

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.95 of 2011

Against the Judgment of conviction dated 08.12.2010 and Order of Sentence dated 09.12.2010 passed by Additional Sessions Judge, F.T.C No.5, Rohtas at Sasaram, in Sessions Trial No. 92 of 2008 arising out of Bikramganj P.S. Case No. 56 of 2007 (G.R. No. 271 of 2007).

Satyendra Sharma @ Satyendra Sharma, Son of Sri Lallu Sharma, Resident of Village-Samahuti, P.S. Dinara, District-Rohtas.

.... Appellant.

Versus

The State of Bihar

.... Respondent

with

Criminal Appeal (DB) No. 73 of 2011

Pappu Kahar, Son of Yadubansh Kahar, Resident of Village - Sumhuti, P.S- Dinara, District- Rohtas.

.... Appellant

Versus

The State Of Bihar

.... Respondent

Appearance :

(In CR. APP (DB) No. 95 of 2011)

For the Appellant : Mr. Surendra Kumar Chaubey, Advocate
Mr. Nagendra Prasad, Advocate

For the State : Mr. Ashwini Kumar Gupta, A.P.P.

(In CR. APP (DB) No. 73 of 2011)

For the Appellant : Mr. Surendra Kumar Chaubey, Advocate
Mr. Nagendra Prasad, Advocate

For the State : Mr. Abhimanyu Sharma, 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: 12-08-2016

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Both the appeals arises out of common Judgment of conviction, dated 08.12.2010 and Order of Sentence, dated



09.12.2010 passed in Sessions Trial No. 92 of 2008, arising out of Bikramganj P.S. Case No. 56 of 2007 (G.R. Case No. 271 of 2007) by Additional Sessions Judge, F.T.C. No.5, Rohtas at Sasaram, whereunder the appellant Satendra Sharma has been convicted and sentenced to undergo Rigorous Imprisonment for Life for the offence under Section 302 of I.P.C. and he has further been awarded Rigorous Imprisonment for three years for the offence under Section 27 of the Arms Act. Appellant Pappu Kahar has been convicted and sentenced to undergo Rigorous Imprisonment for life for the offence under Section 302/34 of I.P.C.

2. The prosecution case, as set out in the fardbeyan of Rana Paswan (Ext.1), son of Ram Rahash Paswan, Resident of Village-Saraya, P.S. Dinara, District-Rohtas recorded by Sub-Inspector Mahendra Ram (P.W.4) of Bikramganj Police Station on 30.04.2007 at 02.00 A.M. at the clinic of Dr. Raghwendra Sharma (P.W.8) is that on 29.04.2007, he along with co-villagers appellant Satendra Sharma, son of Lalu Sharma and Pappu Kahar had come to village Saraya on the motorcycle of one Bablu Singh and at about 3.00 P.M., he went to village Khelariya for performing Tilak ceremony of his sister. After performing Tilak, they had taken their dinner. Thereafter, at about 10.30 P.M., all of a sudden, storm and rain started and, therefore, people started running hither and thither.



The informant along with appellants Satendra Sharma and Pappu Kahar remained together. Appellant Satendra Sharma was having a country made pistol. After some time, appellant Satendra Sharma, with intention to kill the informant, fired from behind and injured him. Thereafter, a lot of hulla was raised. In the meantime, Satendra Sharma and Pappu Kahar fled away on the motorcycle of Bablu Singh. The injured was taken by co-villager Debraj Ram and others to the clinic of Dr. Raghwendra Sharma (P.W.8) for treatment. The cause of occurrence was land dispute with Bablu Singh, who belongs to the village of his wife. The appellant Satendra Sharma and Pappu Kahar used to take side of said Bablu Singh.

3. During trial, the prosecution examined altogether 08 witnesses in support of its case. Out of the aforesaid 08 witnesses, P.W.1 Ganesh Paswan, P.W.2 Keshnath Ram and P.W.3 Kishan Ram have not supported the case of the prosecution and have been declared hostile. P.W.7 Mohan Paswan is a hearsay witness.

