

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 1180 of 2010

Arising out of P.S. Case No. -320 Year- 1991 Thana –Silao
(Rajgir) District- NALANDA (BIHARSHARIFF)

Krishna Mahto, Son of Late Guru Sahay Mahto, Resident of Vill-
Hindupur, P.S-Chhabilapur, Dist-Nalanda.

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

Criminal Appeal (DB) No. 1102 of 2010

Arising out of P.S. Case No. -320 Year- 1991 Thana –Silao
(Rajgir) District- NALANDA (BIHARSHARIFF)

Kalendra Mahto, Son of Late Guru Sahay Mahto, Resident of Village-
Hindupur, P.S.-Chhabilapur, District-Nalanda.

..... Appellant/s
Versus
The State of Bihar
..... Respondent/s

Appearance :

(In CR. APP (DB) No.1180 of 2010)

For the Appellant/s : Mr. Bindhkeshari Kumar, Sr. Adv.
Mr. Neeraj Kumar, Adv.

For the Respondent/s : Mr. S.C. Mishra, APP.

(In CR. APP (DB) No.1102 of 2010)

For the Appellant/s : Mr. Bindhkeshari Kumar, Sr. Adv.
Mr. Neeraj Kumar, Adv.

Mr. Satyendra Narayan Singh, Adv.

For the Respondent/s : Mr. S.C. Mishra, APP.

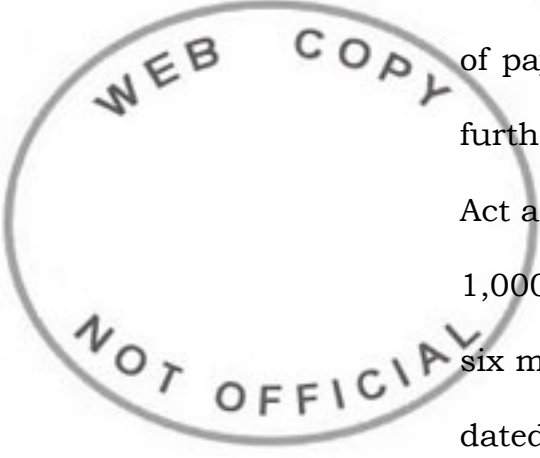
CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR
MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 16-05-2016

01. The Appellants have been convicted under



Section 302/34 of the Indian Penal Code and sentenced to R.I. for life and also to pay a fine of Rs. 5,000/- and in default of payment of fine further sentenced to R.I. for one year and further he has been convicted under Section 27 of the Arms Act and sentenced to R.I. for three years and to pay fine of Rs. 1,000/- and in default of payment of fine to undergo R.I. for six months by a judgment of conviction and order of sentence dated 23/24.08.2010 by the Additional Sessions Judge, F.T.C.-V, Nalanda at Biharsharif in S.Tr. No. 382 of 1992 arising out of Silao (Rajgir) P.S. Case No. 320 of 1991.

02. The case of the prosecution according to Janki Ram, P.W. 5 is that he had four decimals of land over which he had constructed his house over two decimals whereas the two decimals were vacant which was in his occupation. However, the accused persons had collected bundles of paddy crops and kept it forcibly on it so the Informant complained to the Sarpanch and the Mukhiya about it. On 29.12.1991 at about 1 P.M. when his wife Sushila Devi went in the vacant land the accused persons abused her at which they became furious and brought out pistols from their house and both of them fired. However, the firing of Appellant, Kalendra Mahto did not hit any one but when Krishna Mahto fired it hit the son of the Informant, Umesh Ram near his left eye on account of which he died instantaneously. A fardbeyan was given in regard to this occurrence and the investigation started.

03. During trial the prosecution examined eight witnesses.

04. P.W. 1, Muneshwar Prasad Singh has given an eye-witness account about the occurrence but we find that his attention was drawn extensively to his earlier statement and the I.O. P.W. 7, Raj Kishore Singh confirmed that in fact he was not an eye-witness and had merely arrived at the place of occurrence after the same and had merely seen the Appellants fleeing away from the place of occurrence. In such circumstances, this witness is merely corroborative to the extent of the factum of occurrence.

05. P.W. 2, Sunita Kumari is the daughter of the Informant who supports the fact that the Appellants had started to abuse her mother Sushila Devi, P.W. 3 whereafter an altercation has started between her family members and the Appellants in course of which Appellants brought out pistols from their house and fired. However, the firing of Kalendra Mahto did not hit any one whereas the firing of Krishna Mahto caused the death of her brother.

In cross-examination, she stated that the deceased was a tailor and since the two years he and his friends used to come home and eat and drink. She denied that the Informant had abused the two Appellants or assaulted them with lathies.

06. P.W. 3, Sushila Devi is the wife of the Informant who supported the version given by her husband

that when she went to urinate the Appellants abused thereafter an altercation started between them in which they tried to intervene. However, the Appellants got further angry and bought out pistols from their house and fired. On account of firing of the Appellant, Krishna Mahto her son died.

From her version, it appears that the Appellants were asserting that they were in occupation of the land in question and it was the prosecution party which was disturbing their possession. She stated that the Chowkidar came and took the dead body to the Police Station whereafter the Police Officer came with the Chowkidar sometime in the evening. It was suggested to her that in fact her son had been killed in another manner by his own party but she denies the suggestion.

07. P.W. 4, Anita Kumari is the other daughter of the Informant and sister of the deceased and also supported the facts stated by P.W. 1 and P.W. 2.

