

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.529 of 2015

(Against the Judgment of conviction dated 20.04.2015 and Order of sentence dated 24.04.2015 passed by the Additional District and Sessions Judge-II, Lakhisarai, in Sessions Trial No. 339 of 2010)

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Gudo Singh @ Fudo Singh @ Kudo Singh, Son of Late Punit Singh, Resident of village- Walipur, P.S.- Pipariya, District- Lakhisarai.

.... Appellant.

Versus

The State of Bihar

.... Respondent.

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Appearance :

For the Appellant : Mr. Ajay Kumar Thakur, Mr. Kiran Thakur, Mr. Amit Kumar, Mr. Nihesh Kumar, Advocates.

For the State : Mr. Abhimanyu Sharma, 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: 01-07-2016

The sole Appellant has been convicted under Section 302 of the Indian Penal Code and Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for life under Section 302 of the Indian Penal Code with fine of Rs.10,000/- and sentenced to undergo rigorous imprisonment for three years under Section 27 of the Arms Act with fine of Rs.1000/- vide Judgment of conviction dated 20.04.2015 and Order of sentence dated 24.04.2015 passed by the Additional Sessions Judge-II, Lakhisarai, in Sessions Trial No.339 of 2010.



2. The case of the prosecution, according to the Informant Ram Kumar Singh (P.W.3), the son of the deceased, is that on the day of Holi, i.e., 11.03.2009 at about 10.00 P.M., while he was inside the house alongwith the rest of the family members, the sister of the Appellant, namely, Shobha Devi, called out to his mother at which she went out. He also followed them and then he saw the Appellant firing at the deceased on account of which she fell down. When he tried to save his mother, Upendra Singh, the brother of the Appellant, pointed a pistol at him and then he ran away. The reason for the occurrence is that the deceased had given Rs.1,00,000/- earlier to the Appellant but he did not refund it and whenever the deceased used to ask him to return the money, the Appellant and his brother Upendera Singh used to threaten her of dire consequences.

3. During trial, the prosecution examined altogether 9 witnesses.

4. On going through the evidence of the witnesses, we find that it is a clear case of false implication of the Appellant and the reason as to why we have feel so, we would indicate while discussing the evidence of the witnesses.

5. P.W.1 Manoj Singh has stated that on the date of occurrence while he was at his house, he, suddenly, heard screams at which he came out of the house and saw the Appellant running away.

However, when he reached the place of occurrence, he saw the Appellant, his sister Shobha Devi and brother Upendra Singh, both not sent up, standing there. He saw the deceased lying dead having sustained firearm injuries. He lived about 40-50 yards away from the place of occurrence and it takes one minute to reach the place. He stated that he alongwith the Informant went to the police station to inform the police.

In cross examination, he conceded that the Appellant had very good relationship with the deceased and he also did not see the accused firing at the deceased and there was no dispute between the deceased and the Appellant over money. He also stated that the husband of the deceased used to stammer whereas the Appellant was not married. The husband of the deceased was not examined by the police.

His attention was drawn to the earlier statement that, in fact, he was not an eye witness to the occurrence which he denied. Also that, on the date of occurrence, it was dark at the place.

6. P.W.2 Anil Singh is the brother-in-law of the deceased, who stated that while he was standing on his terrace, he saw the Appellant and the two other accused at the door of the deceased whereafter, the Appellant fired at the deceased. They then pointed a pistol at him.



In cross examination, his attention was drawn to the earlier statement that he had stated that on hearing the sounds of firing, he had gone to the place of occurrence and had seen the Appellant fleeing away from there. He also stated that there was good relationship between the deceased and the Appellant which was not liked by the Informant and even he used to ask the deceased to stop the relationship with the Appellant but she did not listen to him. He conceded that there was no money transaction leading to dispute between the Appellant and the husband of the deceased.

7. P.W.3 Ram Kumar Singh is the Informant, who stated that on the night of occurrence, while he alongwith his father, the deceased and sister was sitting inside the house, Shobha Devi, the sister of the Appellant, called out to his mother and said that someone was calling. Then she went to the door. He also followed her and saw the Appellant standing with his brother Upendra Singh and sister Shobha Devi and the Appellant firing at his mother. He once again reiterated the reason for the occurrence that it was because Accused were not returning the amount they had taken from the deceased. He proves the Fardedbeyan as Ext.1. He stated that the Appellant ran away taking the shelter of darkness.

In cross examination, he stated that his father and sister would not be examined. Several questions were put to him about

financial capability of the deceased and it appears from the same that the deceased was not in a position to give loan Rs.1,00,000/-. He stated that the deceased had been shot at from a distance of about 20 feet while he was standing about four feet high from the ground level. He conceded that there had no dispute between the deceased and the Appellant earlier and they had cordial relationship.

