

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.118 of 2009

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Ram Baran Mandal, S/o Late Karu Mandal, R/o Vill. Ramchandrapur Navtoliya,
P.S. Nathnagar, District – Bhagalpur.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant	:	Mr. Sri Akhileshwar Pd. Singh, Sr. Adv. Mr. Bimal Kumar Pandey Mr. Amrit Anunay Mr. Sandeep Sahi
For the State	:	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: 02-03-2016

Heard learned counsel for the Appellant and learned
counsel for the Additional Public Prosecutor.

2. The Appellant has been convicted under section
302/34 of the Indian Penal Code and 27 of the Arms Act and
sentenced to undergo Rigorous Imprisonment for life and also three
years Rigorous Imprisonment by Additional Sessions Judge, F.T.C.-
5th, Bhagalpur in connection with Sessions Trial No. 1453 of
2004/619 of 2006 vide Judgment and order dated 20/22.12.2008
respectively.

3. The case of the prosecution, according to the
Informant (P.W.3) Chandrakala Devi, wife of the deceased, is that
her husband was in the milk business and an employee of the



present Appellant and some others but they had committed defalcation, on account of which they were dismissed from service. However, they kept in contact with the deceased and even on the date of occurrence, they had come to her husband. On 18.10.2001, at about 1.00 am., while her husband, the deceased, Ashok Choudhary, was sleeping outside of the house on the folding cot, she herself was awake on account of heat. She saw that the Appellant and one Ranjay Yadav fired at her husband whereas Dipankar Yadav was also present there. Her husband started screaming. Thereafter, her husband was taken to the Railway Hospital, where he disclosed the fact that the Appellant and Ranjay Yadav fired at him and Dipankar Yadav was also present there. However, when her husband was being taken to Mayaganj Hospital, he died on the way.

4. During trial, prosecution examined five witnesses, whereas the Defence examined two witnesses. P.W. 1, Ankit Kumar, is the son of the deceased, who stated that on the night of occurrence, while his mother, the informant and his sister, Puja Kumari (P.W.2) were sleeping inside the house and his father was sleeping outside on the cemented *Chabutra* in the Railway Colony, Bhagalpur the Appellant and two others came and shot him dead. His grand-father woke him up and told that his father had been shot dead so he went to his father and found him dead. His mother was

saying that the Appellant and two others had killed him. When the Police came then he was taken to Mayaganj Hospital, but he died on the way. He stated in cross-examination that it was only in the morning that he saw the dead body.

5. P.W. 2, Puja Kumari, is the daughter of the Informant and deceased, stated that while she and her mother was sleeping inside the house and her father was sleeping outside, they heard sound of firing then her father started screaming. She and her mother, Informant, went out and saw him injured and saying that the Appellant and two others have shot him. She also saw the three accused persons, including the Appellant, running away in the Vapour Light. She had stated about the previous enmity between the parties. In cross-examination, she stated that the occurrence must have taken place at about 1.00 am. in the morning and at that point of time, three sisters and brother (P.W.1) were sleeping with the mother inside the house and outside adjacent west her father was sleeping in an open space. She stated that when she reached near her father, she was all alone. She also stated that her grand-father was sleeping about 5-6 hands away, but he was still sleeping. Her attention was drawn to the earlier statement that she had not stated about the fact of identification of the Appellant in the Vapour Light.

6. P.W. 3, the Informant, Chandrakala Devi, stated that



in the middle of night between 17-18 October, 2001, her husband was sleeping outside on the folding cot and she was sitting at the door on a chair, while her children were sleeping inside the house, the Appellant and two others came and shot at him. She identified them in a Vapour Light. She also stated that her husband started screaming clutching his chest that he had been shot at by the Appellant and two other accused persons. A number of persons came on hearing the cries. She had seen the Appellant running away and she asked him as to why he had done such a thing. She once again stated about the fact of motive and that the Police was informed, who took him to the Mayaganj Hospital, but on the way, he died. She herself gave *fardbeyan* at Mayaganj Hospital. In cross-examination, she stated that it was the first time in Police Colony, she had given the statement at 9.10 am. She also stated that she had shown the place where the deceased was sleeping.

Her attention was drawn to the earlier statement that she had not stated that she was sitting on a chair at the door and that she had seen the Appellant fleeing away. She also asserted that she had seen the accused in the Vapour Light. In cross-examination, she stated that she and her children had rushed together to the deceased and also that the statement of the deceased was recorded at the Railway Hospital.



