

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.111 of 2011

(Against the Judgment of conviction dated 29.10.2010 and Order of sentence dated 03.11.2010 passed by the Additional Sessions Judge-II, Vaishali at Hajipur, in connection with Sessions Trial No.132 of 2009).

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Dharam Kumar @ Dharan Kumar, son of Anil Rai, resident of Village - Chandpura, P.S. - Raghapur, District-Vaishali.

.... Appellant.

Versus

The State of Bihar

.... Respondent.

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Appearance :

For the Appellant : M/s. Dhirendra Kumar Sinha, Yaspal Yadav and Ajay Kumar Sinha, Advocates.

For the State : Mr. S.N. Prasad, 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: 21-04-2016

The sole Appellant has been convicted under Section 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life and fine of Rs.30,000/-, in default of which, to undergo further simple imprisonment for six months and Section 27(i) of the Arms Act and sentenced to undergo rigorous imprisonment for five years and fine of Rs.10,000/-, in default of which, to undergo further simple imprisonment for three months, vide Judgment of conviction dated 29.10.2010 and Order of sentence dated 03.11.2010 passed by the Additional Sessions Judge-II, Vaishali at Hajipur.

2. The case of the prosecution, according to the Informant Pawan Kumar (P.W.7), is that on the night of 28.12.2008/29.12.2008 at about 01.00 A.M., suddenly he woke up on hearing the cry and when he came out of the room, he saw one person standing at the Varandah. When he asked, who it was, the person shot at his sister, who was sleeping on a cot, and ran away through the courtyard. He tried to chase him and in the torch light, he identified him to be the Appellant. When he came back home, he saw his sister Punam Devi dead. In this interval, several persons came there and tried to locate the Appellant but they could not find him. While they were preparing to take the deceased for treatment, he heard that the deceased had died and, therefore, the First Information Report was given to the police at 06.00 A.M. in the morning.

We find that the First Information Report was recorded by one S.K. Singh, , who was S.H.O. of Raghopur Police Station, Camp-Chandpura, on 29.12.2008 but it was received in the court on 05.01.2009.

3. During trial, the prosecution examined 10 witnesses.

4. P.W.1 Chanarik Ram, who was the uncle of the deceased, stated that while he was at home on the fateful night, he heard the scream of his nephew, the Informant, saying that somebody had fired. When he came out, he saw that he was screaming saying

that the Appellant had shot fire at Punam Kumari. He alongwith the Informant taking the torch tried to chase the Appellant but they could not catch him. He found his niece dead and the motive was that few days earlier, the Appellant had snatched away the mobile of the deceased upon which a dispute had arisen.

This witness has not been cross examined and, therefore, his evidence has remained unchallenged.

5. P.W.2 Jay Prakash Rai has stated that while he was sleeping, he heard some sounds of firing and when he came out of the house, he saw the Appellant fleeing away with a pistol. Everyone ran to catch him but they could not do so. When he returned, he saw his cousin sister dead on a cot. He also stated that they tried to take her for treatment but she died on the way, whereafter the Fardbeyan was recorded, signature on which he proved as Ext.1. He further stated that when he came out of room of his house with a torch, he saw the Appellant and identified him in the torch light.

In cross examination, his attention was drawn to the earlier statement that, in fact, he had not seen the Appellant fleeing away from the place of occurrence but when the Investigating Officer has not been confronted with this statement, it has no value.

6. P.W.3 Om Prakash Rai has stated that on the sound of firing, he woke up and came out of the house and saw the Appellant

running away after shooting the deceased. He alongwith Jay Prakash and the Informant chased him but he fled away. On the next day, police came and prepared the Inquest in his presence, which he proves as Ext.1/1. He also stated that he was the cousin brother of the deceased and lived within the same courtyard.

In cross examination, his attention was drawn to the earlier statement that he had not seen the Appellant running away but when such statement was not put to the Investigating Officer, such contradiction cannot be taken into consideration.

7. P.W.4 Mosafir Rai has stated that in the torch light and electricity, he saw the Informant, Jay Prakash and Om Prakash chasing the Appellant, who was running away with a pistol. He stated that it was the Appellant who had caused the death of the deceased for the reason of dispute, which had arisen, when the Appellant had tried to snatch away the mobile of the deceased prior to the occurrence. He also explained that his courtyard and that of the deceased was common and she was his niece.

8. P.W.5 Jipsi Devi, the mother of the deceased, stated that on hearing the sound of firing, she got up and saw the Appellant running away after shooting his daughter. The Informant, Om Prakash, Jay Prakash and Mosafir Rai ran after him but he could not be caught.

