

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.132 of 2011

(Against the Judgment of conviction dated 28.12.2010 and Order of sentence dated 05.01.2011 passed by the Additional Sessions Judge, Fast Track Court No.II, Rohtas at Sasaram, in Sessions Trial No.481 of 2008/Tr.261 of 2009).

Raj Kumar Choudhary, son of Jawahir Chaudhary, resident of village-Lakari, P.S.- Kochas, District-Rohtas.

..... Appellant.
Versus
The State of Bihar
..... Respondent.
with

Criminal Appeal (DB) No. 52 of 2011

- 1. Balister Chaudhary, son of Late Biru Chaudhary @ Bhirgu Chaudhary.
- 2. Musa Chaudhary, son of Late Lala Chaudhary
Both resident of village- Lakri, P.S.- Kochas, District- Rahtas at Sasaram.

..... Appellants.
Versus
The State of Bihar
..... Respondent.
with

Criminal Appeal (DB) No. 77 of 2011

- 1. Jawahir Choudhary, son of Mahesh Chaudhary, resident of village- Lakari, P.S.- Kochas, District- Rohtas (Bihar).
- 2. Rama Shankar Chaudhary, son of Late Bishwanath Chaudhary, resident of village- Parvata Chak, P.S.- Dhansoi, District- Buxar (Bihar).

..... Appellants.
Versus
The State of Bihar
..... Respondent.

Appearance :
(In CR. APP (DB) No. 132 of 2011):
For the Appellant : Dr. Amrendra Kumar, M/s. Manish Rai Sharma and Ajay Kumar Pandey, Advocates.
(In CR. APP (DB) No. 52 of 2011):
For the Appellants : M/s. Pashsuspati Prasad Sinha, Pramod Kumar & Deepak

Kumar, Advocates.

(In CR. APP (DB) No. 77 of 2011) :

For the Appellants : Dr. Amrendra Kumar, M/s. Manish Rai Sharma and Ravi Shankar Pankaj, Advocate.

In all the Appeals:

For the State : M/s. A.K. Sinha, A. Sharma and S.N. Prasad, A.P.Ps.

For the Informant : Mr. Krishna Prasad Singh, Senior Advocate & Mrs. Meena Singh, Advocate.

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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: 13-01-2016

Appellant Raj Kumar Choudhary of Criminal Appeal (DB)

No.132 of 2011 has been convicted under Section 302 of the Indian Penal Code and Section 27 of the Arms Act and sentenced to rigorous imprisonment for life under Section 302 of the Indian Penal Code and rigorous imprisonment for three years under Section 27 of the Arms Act, whereas Appellants Balister Chaudhary and Musa Chaudhary of Criminal Appeal (DB) No.52 of 2011 have been convicted under Sections 302/34 of the Indian Penal Code and sentenced to rigorous imprisonment for life and Appellants Jawahir Choudhary and Rama Kant Chaudhary of Criminal Appeal (DB) No.77 of 2011 have been convicted under Sections 302/34 of the Indian Penal Code and Section 27 of the Arms Act and sentenced to rigorous imprisonment for life and three years respectively vide Judgment/Order dated 28.12.2010/05.01.2011 passed by the Additional Sessions Judge, Fast Track Court No.II, Rohtas at Sasaram, in Sessions Trial No.481 of

2008/Tr.261 of 2009.

2. The case of the prosecution, according to the Informant (P.W.8) Birendra Kumar Singh, is that on 01.06.2008 at about 8.45 P.M., the accused persons variously armed suddenly came to his door, while he was teaching some children and then Appellant Raj Kumar Chaudhary shot at his son Harendra Kumar Singh (deceased) on the forehead. When he raised "Hulla", his father Ram Chandra Singh (P.W.2), cousin brother Ram Parvesh Singh (P.W.7), younger brother Satendra Kumar Singh (P.W.5), cousin brother Ram Awadha Rai (P.W.1) reached there and caught hold of Appellants Jawahir Chaudhary and Rama Shankar Chaudhary. From the possession of Appellant Jawahir Chaudhary one country made pistol and two live cartridges were recovered, whereas, Raj Kumar Chaudhary, Balister Chaudhary and Musa Chaudhary ran away. The deceased was taken to the Kochas Hospital, where he was being treated. This information was given at the Primary Health Centre, Kochas at 10.10 P.M. before the Investigating Officer (P.W.10) by the Informant Birendra Kumar Singh (P.W.8). Later on, the deceased died on account of which Section 302 of the Indian Penal Code was also added in the present case and the accused were charged and put on trial and convicted as mentioned above.

