

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.575 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- SAMASTIPUR

Shankar Rai S/o late Dorik Rai, resident of village Kewas Nijamat, P.S.-Samastipur
Mufassil, District-Samastipur

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

Criminal Appeal (DB) No. 603 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- SAMASTIPUR

Satish Sharma son of late Rajendra Sharma, resident of village Supaul, Police
Station Angarghat, District Samastipur

... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

(In CR. APP (DB) No.575 of 2011 & CR. APP (DB) No.603 of 2011)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Mukesh Kumar-1, Advocate
Mr. Pramod Kumar, Advocate
Mr. Ravi Bhardwaj, Advocate
Smt. Kiran Thakur, Advocate

For the Respondent/s : Mr. A.K. Sinha, APP
Mr. D.K. Sinha, APP

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 24-05-2016

Appellant Shankar Rai of Criminal Appeal (DB) No.575

of 2011 and Appellant Satish Sharma of Criminal Appeal (DB)

No.603 of 2011 have been convicted and sentenced to R.I. for life and

fine of Rs.10,000/- each under Sections 302/34 I.P.C., in default of

which rigorous imprisonment for another one year, by judgment dated 11.05.2011 and 12.05.2011 respectively passed by the Additional Sessions Judge, Fast Track Court No.5th, Samastipur in Sessions Trial No.203 of 2009.

2. The case of the Prosecution according to Sanjeev Kumar Rai (P.W.7) is that on 01.11.2008 at about 7 P.M. he and his brother-in-law Ashok Kumar Rai, the deceased, were going home. His brother Vinod Rai (P.W.6) and the uncle of the deceased Ashok Kumar Rai, namely, Ram Swarath Rai was following them on another motorcycle. When they reached near the house of Appellant Satish Sharma he asked them to stop the motorcycle. Accused Shiva Shah, the owner of Vikash brick kiln and his Clerk Tilleshwar, Appellant Shankar Rai were standing with four motorcycles. They all surrounded them and on the orders of Shiva Shah Appellant Shankar Rai fired on the back of his brother-in-law Ashok Rai, due to which he fell down. The brother-in-law started screaming that he should run away and that Appellant Shankar Rai had shot at him. Just then the second motorcycle on which his brother P.W.6 Vinod Rai and uncle Ram Swarath Rai were boarded also reached. He disclosed to them about Appellant Shankar Rai having fired at the deceased.

3. The motive for the occurrence was that his brother-in-law had given some land for manufacturing bricks to accused Shiva

Shah but there was some dispute over the same and hence the present occurrence. This information was given at the Sadar Hospital on the same day at 10 P.M.

4. During trial the prosecution examined nine witnesses. However, we find that even the family members of the deceased themselves have given divergent stories, both of them pulling in opposite directions, whereas independent witnesses have given yet another version. The difficulty before the Court is now as to who to believe. We accordingly discuss the evidence of the witnesses.

5. P.W.1 Ram Jatan Rai and P.W.4 Jagdish Rai have not supported the case of the prosecution and have been declared hostile.

6. P.W.2 Bhola Sharma stated that on the date of occurrence while he was at home he suddenly heard people screaming “*mar gaya mar gaya*”. He went to the place of occurrence along with others and saw Ashok Rai lying on the road. A number of persons gathered there. However, he did not identify any of the miscreants.

7. P.W.3 Ram Bali Rai also stated that about hearing sound of firing and running to the place of occurrence and seeing the deceased Ashok Rai on the road with gun shot injury on his back. According to him, a number of persons gathered, after which injured/deceased Ashok Rai was removed. However, he did not see anyone firing at the deceased.

He confirmed that he had not seen the Appellant Shankar Rai and Satish Sharma anywhere near the place of occurrence.

8. P.W.5 Ram Ram Lakhan Rai is also a resident of the vicinity where the occurrence had taken place, who stated that about hearing sound of firing and going to the place of occurrence where he saw Ashok Rai fallen in a pool of blood. On hulla several persons came and took him to the Hospital. He further stated that apart from Ashok Rai nobody else had sustained injuries.

