

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.170 of 1994

=====

Ram Sagar Rai, son of Late Ram Lochan Rai, resident of Village- Ghaghra,
P.S. Parihar, District- Sitamarhi

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Navin Kumar, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, A.P.P.

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 11-11-2017

Challenging his conviction ordered vide judgment
dated 7th of April, 1994 passed by the 1st Additional District &
Sessions Judge, Sitamarhi in Sessions Trial No. 185 of 1993,
arising out of G.R. No. 656 of 1992 and convicting him to R.I.



for life for an offence under Section 302 I.P.C., this appeal has been filed by the appellant under Section 374(2) read with Section 389 of the Code of Criminal Procedure.

It is the case of the prosecution that on 27.09.1992 at about 11:30 P.M. when the informant Raj Nandan Rai (P.W. 7) was sleeping in his house, he heard sound of gun fire from the nearby house of Shailendra Yadav. He rushed to the said house with a torch in his hand and heard the weeping and crying of the wife of Shailendra Yadav in her verandah-room. He flashed his torch light into that room from the eastern window and saw Jitendra Kumar, son of Shailendra Yadav injured and bleeding from his head. It is said that the informant with the help of others got opened the room which was locked from inside. In the meanwhile, villagers P.W. 5 Ram Sakal Rai and P.W. 8 Ram Shrestha Rai and several other persons arrived there and after getting the door opened when they entered into the room they found Jitendra Kumar, the 11 year old son of Shailendra Yadav gasping and having sustained a gun shot injury on his head. When they asked Jintendra Kumar as to what happened, he closed his mouth and is said to have died. On this, the informant is said to have asked wife of Shailendra Yadav namely P.W. 10 Urmila Devi as to what has happened but she



did not say anything and became unconscious.

First Information Report was lodged and both the appellant Ram Sagar Rai and his son Amar Rai were prosecuted for the offence.

The case of the defence was of false implication and inimical relation between the families.

In the trial, appellant has been convicted but appellant's son Amr Rai has been acquitted as the trial court records a finding that he has done nothing. He was only present at the spot as seen by P.W. 10 Urmila Devi.

Be it as it may be, the prosecution examined 13 witnesses which included the informant P.W. 7 Raj Nandan Rai, Urmila Devi P.W. 10 wife of Shailendra Yadav and mother of the deceased Jitendra Kumar, P.W. 1 Jawahar Rai, P.W. 2, Ram Jinish Rai and P.W. 3 Deolal Rai. They are all witnesses who came to the spot after the incident took place. Except Urmila Devi P.W. 10 none of the witnesses in this case can be termed as an eye-witness or a witness to the incident. All are either witnesses who came to the spot after the occurrence or witness to the seizure memo, recording of the fardbeyan etc. except doctor Krishna Nandan Prasad P.W. 9, the Medical Officer who has examined the victim deceased and P.W. 13 Bageshwar Rai



the Investigating Officer.

The defence has also examined two witnesses namely Jitendra Jha as D.W. 1 and D.W. 2 Krishna Chandra Prasad who have proved certain documents being documents to show the inimical relationship between the parties.

On a close scrutiny of the evidence available on record, it is seen that the entire case of the prosecution and the conviction itself is based on the testimony of P.W. 10 Urmila Devi who says that from the window of the room she had seen the barrel of a gun and the appellant firing on her son. Now, when we scan the statement of Urmila Devi, the so-called sole eye-witness, she speaks about she and her son sleeping on the Chowki, her son was asleep and she was awake and in the meanwhile she says that she saw the barrel of a gun being put through the bars of the eastern window. She says that a lantern was burning in the room and in the light of the lantern she saw the barrel of the gun. On seeing this, she is said to have raised a hue and cry and saw accused Ram Sagar Rai opening fire from this gun which caused injury on the head of her son. She says that she caught hold of her son but he opened his mouth twice and died. She speaks about the fact that she made a hulla and shouted that Ram Sagar Rai has killed her son and thereafter she



became unconscious. She speaks about the fact that she gained conscious on the next day. She also says that along with accused Ram Sagar Rai she saw his son Amar Rai standing beside him. However in her cross-examination she stated that she could identify the accused from the lantern burning in the house. She speaks about making hulla-gulla for a period of more than 5 minutes after the gun shot was fired and she became unconscious thereafter. She also says that only one fire was made.

If we analyze her statement and evaluate it with the statement of other witnesses, it is seen that except for Raj Nandan Rai P.W. 7 all other witnesses came to the spot much after the incident had taken place. Even Raj Nandan Rai does not say anything about the incident. He says that he was sleeping in his house and when he heard the gun-shot sound from the house of Shailendra Yadav and flashed a torch light through the window and saw the deceased lying in the injured condition and on entering the room after forcing it open, he saw Jitendra Kumar and his mother lying unconscious. He also says that only one lantern was burning in the room and outside was completely dark. Even though in the Court he speaks about Urmila Devi P.W. 10 lying unconscious when he entered the



room but in the fardbeyan and information given by him he says that when he went to the house of Shailendra Yadav with a torch in his hand he found wife of Shailendra Yadav shouting and making lot of commotion. He saw through the window by flashing his torch light. He wanted to open the door. He opened the door with the help of other witnesses who came there and on going through the room he found the 11 year old son of Shailendra Yadav injured and when we tried to ask him what has happened, he closed his mouth and died. He speaks about Urmila Devi P.W. 10 being conscious then and asking her as to what has happened and he only says that she was crying and did not say anything and thereafter sometime she becoming unconscious. That apart from the evidence that has come on record, it is seen that there was only a lantern burning in the room. The gun-shot injury was fired from the back side of the head. P.W. 3 Deolal Rai speaks about his returning after easing from the eastern side of his house, his hearing a sound of gun-shot from the house of Shailendra Yadav and in the flash light seeing Amar Singh and Ram Singh near the house. However, he speaks about going to the house and Urmila Devi narrating him the story. The statement of this witness becomes doubtful as it is totally contrary to what Urmila Devi and the informant has



spoken.

The First Information Report is against unknown person and the entire evidence is based on the statement of Urmila Devi. The statement of Urmila Devi has to be appreciated by taking note of the fact that she was in the room where a lantern was burning and outside it was complete dark and merely from such a light it is impossible to accept that she would have seen the faces of both the accused persons. That apart, the gun which is said to have used for commission of the offence has not been seized. What has been seized is only the blood and the pellets from the room. No forensic evidence has been produced to prove that the injuries were caused by the firearm which is said to have been used and the pellets were fired from the said firearm. The prosecution has failed to prove use of firearm by the appellant by not seizing the firearm and getting it ballistically examined by an expert. This read with the fact that in the mid-night in the village it would be very difficult to see and identify a person on the basis of a lantern only burning in the room, we have no hesitation in holding that the benefit of this has to go to the appellant as possibility of false implication due to various reasons explained by the defence cannot be ruled out.



Taking note of all these circumstances, the appeal is allowed, the impugned judgment of conviction and sentence are quashed and the appellant is discharged from the liability of his bail bond.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

P.K.P.

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	15.11.2017
Transmission Date	

