

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.272 of 1994

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Dinesh Ram, son of Shri Nathuni Ram, resident of village Mansingpur, police station- Gaurichak, District- Patna.

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Aaruni Singh, Advocate(Amicus Curiae)
For the Respondent/s : Mr. S.N. Prasad (APP)

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 25-11-2017

Heard the parties.

2. No one had appeared on behalf of appellant on 11.11.2017 when the case was called out as such this court appointed Mr. Aaruni Singh to assist this court as Amicus Curiae. The State is represented by learned A.P.P.

3. This criminal appeal is directed against the judgment of conviction and order of sentence dated 30.04.1994 passed by 12th Additional Sessions Judge, Patna in Sessions Trial No. 818 of 1991 convicting the appellant under Section 302 of Indian Penal Code and 27 of the Arms Act sentenced to undergo rigorous imprisonment for life under Section 302 of I.P.C. and to undergo rigorous imprisonment for 3 years under Section 27



of the Arms Act. Both the sentences to run currently.

4. Prosecution case is based on fardbeyan of Jadu Ram (informant) recorded by Sub-Inspector A. Ojha of Gaurichak Police Station at 9 P.M. on 01.07.1991 at the Gaurichak police station that on the same day at 7 P.M. he was returning after attending the call of nature and had reached at his door his nephew Dinesh Ram (appellant) asked him as to why he had cut the ridge of his land. The informant said that they should get the land measured but in the meantime the wife of informant came there and admonished the appellant as he was in habit of quarreling. Thereafter, accused Bijendra Ram, Shiv Ram and their father Nathun Ram came there and caught hold of the informant by neck and assaulted him by fists and slaps and also assaulted his wife as a result of which she fell on the ground. The informant thereafter ran towards west from where Dinesh Ram (appellant) was coming and he fired from his pistol causing injury in the abdomen of the informant. In his fardbeyan he named his son Nawal Kishore Ram (P.W.2) his wife Maheshwari Devi (P.W.3) as witness to the occurrence.

5. On the basis of above fardbeyan of the informant an F.I.R. was registered giving rise to Fatwa (Gaurichak) P.S. Case No. 158 of 1991 instituted under Section 307, 323, 504



read with 34 of I.P.C. and 27 of the Arms Act against the appellant. Informant succumbed to his injuries during treatment in P. M.C.H. on 02.07.1991 at 10.00 AM as such section 302 of I.P.C. was added in the F.I.R.

6. After investigation police submitted chargesheet against the appellant upon which the Sub- Divisional Judicial Magistrate, Patna took cognizance of the offence and committed the case to the court of Sessions. Charges were framed under Section 302 of I.P.C. and 27 of the Arms Act against the appellant to which he pleaded not guilty and claimed to be tried.

7. Prosecution has examined 6 witnesses P.W.1 is Madhusudan Ram, P.W.2. Nawal Kishor Ram, P.W. 3 Maheshwari Devi, P.W. 4. Janki Sao, P.W.5. is Dr. Arbind Kumar Singh and P.W.6. is Manik Chand Singh (I.O.). The defence has also examined 4 witnesses

8. P.W.1 Madhusudan Ram is son of informant who in his deposition has stated that on the day of the occurrence at about 7 P.M. he was in his house and thereafter on hearing hulla went outside he saw his father coming after attending the call of nature. Accused Dinesh Ram, Bijendra Ram, Shiv Ram and Nathun Ram were standing beside the door



where altercation started between his father and Dinesh Ram and three others. His mother asked to leave the place and his father was going from East to West, when Dinesh Ram brought a pistol from his house and fired in the stomach of his father thereafter he took his father to his house and all assembled there and went to P.M.C.H. for treatment. Before reaching P.M.C.H. they had gone to police station where statement of his father was recorded, his father died on the next day. In his cross-examination he has stated that his statement was recorded by the Daroga, in which he stated that after hearing hulla he went to Eastern side and saw his father coming after attending call of nature. Blood was oozing out and his father fell down and thereafter he carried him. His clothes also got blood stained, he went to Gaurichak P.S. at about 9:00 P.M. and from there to P.M.C.H. They went by Tempo. He has denied that he had not gone with his father to police station or P.M.C.H. His statement was recorded in P.M.C.H. on next day.