3. During trial, the prosecution examined 11 witnesses.

4. P.W.1 Ram Awadha Rai happens to be the cousin brother of the deceased and he stated that on 01.06.2008 at about 08.30 P.M. while he was at his door, which was adjacent to the house of the Informant, and other witnesses were also present, they heard the sound of firing on the west side at which ladies who had gone to the field to defecate became afraid and came back. Then he saw four Appellants variously armed coming to the door of Birendra Kumar Singh (P.W.8). P.W.8 Birendra Kumar Singh asked the Appellant Jawahir Choudhary and rest accused as to why they were making firing since ladies had become frightened. At this, accused persons started abusing the Informant Birendra Kumar Singh and when his son Harendra Kumar Singh the deceased intervened, Appellant Raj Kumar Choudhary fired on his forehead due to which he fell down. Appellant Jawahir Choudhary also fired at the informant but it did not hit him. When the accused started to run, they caught hold of two Appellants i.e. Jawahir Choudhary and Rama Shankar Chaudhary. Then deceased was taken to Kochas Hospital but he was referred to Banaras and while they were on the way, he died. He proved the signature of the Informant Birendra Kumar Singh (P.W.8) and his signature on the Fardbeyan as Exts.1 and 1/1. He stated that after they returned from Banaras they went to the police station and Birendra Kumar Singh once again gave Fardbeyan, in carbon copy of which he



proves the signature of the Informant as Ext.1/2 and his own signature as Ext.1/3. In cross examination, he conceded that the Informant was his cousin brother and that on the date of occurrence, all the accused persons had come together to the door of the Informant and fired. Importantly, in cross-examination, he stated that before firing was resorted to there was an altercation between the two parties which continued for about 5 minutes and then the deceased was shot at. His attention was drawn to the earlier statement that he had not stated about the firing having been resorted to by the Appellant Jawahir Chaudhary.

5. P.W.2 Ram Chandra Singh, the father of the Informant, stated that on the night of occurrence while he was at his door, women were going to the field to defecate but they returned because there was some firing in the field which they also heard. Then the five accused persons variously armed came to the door to whom the Informant questioned as to why they had fired since the women had got scared. At his questioning, the accused persons caught hold of his grand son, the deceased Harendra Kumar Singh and Appellant Raj Kumar Choudhary fired at him on the forehead on account of which he fell down. While the accused persons were fleeing away, the Appellants Jawahir Choudhary and Rama Shankar Chaudhary were caught. The deceased was then taken to the Hospital on a tractor but

on the way to Banaras he died. In cross examination, his attention was drawn to the earlier statement that he had not stated that the accused persons had caught hold of his grand son, the deceased.

6. P.W.3 Jagdish Singh is hearsay witness. He has stated that when he came to the door of the Informant on the sound of firing, he found Jawahir Choudhary and Rama Shankar Chaudhary having been caught and detained there. From Birendra Kumar Singh (P.W.8) he learnt about the occurrence which he narrates. In cross examination, he stated that he was the uncle of the Informant whereas the deceased was his grand son. Importantly, he has stated that the house of the Informant was bounded by about 8 feet high boundary wall and the dead body of the deceased was found outside the boundary wall. It appears that the Informant has not stated about narrating the occurrence to this witness and, therefore, his hearsay count is inadmissible.

7. P.W.4 Harihar Roy is next witness, who also came on "Hulla" and found the deceased dead and there he heard about the occurrence from the family of Birendra. In cross examination, he changed the place of occurrence to be the Khaliyan of Chandrashekhar where he found the deceased in an injured condition in the lap of the uncle of the deceased.

