

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.317 of 2010

(Against the Judgment of conviction dated 24.02.2010 and Order of sentence dated 06.03.2010 passed by the Additional District and Sessions Judge, F.T.C.-II, Banka, in Sessions Trial No. 642 of 2007).

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Pundeo Mahto, S/O Late Ram Bachchan Mahto, R/O Vill.-Harinagar, P.S.-Goradih,
Dist.-Bhagalpur.

..... Appellant/s

Versus

The State of Bihar

..... Respondent/s

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Appearance :

For the Appellant/s : Mr. Praveen Kumar, Advocate.
Mr. Krishna Mohan, Advocate.
Mr. Nihar Nandan Ambasta, Advocate.
For the State : Mr. S.C. Mishra, 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: 07-04-2016

The Appellant has been convicted under Section 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life vide Judgment of conviction dated 24.02.2010 and Order of sentence dated 06.03.2010 passed by the Additional District and Sessions Judge, F.T.C.-II, Banka in Sessions Trial No. 642 of 2007.

2. The case of the prosecution, according to the Fardbeyan of the Informant Sabita Devi (P.W.1), is that, on 13.11.2006, at about 11 P.M., two accused persons including the Appellant climbed on her terrace with the help of bamboo ladder and on the point of pistol



threatened her to give them money. She was assaulted in this transaction. Bisun Mahto caught hold of her husband (the deceased) assaulted on the head of her husband with a dagger. He further ordered Appellant, Pundeo Mahto, to fire at her husband, on which, Appellant fired at the chest of her husband on account of which, he fell down dead. When she started screaming, accused Bisun Mahto stated that they should run away since people were gathering. Then accused persons climbed over the wall and ran away towards the Harna village. She had seen three other unknown persons standing outside. This information was given soon after the occurrence at 11.45 P.M. to Abdul Majib, S.I. of Dhoraiya Dhamukund Police Station, which instantly was 18 K.M. away.

3. During trial, the prosecution examined six witnesses. P.W.1 Sabita Devi is the informant. P.W.2, Md. Mukhtar Hussain and P.W.5 Srikant Choudhary have deposed as seizure list witnesses as well as hearsay witnesses, P.W.3 Abhilas Choudhary is the father of the deceased whereas P.W. 4 Anirudh Choudhary is the brother of the deceased, who have not supported the case of prosecution. P.W. 6 is Dr. Jai Prakash Sinha, who conducted the Post-Mortem Examination of the dead body of the deceased.

4. One Bindi Devi was examined as D.W.1, who proves a public petition as Ext. A saying that the Appellant was falsely

implicated in this case.

5. P.W.1 Sabita Devi repeated that both accused persons had climbed on to the terrace with the help of bamboo ladder and thereafter Appellant Pundeo Mahto had asked her to give money but she pleaded that they are poor people and are unable to give them money, at which, she was assaulted. Then Bisun Mahto caught hold of her husband and assaulted her husband with dagger on his head. Thereafter Appellant Pundeo Mahto fired at the chest of the deceased and both fled away. She identified the Fardbeyan as Ext.1.

In cross-examination, she stated that there were two entries to the house and both of them were closed at about 10 P.M. on the night of the occurrence. She stated that a number of villagers gathered after the occurrence but she did not talk to any of them. Thus, her evidence discredits the evidence of P.W.2 Md. Mukhtar Hussain and P.W. 5 Srikant Choudhary, who have deposed as a hearsay witnesses. She admitted that she had never visited the village of the present Appellant nor she did know about the parentage of P.W.2 and P.W.3 and other persons.

6. P.W.2 Md. Mukhtar Hussain was the seizure list witness of dagger which was proved as Ext.2. He also stated that the informant had disclosed the complicity of the present Appellant and co-accused Bisun Mahto but since it has not been supported by the

informant, therefore, his evidence on this ground has to be rejected being inadmissible in law.

7. P.W. 3 Abhilas Choudhary, who is the father of the deceased, has been declared hostile since he has stated that no names had been disclosed by the informant. He proves his signature on the Fardbeyan as Ext.1/1.

In his cross-examination, he stated that it was the second marriage of the informant to his son, who was living separately with him.

8. P.W.4 Anirudha Choudhary is the brother of the deceased, who also did not support the complicity of the present Appellant.

9. P.W.5 Srikant Choudhary was the witness of the inquest report, who proved his signature on the same as Ext.3/1. He stated that informant disclosed the names of the accused to him but this fact is not supported by the informant and hence this part of his evidence is not admissible in law.

10. P.W. 6 Dr. Ji Prakash Sinha conducted the Post-Mortem of the deceased Shambhu Choudhary on 14.11.2006 and found the following injuries on his person:

(I) An over lacerated wound with black inverted margin about 1" x 4/3" over left side of chest below costal margin, i.e., wound of entry. On

discussion of wound the surrounding tissue blood vessels were damage. Herd was pierced. Left lung and right lung also injured.

(II) Chest cavity was full of blood clot. No wound of exit was found.

On exploration one bullet was recovered from posterior chest wall right side.

(III) One lacerated wound over scalp 1/2" x 1/4" caused by hard and blunt substance.

11. The Investigating Officer has not been examined in the present case.

12. On going through the evidence of the witnesses, we find that the case depends on the sole evidence of P.W.1 (informant). We are unable to understand as to how this lady knew the parentage of the present Appellant, co-accused, even though, they belong to another village and District. She has stated in her evidence that she had never visited the village of the Appellant. She also stated that she did not know the parentage of the witnesses of her own village which makes her evidence about the disclosure of the complicity of the present Appellant in the present case doubtful. We also find that the prosecution has failed to produce the Investigating Officer, who could have supported the prosecution case on objective evidence to the extent of finding a bamboo ladder, from which, the Appellant had climbed to the terrace of the

informant or signs of jumping from the roof over the wall. We also note that, even though, the prosecution case is that the deceased had been assaulted on his head with a dagger but no such injury was found in the Post-Mortem report reproduced above. We find that there was a simple injury caused by hard and blunt substance on the person of the deceased, which could have been caused on account of the fall on the ground.

14. In the facts and circumstances of the case, this Appeal is allowed giving benefit of doubt. The Judgment of conviction and Order of sentence passed against the Appellant, above named, is set aside. He is acquitted of the charge. The Appellant is in jail custody, therefore, he is directed to be released forthwith, if not wanted in any other case.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

**Bhardwaj/
A.F.R.**

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