

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.175 of 1994

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Serajuddin @ Bachha Khan

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rampravesh Nath Tiwary, Advocate
Mr. Abul Kalam, Advocate
Mr. Sanjay Kumar Sinha, Advocate

For the Respondent/s : Mr. Dilip Kumar Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA)

Date: 11-11-2017

This appeal has been preferred by the appellant against the judgment dated 22.02.1994 and order of sentence dated 26.02.1994 passed by Sri Tarkeshwar Prasad Singh, 3rd Additional Sessions Judge, Chapra, in S.T. No. 18/93, whereby the appellant was convicted for the offence punishable under Sections 302 of the Indian Penal Code and was sentenced to undergo rigorous imprisonment for life.

2. Brief facts of the case are that while the informant and his mother was at home, appellant came armed with double barrel gun and fired on the mother of the informant due to which she died.

3. On the basis of above, a case being Taraiya P.S. Case No. 27 of 92 was registered against the appellant under Section 302 of Indian



Penal Code. Police after investigation submitted charge-sheet against the appellant under Section 302 of the Indian Penal Code and cognizance of the offence was taken. Thereafter, the case was committed to the court of sessions, which ultimately traveled to the file of Sri Tarkeshwark Prasad Singh, learned 3rd Additional Sessions Judge, Chapra, for trial and disposal.

4. Learned Trial Court after conclusion of trial convicted the appellant under Section 302 of Indian Penal Code and sentenced him to undergo rigorous imprisonment for life.

5. Aggrieved by the said judgment, the appellant preferred the present appeal.

6. Learned counsel for the appellant has assailed the judgment of trial court and submitted that the appellant has falsely been implicated in this case at the instance of informant as he used to suspect that there was love affair between his wife and the appellant, which will appear from the evidence of D.W. 1, who had stated in his evidence that the appellant used to visit the house of the informant. Further submission that almost all the witnesses of the prosecution side are interested witnesses as they all were members of one family and further there is no independent eye witness to prove the occurrence, though occurrence took place in broad daylight. It has also been submitted that the Medical report is contradictory to the established principle of Medical Jurisprudence as wound of exit is smaller in size



than the wound of entry.

7. Learned counsel for the State, on the other hand, has countered the submission of learned counsel for the appellant and submitted that there is direct allegation against the petitioner of firing on the deceased causing her death, which has been substantiated by the evidence of P.W. 2, P.W. 3, P.W. 5 and P.W. 6. Further other witnesses had also seen the appellant fleeing away from the place of occurrence with a double barrel gun. It has also been submitted that the above evidence of witnesses found further corroboration from the medical evidence, in which cause of death has been ascertained due to gunshot injury. Learned counsel for the State further submitted that the motive behind the occurrence is also apparent as some days prior to the occurrence deceased had asked the appellant either to pay back her money or execute a sale deed, on which the appellant had become angry and had threatened her.

8. From perusal of material available on record, it appears that P.W. 5 is the informant in this case and he has stated in his chief that at about 4.30 to 5.00 am in the morning he was tying ox near his darwaza and her mother was sitting in a chowki on darwaza, the appellant came armed with double barrel gun and he fired on his mother and fled away. Her mother fell on the ground and died. He has also stated in his evidence that his wife (P.W. 2) Jhagru Pandit (P.W. 3) and Lalmuni Devi (P.W. 6) had seen the occurrence. His evidence



also shows that Jalandhar Pandit (P.W. 4) was also sleeping there. According to him motive of the occurrence is that appellant has taken Rs. 3,000/- from his mother and given 3 katha of land in mortgage and his mother has asked the appellant either to execute the sale deed in her favour or pay back the money. The aforesaid evidence of P.W. 5 has been corroborated by the fardbeyan, the earliest version of the prosecution in toto. This witness has been cross examined also at length and even in his cross examination he has stated that the gun carried by the appellant was a double barrel gun but there is nothing in his cross-examination to doubt the veracity of testimony of this witness rather his evidence has been corroborated by the evidence of P.W. 2 who is the wife of the deceased as well as P.W. 3 and P.W. 6,1 who are the uncle and aunt of the informant and they have been named in the F.I.R also as a witness in this case.

9. Learned counsel for appellant has come with the defence that he has relationship with P.W. 2 and due to that P.W. 5 being her husband was annoyed as such he has named the appellant in this case., However, the evidence of P.W. 2 shows that while she was washing the utensils the appellant came and fired on the deceased and she had seen on her own eyes appellant firing on the deceased. She has also supported the motive behind the occurrence in her evidence in chief in para -1 and 2 of her chief. This witness has also been cross examined and she has also stated in her cross-examination that her mother in



law fell on the darwaza after receiving injuries and she died. This witness has been cross-examined at length and her evidence does not show that she is not eye witness of the occurrence. She has also been cross-examined and she has stated that in spite of her marriage of eight years, she had no issue and the appellant is known to her for last eight years. He is unmarried and he used to come in her house for last eight years. Her evidence further shows that appellant is father in law in relation. No doubt her evidence in para -4 also shows that her husband asked the appellant not to come six months prior but there is nothing in cross examination to show that there was any intimacy between her and the appellant or she had any soft corner for the appellant. On the other hand, it clearly appears that she is an eye witness and supported the prosecution case.

10 P.W. 3 and 6 are the uncle and aunt of the informant and P.W. 3 has stated that he was standing on his darwaza from where darwaza of the informant was visible and the appellant came and fired on the deceased and after firing he fled away, thereafter, he had gone near the deceased, who died after two minutes and in spite of cross examination of this witness, there is nothing to show that he is not an eye witness of the occurrence and even no suggestion has been given that he has not seen the occurrence.