In cross-examination, she stated that her mother had gone to urinate to the north of the "Gali". She stated that the accused lived nearby and there was no dispute between them.

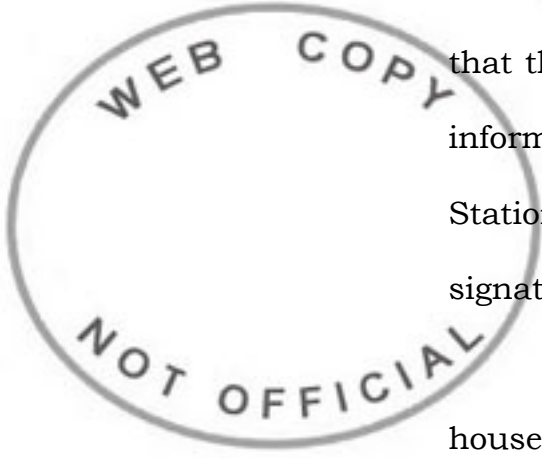
08. P.W. 5, Janki Ram is the Informant who stated that on 29.12.1991 during the day time when his wife P.W. 3, Sushila Devi went to urinate the Appellants picked up a quarrel with her and when they tried to intervene the

Appellants brought out pistols from their house and fired whereas the firing of Kalendra Mahto did not hit, he confirmed that the firing of Krishna Mahto hit his son. He stated that he informed the Chowkidar and both of them left for Rajgir Police Station and gave his fardbeyan on which he identifies his signature as (Exhibit-1).

From the topography he gives it appears that the house of the Appellant was nearby. He also states that there was no dispute between the parties from before. He confirmed that apart from his family members no one else were there when the occurrence took place.

09. P.W. 6, Kailash Prasad is a formal witness who has proved the seizure-list of the blood-stained earth as Exhibit-1/1.

10. P.W. 7, Raj Kishore Singh is the Investigating Officer posted as Officer In-charge at Rajgir Police Station and at 2.30 P.M. he had recorded the fardbeyan of the Informant which is identified as (Exhibit-2) and the First Information Report as (Exhibit-3). He supported the investigation in respect to the place of occurrence which was situated in village, Hindupur and adjacent to the house and the Informant in a "Gali" which went south. The dead body was found in a pool of blood and that he sent the dead body for post-mortem. He also collected the blood-stained earth and prepared the seizure-list which is marked as (Exhibit-5). He further procured the Post-



mortem Report and submitted the charge-sheet.

In cross-examination, he conceded that P.W. 1 had not deposed as an eye-witness and there is some minor contradiction in regard to the evidence of P.W. 5.

11. P.W. 8, the Doctor Ravi Ranjan Rajesh held the Post-mortem and found the following injuries on the person of the deceased as also proved the Post-mortem as (Exhibit-6):-

"1. One charred lacerated wound with inverted black and sinzing of hair of size $\frac{1}{2}$ "x $\frac{1}{2}$ ". Cranial cavity deep found on the left eye-brow with laceration of left eye-walls wound of entry presence charring around the wound. On dissection of wound of cranial cavity fracture of orbital and frontal bone of left side of skull menanzing clot. One long metally foreign body like bullet lodged in posterior region. Oscipital lobe of brain which was removed and sealed in a glass container. Blood clots present underneath the tissue of wound.

2. On dissection of chest both lungs were congested and intact. Left heart chamber was empty and right heart chamber contained blood.

3. On dissection of abdomen, abdominal viscera were congested and intact contain semi digested food material of about four ounces. Mucosa stomach was healthy. Small intestine contained food and gas. Large intestine contained gas. In the opinion of the Doctor, death occurred due to some injury caused by fire arms. Time elapsed since death is within 24 to 36 hours. Rigor mortis present in lower extremity



and passing in upper extremity. One foreign metallic foreign body was recovered from inside of the cranial cavity, which was sealed in a glass container which was handed over to the Constable who accompanied the dead body. On his recognition, this post-mortem examination report, which is in his pen and signature, has been marked as Ext. 6. This witness has been cross-examined, but nothing fatal to the prosecution case could be found out. The medical evidence proves that the injury to the deceased was caused by fire arms."

12. Learned counsel for the Appellants submits that even if his complicity is believed in the facts of the case no offence under Section 302/34 is made out.

13. On going through the evidence of the witnesses, we find that admittedly, the occurrence took place on the spur of the moment without premeditation and in the midst of an altercation in which both the parties were involved. Admittedly, according to the Informant there was a dispute only in respect to asserting possession over a piece of land between them. There was no earlier dispute as the witnesses have conceded, meaning thereby, that the altercation had taken place suddenly. Admittedly, the firing of Appellant, Kalendra Mahto did not hit anyone nor did either of the Appellants repeat the firing.

14. In such circumstances, we are inclined to hold that in the facts of the case the Appellant, Kalendra Mahto is

punishable under Section 307 IPC and his sentence is reduced to the period already undergone by him. As for the Appellant, Krishna Mahto, we find that in the facts of the case since he had not intended to cause death of the deceased and there is no repetition of firing he is convicted under Section 304 Part-I IPC and his sentence is reduced to the period undergone by him.

15. With the aforesaid modification in conviction and sentence, the Appeals stand dismissed.

(Anjana Prakash, J.)

(Rajendra Kumar Mishra, J.)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	X
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