

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.885 of 2010

Arising Out of PS.Case No.35 Year- 2008 Thana -null District- BHAGALPUR

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Pancha Paswan, S/O Muni Lal Paswan, Resident of Village Koela Manchipur,
Police Station Lodipur (Sabour), District Bhagalpur.

.... Appellant/s

Versus

1. State Of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Rajendra Kumar Jain, Advocate

For the Respondent/s : Mr. A.K. Sinha, 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: 02-03-2016

Sole Appellant has been convicted under Section 302 I.P.C. and 27 of the Arms Act and sentenced to R.I. for life and fine of Rs.10,000/-, in default of which simple imprisonment for another one year and R.I. for three years and fine of Rs.1000/-, in default of which simple imprisonment for another three months respectively by judgment dated 17/19.04.2010 passed by the Additional Sessions Judge, F.T.C. Vth, Bhagalpur in Sessions Trial No.677 of 2008/Trial No.296 of 2009.

2. The case of the prosecution according to Informant Kaushilya Devi (P.W.1) is that on 10.02.2008 when she was going along with her daughter Guddi Kumari, the deceased, for in search of

work, the Appellant confronted them and shot at her daughter, on account of which she fell down dead. On her sound several persons came. The reason for the occurrence was that the Appellant used to tease her daughter and there was also some kind of land dispute between Gulabi Rajak and herself, on account of which they used to create a nuisance.

3. During trial the prosecution examined twelve witnesses, whereas defence examined three witnesses. Having gone through the case record we find that the case rests mainly on the evidence of P.W.1 Informant Kaushilya Devi, P.W.7 Dr. Y.P. Sah and P.W.10 Ravi Shankar Prasad (Investigating Officer).

4. P.W.2 Sikandar Pandit is the father of the deceased, who has merely stated on the point that he had heard from others that his daughter had been killed by Pancha Paswan. He was not an eye witness himself.

5. P.W.3 Athho Yadav is also not an eye witness and has only stated about the murder of Guddi. In his cross examination he stated that he had not been examined by the police.

6. P.W.4 Mina Devi has only stated about the murder of Guddi Kumari.

7. P.W.5 Yogendra Prasad Yadav is a seizure witness of the cartridge on 29.02.2008 at the instance of the Appellant, which is

Exhibit 1.

8. P.W.6 Sanjeet Rai is a seizure list witness to the seizure of blood stained earth and he proves his signature on the same as Exhibit 2/1.

9. P.W.8 Prakash Paswan is also a seizure list witness of the cartridge on 29.02.2008 and he proves his signature as Exhibit 1/1.

10. P.W.9 Arjun Rajak is merely on having seen the dead body of the deceased.

11. P.W.11 Md. Aftab Alam is an inquest witness and proves his signature on the same as Exhibit 7/A and signature on the seizure list of the blood stained earth as Exhibit 2/B.

12. P.W.12 Md. Rafique is also an inquest witness and proves his signature as Exhibit 2/B.

13. P.W.1 Kaushilya Devi, the sole eye witness and mother of the deceased in support of the prosecution case, has stated that on the date of occurrence at 9 A.M. when she was going to look for work along with her daughter Guddi Kumari, aged about 17-18 years, she reached near the river at about 10 A.M. when suddenly the Appellant came out from the wheat field and caught her daughter and started to molest her. When her daughter protested, he shot her on the chest. On her cries Athho Yadav also came who was nearby. She stated that she did not have any dispute with the Appellant earlier. In

cross examination it was suggested to her that she had not seen the occurrence and in fact it was Athho Yadav, who had told her about the same but she denied this suggestion. She asserted that the police had come at about 10 A.M. and that the deceased was walking about 10 steps ahead of her. There is nothing else which is to note.

14. P.W.7 Dr. Yogesh Prasad Sah has fully corroborated the prosecution case inasmuch as he finds the following injuries on the person of the deceased :

The body was soiled with dried mud. On entrance with inverted margin $\frac{1}{2}$ "x $\frac{1}{4}$ "x chest cavity deep was present on left part of chest 3" below sterno clavicular joint & $2\frac{1}{2}$ " from left nipple. There was blackening & tatooing around the entrance around about $\frac{1}{2}$ " in diameter. The projectile entered chest cavity and came out by an exit wound $\frac{1}{2}$ "x $\frac{1}{2}$ " on left part of back $2\frac{1}{2}$ " below left angle of scapula and $3\frac{1}{2}$ " from midline of back. Left lung and heart was found scared. Chest cavity contained. Vaginal swab was taken and sent for pathological examination for presence of spermatozoa. Hymen showed old tears.

Opinion :- The above noted injuries were antemortem, grievous and was caused by firearm.

Cause of death :- Haemorrhage and shock due to above noted injuries.

Time since death :- 4-12 hours from the time of postmortem examination.

He proves the postmortem examination report as Exhibit

3. There is nothing which is of note in his cross examination.



15. P.W.10 Ravi Shankar Prasad, the Investigating Officer, stated that on 10.2.2008 he received information on telephone that somebody had been shot dead near the river, at which he proceeded along with the photographer. He then recorded the statement of P.W.1. He proves his signature as Exhibit 5 and signature of a witness on the same as Exhibit 5/A. He also proves the First Information Report as Exhibit 6. He proves the inquest report, which is Exhibit 7. He stated that he arrested Pancha Paswan and on recording his confessional statement on his pointing out he recovered a cartridge from the place of occurrence, on which he prepared the seizure list which has been marked as Exhibit 10. He asserted that the said document was given to Appellant Pancha Paswan. He also stated that previously Sikandar Pandit (P.W.2) i.e. father of the deceased had given a Sanha before the Chief Judicial Magistrate against Appellant Pancha Paswan. He also examined among others Athho Yadav (P.W.3), which is contrary to his statement. In cross examination he stated that he had made Sanha diary entry at 9.40 A.M. about this and he reached at 10.15 A.M. He also informed the Senior officials in regard to the murder and found the Informant crying near the dead body. A number of villagers have gathered there. His attention was drawn to the earlier statement of P.W.1 but that is too a very minor effect. He also said that the Appellant had refused to give any

confession when he was produced before the Magistrate for recording the same under Section 164 Cr.P.C.

16. On behalf of the defence we find that D.W.1 Md. Bhukhan, D.W.2 Bipin Kumar Paswan and D.W.3 Ziro Yadav have given evidence that Appellant Pancha Paswan used to work in a paper factory in Rajasthan at the relevant time. However, the Appellant has not given any such explanation in the statement when an opportunity was given to him under Section 313 Cr.P.C.

17. The Counsel for the Appellant submits that P.W.1 has not been corroborated on any material particulars and even Athho Yadav (P.W.3) has not supported the fact that he was nearby or had seen the occurrence, in which circumstances she should be disbelieved.

18. However, we find that there is absolutely no scope for doubting the evidence of P.W.1, which is further corroborated by the Doctor, who found corresponding injuries on the chest of the deceased and that the Investigating Officer had recovered the dead body at the place of occurrence and also a cartridge on the pointing out of the Appellant. The Investigating Officer also corroborated the fact that earlier complaint had been made by the father of the deceased. P.W.2 Sikandar Pandit to the Chief Judicial Magistrate about the conduct of the Appellant, which proves the motive.

19. In such circumstances, we find no merit in the appeal
and the same is dismissed.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

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