

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.491 of 2011

(Against the Judgment of conviction dated 07.04.2011 and Order of sentence dated 08.04.2011 passed by the Additional District and Sessions Judge (FTC-I), Ara, in Sessions Trial No. 250 of 2008)

Ramadhar Ram, Son of Gauri Shankar Ram, Resident of Village- Chhaprapur, P.S. Narayanpur, District-Bhojpur.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

Criminal Appeal (DB) No. 356 of 2011

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

Ram Chandra Ram @ Ram Chandra Paswan, Son of Late Ghurahu Ram @ Late Ghurahu Paswan, Resident of Village- Situhari, P.S.- Nrayanpur, District- Bhojpur.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

(In CR. APP (DB) No. 491 of 2011)

For the Appellant/s : Mr. Law Kush Kumar, Advocate.

For the Respondent/s : Mr. D.L. Sinha (APP)

(In CR. APP (DB) No. 356 of 2011)

For the Appellant/s : Mr. Prabhat Kumar Singh, Advocate.

Mr. Anirudh Kumar Singh, Advocate.

Mr. Ganesh Prasad Singh, Advocate.

For the Respondent/s : Mr. Abhimanu Sharma, A.P.P.

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 29-01-2016

Both Appellants have been convicted under Sections

302/149 and 307/149 of the Indian Penal Code and Section 27 of the



Arms Act and sentenced to Rigorous Imprisonment for life for the offence under Section 302/149 of the Indian Penal Code and also fine of Rs.5000/-, in default of which, further one month Simple Imprisonment, sentenced to Rigorous Imprisonment for 10 years for the offence under Section 307/149 of the Indian Penal Code and fine of Rs.2000/-, in default of which further 15 days Simple Imprisonment and sentenced to Rigorous Imprisonment for 7 years for the offence under Section 27 of the Arms Act vide Judgment of conviction dated 07.04.2011 and Order of sentence dated 08.04.2011 passed by the Additional District and Sessions Judge (FTC-I), Ara, in Sessions Trial No. 250 of 2008.

2. The case of the Informant, Rajendra Ram, P.W.2, is that on 09.03.2007, he had gone in his field to cut grass. In the afternoon, his mother, P.W.1, Baleshwari Devi, had come to feed him at the field and returned. At around 2 'O' clock his father, Tara Nath Ram had come to the field and started cutting grass. At around 6 P.M., his father stated him that he should proceed for home and he would



come after lighting the lamp. The informant stated him that he would leave together. Suddenly, accused persons came there and surrounded both of them and ordered the deceased, Tara Nath Ram, to vacate the land. The deceased stated that he was cultivating the land since long and it is was his only livelihood. However, Rajesh Choudhary stated that since the deceased would not vacate the land, he should be killed so the Appellant, Ramadhar Ram, shot fire at his chest with his rifle and when he fell down, Raju Ram also shot fire with his rifle at his neck, on account of which, he died. The informant, P.W.2, pleaded them to leave his father alive but the accused persons turned towards him and fired at him but he somehow saved himself by running towards the village. He stated that the reason for the occurrence was land dispute for which a case was going on between the parties. This information was given to the Sub-Inspector, Ram Sharik Tiwary, of P.S. Camp Narayanpur at 10 P.M.

3. During Trial, the prosecution examined 8 witnesses. P.W.1, Balkeshwari Devi, wife of the deceased, P.W.2,

Rajendra Ram, the informant and son of the deceased, P.W.3, Manish Kumar, P.W.4, Jai Ram Das, P.W.5, Md. Moharan Mian, P.W.6, Hasbuddin, P.W. 7, Dr. Naresh Prasad, who conducted the postmortem examination, P.W.8, Ram Awtar Giri.

4. Defence examined one witness, D.W.1, Baijanti Kuer.

5. P.W.1, Balkeshwari Devi, wife of the deceased, stated that her husband had been killed in the evening while she was at home. Her son was there and he informed her about the murder. She stated that there was land dispute between the Appellant and themselves and the said land was in her possession. She stated that Ramadhar sold the land to Raju. She stated that Raju and Ramadhar had killed her husband. In cross-examination, she explained that the deceased and one Gaurishankar were brothers. Informant, Rajendra Ram, was the son of deceased and Ramadhar, Krishna and Sunita were children of Gaurishankar. Sunita was married to Appellant, Ram Chandra Ram @ Ram Chandra Paswan and he was living at Situhari,



which was 10 kilometers away from her village. She has stated that she was also accused in the case of murder of Krishna. She stated that her husband used to live in the field (Baihar) day and night. On the day of occurrence, at about 12 noon, she had gone in the field to feed him and returned home. She stated that blood stain was found in the field also that police came at about 8 P.M. in the field.