11. P.W. 6 has also stated in her evidence that the darwaza of the informant is visible from her darzawa and she saw that appellant came



with a rifle and fired on the deceased and fled away. Even in her cross examination that she has stated that firing was made from a distance of two to two and half hands and the deceased fell there. No suggestion has been given to this witness to show that she is not an eye witness of the occurrence.

12. P.W. 4 is the brother of informant and he has also stated that on hearing the sound of firing, he woke up and saw the appellant fleeing from there. His evidence also shows that he was sleeping at darwza of the informant, which has been corroborated by the F.I.R also and in spite of cross-examination, his evidence appears to be impeccable. P.W. 1, P.W. 7 had also stated that on the sound of firing they saw the appellant fleeing away from the place of occurrence, carrying double barrel gun. The evidence of I.O. in para -9 also shows that to the west from the house of the informant, there is house of Jhagru Pandit (P.W. 3) of east facing and house of P.W. 1 Khaderan Pandit, which is of west facing as such, it appears that P.W. 1, 3 and 6 are the close neighbours of the informant and their presence is quite natural.

13. Aforesaid oral evidence, which is impeccable in character has been supported by the evidence of P.W. -11 Doctor Arvind Kumar Gupta, who has found one lacerated wound about $\frac{3}{4}$ " X $\frac{1}{2}$ " in oval in the neck, black tattooing around the wound, the wound was passing downward and backward, blood vessels of right side of neck lacerated at the root of neck. This was the wound of entry. His evidence also



shows that one lacerated wound about ½”x ¼” in middle of right side of back was found, this was the wound of exit. One foreign body was found at the wound, taken out and sealed. His evidence further shows that cause of death in his opinion was haemorrhage and shock and damage of right lung caused by the injuries above mentioned, which were fire arm pellet injuries.

14. It further appears that two witnesses namely Ramlal Rai, Jamadar Singh, has been examined as court witness and Ramlal Rai proved his signature over the seizure list and also his signature over the fardbeyan and this witness claims to be the eye witness of the occurrence but he has stated in cross examination by prosecution that appellant was not present there and the informant has told him that the firing was accidental and the informant has also stated so before the police. However, this witness admitted his signature on fardbeyan, which clearly shows that it is the appellant, who fired on the deceased. As such it appears that this witness is supporting the real facts. C.W. – 2 is the reader in the inspector’s office and he has proved the part of case diary.

15. On discussions of the oral evidence as well as medical evidence, it clearly appears that witnesses have supported the prosecution case so far manner of occurrence is concerned and the same has been corroborated by the medical evidence.

16. So far submission of learned counsel for the appellant that all



the witnesses are interested and related witnesses and no independent witness was examined, though, the occurrence took place in midst of the village, the evidence shows that it was dawn hour and the evidence as discussed above also shows the presence of all the witnesses, quite natural as they are neighbour. It further appears that occurrence took place between 5.00 to 6.00 A.M. in the morning at the Darwaza of the informant, as such; presence of the villagers may not be possible at an early hour. It is also well established that the evidence of the prosecution cannot be brushed aside only on the ground that they are interested or related witnesses rather the evidence of those witnesses require close scrutiny and in the present case, as discussed above, there is nothing in their evidence to doubt their presence at the place of occurrence or to discredit their testimony or to show that they are not eye witness of the occurrence. Rather their evidence has been corroborated by the evidence of doctor P.W. 11. In this case appellant is sole accused and P.Ws 2, 3, 5 and 6, no doubt are related witness but merely because they are related, they do not become unreliable witnesses.

17. A submission has also been advanced that evidence of doctor clearly shows that wound of exit is smaller than the wound of entry and that falsifies the prosecution case as medical jurisprudence shows that the wound of exit generally is larger than the wound of entry and the doctor has also stated so in his evidence in para -5. However, in



our opinion, where there is ample oral evidence available on record to show that the appellant has fired from close range, causing death of the deceased, prosecution case cannot be thrown out on the above ground especially on the fact that the pellet was also recovered from the body. It further appears that the gun was produced as material ext. 1 in the court and the verification report of the gun has also been brought on record in this case, which shows that the gun was 12 bore Indian Made hammered DBBL gun, it is in working order and effective, the barrels of Ext. was examined chemically as a result of chemical analysis, fire arm discharged residues were detected in both the barrels indicating sign of previous firing.

18. On behalf of defence one witness has been examined, who has proved that one Dindayal Rai has lodged a case against Lalji Rai and other and he has proved the signature of Advocate over the complaint lodged by him as Ext. A. His evidence has been brought to show that some of the witnesses are at inimical terms but that is not sufficient to hold the consistent evidence of P.W. 2, 3, 5 and 6, untrustworthy.

19. Considering the entire discussions made above, it appears that prosecution case has been supported by the P.W. 2, 3, 5 and 6, who are eye witness of the occurrence and the aforesaid evidence has been corroborated by the medical evidence. It further appears that DBBL gun has also been seized on the same day, which is Ext. 6 by the police and sent for chemical examination to the F.S.L, in which it was



found effective and was recently used, hence, there are sufficient cogent, reliable and impeccable evidence available to show that appellant fired on the deceased causing her death and defence taken by the appellant does not appear to be convincing, as such, conviction of the appellant under Section 302 of Indian penal code appears to be just and proper and does not require any interference.

20. Accordingly this appeal is dismissed. Judgment dated 22.02.1994 and order of sentence dated 26.02.1994 passed by Sri Tarkeshwar Prasad Singh, 3rd Additional Sessions Judge, Chapra, in S.T. No. 18/93 and the same is, hereby, affirmed

21. As the appellant is on bail, his bail bond is cancelled and he is directed to be taken into custody to face the remaining sentence.

(Ajay Kumar Tripathi, J)

(Vinod Kumar Sinha, J)

sunil/-

AFR/NAFR	AFR
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