

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.458 of 2011

(Against the Judgment of conviction dated 29.03.2011 and Order of sentence dated 05.04.2011 passed by the Additional District and Sessions Judge-I, Bhojpur, Ara, in Sessions Trial No.238 of 2006).

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Anil Kumar Rai, son of Nagerseth Bhatt, resident of village-Balbandh, P.O. Balbandh, P.S. Charkhari, District- Bhojpur.

.... Appellant.

Versus

The State of Bihar

.... Respondent.

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Appearance :

For the Appellant : M/s. Baxi S.R.P. Sinha, Senior Advocate and Rahul Nath, Advocates.

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: 18-03-2016

Appellant has been convicted under Section 302 of the Indian Penal Code and 27 of the Arms Act and sentenced to undergo rigorous imprisonment for life vide Judgment of conviction dated 29.03.2011 and Order of sentence dated 05.04.2011 passed by the Additional Sessions Judge-I, Bhojpur, Ara, in Sessions Trial No.238 of 2006.

2. The case of the prosecution, according to the Fardbeyan of the Informant Anil Kumar Rai P.W.3, is that on 10.10.1998 while they were crossing the lane in the evening, one accused Ravindra



Kumar Rai abused and asked as to who is crossing the lane and asked Appellant Anil Kumar Rai to bring his gun. Soon thereafter, Appellant and one Harendra Kumar Rai appeared with a gun and pistol and surrounded them. Thereafter, Appellant fired at the left chest of the deceased Sunil Kumar Rai while accused Harendra Kumar Rai threatened them on pistol point. Sunil Kumar Rai fell down dead and then accused persons ran away. The motive for the occurrence was some petty matters. In the First Information Report, P.W.2 Ramesh Kumar Rai is also named as a witness who also signs the Fardbeyan alongwith the Informant.

3. During Trial, prosecution examined seven witnesses.

4. P.W.1 Angad Kumar Rai stated that in the evening at around 05.00 P.M. on 10.10.1998 while he alongwith the deceased Sunil Kumar Rai, Informant Anil Kumar Rai (P.W.3), Ramesh Kumar Rai (P.W.2) and Rajesh Kumar (P.W.5) were returning from their fields and crossing a certain road, accused Ravindra Bhatt screamed as to who was crossing that passage and then Appellant Anil Kumar Rai and Ravindra Bhatt surrounded them. Ravindra Bhatt ordered the Appellant Anil Kumar Rai to bring his gun and then Appellant having brought his gun fired on the left of the chest of the deceased on account of which he fell down. Harendra Kumar Rai had pointed a pistol on them. The deceased was then attempted to be taken to the hospital but

he died on the way. He explained that the passage was common but they were not permitted to use the same by the accused persons.

In cross examination, he stated that every day they used to go from the same route and on earlier occasion no dispute had taken place on account of it. He also stated that several persons came while altercation was going on and in course of altercation the firing took place. There is nothing else which is notable in his further cross examination.

5. P.W.2 Ramesh Kumar Rai, the cousin brother of the Informant Anil Kumar Rai (P.W.3), also supported P.W.1 inasmuch as stated that they were returning from their fields when this occurrence took place in which the deceased Sunil Kumar Rai was shot at by the Appellant.

In cross examination, he explained that the Informant Anil Kumar Rai (P.W.3) was his cousin brother whereas P.W.5 Rajesh Kumar Rai was his own brother and the deceased Sunil Kumar Rai was his cousin brother. He further stated that the 'Gali' which they were crossing was common passage and earlier there was no dispute between the parties.

6. P.W.3 Anil Kumar Rai the Informant supports his Fardbeyan and states that on 10.10.1998 at around 05.00 P.M. when he alongwith the rest of the witnesses and the deceased were returning



home, they were accosted by the accused persons and then Appellant fired at the deceased on account of which he died. He stated that at the time when the firing started, 25-30 persons had gathered and no earlier dispute had arisen for the reasons of using the passage. He also stated that there was no altercation before the firing and as soon as Appellant came, he fired at the deceased.

In cross examination, there is nothing else which is of note except he stated that 50-60 persons had gathered when the occurrence had taken place.

7. P.W.4 Brinda Bhatt is the father of the deceased, who stated that while his son was going alongwith the rest of his nephews, the accused persons surrounded him and an altercation took place. He suddenly heard Ravindra telling the Appellant to bring the arms, at which he came to the place of occurrence and saw the deceased being shot at by the Appellant.

In cross examination, he stated that when he reached the place of occurrence, the occurrence was already over and earlier there was no obstruction on account of crossing the 'Gali'.

8. P.W.5 Rajesh Kumar Rai is the next eye witness who also supported the previous witnesses on material particulars that they were going together and then accosted by the accused persons, whereafter, Appellant was ordered to bring the arms which he did and

he fired at the deceased on account of which he died. He explained that all the witnesses were relations and there was no enmity between the accused persons from before. He also stated that 20 persons had gathered at the place of occurrence.

9. P.W.6 is Dr. Jitendra Kumar Singh who conducted the post-mortem examination of the deceased and found following injuries on his person:

(I) There was rigor mortis on all four limbs.

(II) Lacerated wound on the left side of chest below nipple about 1.1/2" x 1.1/2" x Cavity deep with charring with adjacent margin.

10. P.W.7 Ahamad Hussain Khan is the Investigating Officer. He stated that on 10.10.1998 he got information that some body had been killed at which he departed to the place of occurrence and recorded the Fardbeyan of the Informant at 06.30 P.M. on which the Informant signed. He also inspected the place of occurrence and saw the dead body which had sustained an injury on the chest. He also found empty cartridge at the place of occurrence. He did not take note of any other materials at the place of occurrence. He submitted the chargesheet later against the accused persons.

In cross examination, there is nothing which is note worthy.

11. Having gone through the evidence which we have dealt with above, we find that there is consistent eye witness account, of

P.Ws.1, 2, 3, 4 and 5 on the manner in which the deceased, and, they themselves were surrounded by the accused persons and, thereafter, Appellant had fired at the deceased on account of which he died. The doctor found corresponding firearm injuries on the person of the deceased whereas the Investigating Officer found objective evidence such as fired cartridge at the place of occurrence.

12. No doubt, an argument was advanced by the learned counsel for the Appellant that no blood was found at the place of occurrence by the Investigating Officer (P.W.7) but that being a minor omission, we would not like to pay unnecessary attention to it specially when after the occurrence number of persons had gathered and it is quite possible that the blood may have disappeared due to it being soaked up by the footsteps of so many persons.

13. For the aforesaid reasons, finding no merit in this Appeal, we dismiss this Appeal.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

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

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