8. P.W.4 Balmiki Singh has been declared hostile on the point of identification of the Appellant. However, P.W.4 stated in his cross examination that when P.W.1 reached to the place of occurrence, he suggested to the Informant that the Appellant be implicated so that he would not have to repay the money, which he had given to his mother.

9. P.W.5 Jai Prakash Singh stated that he did not hear as to who had killed the deceased.

10. P.W.6 Chandan Kumar alias Chandan Kumar Singh, who came to the place of occurrence immediately, stated about the factum of the occurrence but he did not disclose any names.

11. P.W.7 Raja Ram Singh stated that the Appellant had killed the deceased but when his attention was drawn to the earlier statement, he denied that he had stated that the accused Upendra Singh and Shobha Devi had been falsely implicated on account of village politics. He conceded that he was at home and the place of

occurrence was at a little distance and when he went there by that time, the deceased had already sustained gun shot injuries. He also supported the fact that the husband of the deceased was not of unsound mind and that there was no dispute between the Appellant and the deceased.

12. P.W.8 is Dr. Ramprit Singh, who conducted the Post-Mortem Examination of the deceased. He proved the Post-Mortem Examination Report of the deceased as Ext.2. He found the following injuries on her person:

I. Wound of entry 1/2" X 1/2" on mid sternal area (right side) on anterior chest. Charring was present and clothes were burnt communicating to

II. wound of exit 3/4" X 3/4" at No.1 level of right posterior auxiliary line of chest.

On dissection:-blood and blood clots were found in mediastinum, right lung cavity, lungs and great vessels were injured.

Death was caused by severe shock and hemorrhage caused by abovementioned injuries caused by firearm.

Time elapsed since death- was within 24 hours.

13. P.W.9 Kumar Shailendra Akela is the Investigating Officer who stated that on 12.03.2009, i.e. on the next day, he recorded the Fardbeyan of the Informant. He proves his

signature on the same as Ext.1/1. Thereafter, he sent the dead body for Post-Mortem Examination and examined the place of occurrence, which was in front of the house of the Appellant and it was empty space.

In cross examination, he stated that he received informant on 05.45 A.M. through the Chowkidar about this incident and he had recorded a Sanha in this regard but the same has not been produced . He stated that pursuant to the Sanha, he reached the place of occurrence at 07.00 A.M.. He prepared the Inquest Report and recorded the Fardbeyan of the Informant at 07.30 A.M. He confirmed that P.W.7 had stated about false implication of the two accused who were not sent up. His attention to evidence of hostile witnesses was also drawn but as noted earlier they themselves had even earlier not supported the fact of being eye witnesses.

14. As indicated above, we find that neither P.W.1 Manoj Singh nor P.W.2 Anil Singh were witnesses to the actual occurrence so the case is based upon the sole evidence of P.W.3, Ram Kumar Singh, the son of the deceased. Admittedly, he had a grouse against the Appellant because his mother had some relationship with him. The motive also has not been satisfactorily proved. In fact, it appears that the Appellant, who was financially strong, used to help the deceased, which was not liked by the family members of the

deceased. We also find that the Informant had categorically stated that he would not examine his sister and father even they were present in the house itself on the fateful night. The reason he does not disclose and thus we are inclined to view it adversely against the prosecution.

We also find that even though the occurrence is said to have taken place on 11.03.2009 at about 10.00 P.M. and the police station was merely 7 kilometers away but no effort was taken by anyone to inform the police even though the informant's mother had been killed.

The Investigating Officer stated that he was informed by the Chowkidar but the Sanha has not been brought on record which would satisfy the Court as to the first version. We also find that P.W.2 has stated that he had gone to the police station to give information at 05.00 A.M., which corroborates the evidence of the Investigating Officer who stated that he received information about it in the morning. The prosecution has failed to produce, as discussed above, the nature of exact information and even if the prosecution had informed the police at 05.00 A.M., in our opinion, it was quite late for which there is no explanation forthcoming.

Also the manner of occurrence is also falsified by the independent witness, P.W.8, Dr. Ramprit Singh, who found margins of injury charred with blackening which would be possible only if the

firing was made from a close range. However, the Informant stated that the assailant was at the distance of 19-20 feet which could not possibly cause an injury with charred margins. In such circumstances, we are inclined to give the benefit of doubt to the Appellant.

15. In the result, this Appeal is allowed. The Judgment of conviction and Order of sentence passed against the Appellant, above named, is set aside. He is acquitted of the charges. The Appellant is in jail custody, therefore, he is directed to be released forthwith, if not wanted in any other case.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

Pradeep Srivastava/A.B. Bhardwaj.

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