

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.80 of 2012

[Against the judgment of conviction dated 29th November, 2011, and order of sentence dated 9th December, 2011, passed by the 1st Additional Sessions Judge-cum-Special Judge, Jamui, in SC/ST Case No.60 of 2009]

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Bittu Rawat, son of Sukhdeo Prasad Rawat, resident of village-Agahara, P.S.- Jamui, District- Jamui.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ajit Kumar, Advocate
For the Respondent/s: Mr. A. K. Sinha, APP
For the Informant : Mr. Ajit Kumar Ojha, Advocate
Mr. Rajesh Kumar Sinha, Advocate

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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: 01-04-2016

1. Sole Appellant has been convicted under Section(s)

302, 385, 504 Indian Penal Code, under Section 27 of the Arms Act and 3(x) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act and sentenced to undergo rigorous imprisonment for life under Section 302 Indian Penal Code with fine of ₹2,000/- and in case of default of payment of fine further rigorous imprisonment for six months, two years rigorous imprisonment each under Section(s) 385 and 504 Indian Penal Code, three years rigorous



imprisonment under Section 27 of the Arms Act as well as six months simple imprisonment under Section 3(x) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act by the judgment of conviction dated 29th November, 2011, and order of sentence dated 9th December, 2011, passed by the 1st Additional Sessions Judge-cum-Special Judge, Jamui, in SC/ST Case No.60 of 2009. All the sentences were directed to run concurrently.

2. The case of the prosecution according to the Informant, Pankaj Kumar, (PW 6) is that on 12.12.2008 while his father (deceased), who was the Headmaster, had gone to school, he suddenly heard sound of firing at which he went to the school and found the Appellant Bittu Rawat having fired and then once again at his temple due to which he fell down from the chair. The Appellant attempted to flee but some villagers chased and caught him. He stated that the cause of occurrence was demand of ransom which had not been paid by the deceased.

3. The prosecution, in all, examined nine witnesses, out of whom, PW 1 (Mangal Ram), PW 2 (Rajendra Rawat), PW 3 (Amarjeet Paswan), PW 4 (Chandrika Paswan) and PW 6 (Pankaj Kumar) have deposed as eye witnesses. PW 5 (Mamta Kumari), who was a Teacher in the same school, has been declared hostile on the point of identification of the Appellant. PW 7 Dr. Vijay Kumar

conducted Post Mortem Examination on the dead body of the deceased, whereas, PW 8 (Brij Bihari Singh) is the Investigating Officer, who was not cross-examined by the Appellant and PW 9 (Arun Paswan) is a formal witness, who had produced a pellet seized in the present occurrence.

4. After the evidence was placed before us, we have decided to maintain the conviction for the reasons whereof we are discussing the evidence of the witnesses in brief.

5. PW 1 (Mangal Ram) stated that while he was present in the School, he heard sound of firing at which he rushed and saw the deceased Bhubaneshwar Paswan having sustained injury on the arm and the Appellant, Bittu Rawat, once again having fired at the temple saying that he was not giving *Rangdari*. He then ran away but he was chased by the villagers in course of which he fell in a water body and threw his pistol there.

In cross-examination, his attention was drawn to the earlier statement but it is of consequence and, thus, his evidence appears to be in complete conformity with the prosecution case.

6. PW 2 (Rajendra Rawat), who happens to be the uncle of the Appellant, stated that while he was in his house he suddenly heard sound of firing and ran to the school and saw the Appellant firing at the deceased on account of which he fell down.

The Appellant tried to run away but fell in the pond and was caught by the villagers. He threw the pistol in the water. The cause for the occurrence was demand of *Rangdari* which was not paid by the deceased.

In his cross-examination, there is nothing which would discredit his evidence.

7. PW 3 (Amarjeet Paswan) also stated that on hearing sound of firing he ran towards the school and saw the Appellant fleeing away from the place of occurrence at which he was caught and then handed over to the police which had come immediately thereafter.