In cross examination, she stated that the deceased had been married one year back and all the witnesses had come on her 'Hullah'. Her attention was drawn to the earlier statement that, in fact, she had not stated that it was the Appellant, who had been seen running away, but the Investigating Officer has not been questioned on this point and, thus, the contradiction is valueless.

9. P.W.6 Binda Rai stated that on hearing the sound of firing, he got up and ran and saw the witnesses running chasing the Appellant but he could not be caught. When he returned, he saw the deceased having sustained firearm injuries. He also stated that the Appellant was his neighbour.

In cross examination, it was suggested to him that, in fact, he was hearsay witness and also that he had not stated this fact before the Investigating Officer. However, the earlier statement of this witness was not put to the Investigating Officer, hence it is worthless.

10. P.W.7 Pawan Kumar, the Informant, reiterated his statement as in the Fardbeyan and of having identified the Appellant in the light of torch and electricity and that he fired at his sister, who was lying on a cot. He was chased by himself and the several witnesses but they could not catch him. He identified his signature on the Fardbeyan as Ext.1/2 and on the Inquest Report as Ext.1/3.

In cross examination, he was questioned about the motive

of the occurrence and some mundane questions were also asked about the position of the dead body, which are not important. He also stated that he came out of the room on hearing the sound of single firing.

11. P.W.8 Surendra Kumar Singh is the Investigating Officer, who stated that on 29.12.2008, he heard that some lady had been shot dead, so he proceeded to the village and found the dead body inside the courtyard and recorded the Fardbeyan of the Informant. He proves the Fardbeyan as Ext.2 and the Inquest Report as Ext.3. He further stated that he examined the witnesses mentioned earlier and inspected the place of occurrence, which was a Verandah of the house with a courtyard in the middle. He also described the topography of the house as also that he sent the dead body for Post-Mortem Examination on the same day.

Since the defence has not cross examined this witness, therefore, his evidence remains unchallenged.

12. P.W.9 Dr. Brajesh Kumar Singh conducted the Post-Mortem Examination of the dead body of the deceased on 29.12.2008 and found the following injuries on her person:

- (i). Lacerated wound left temporal area 1.5 Cm in diameter, oval in shape, margin inverted and blackening and charring of skin in 2.5 Cm. in diameter around wound. The above wound was

anterior to left ear (Superior end).

(ii). Lacerated wound 2.5 Cm. in diameter, margin everted without charring at base of right ear.

Injury No.(i) and (ii) were communicating with each other and the structure in between were pierced through and through.

On dissection-

(A). haematoma surrounding the wound, temporal bones of both sides were found fractured. Brain lacerated and cavity contained blood.

(B). Neck-Normal.

(C). Chest-Bony cage normal, pleura and lungs were pale. All chambers of blood contained blood.

(D). Abdomen-stomach contained 100 ml of fluid, liver spleen, kidney were found normal and pale. Uterus-non-pregnant, Private parts were found intact.

The cause of death was head injury (Comma).

The nature of weapon used was firearm.

The time of injury was in between 06 to 24 hours from the Post-Mortem Examination.

He proves the Post-Mortem Examination Report as Ext.4.

This witness was also not cross examined.

13. P.W.10 Srikant Kumar is a formal Police Officer, who

merely submitted the chargesheet.

14. Counsel for the Appellant submits that the identification of the Appellant in the dark night was not possible as also the prosecution has failed to bring positive evidence in regard to the presence of the torch and electricity. The further submission is that the First Information Report was received in the Court on 05.01.2009 alongwith the accused/Appellant and, therefore, the veracity of the Fardbeyan is highly doubtful. Further submission is that there is no motive assigned in the case which makes the story doubtful.

15. As for identification, we have seen that the Appellant is a co-villager of the prosecution witnesses, well-known to them and his identification even in absence of positive evidence by way of production of torch or presence of electricity, in our opinion, is not fatal to the prosecution case.

16. Having gone through the evidence of the witnesses, discussed above, it is clear that there is no eye witness directly on the point of the Appellant having fired at the deceased. However, there is positive and unimpeachable evidence of the witnesses, who stayed in the same courtyard that they saw the Appellant fleeing away with arms right after the occurrence and was sought to be chased. This circumstance according to us is enough to link the Appellant with the

murder of the deceased.

As for motive, the same is not important in a criminal case and, hence, we reject such submissions.

17. Under the aforesaid facts, in view of the consistent clinching evidence of the witnesses on the strong circumstance against the Appellant as discussed above, finding no merit in this appeal, we dismiss the same.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

**A.B. Bhardwaj/Pradeep Srivastava/
A.F.R.**

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