

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.564 of 2012

(Against the Judgment of conviction and Order of sentence dated 9.2.2012/15.02.2012 passed by the 2nd Additional Sessions Judge, Naughachhia, Bhagalpur in Sessions Trial No. 127 of 2005 and S.T. No. 1205 of 2008).

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1. Shambhu Choudhary son of Late Basant Choudhary.
 2. Pramod choudhary son of late Basant Choudhary both residents of village Morwa P.S. Bihpur Dist. Bhagalpur. Appellant/s

Versus

The State of Bihar Respondent/s

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Appearance :

For the Appellant/s : Mr. Sharvan Kumar, Adv.

For the Respondent/s : Mr. G.P. Jaiswal, APp

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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: 28-06-2016

1. The Appeal is filed against the judgment and order of conviction passed by the 2nd Additional Sessions Judge, Naughachhia, Bhagalpur in Sessions Trial No. 127 of 2005 and S.T. No. 1205 of 2008 on 9.2.2012 whereby and where under the Appellants have been convicted for offence under Section 302/34 of I.P.C and 27 Arms Act and sentenced to undergo Rigorous Imprisonment for life for the commission of offence under Section 302/34 of I.P.C and a fine of Rs. 10,000/- is also imposed on 15.02.2012 and in default of payment of fine they shall undergo further imprisonment of 3 months. The Appellants are also sentenced for rigorous imprisonment of three years for the commission of offence under Section 27 of Arms Act. Both sentences shall run concurrently.

2. The case of the prosecution according to Kumod Kumar Chaudhary (P.W. 2) is that on 06.11.2003 he had taken his uncle deceased Ramavtar Choudhary to the orchard to relieve himself since he was suffering from 'cattaract' and could not see properly. While returning from the field when they reached near the field of Nand Lal Chaudhary about 8.30 A.M. two Appellants came out of the fields and fired at his uncle on the chest. His uncle died there and then on his hulla several persons including Naresh Chaudhary(P.W. 4), Shiv Nandan Chaudhary (P.W. 5) and Laxman Chaudhary (P.W. 3), came and saw his uncle dead. The witnesses had seen the accused person fleeing away. The reason for occurrence was land dispute. This information was given at 9.45 A.M itself at the Police Station which was located about 3 Kms away from the place of occurrence.

3. During trial the prosecution examined seven witnesses out of whom P.W. 1 Gopal Choudhary, P.W 3 Lakshman Choudhary @ Navin Kumar Chaudhary did not support the case of the prosecution and were declared hostile. P.W. 7 is a formal police officer who submitted the charge sheet whereas P.W. 6 Dr. Deepak Kumar conducted the post mortem examination of the deceased. P.W. 4 Naresh Choudhary and P.W. 5 Shiv Nandan Choudhary who were named in the first information report have deposed as part eye-witness whereas the informant P.W. 2 Kumod Kumar Choudhary is an eye-witness to entire occurrence.

4. P.W. 2 Kumod Kumar Choudhary, the informant in Court stated that on 6.11.2003 at about 8.30 when he and his uncle, the deceased were returning from the orchard both the Appellants came out from the field and shot at the chest of the deceased on account of which he fell down dead. On hulla his uncle Umesh Choudhary, Dukhi Choudhary, Naresh Choudhary, Laxman Choudhary and Suren Choudhary came there who saw the accused fleeing away. Immediately he went to the police station and instituted the case.

In cross-examination he stated that he had gone to some distance in the morning with his uncle and he was at a distance of about two feet from his uncle. He further describes the place of occurrence and there is nothing which is notable in his evidence except that he describes Naresh Choudhary (P.W. 4) and Shiv Nandan Choudhary (P.W. 5) as his agnates.

5. P.W. 4 Naresh Choudhary stated that on 6.11.2003 at about 8.30 A.M while he was at his door he suddenly heard Hulla and ran towards the field of Nand Lal Choudhary and saw the deceased dead with two firearm injuries on his chest and he also saw the two accused were running towards the field.

In cross-examination he stated that he was a distant agnate of the informant and described the place of occurrence being an open field and around the area were several houses. He explained that he

had seen the accused persons running away from a certain distance. There was no dispute between the parties. He also stated that the police had examined him on the date of occurrence itself.

6. P.W. 5 Shiv Nandan Choudhary also stated that on 6.11.2003 at about 8.30 A.M on Hulla he went to the place of occurrence and saw the deceased dead and also saw the Appellants fleeing away from there. He was a signatory to the inquest report which he proves as Ext. 2. He also explained that he was a distant agnate of the informant and described the place where the dead body was found. He further stated that he had seen the accused fleeing away from 25-30 yards.

7. P.W. 6 Dr. Deepak Kumar proved the post mortem examination as Ext. 3 and found the following injuries on his person :

“a. lacerated wound of entry size 1” x 1/2” x marginal inverted communicating to the wound of exit over fourth i.C.S. on left side of chest.

b. lacerated wound marginal inverted of entry (wound of entry) size 1/2 x 1/2” x communicating to the wound of exit on left side of chest (last rib).

c. lacerated wound of exit Number 1 lacerated wound size 2” x 1” x communicating to the injury number 1 margin inverted over left side of back and below of scapula.

d. lacerated wound size 2” x 1/2 “ x communicating wound number 2 wound of exit for injury number 2 margin inverted over left side of back of chest laterally lower portion.

On dissection of above noted injuries, clotted blood found under neath the tissues chest cavity if full of dark blood, heart ruptured left lung ruptured abdominal cavity full of blood with rapture of small intestine

Cause of death: he opined the cause of death occurred due to hemorrhage and shock as result of above noted injuries caused by fire arm.

Time elapsed since death from 6 to 12 hours.”

8. P.W. 7 Ugranath Jha, Police Officer took over the investigation on 02.01.2004 and submitted the charge-sheet. He is formal in nature.

9. Learned counsel for the Appellants submitted that one of the witnesses named in the first information report has not been examined and nor have the two witnesses namely, Gopal Choudhary (P.W. 1) and Lakshman Choudhary (P.W. 3) supported the case of the prosecution therefore a reasonable doubt is created on the veracity of the prosecution case.

10. On the contrary we find that the informant has given a very natural and trust worthy narrative of the manner of occurrence. We also find the matter was reported at the earliest instance i.e. within two hours.

11. Further P.W. 4 Naresh Choudhary and P.W. 5 Shiv Nandan Choudhary who ran on hulla saw the Appellants fleeing away from the place of occurrence. Dr. Deepak Kumar found corresponding two fire arm injuries on the person of the deceased which further

corroborated the prosecution case.

12. Merely for non- examination of the main Investigating Officer the prosecution case cannot fail also because we find there is absolutely no contradiction in the statements of the three material witnesses.

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

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

Prakash/-

AFR/NAFR	
CAV DATE	
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