In cross examination he stated that Appellant Satish Sharma belonged to his village and when he reached there he did not see anyone running nor were any names disclosed by anyone.

9. P.W.6 Vinod Rai is named in the First Information Report as one of the two persons, who was following the Informant on his own motorcycle. He has given an eye witness account and revealed the complicity of all the accused persons including the present Appellants.

In cross examination he stated that when he reached the place of occurrence Ashok Rai had fallen on the road and the Informant Sanjeev Kumar Rai was holding on to him. He was not saying anything.

His attention was drawn to the earlier statement that in fact he had not given an eye witness account in his statement recorded

under Section 161 Cr.P.C. and therefore his subsequent development as being an eye-witness has to be rejected.

10. P.W.7 Sanjeev Kumar Rai is the Informant, who stated as he did in the fard beyan and that on the date of occurrence at about 7.30 P.M. while he was going on his motorcycle with his brother-in-law, the deceased, seated at the back and had reached near Bhushan chowk near the house of Bhola Sharma (P.W.2) one motorcycle overtook them and asked them to stop. That motorcycle was being driven by Appellant Satish Sharma, whereas Appellant Shankar Rai was boarded on it. When he stopped the motorcycle Appellant Shankar Rai shot at his brother-in-law at the back, due to which he fell down. Just then his brother Vinod Rai (P.W.6) and Ram Swarath Rai, uncle of the deceased (not examined) reached whereafter they took the deceased to the Hospital where he was declared dead. He added that on the second motorcycle were seated accused Baiju Rai and Sanju Sharma whereas on the third motorcycle was seated Accused Ranjeet Paswan @ Gujar. He identified the accused persons in the headlight of the motorcycle. He proved the fard beyan as Exhibit 1 as also the signature of Upendra Rai on the same as Exhibit 1/1 and the seizure list as Exhibit 2 and the signature of Upendra Rai on the same as Exhibit 2/1 and the signature of Navin Kumar as Exhibit 3.

In cross examination he stated that he did not remember that his brother Vinod Rai (P.W.6) was an accused in Samastipur Rail P.S. case No.76 of 2005 and that he along with his brother was accused in N.D.P.S. case No.1 of 2006 pending before the District & Sessions Judge, Samastipur and another case under Section 396 I.P.C. in which his brother-in-law the deceased was also an accused.

In further cross examination he stated that the houses of Bhola Sharma (P.W.2) and Appellant Satish Sharma were near the place of occurrence.

It has been noted that P.W.2 Bhola Sharma has supported the factum of the occurrence of firing upon the deceased but did not disclose any names nor about the presence of the Informant.

In cross examination he further stated that after the occurrence about 10-12 persons including P.W.6 Vinod Rai his brother and P.W.8 Asha Devi wife of the deceased and his own sister came. It has already been noted that P.W.6 Vinod Rai has attempted to improve the prosecution case by saying that he was an eye witness but his own statement earlier and that of P.W.7 the Informant belies his presence.

11. P.W.8 Asha Devi, the wife of the deceased and sister of the Informant, has given a totally different story about the



occurrence. She stated that at about 5.30 P.M. she along with her husband deceased had gone to Bhushan chowk for marketing on a Hero Honda motorcycle. Her husband went to have tea to the main road. Since she had already finished her shopping and seeing her brother sitting with her husband she proceeded home. When she reached near the house of Yugeshwar Rai she saw two motorcycles standing there and 3-4 persons talking to each other and smoking. However she proceeded further and then saw Appellant Satish Sharma standing there whereas his son-in-law was urinating. She proceeded still further and when she reached near Anganwari centre she heard sounds of two firings. She just stood there. There was a hulla that Ashok Rai had been shot at. So she came running and saw her husband fallen near the door of Lakhan Rai. His motorcycle had fallen there. When she asked him as to who had shot he disclosed the complicity of the present Appellants that it was Appellant Satish Sharma who had stopped him whereas Appellant Shankar Rai had shot him. Then her brothers P.W.7 Sanjeev Kumar Rai and P.W.6 Vinod Rai and several other relatives reached there. She then became unconscious.