9. P.W. 2 is Nawal Kishor Ram son of informant in his examination-in-chief has stated that on the date of occurrence at about 7 A.M. he was in his house, his father was coming after attending the call of nature. Dinesh Ram, Bijendra Ram, Shiv Ram, and Nathun Ram surrounded his father and



asked why he cut the ridge upon which his father said that measurement will be done in the morning. Accused abused and assaulted him by fists and slaps. His mother came and separated them and tried to take away his father then they started abusing and assaulting his mother also. Dinesh Ram went to his house and threatened all to teach lesson. His father started running towards West and Dinesh Ram (appellant) came from West and shot from his pistol on the abdomen of his father, who fell down and thereafter was carried to hospital where his statement was recorded and his father died on the next day in P.M.C.H. during treatment. In his cross-examination he has stated that his statement was recorded by the I.O. as well as Jamadar of Pirbahore Police Station.

10. P.W. 3 is Maheshwari Devi widow of deceased Jadu Ram, who in her examination-in-chief has stated that on the date of occurrence her husband had gone to attend the call of nature and after returning all the accused persons Dinesh Ram, Bijendra Ram, Nathu Ram and Shiv Ram surrounded him and asked him why he has cut the ridge, upon which his husband replied that measurement will be done and on hearing it all the four became infuriated and started assaulting her husband by fists and slaps. She went to separate them but was



also assaulted and tossed on the ground and thereafter he was taking her husband to the home. Dinesh Ram said that he will teach a lesson and went to his house and came with a pistol and shot her husband on abdomen and he fell down and thereafter was carried to home. Villagers bandaged his wound and her husband was taken to doctor however he was not treated and thereafter was taken to Gaurichak police station and thereafter to the P.M.C.H. and died there. She had not accompanied her husband.

In her cross-examination, she stated that the lands of her and accused are partitioned however both the cultivable lands are joint and adjacent. She had not stated about her injury to the police. She did not met Daroga Jee.

11. P.W.4. Janki Sao in his examination-in-chief has stated that on the date of occurrence he was in his house in the night and saw all the four accused quarreling with Jadu Ram, Dinesh Ram shot from his pistol to Jadu Ram. Jadu Ram was carried to hospital and thereafter to P.M.C.H.

In his cross-examination, he said that incident took place towards East of the village in Solbigha Khanda. Jadu Ram has cultivable land there. The house of Jadu Ram is situated about 1000-1200 guj from said land, he saw Jadu Ram in



injured condition and was being carried on the cot in unconscious state by the villagers. He was taken away in big hospital at about 10:30 to 11 P.M. by Jeep. His wife was on jeep and no other family members were on the jeep. There was no conversation with Jadu Ram.

12. P.W. 5 Dr. Arbind Kumar Singh, in his deposition has said that on 02.07.1991 he was posted as medical officer in the department of forensic medicine P.M.C.H. and conducted postmortem examination of Jadu Ram at 4:30 P.M. He found one penetrating wound 1/4" x 1/4" on front of right abdomen margin inverted blackened and tatto present which was the wound of entry and 1" x 1/2" diameter x 2" and 3" on back of abdomen which was wound of exit and was the cause of death and had been shot from a close range.