8. P.W.5 Satyendra Kumar Singh stated that while he was



at his door, rest of the witnesses were also there, and he heard sound of firing and saw the women returning from the field shouting and said that the Appellants were coming with arms and that they had run away on seeing them. The Appellants then came to the door of the Informant and when the Informant asked them as to why they had fired, Appellant Raj Kumar Choudhary fired at the deceased. On the shouts of the rest of the Appellants for assault, Jawahir is said to have fired at the Informant but it missed. He stated that Appellants Jawahir and Rama Shankar were caught there and from the possession of Appellant Jawahir, one pistol and two live cartridges were recovered. He stated that he was one of the persons who had taken the deceased to the hospital from where he was referred to Banaras but unfortunately on the way he died. He proved his signature on the Inquest Report which is Ext.2 and the signature of the Informant Birendra Kumar Singh (P.W.8) which is Ext.2/1. His attention was drawn to the earlier statement that he had not stated that the rest of the accused persons had shouted to assault at which the Appellant Raj Kumar Choudhary had shot at the deceased or that the Appellant Jawahir had shot at the Informant which had missed him.

9. P.W.6 Gauri Shankar Yadav is a formal witness, who had brought the pistol, which was seized in connection with Kochas P.S. Case No. 56 of 2008.

10. P.W. 7 Ram Parvesh Singh stated that on the night of occurrence, he was standing at his door, which was adjacent to that of the Informant and from the west side of the village he heard the sound of firing and women were narrating that five persons were armed and firing. Soon thereafter they came to their door and when the Informant asked him as to why he had fired, which had scared the ladies, the accused persons had started abusing. Then Appellant Jawahir, Rama Shankar, Balister and Musa caught hold of the deceased and Appellant Raj Kumar Chaudhary fired at the deceased. Jawahir Choudhary is also said to have fired on the Informant, which missed him and then Appellant Jawahir and Rama Shankar were caught by the villagers. He stated that a separate case had been instituted for recovery of firearms from the possession of Appellant Jawahir Choudhary, which was going on. He also admits that he is the uncle of the deceased. He also stated that the house of the deceased was bounded by brick wall and it was only he and Satyendra, who had caught hold of Jawahir Choudhary and none else was present there. He was the person, who had recovered the firearms and detained him along with Rama Shankar Choudhary and handed over to the Police. He also gave the evidence in the case instituted for holding arms against Jawahir. His attention was drawn to the earlier statement with regard to all the Appellants being armed and that while rest of the

Appellants had caught hold of the deceased, Appellant Raj Kumar Choudhary had fired at him and Jawahir Choudhary had fired at the Informant.

11. P.W.8 Informant Birendra Kumar Singh stated that on the date of occurrence while he was at his door, he heard sound of firing from the west and women rushing back. Thereafter, they saw a number of persons gathered at his door. While the women started narrating that the Appellants were armed with guns and had fired, they saw the Appellants coming to the door at which the Informant questioned him as to why they had fired because the women had become afraid. Then the accused started abusing him and exhorted to assault. When his son, Harendra Kumar intervened, while rest of the Appellants caught hold of him and Appellant Raj Kumar Choudhary fired which hit him on his forehead. Appellant Jawahir also fired at him but it missed. When the accused started to run, the villagers caught hold Jawahir and Rama Shankar and detained them. From the possession of Jawahir, arms were recovered. He states that his signature on the Fardbeyan had already been exhibited as Ext.1 and 1/1 and the Inquest Report as Ext.2. He states that the motive for the occurrence was that in his house the father of Appellant Jawahir Choudhary and his relatives had committed dacoity of which case had been instituted by his father in which the accused persons had been

convicted and, therefore, in conspiracy they had committed this act. However, in cross examination, he gives a very shaky evidence in regard to the case of dacoity. His attention was drawn to the earlier statement that he had also stated before the police in his Fardbeyan that there was enmity from before with the accused persons. He also admits that there was talk with the accused for about 2-4 minutes with Informant in course of which deceased was caught and, thereafter, killed. As for the place of occurrence, he stated that it was Khaliyan of Chandrashekhar Pandey and it is there that all the villagers had gathered. His attention was drawn to the previous statement with regard to the motive of the occurrence or that rest of the accused persons had caught hold of the deceased and then Appellant Raj Kumar Choudhary had fired at him and he himself had been fired by the Appellant Jawahir. He stated that the house of the Appellants was close to his house and they all belonged to the same family.

12. P.W.9 Dr. Anil Kumar conducted the post-mortem of the dead body of the deceased and found the following ante mortem injuries on his person:

External Examination:-

(I). Stitched wound 1/2" long found over mid of forehead. Removed the stitches and found lacerated wound 1/2" X 1/2" over mid of forehead with blackened margin and cavity deep.