In cross-examination, he stated that he resided three houses away from the school which shows that he was near the vicinity and could have seen the Appellant running away from the place of occurrence soon after the occurrence. He also stated that he had good relation with both the deceased and the Appellant, so, there is no cause for any false implication.

8. PW 4 (Chandrika Paswan) stated that on the date of occurrence while he was going to buy some grocery he heard sound of firing and saw the deceased Bhubaneshwar Paswan having sustained fire arm injuries. He also supported the fact that the Appellant was caught by the villagers and handed over to the police

and the reason was demand of ransom.

In cross-examination, there is nothing which is of note.

9. PW 5 (Mamta Kumari) supported the case of the prosecution so far as factum of occurrence is concerned but denied having identified the Appellant and her attention was drawn to the earlier statement from which it appears that she had named the Appellant therein.

10. PW 6 (Pankaj Kumar) is the Informant, who supported the contents stated in the First Information Report that on the sound of firing he went to school and saw his father having been injured by the Appellant for reasons of non-payment of ransom and his arrest soon thereafter by the villagers. He proved his signature on the *fard-e-bayan* as Ext.1. There is nothing which is of any sequence in the cross-examination.

11. PW 7 (Dr. Vijay Kumar) conducted Post Mortem Examination of the deceased Bhubaneshwar Paswan on 12.12.2008. He proved the Post Mortem Examination Report as Ext.2. He found following injuries on the person of the deceased:

- “(a) Lacerated wound $\frac{1}{2}$ ” x $\frac{1}{4}$ ” x neck muscle deep with blood clots in face and head below right ear with charring all around wound with inverted margin. Blood clots present in mouth cavity (wound of entry)
- (b) Lacerated wound $\frac{1}{2}$ ” x $\frac{1}{4}$ ” x muscle deep with inverted margin with charring all around the wound on

anterior part of right arm with blood clots on right arm and forearm (wound of entry)

- (c) Lacerated wound $\frac{3}{4}$ " x $\frac{1}{2}$ " x muscle deep with everted margin with blood clots on all around on back of right arm (wound of exit)

Injury No. (b) and (c) are communicating with each other.

On deep dissection of neck near Injury No.(a) and adjoining part- laceration of neck muscles, oesophagus, blood clots in buccal cavity and in between neck muscles- a metallic bullet found in left side jaw and neck muscles.

This metallic bullet duly sealed in glass vial and handed over with the report."

From his evidence, we find that it is in complete in conformity with the prosecution case reported at the earliest instance.

12. PW 8 (Brij Bihari Singh) is the Investigating Officer, who stated that on 12.12.2008 he received information about the occurrence and reached the place of occurrence, recorded the *fard-e-bayan*. He also stated that the Appellant was caught by the villagers soon thereafter. He proved his signature on the *fard-e-bayan* as Ext.3, Inquest Report as Ext.4 as also the Dead body *Challan* as Ext.5. He also proved the seizure list as Ext.6 and the formal First Information Report as Ext.7 as also the charge-sheet as Ext.8. He testified that PW 5 (Mamta Kumari) had supported the occurrence to the hilt.

It appears that no body turned up for cross-examination of this witness and hence, his evidence has remained unchallenged.

13. PW 9 (Arun Paswan) is a formal witness, who brought the cartridge used in the present occurrence, before the Court, as material Ext.-I.

14. We, thus, find that the First Information Report was instituted within two hours of the occurrence and the Appellant was handed over to the police immediately. There is direct evidence against the Appellant of having fired repeatedly at the deceased and such injuries were found on his person by the independent witness i.e. Doctor. The Investigating Officer also found blood stained earth as also empty cartridges at the place of occurrence further substantiating the case.

15. In such view of the matter, the impugned judgment does not require any interference by this Court.

16. The appeal is **dismissed**.

(Anjana Prakash, J)

NAFR
J.Alam/-

(Rajendra Kumar Mishra, J)

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