4. P.W.5 Brij Paswan stated in his evidence that the occurrence took place three years ago in the night at about 10-11 P.M. in village Karakat within the Khelariya Police Station. He had gone to village Khelariya in the Tilak ceremony of daughter of Deoraj Paswan along with Yogendra Paswan, Deoraj Paswan, Pappu Kahar (appellant), Satendra Sharma (appellant) and Rana Paswan



(deceased). The deceased Rana Paswan and Satendra Sharma went together on a motorcycle, which belonged to Bablu Singh. There was land dispute in between Bablu Singh and Rana Paswan (deceased). After Tilak ceremony, storm and rain started. In the meantime, appellant Satendra Sharma shot at Rana Paswan (deceased), whereas appellant Pappu Kahar was also there. Thereafter, Satendra Sharma and Pappu Kahar fled away on the motorcycle of Bablu Singh. The injured Rana Paswan was taken to the hospital at Bikramganj for treatment from where he was referred to Patna for better treatment, where he died, after 1-2 days, in course of treatment.

In cross-examination, he stated that there was land dispute between the accused and his family, prior to the date of occurrence. He further stated that when Rana Paswan sustained fire arm injury, he was 100 yard away from place of occurrence. At the relevant time, he was sitting on the Chowki, which was arranged for persons, who had come to attend Tilak ceremony. Soon after the firing, he reached the place of occurrence along with others. There were four persons at the place of occurrence.

It would appear from the evidence of this witness that at the time of occurrence, he was 150 yards south from the place of occurrence. Furthermore, it also appears that this witness was having animosity with the accused persons at there was land dispute.



5. P.W.6 Lal Mohar Paswan stated in his evidence that the occurrence took place about three years back in the night between 9 to 11 P.M. in village Khelariya. The Tilak ceremony of daughter of Deoraj Paswan was being performed at village Khelariya. He along with his brother Deo Raj, Ranajee (deceased), Yogendra Paswan, appellants Satendra Sharma and Pappu Kahar had gone to attend the said Tilak ceremony. After Tilak ceremony, storm and rain started and people began to move hither and thither. In the meantime, Rana Paswan (deceased), appellants Satendra Sharma and Pappu Kahar also traveled 100 yards, where appellant Satendra Sharma fired at Rana Paswan, whereafter both the appellants fled away. Rana Paswan was taken to Bikramganj hospital, where Darogajee came and took his statement. Both the witnesses and Rana Paswan put their thumb impression. Rana Paswan was then taken to P.M.C.H., Patna, where he died after seven days. Darogajee also recorded the statement of this witness.

In his cross-examination, he admitted that Rana Paswan was his nephew. He further stated that the place of occurrence, where Rana Paswan was shot was 100 yards south-west from the Dalan, where he was hiding himself. He stated that he did not make any statement in course of investigation and for the first time, he was making his statement in the Court. He also stated that Darogajee had

taken his thumb impression of a paper.

It would appear from the evidence of this witness that he was sitting about 100 yards away from the place of occurrence at the time of incident. Furthermore, he did not make any statement in course of investigation and for the first time, he made his statement in the Court. As such, his evidence would be of no help to the Police.

6. P.W.4 Mahendra Ram is the Investigating Officer of the case. He stated in his evidence that on 30.04.2007, he was posted as Sub-Inspector in Bikramganj Police Station. He recorded the fardbeyan of informant Rana Paswan (deceased) at 02 O'clock in the night at the clinic of Dr. Raghwendra Sharma (P.W.8). He further stated that after reading the fardbeyan, Rana Paswan put his signature on the same. He proved the fardbeyan, which was marked as Ext.1. He stated that the charge of investigation was made over to him by the Officer-in-Charge Rajeev Kumar. In course of investigation, he visited the clinic of Dr. Raghwendra Sharma (P.W.8), where he recorded re-statement of Rana Paswan, who was referred to P.M.C.H., Patna for better treatment. He also recorded the statement of Deoraj Paswan (not examined). He then proceeded for village Khelariya, where the occurrence took place. The place of occurrence is village road between the village Baraki Khelariya and Chhotaki Khelariya near Mango tree. He recorded the statements of Ganesh



Paswan (P.W.1), Kishan Paswan (P.W.2) and Kesh Nath Paswan (P.W.3). Thereafter, he proceeded for village Samahuti, in search of the accused persons. However, both the accused, namely, Satendra Sharma and Pappu Kahar were absconding and not found in their houses. On 16.05.2007, he received information about death of injured Rana Paswan and as such Section 302 of Indian Penal Code and Section 27 of Arms Act were added. He received the Post-mortem on 20.05.2007. He also received the Inquest Report, which bears the signature of S.I. Brij Kumar Singh, which is marked as Ext.2. He recorded the statement of Yogendra Paswan and put his signature, which has been marked as Ext.3.

