

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.432 of 2013

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(Against the Judgment of conviction dated 26.04.2013 and Order of sentence dated 27.04.2013 passed by the Ist Additional Sessions Judge, Gopalganj, in Sessions Trial No. 67 of 2009).

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Munna Mishra, Son of Late Ganga Mishra @ Laxmi Kant Mishra, Resident of Village- Panan Bahuawan, P.S. Kateya, District- Gopalganj.

.... Appellant.

Versus

The State of Bihar

.... Respondent.

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Appearance :

For the Appellant : Mr. Ajay Kumar Thakur, Advocate.
Mr. Mritunjay Prasad Singh, Advocate.
For the State : Mr. A.K. Sinha, A.P.P.
For the Informant : Mr. Rahul Nath, 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: 19-04-2016

The sole Appellant has been convicted under Section 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life and fine of Rs.10,000/-, in default of which, to undergo further six months simple imprisonment, under Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for five years and fine of Rs.3,000/-, in default of which, to undergo further three months simple imprisonment vide Judgment of conviction dated 26.04.2013 and Order of sentence dated 27.04.2013 passed by the Ist Additional Sessions Judge, Gopalganj, in Sessions

Trial No. 67 of 2009.

2. The case of the prosecution, according to the Fardbeyan of the Informant Kalawati Devi (P.W.4), is that, on 30.09.2006, at about 9 P.M, while she was cooking food and her husband was sitting on the Verandah, co-villagers Munna Mishra (Appellant) and Braj Kishore Mishra @ Jhinku Mishra came and started talking with him and they were telling him that the land which he had got executed from Arun Mishra should be left and then Appellant Munna Mishra took out a Pistol and fired at him, on account of which, he fell down dead. She was also threatened to go inside the house. The two accused persons sat on the motorcycle and fled away. This information was given at 10.30 P.M. on the same day at the Kateya Police Station.

3. During trial, the prosecution examined seven witnesses.

4. P.W. 1 Banarsi Gond did not support the case of prosecution and, therefore, he was declared hostile. Further, it was suggested to him that he was sitting at his door on the date of occurrence while he heard sound of firing and hue and cry of the informant and when he reached there he saw Sugriv Mishra (deceased) injured. Several persons gathered and took the deceased to Kateya and there was a dispute between the deceased, Sugriv Mishra

and Appellant Munna Mishra. This fact has been corroborated by the Investigating Officer.

Thus looking into the earlier statement of this witness we find that he had not mentioned the names of any of the accused persons, even though, he reached the place right after the occurrence.

5. P.W. 2 Ram Bahadur Sharma, was present along with the deceased in his house, when Appellant Munna Mishra came there and called out the deceased Sugriv Mishra, on which, both he and his wife (P.W.4 the informant) came out from his house and all three went towards the East and started talking to each other then the Appellant Munna Mishra fired at the deceased, on account of which he fell down dead. He also found accused Jhinku Mishra moving nearby the place of occurrence.

We thus find that he gave a slightly different version of the prosecution case as detailed in the First Information Report and the Informant had interestingly not mentioned his name in the First Information Report.

6. P.W. 3 Oshiyar Sah stated that at the time of occurrence he was at Katya where he saw that accused Jhinku Mishra having come there on motorcycle and fired at the deceased, on account of which, he fell down dead. He denied the presence of any other accused persons.

We thus find that he has stated that it was Jhinku Mishra, who shot at the deceased and contradicts the statement of P.W.2, who had stated that Jhinku Mishra was moving around the area whereas Munna Mishra had fired at the deceased. He also contradicts the informant with regard to the Appellant having caused death of the deceased.

7. P.W.4 Kalawati Devi is the informant, who stated that, on 30.09.2006, at about 9 P.M., while she was also with her husband (the deceased) in her newly constructed house, two accused including the Appellant came there and started talking with her husband. She also went there and then they started to walk towards the old house. She started to cook food inside the house. Appellant Munna Mishra then allegedly told the deceased that he should leave the land which he had purchased from Arun Mishra, on which, an altercation arose between them and she also arrived. Appellant Munna Mishra then is said to have fired at the deceased and fled away. Appellant Munna Mishra also threatened Ram Bahadur Singh etc. of dire consequences.

In cross-examination, it was suggested to her that she never used to live regularly at the village. To certain extent she conceded this point. From her evidence, we find that she had changed the manner of occurrence and not mentioned the presence of P.W.2

Ram Bahadur Sharma at all.

8. P.W.5 Sanjay Bidyarthi is formal police official, who only submitted the charge-sheet.

9. P.W. 6 Dr. Mohammad Ishrail conducted the Post-Mortem of the deceased, Sugriv Mishra on 01.10.2006 and found following injuries on his person.

(I) Charred and lacerated wound around 4" x 2" x skin deep touching and tearing right lower end of ulna and tribula on forearm.

(II) Charred and lacerated wound 4" x 3" x deep cavity of the thorax over the right side of sternum.

(III) Everted and charred wound 1/2" x 1/4" x deep cavity on left side of thorax in left of forehead in middle and auxiliary line.

He proves the Post-Mortem Examination Report as Ext.

1.

We thus find that to this extent the prosecution case is corroborated by this objective evidence.

10. P.W. 7 Sardendu Sarat is the Investigating Officer, who stated that on 30.09.2006 at about 10.30 P.M., informant along with dead body came to the police station with witnesses Arun Shukla and Ramashankar Tiwari (both not examined) and gave the Fardbeyan which he proves as Ext.2. He also proved the signatures on the Fardbeyan as Exts. 2/1 and 2/2 and the script of the story on

First Information Report as Ext.3. He also proves the Inquest Report as Ext.4.

As far the place of occurrence, he stated that it was a thatched room, which was next door and new construction was going on and inside the room there was a bed and pool of blood was found and the next room was a Kitchen where food material was kept. He did not take steps to see papers with regard to the land dispute between the Appellant and the deceased. Surprisingly, he did not find any pellet at the scene of the occurrence.

We thus find from his evidence that the place of occurrence is completely changed to be that being inside the house on the bed whereas the consistent story of the prosecution is that the deceased was called and while the Appellant and he were going towards the East outside the room the firing took place. We also find that the three eye witnesses discussed above have given different versions and have contradicted each other inter se even to the extent of complicity of the Appellant and in such circumstances it is difficult to place absolute reliance upon the veracity of the prosecution case.

11. Hence, 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.



Bhardwaj/-

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

AFR/NAFR	AFR
CAV DATE	
Uploading Date	
Transmission Date	