7. P.W.4, Indradeo Ram, the Investigating Officer, had stated that on 18.10.2001, he was posted at Mayaganj Police Station and at 5.00 am. in the morning, he was given a charge of investigation. It was on the statement of P.W.3 Chandrakala Devi that the First Information Report had been instituted which was sent by B.K. Das, which he proves as Exhibit. 2. He also stated about preparing the Inquest Report, which he proves as Exhibit-4. About the place of occurrence, he stated that it was Railway Colony, Block No. 104, in front of Quarter No. A/8 a cemented block used for sleeping. He found clotted blood there. To specific question, he stated that he had not mentioned about the vapour light at the place of occurrence, nor any cot and folding was there and at the Police station *Sanha* Entry was made at 1.25 am. on 18.10.2001, which was based on rumor. He stated that he had not examined the person, who had taken the deceased to the Hospital on the Mobile Van, that is R.P. Kumar, A.S.I., and did not note the distance between the cemented block and the house of the deceased, nor any fired cartridge was found there. He confirmed that P.W.1, Ankit Kumar, had not said before him that the Appellant and Ranjay came and shot at his father. P.W. 3, Chandrakala Devi had also not stated that she had confronted the Appellant as to why he had done so or even the deceased had screamed clutching his chest about the assailants

having shot at him. She did not say about her sitting at the place of occurrence.

8. P.W. 5, Dr. Vishnu Deo Prasad, found the following injuries on the person of the deceased :-

(1) Entry wound of 1" x 1/2" with blackening was present. On the abdomen 4" above the umbilicus and exit wound of 1/2" x 1/2" was present on the left side of back.

(2) Entry wound 1" x 1/2" was present on the abdomen 3" below the umbilicus with tattoo-mark of 3" x 3".

09. The Defence examined two witnesses, namely, Basudeo Yadav (D.W.1) and Mohan Yadav (D.W.2) on the point that they had also gone to the place of occurrence on hearing about the murder of the deceased, but no names were disclosed by anyone at that point of time.

10. From the evidence of witnesses, we find that whereas P.W.1, Ankit Kumar, had stated that his grandfather awoke him and told him his father had been shot dead, P.W.2, Puja Kumari, stated that it was the deceased, who disclosed the names of the Appellant and P.W. 3, Chandrakala Devi gave an eye witness account. She has stated that she could see the occurrence because



she was sitting at the door, while the children were sleeping inside the house because of the heat which is highly improbable since the date of occurrence was in the middle of October which is not a hot month. The fact of her being in a position to see the occurrence is belied by the evidence of children, who stated that they were all sleeping together and they had rushed out together on hearing the sound of firing.

11. As for the disclosure of names of the Appellant, we find that P.W.1 had stated that the mother had disclosed that Appellant and two others had shot at his father, whereas P.W.2, Puja Kumari, stated that it was her father who had disclosed this fact. P.W.3, Chandrakala Devi, the Informant, herself stated that she was sitting at the door when she saw the occurrence and then also heard her husband screaming taking name of the Appellant but this fact was not disclosed earlier.

In view of the statement of P.W.1, Ankit Kumar, who stated that P.W.2 and P.W.3 were sleeping together which is further confirmed by P.W. 2, it appears highly and unlikely that P.W. 3 was sitting at the door and had seen the occurrence.

12. The further suspicious material that has been noticed is that the Informant had stated that the deceased had given the statement at the Railway Hospital, which fact was confirmed by

her statement given in Court. However, the prosecution has not brought on record such statement which cannot be favourably viewed.

13. Also the fact that the Appellant could at all be identified in the Vapour Light is doubtful since witnesses had contradicted themselves on the presence of the Vapour Light and Investigating Officer also did not note the presence of the Vapour Light. We also find that there is no independent witness to the occurrence, who would lend assurance to the prosecution case to make it trustworthy.

14. Under such circumstances, the Appeal is allowed. The Judgment of conviction and Order of sentence dated 20.12.2008/22.12.2008 passed by the Additional Sessions Judge, F.T.C.-5, Bhagalpur in connection with Sessions Trial No. 1453 of 2004/619 of 2006 arising out of Mozahidpur P.S. Case No. 140 of 2001 is hereby set aside. The above named Appellant, who is in jail custody, is directed to be released forthwith, if not wanted in any other case.

(Anjana Prakash, J.)

(Rajendra Kumar Mishra, J.)

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