

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.89 of 2011

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Kalaktar Paswan @ Dhurfakan Paswan, S/o Rameshwar Paswan, Resident of
Village- Belaur, P.S- Udwant Nagar, District- Bhojpur, Ara.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Manoj Kumar
For the Respondent/s : Mr. A.K. Sinha, 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: 08-01-2016

Heard learned counsel for the Appellant and
learned counsel for the State.

The Appellant has been convicted under sections
302/34 of the I.P.C. and 27 of the Arms Act by a Judgment dated
24/29.12.2010 passed by the 2nd Additional Sessions Judge,
Bhojpur at Arrah and sentenced him to Rigorous Imprisonment
for life and 5 years respectively in connection with Sessions Trial
No. 319 of 2007 arising out of Udwant Nagar P.S. Case No. 102
of 2001.

The case of the prosecution, according to the
informant, Shankar Paswan (PW-1) is that on the night of
29.05.2001, he suddenly heard a sound of firing and on the



scream of his brother, deceased Shivji Paswan, he reached there and saw him lying on his cot having sustained fire arm injuries. The deceased told him that the Appellant had shot him at the waist and run away when he had returned from having seen the video at adjacent Tolla. He further stated that he along with Kalaktar Paswan, Mishri Ram and some other accused always used to accompany him. A number of villagers gathered there but after one hour, the deceased died. He stated that about one and half years back, the father of the Appellant had come to the door of the deceased in a drunken state and had started to abuse him at which an assault had taken place. In the recent past, the deceased was being threatened by them and it appears that after well hatched conspiracy, the deceased was shot dead.

During trial, the prosecution examined 13 witnesses. PW-1, Shankar Paswan, is the informant, who stated that he was a step brother of the deceased and on the night of occurrence, he suddenly heard scream of his brother at which he went there and found him injured. The deceased told him that the Appellant had shot at him. The deceased had also reportedly said that a little earlier Rameshwar Paswan, crossed from the place where he was sleeping. We find that no one appeared for cross-examination on behalf of the Appellant and he declined to do so himself.



PW-2, Lala Paswan, who stated that the deceased was his younger cousin brother and on the night of occurrence, he on the scream of the deceased had reached on the spot and found him injured. He reportedly told him that the Appellant had shot at him. He also stated that the Police had recorded the statement of the informant. This witness is also not cross-examined on behalf of the Appellant.

P.W-3, Birbal Kumar, son of the deceased, stated that on the date of occurrence, he heard his father's scream at which he reached there and found him injured. His father said that the Appellant had shot at him and fled away. He had also stated that Rameshwar, father of the Appellant, had come a little while earlier and left. In cross-examination, there is nothing significant for either of the parties, except that, he stated that his father had no enmity with the Appellant.

P.W-4, Shiv Kumar Paswan, is a co-villager, who stated that on the night of occurrence, on the screams of deceased, he reached on the place and found him injured. He disclosed that the Appellant had shot him and fled away. Several questions were put to him with regard to the credentials of the deceased and Rameshwar but there was no cogent reply in this regard.



P.W-5, Kaushaliya Devi, stated that she is the sister-in-law of the deceased and on the night of occurrence, on the screams of the deceased, she reached there and found him in an injured condition. She also corroborates the factum of the oral dying declaration and that of the fight which had taken place earlier, as mentioned in the fardbeyan. In the cross-examination, we do not find anything of relevance, except that she stated that she had not given evidence earlier.

P.W-6, Khaderan Ram, also corroborated the earlier statements of the witnesses on the factum of going to the cot of the deceased and the oral dying declaration. He stated that the deceased was sleeping at his door and on information, the Police had come and he had also given his statement. He asserted that the deceased was seen lying on the cot and not on the ground and that he had given statement first time.

P.W-7, Nirmal Kumar, the other son of the deceased, corroborated his brother and other witnesses in regard to the manner of reaching the deceased and the oral dying declaration. She stated that when her father giving his statement, he was fully conscious and it is on their asking that he had disclosed the complicity of the Appellant. He also stated that the deceased used to always sleep at his door.

P.W-8, Uday Paswan, is an independent witness and belonged to the same locality. He stated that he reached at the cot of the deceased and found him injured and who disclosed that the Appellant had shot him and fled away. He stated that a number of persons had reached the place of occurrence and blood was scattered all around. He himself had not seen the accused persons.

P.W-9, Lalmuni Devi @ Lalo Kunwar, widow of the deceased, corroborated the statement of her sons and we find that she was not cross-examined.

P.W-10, Vijay Kumar Singh, is the Investigating Officer, who stated that on the date of occurrence, he had recorded the *fardbeyan* of P.W-1 (Shankar Paswan), which he proves himself as Exhibit-1 and the First Information Report as Exhibits-2 and 3. He stated that during course of investigation, he had seized the black suit of which he made a seizure and that the place of occurrence was the door of the deceased on which a cot was laid. He proves Inquest Report, Exhibit-4. We find that there is nothing of relevance in his cross-examination, which is cryptic.

P.W-11, Rajdeo Singh, is a formal Police Officer with regard to the surrender of the Appellant. P.W-12, Bharat Ram, is also a former Police Officer with regard to the submission of charge-sheet.

P.W-13, Dr. Jitendra Kumar, conducted the *post mortem* of the deceased on 30.05.2007 and found the following injuries on his person:

External Examination :-

Average Built – Rigor Mortis present, eyes, mouth closed, pale in look.

i) Lacerated wound ½” in diameter in mid right inguinal canal region, margin inverted and chard on probing wound is directed obliquely in the abdominal cavity.

On Dissection :-

Skull - Brain matter pale.

Chest - Lungs Pale, Heart right Chamber filled and left chamber empty.

Abdomen – Abdominal cavity filled with blood.

Mesentery is lacerated. A Bullet found in abdominal cavity lagged in vertebral column of Lumber 4 vertebrae.

Liver is pale, spleen pale, kidney pale stomach – 2 Ounce semi digested food present. About 50 ml. Urine was present in Bladder.

Time elapsed since death – Within 24 hours.

Cause of death – Death was caused by shock and Hemorrhage due to fire arm injury.

One bullet recovered and preserved in sealed vile for Exhibit.

He also found a bullet in the stomach and opined that the death was caused on account of shock and hemorrhage due to fire arm injury. He was asked to explain with regard to the distance from which the shot had been fired and he stated that it must have been fired from about 3 to 4 feet away since there was no charring or blackening around the fire arm injuries.

On going through the evidence of the aforesaid witnesses discussed as above, we find that right from the stage of the recording the fardbeyan at the earliest instance, consistent story of the prosecution is that the deceased had disclosed that it was the Appellant, who had shot at him. Dr. Jitendra Kumar (P.W-13) corroborates the factum of death by fire arm injuries. No doubt, even though there is a statement that the deceased had been shot at from very close range, but the Doctor did not find such injuries. However, we are not inclined to place too much of importance to this aspect of the case. We find that the Investigating Officer (P.W-10) found the cot, which was blood

stained, thus, proving the place of occurrence and the manner of the same.

In such circumstances, finding no merit in this appeal, the same is dismissed.

(Anjana Prakash, J.)

(Rajendra Kumar Mishra, J.)

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