6. P.W.2, Rajendra Ram, the informant and son of the deceased, stated that he had gone to cut the grass in the morning in the field. At noon time, his mother came there with food and in the after noon his father came there. At around 6 P.M., his father told him that he should proceed for home whereas he would light the lamp to which he stated that they would leave together. Just then the accused persons surrounded them and Raju Ram threatened his father to vacate the land but his father resisted, on which, he ordered and then, Appellant, Ramadhar Ram, shot fire at the chest of the deceased whereas Raju Ram shot fire at the neck of the deceased. When he started to plead them to leave his father, the accused persons



repeatedly fired at him but he somehow saved himself by running towards the village. He proves his own signature and signature of the witness on the Faradbeyan as Ext.1 and 1/1 and the inquest report as Ext. 2. In cross-examination, he also explained the relationship between the parties and stated that there was a Title Suit pending between them. He also asserted that Bihar Sarkar settled land only in favoaur of his father, which was in his possession. He also stated that there was blood stain in the filed and the police jeep and the village was about 1 kilometer away from the place of occurrence. He conceded that he was accused in the case of murder of Krishna Paswan and that Appellant, Ram Chandra Ram @ Ram Chandra Paswan was his brother-in-law. He refused a suggestion in regard to the political affiliation of the deceased as also that within 15 minutes of his reaching he called the police which came 10 minutes later.

7. P.W. 3, Manish Kumar, is a formal police witness, who had conducted the part of investigation but it is of no relevance.

8. P.W. 4, Jai Ram Das, who was initially a hearsay witness along with P.W.5, Md. Monaram Mian and P.W.6, Hasabuddin, have been declared hostile.

9. P.W. 7, Dr. Naresh Prasad, conducted the postmortem examination of the deceased on 10.03.2007 and found following injuries on his person.

External Injury:-

- I. Lacerated wound over the mid of neck interiorly, Size -2" x ½" x oval in shape x bone deep. Margin in inverted and blackend.
- II. Lacerated wound over the back of the neck right lateral to the spine size- 2" x ½" X bone deep margin e-verted.
- III. A lacerated wound over the right side of chest below the nipple size ½" x ½" x cavity deep circular in shape. Margin everted and blackend.
- IV. Lacerated wound over the back of right chest. Size ½" x ½" x cavity deep. Margin e-verted. Both wounds communicate each other.

On desection:-

Scalp- Brain and manages are failed.

Neck- There is injury of Trakia with laceration of muscles vesicular Tissue.

Chest- Hemothorex right lung in lacerated.

Heart- is pale.

Right side is empty. Left side of heart is partially full.

Abdomen- All vesra are fault. Stomach contain saterial
blador contain few M1. of rigidual urine.

Time lapsesince death – 6 to 36 hours of postmortem
examination.

Cause of death is due to hemorrhage and shock leading to death
caused by firearm weapon.

The injuries are ultimatum in nature. The injuries are subsient to
death in the ordinary course of death.

10. P.W.8, Ram Awatar Giri, is also a formal
police witness, who proves the case diary which is of no relevance.

11. D.W.1, Baijanti Kuer, wife of Krishna Paswan,
stated about the facts of the earlier Sessions Trial in regard to the
murder of her husband, in which, the prosecution party was accused.

12. It has been argued that apart from the family
members of the informant none has come to support the prosecution
case. Further argument is that these witnesses are highly interested
since admittedly there was land dispute as also a murder case was
pending, in which, they were accused therefore they had ample reason
to implicate them. There is no corroboration of the prosecution case

by way of objective evidence. The inquest report, which has been proved, shows that the dead body was found on the road which is contrary to the prosecution case.

13. While dealing with the case of the two Appellants, we find that only P.W.1, Balkeshwri Devi and P.W.2, Rajendra Ram, have adduced evidence in regard to the factum of murder. P.W.1, Balkeshwari Devi, even though hearsay witness, has not named the Appellant, Ram Chandra Ram @ Ram Chandra Paswan, who was the brother-in-law of the Appellant Ramadhar Ram. In these circumstances, we are inclined to give him the benefit of doubt also for the reason that apart from an allegation that he was one of the persons amongst the accused, no specific overt act has been alleged against him. Accordingly, Criminal Appeal (DB) No. 356 of 2011 filed on behalf of the Appellant, Ram Chandra Ram @ Ram Chandra Paswan, is allowed and the impugned Judgment of conviction and Order of sentence as passed against Appellant, Ram Chandra Ram @ Ram Chandra Paswan, is set aside. He is in jail

custody, so he is directed to be released forthwith, if not wanted in any other case.

14. As far as Criminal Appeal (DB) No. 491 of 2011 filed on behalf of Appellant, Ramadhar Ram, is concerned, we find that P.W. 2, Rajendra Ram, has been consistent in relating the manner of occurrence right from the stage of Faradebyan. We also find that there was promptness in reporting the matter inasmuch as the occurrence is said to have taken place at 06.00 P.M., whereas the Faradebyan has been given at 10 P.M. No doubt, the counsel for the Appellants has drawn our attention to the evidence of P.W.2, Rajendra Ram, wherein he has stated that police had come within ½ hours of the occurrence whereas the Faradbeyan was recorded at 10 P.M. but one cannot rely totally on estimated timing given by a lay person. We also find that since the Investigating Officer has not been examined there is no objective evidence in regard to the place of occurrence but we find the Doctor, who conducted the postmortem examination, stated that he had found pasty material in the stomach of the deceased which

corroborates the time of occurrence beyond reasonable doubt. We also find that both witnesses have asserted that Appellant, Ramadhar Ram and Raju Ram, wanted to capture the land, which belonged to them while the deceased so he was shot at the chest which fact also corroborates.

15. In view of the above, Criminal Appeal (DB) No. 491 of 2011 filed on behalf of the Appellant, Ramadhar Ram, is dismissed.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

Bhardwaj/A.F.R.

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