

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.36 of 2011

=====

(Against the Judgment of conviction dated 30.11.2010 and Order of sentence dated 07.12.2010 passed by Additional Sessions Judge, F.T.C.-III, Patna, in Sessions Trial Case No. 224 of 2009/ 114 of 2009).

=====

Kranti Kumar @ Kranti Ram, S/O Late Shiv Kumar Ram, Resident of Village-
Sohsarai Bich Bazar, Kathal Tola, P.S.- Sohsarai, District- Nalanda.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

=====

Criminal Appeal (DB) No. 188 of 2011

=====

1. Chandan @ Chandan Kumar @ Loha, son of Late Sikandar Ram, Resident of Village- Jakkanpur Dopulia, P.S. Jakkanpur, District- Patna.
2. Jitendra Kumar @ Jitendra @ Bhutta, son of Bijendra Ram, Resident of Village- Lashendha, P.S.- Chandi, District- Nalanda.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

=====

Appearance :

(In CR. APP (DB) No. 36 of 2011)

For the Appellant/s : Mr. Akhileshwar Prasad Singh, Sr. Advocate.

For the State : Mr. A.K.Sinha, A.P.P.

(In CR. APP (DB) No. 188 of 2011)

For the Appellant/s : Mr.

For the Respondent/s : Mr. S.C. Mishra, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 26-07-2016

Heard learned counsel for the Appellants and

learned counsel for the State.

2. The Appellants of both appeals have been convicted under Sections 302, 394 and 411 of the Indian Penal Code and Section 27 of the Arms Act vide Judgment of conviction, dated 30.11.2010 and Order of sentence, dated 07.12.2010 passed by the Additional Sessions Judge, F.T.C.-III, Patna, in Sessions Trial No. 224 of 2009/ 114 of 2009. For the offence under Section 302 of the Indian Penal Code, the appellants have been sentenced to undergo Rigorous Imprisonment for life and fine of Rs. 5000/- and in default of which, to undergo further Rigorous Imprisonment for one year. For the offence under Section 394 of the Indian Penal Code, they have been sentenced to undergo Rigorous Imprisonment for five years and fine of Rs.1000/-, and in default of which, to undergo further Rigorous Imprisonment for six months. For the offence under Section 411 of the Indian Penal Code to undergo Rigorous Imprisonment for one year. However, no separate sentence has been passed under Section 27 of the Arms Act.

3. The prosecution case as set out in the written report (Ext.2) of Pappu Kumar (P.W.2), son of Rajendra Prasad Yadav, Village- Bishunpur Pakri, P.S. Beur, District- Patna, recorded by Sri R. K. Sinha of Jakkanpur P.S., on 20.09.2008, at



about 11 P.M., at P.M.C.H., Patna, is that on 20.09.2008 his elder brother, Sunil Kumar, who was working as Area Sales Manager, in the Nakshtra Diamond Jewellery situated at Hari Niwas Complex left the house for office on his Hero Honda Motorcycle bearing Registration No. BR-1AM-1799 at 11 A.M. While returning from his office, his brother stayed for some time at his old house at Mithapur, from where he proceeded at 10 P.M. for Bishunpur Pakri. When he reached at Jaiprakash Nagar, some unknown criminals shot him at his head and snatched his Hero Honda Motorcycle bearing Registration No. BR-1AH-1799 and two mobiles, bearing no. 9334662332 and 9334102905 as well as purse etc. His brother died on way to P.M.C.H., Patna. On receiving information about the occurrence, the informant along with family members reached P.M.C.H, Patna and found his brother dead.

4. During trial, the prosecution examined altogether 9 witnesses.

5. P.W. 1, Binod Kumar, in his evidence stated that, on 20.09.2008, at about 10 A.M., the family members of the deceased knocked the door of his house and informed him about Sunil Kumar's murder as well as snatching of his motorcycle. However, none of the family members of the deceased disclosed

the name of any of the miscreants. Thereafter, he along with the family members of the deceased went to the P.M.C.H, Patna, where the victim was taken for treatment. The police made some enquiries. He could not know the name of assailants there also.