13. P.W.10 Bashishta Prasad Mandal is Investigating Officer, who stated that while he was the ASI of Kochas Police Station, he heard rumour that some body had come in an injured condition to Kochas Hospital at which he reached there and recorded the Fardbeyan of Informant Birendra Kumar Singh, which is exhibited as Ext.4. In the formal First Information Report, he proves his signature as Ext. 5. He also stated that he heard that Jawahir and Rama Shankar Choudhary had been detained by the villagers at which he went there and took them in his charge. He proved the Inquest Report (Ext.6). As for the place of occurrence, he stated that it was the Khaliyan of Chandrasekhar Pandey, which was next to the “Dalan” of the Informant. He stated that a separate case had been instituted under the provisions of Arms Act against the Appellant Jawahir Choudhary. He stated that the Informant and the witnesses have stated that while the deceased was standing at the place of occurrence, Appellant Raj Kumar Choudhary had fired from south-east about 20-25 feet away, which had hit Harendra Kumar Singh on his forehead on account of which he had fell down. He stated that he did not find any blood stains at the “Dalan”. His attention was drawn to the earlier statements of the witnesses and he has confirmed that witnesses had not stated the rest of the Appellants had caught hold of the deceased or the Appellant Jawahir Choudhary had fired at the Informant. He also

confirmed that the Informant had stated about the previous enmity between the parties.

14. P.W.11 Kamta Paswan is a formal witness who proved the bullet recovered from the person of the deceased as Ext.I.

15. On going to the evidence of the witnesses, the consistent story is to the following effect:

(i). The firing had taken place on the western part of the village which had frightened the ladies who had gone to the open field to defecate.

(ii). Soon thereafter, all the accused persons variously armed had crossed the door of the Informant.

(iii). The Informant had then questioned the Appellants as to why they had fired.

(iv). There had been an altercation between the parties on this questioning.

(v). The deceased had intervened in the altercation.

(vi). It was then that the Appellant Raj Kumar Choudhary had fired at the deceased.

(vii).The Appellants Jawahir Choudhary and Rama Shankar Chaudhary had been caught hold by the villagers.

(viii).The dead body was outside the boundary wall of his house in the Khaliyan of Chandrasekhar Pandey.



16. From the above, we are inclined to conclude that the Appellants had not come to the door of the Informant specifically targeting the deceased. It appears that they were crossing the area where the house of the Informant was situated and on reaching near the Khaliyan of Chandrasekhar Pandey, a fight had ensued in course of which the Appellant Raj Kumar Choudhary had fired at the deceased. This leaves out any scope for deducing that the Appellants had a common intention or object to commit the murder of the deceased. The occurrence of firing appears to have happened on the spur of the moment, when the Appellants were questioned with regard to the firing at the village. We also notice that a separate case had been instituted against the Appellant Jawahir Choudhary under the Arms Act in which, as we have now been informed, he has been convicted. None of the witnesses had stated earlier that Appellant Jawahir Choudhary had fired at the Informant which had missed him or that the rest of the Appellants had caught hold of the deceased and there being no overt act attributed to them we would be inclined to hold that apart from Raj Kumar Choudhary none of the accused can be held culpable for the act of murder.

17. As such, for the above reasons, we are inclined to allow the appeals of the Appellants, Balister Chaudhary and Musa Chaudhary, bearing Criminal Appeal (DB) No.52 of 2011 and

Jawahir Choudhary and Rama Shankar Chaudhary, bearing Criminal Appeal (DB) No.77 of 2011. The aforesaid Appellants are acquitted of the charge. They are on bail, therefore, they are discharged from the liabilities of their bail bonds.

18. As for the Appellant Raj Kumar Choudhary of Criminal Appeal (DB) No.132 of 2011 is concerned, since there is consistent eye-witness account that it was he who had fired at the deceased and caused his death as confirmed by the Doctor, who found a single firearm injury on his forehead, his Appeal is dismissed.

19. In the result, Criminal Appeal (DB) No.132 of 2011 is dismissed whereas Criminal Appeal (DB) Nos.52 of 2011 and 77 of 2011 are allowed.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

**Pradeep Srivastava/Manish Kumar/
A.F.R.**

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