In cross-examination, he stated that, on receipt of O.D. Slip from the compounder of Dr. Raghwendra Sharma at about 2 O'clock, in the night, he went to his clinic, which is situated ½ K.M. from the Police Station. In the clinic, he met with Dr. Raghwendra Sharma and saw Rana Paswan, lying injured. He stated that Dr. Raghwendra Sharma opined that the condition of Rana Paswan is fit for taking statement.

7. P.W.8 Dr. Raghwendra Sharma stated that on 30.04.2007, he was posted as Chikitsa Padadhikari at P.A.C. Kosanda. He further stated that on that day Darogajee made a requisition for treatment of Rana Paswan (deceased). He found

bandaged injury on the back of the deceased. In his presence, the statement of Rana Paswan was taken by Darogajee. At that time, Rana Paswan was conscious. Thereafter, he was referred to P.M.C.H., Patna for better treatment.

In his cross-examination, he stated that he saw the injured in his private clinic, but he does not remember whether he had gone to hospital on 30.04.2007 or not?

8. Learned counsel for the appellant Satendra Sharma submits that it would appear from the evidence of P.W.8 Dr. Raghwendra Sharma that he examined the injured in his clinic and saw bandaged injury on his back. The Doctor has not given the details of the nature of the injury. He did not give any treatment and the injured was soon referred to P.M.C.H., Patna for better treatment, where he died after 7-8 days. He further submits that neither the Post-mortem report was brought on record nor the Doctor, who had conducted the postmortem examination on the deceased was examined. Thus the cause of death of the deceased has not been established by the prosecution. In absence of Post-mortem report, it cannot be said that as to how the deceased died. He further submits that the case would not fall under Section 302 of the I.P.C. rather Section 307 of I.P.C.

9. Learned counsel for the appellant Pappu Kahar

submits that the only material against him is that he was present at the time of occurrence along with Satendra Sharma. There is no evidence on the record that he participated in the alleged assault on the deceased in any manner.

10. Learned counsel for the State is not able to contradict the submission of the appellants that neither the Post-mortem report was brought on record, nor the Doctor, who conducted the Post-mortem examination, was examined. He, however, submits that both appellants have been named by the witnesses as an accused.

11. On going through the evidence, as discussed above, we find that P.W.8 Dr. Raghwendra Sharma found bandaged injury on the back of Rana Paswan (deceased), but he has not given the details of the injury and in absence of Post-mortem report and the examination of Doctor, the cause of death of the deceased could not be ascertained. As the cause of death has not been established by the prosecution in absence of Post-mortem report and examination of Doctor, it is difficult to hold the appellant Satendra Sharma guilty under Section 302 I.P.C. Nonetheless it is evident from the fardbeyan of the deceased and the statement of the Investigating Officer Mahendra Ram (P.W.4) and the Doctor, that the deceased had stated that he sustained fire arm injury on the back by the appellant Satendra Sharma. Thus the case would fall under Section 307 of

Indian Penal Code and not under Section 302 of Indian Penal Code. The appellant Satendra Sharma has already remained in custody for about 09 (Nine) years. In this view of the matter, the sentence imposed on him is modified to the period already undergone.

12. So far appellant Pappu Kahar is concerned, there is no evidence on record that he had participated in the said crime, rather he was merely present at the place of occurrence, where the incident took place. In absence of any evidence that he had participated in the occurrence, we acquit the appellant Pappu Kahar of the charges.

13. In the result, the Cr. Appeal (DB) No. 73 of 2011 is allowed and the conviction and sentenced imposed upon appellant Pappu Kahar is set aside and he is discharged from the liability of his bail bond. So far as Cr. Appeal (DB) No. 95 of 2011 is concerned, the same is dismissed in the modification of the sentence as appellant Satendra Sharma have remained in custody for about nine years.

(Samarendra Pratap Singh, J.)

(Rajendra Kumar Mishra, J.)

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