6. P.W.2, Pappu Kumar, is the informant of the case and the brother of the deceased. He has stated that, on 20.09.2008, in the night, at about 10.50 P.M., he received information from the Police Station that his brother met with an accident. Thereafter, he went to Jakkanpur Police Station, where he was informed that his brother sustained firearm injuries and has been rushed to P.M.C.H., Patna for treatment. He accordingly proceeded for P.M.C.H. and found his brother dead. The police recorded his Fardbeyan in P.M.C.H. He stated that his brother was shot dead while he was returning from his office. Before he was shot dead, his brother stayed for some time at his old house at Mithapur. In cross-examination, he stated that his brother used to go to the office, on his Hero Honda Motorcycle in the morning and after office hours, he used to return to his house in the evening. He identified his signature on Fardbeyan, as Ext.1. He, however, stated that he had not seen the occurrence.

7. P.W.3, Krishna Kumar Singh, stated that deceased, Sunil Kumar, was the Area Manager in Nakshtra



Diamond Jewellery Shop, he was wholesale Distributor of the company in the State of Bihar. On the date of occurrence the deceased, Sunil Kumar, had worked in the office during day time. He stated that on the relevant date he was at Bombay and received the information of the death of his brother Sunil Kumar, on telephone. After receiving the news, he arrived at Patna on the following morning and saw the dead body of Sunil Kumar. The police recorded his statement and informed that accused persons have been apprehended alongwith key of motorcycle and other looted articles.

8. Sunita Devi, wife of the deceased, Sunil Kumar, has stated that in the night of 20.09.2008, she was at her house, when she received information about firing upon her husband. Thereafter, she went to the P.M.C.H. and found her husband dead. She stated that her husband was an Area Manager in Nakshtra Diamond Jewellery Shop. She learnt from the police that some accused persons have been apprehended, from whose possession looted ATM Card, I-Card and key of motorcycle of her husband have been recovered. She further stated that she is not an eye witness to the occurrence.

9. P.W.5, Ranjeet Kumar Singh, is the Investigating Officer of the case, who has stated that on

20.09.2008, he was posted as Sub-Inspector in Jakkanpur Police Station. On the said date at about 11 P.M., he recorded the Fradbeyan (Ext.1/1) of Pappu Kumar in P.M.C.H. On the basis of Farbdeyan a formal F.I.R. was drawn, which he proved as Ext.2. He prepared the inquest report of the dead body of Sunil Kumar and proved the same as Ext.3. According to D.W. 1, the place of occurrence is the Main Road passing through Jai Prakash Nagar, across to Patna-Gaya Railway Line connecting Mithapur with Parsa. There were a number of vegetable shops on both sides of road. During investigation, he found the blood stains at the place of occurrence. He recorded the statement of Smita Devi (P.W.4), Krishna Kumar Singh (P.W.3), Binod Kumar (P.W.1), Manti Devi (P.W.7), Rohit Kumar (P.W.8), Ramesh Prasad Mathur (P.W.6) and Ajay Shankar (not examined). In course of investigation, he apprehended Appellant, Chandan @ Chandan Kumar @ Loha who confessed his involvement in the crime, along with Appellants Jitendra Kumar @ Jitendra @ Bhutta and Kranti Kumar @ Kranti Ram. Thereafter, he apprehended accused Jitendra Kumar @ Jitendra @ Bhutta, who too confessed his guilt admitting his involvement in the crime with Appellant Chandan @ Chandan Kumar @ Loha and Kranti Kumar. He raided the rented house of accused, Jitendra Kumar, and recovered Identity Cards issued by