The reason for the occurrence was a dispute over cutting of a tree, for which the accused had threatened the deceased.

In cross examination she stated that her husband had



driven the Hero Honda motorcycle from home to Bhushan chowk and the house of Lakhan Rai was 15-20 steps away from there. The Aanganbari centre was about 10 minutes walk. She disclosed that she did not see anyone fleeing away and once again that the two brothers Sanjeev Kumar Rai Informant (P.W.7) and Vinod Rai (P.W.6) came later. She stated that she was examined two days later. Her attention was drawn to the earlier statement that she had not disclosed about the deceased having given an oral dying declaration. She confirmed that she was not an eye witness and had disclosed whatever her husband had stated.

12. P.W.9 Dr. A.B. Sahay conducted postmortem on the dead body of the deceased Ashok Kumar Rai and proved the postmortem examination report as Exhibit 4. He found the following injuries on his person :

- (i) Multiple 2 to 4 m.m. size tattooing over right side of face and right ear lobule.
- (ii) Incised wound right scapular region transverse 4"x1½"x bone deep, medial end of the wound is lacerated, charred and communicating to the deep cavity (entry wound).
- (iii) Incised wound right infra scapular region 2"x1"x muscle deep.

On deep dissection –

- (1) Impacted bullet recovered from the body of the sternum medial end of ante mortem wound no.(2)

is communicating to the sternum (entry wound).

(2) Fracture the right 3rd rib.

(3) Ruptured right lined and pleura.

(4) More than 1½” litres of blood was present within right pleural cavity.

Cause of death – Haemorrhage and shock, caused by fire arm injury.

13. We find that the Investigating Officer has not been examined.

14. From the discussions above it is easy to gather that there are three different versions of the prosecution case. The first version is that of the Informant who stated that the accused persons stopped his motorcycle on which the Ashok Rai was boarded and thereafter the Appellant Shankar Rai fired at the back of the deceased. He had stated that he had informed P.W.6 his brother about the occurrence when his motorcycle reached the place of occurrence.

15. The other version is that of P.W.8 Asha Devi, who stated that she along with her husband had gone on a motorcycle for marketing. So there was no occasion for the deceased to have boarded the motorcycle of the Informant. She discredits the eye witness account of the Informant P.W.7 and the other brother P.W.6 Vinod Rai by saying that they had both reached after she had rushed to the place of occurrence. She mentions about an oral dying declaration

having been given by the deceased but this fact is not supported by P.W.2, P.W.3 and P.W.5 who had also reached simultaneously and she had not stated this fact in her earlier statement.

16. The witnesses of the vicinity namely P.W.2 Bhola Sharma in front of whose house the deceased is said to have shot at and P.W.3 Ram Bali Rai and P.W.5 Ram Lakhan Rai, who went to the place of occurrence on hearing sounds of firing have given yet another version by stating either that they had not seen anyone fleeing away from the place of occurrence/or that the two Appellants were not present at the place of occurrence/or that no names were disclosed by anyone at the place of occurrence.

17. As for the dying declaration we find that there is no mention of any oral dying declaration in the fard beyan. There is only a mention that the deceased was screaming that the Appellants had shot at him. P.W.6 Vinod Rai does not say anything about the deceased screaming that the Appellant Shankar Rai had shot at him nor do any of independent witnesses who lived close by and rushed to the deceased.

18. In such circumstances, we are inclined to give benefit of doubt to the Appellants.

19. In the result, both the above noted appeals are allowed and the judgment of conviction and order of sentence dated

11.05.2011 and 12.05.2011 respectively passed by the Additional Sessions Judge, Fast Track Court No.5th, Samastipur in Sessions Trial No.203 of 2009 is hereby set aside. The Appellant Shankar Rai of Criminal Appeal (DB) No.575 of 2011, who is in custody, be released forthwith, if not wanted in any other case. The Appellant Satish Sharma of Criminal Appeal (DB) No.603 of 2011, who is on bail, is discharged from the liabilities of his bail bonds.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

Narendra/-

AFR/NAFR	NAFR
CAV DATE	
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