. 10, Janki Devi on the point of factum

of dying declaration. Further, from the evidence of P.W. 10, Jank Devi, we find that she stated that the Appellants and the parents of Sunny were also present where the injured was lying. This is not the natural conduct of a person who had committed murder which would have been to flee away. This circumstance creates a reasonable doubt on the veracity of the prosecution case.

11. Hence, in the aforesaid circumstances, the Appeals are allowed and the judgment of conviction dated 20.08.2015 and order of sentence dated 25.08.2015 passed by the Additional District & Sessions Judge-III, Danapur, Patna in S.Tr. No. 1488 of 2010 arising out of Danapur P.S. Case No. 181 of 2008 (G.R. No. 1563 of 2008) is, hereby, set aside. The Appellants, who are in jail custody, is directed to be released forthwith, if not wanted in any other case.

(Anjana Prakash, J.)

(Rajendra Kumar Mishra, J.)

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