the Nakshtra Company as well as other looted materials belonging to the deceased. After recovery, he prepared the seizure list in presence of two independent witnesses, namely, Purushottem @ Chote and Chandan Kumar (both not examined). He raided the rented house of accused Kranti Kumar and seized Briefcase, from which, purse of Nakshtra Company and also visiting cards of the company were recovered. He prepared seizure list of the aforesaid recovered articles in presence of Vijay Paswan and Gopal Ji (both not examined). This witness also proved the signature of Jai Prakash Rai, the then Officer-In-Charge, (not examined) on the seizure list, as Ext.7. In cross-examination, he stated that Rohit Kumar (P.W.8) has not disclosed the physique of the culprits nor he claimed to be an eye witness to the occurrence. He further stated that the seized articles were not produced in the court nor put on T.I. Parade for identification by the informant and other witness, till submission of charge sheet.

10. P.W.6 Ramesh Prasad Mathuri, P.W.7 Manti Devi and P.W.8 Rohit Kumar have their vegetable shops near the place of occurrence. Though, they have stated about firing, but have not claimed to have identified the accused persons or injured.

11. P.W.9 Dr. Pankaj Kumar, is Assistant

Professor in the Department of Forensic Medicine in the P.M.C.H., Patna on 21.09.2008. He conducted the Post-Mortem Examination (Ext.8) of the deceased at about 10.40 A.M. and found the following injuries on his person:-

(i) One entry wound $1\frac{1}{2}$ " x $1\frac{1}{2}$ " left mandibular are adjacent to left ear with blackening 1 " x $\frac{3}{4}$ " margin lacerated and inverted.

(ii) One exit wound $\frac{1}{2}$ " x $\frac{1}{4}$ " right side upper part of neck 1 " below right ear low margin lacerated and inverted.

Injury Nos. (i) and (ii) were in continuation and structures in between were found pierced through and through. Second cervical vertebra was found pierced and with clot over facie.

He proved the Post-Mortem Report as Ext.8.

According to him, the cause of death is haemorrhage and shock and cause of violence is firearm.

12. Mr. Akhileshwar Prasad Singh, learned Senior Counsel for the Appellants submits that there is no legal evidence to connect the Appellant with the crime. He submits that there is no eye witness to the occurrence. Even P.Ws. 6, 7 and 8, who were present at the place of occurrence, have only stated about firing, but have not claimed to identify the accused or



injured. P.W.5, Ranjeet Kumar Singh, the Investigating Officer of the case, has claimed to have recovered and seized the looted articles from the house of the Appellants, but the same have neither been put on T.I. Parade for identification by the informant and other witnesses nor produced before the court as material exhibits. The seizure list witnesses have also not been examined during trial.

13. Mr. Ashwani Kumar Singh, learned counsel for the State submits that the seized materials were recovered from the rented premises of the Appellants, which initially would establish their involvement in the crime.

14. On going through the evidence as discussed above, we find that there is no eye witness to the occurrence and only material which has come against these Appellants is that some looted articles, belonging to the deceased, were recovered from the rented house, but the same too were not put on T.I. Parade for identification by the informant and the witnesses, and also not produced before the court as materials exhibits. The seizure list witnesses have also not been examined to establish the recovery of the articles from the rented house of the Appellants. As such, we do not find that the prosecution has succeeded in establishing the guilt against the Appellants beyond

all reasonable doubt.

15. In the result, these appeals are allowed.

The impugned Judgment of conviction dated 30.11.2010 and Order of sentence dated 07.12.2010 passed by the Additional Sessions Judge, F.T.C.-III, Patna, in connection with Sessions Trial No. 224 of 2009/ 114 of 2009 is set aside. The Appellants are discharged from the liabilities of their bail bonds. The Appellants, who are in jail custody, are directed to be released forthwith, if not wanted in any other case.

(Samarendra Pratap Singh, J)

Bhardwaj/-

(Rajendra Kumar Mishra, J)

U		T	
---	--	---	--