13. P.W. 6 Manik Chand Singh is the I.O. of the case who was posted in the Gaurichak Police station and Anirudh Jha S.I. was officer in-charge of police station, who recorded the fardbeyan of deceased Jadu Ram on basis of which formal F.I.R. was instituted which has been marked as Exhibit Nos. 2. and 3. He took the re-statement of Jadu Ram after taking charge of investigation and he was sent to P.M.C.H. for further treatment. He reached place of occurrence at 22:30 on the same



day which was shown by wife of Jadu Ram, Maheshwari Devi. The place of occurrence is East of village and cultivable land of deceased which is known as Solbiga Khanda. There is one well and one brick Klin on the said land from said land there are two ways for going to village north passage goes to residence of accused Dinesh Ram and south passage goes to the residence of deceased Jadu Ram. The lands of accused are west of this land. Place of occurrence is a vacant land. Nothing was recovered from the house of accused. On 11.07.1991 he received statement of Bakhori Ram (P.W.2) son of deceased, Jadu Ram forwarded from Pirbahore Police Station, Patna from which he came to know that Jadu Ram has died on 02.07.1991. He also received inquest report which has been marked as Exhibit- 4 and statement of Bakhori Ram (P.W. 2) before Pirbahore police has been marked as Exhibit- 5.

In his cross-examination, he has stated that he recorded the statement of Bakhori Ram (P.W.2) on 06.08.1991 and statement of Madhusudan (P.W.1) on 19.08.1991 in village Mansipur. No family member had come along with deceased informant in the police station as such there is no signature in the fardbeyan of any person accompanied deceased informant. In injury report also there is no signature of any witness. All



witnesses were hearsay witnesses. Except witness Bakhori Ram, no other witness had stated of their presence in police station. He has not stated that by which vehicle and in whose company injured was sent to P.M.C.H. Madhusudan Ram (P.W.2) had not stated before him that on hearing hulla he went to East khand of land, he had also not stated that he saw that his father was returning after attending call of nature. He also did not state regarding four accused were standing near the door. He had not recorded any statement on the date of occurrence. He has further stated that witness Nawal Kihore Ram @ Bakhori Ram (P.W.2) has stated before him that his mother had gone to pacify the matter. He had not stated that Dinesh Ram appellant had tossed his mother on the ground. He had not stated that Dinesh Ram was coming from his house with pistol.

14. Four witnesses have also been examined on behalf of defence to establish their innocence and disapprove the charges framed against them.

15. Fardbeyan of deceased informant was recorded by Officer-in-Charge in the police station in presence of I.O. and on basis of said fardbeyan formal F.I.R. was drawn in the police station which has been proved by the I.O. in whose presence fardbeyan of deceased informant was recorded and deceased



informant Jadu Ram had appended his L.T.I. on fardbeyan recorded by Officer-in-Charge of P.S. The injury of informant was also examined by the I.O. and he found one bleeding injury towards left side of his stomach and thereafter referred him to P.M.C.H. for treatment. Medical officer who had conducted the postmortem of deceased on 02.07.1991 has found one penetrating wound on front right side of abdomen which was the wound of entry and wound on back of right abdomen was the wound of exit which support the case of prosecution and statement of informant that Dinesh Ram fired on the abdomen of informant one bullet, which was the cause of his death. The medical officer opined that the firearm injury was from close range as blackening was found on the entry wound. The fardbeyan of deceased informant Jadu Ram was recorded in the police station at 9:00 P.M. on 01.07.1991 and had named Nawal Kishore Ram @ Bakhori Ram (P.W.2), his son and Maheshwari Devi (P.W.3) his wife who had witnessed the incident. I. O has stated that he inspected the place of occurrence on the same day and examined Jageshwar Ram. Prahalad Ram, Raghunath Ram and Ganauri Ram who supported the prosecution case but they were not examined as prosecution witnesses. The prosecution witnesses who had been examined their statement was recorded



much after the incident and they were not eye-witness to the occurrence as such their statement and evidence cannot be relied upon. There is much contradiction in their statement recorded by the police under Section 161 of Cr. P.C. as well as their statement given during the trial before the Court. The I.O. in his deposition has denied that any such statement was made by prosecution witnesses which was recorded by him during investigation and as deposed before the Court during trial as such their evidences are not trustworthy and cannot be relied upon.

16. Exhibit- 2 is the fardbeyan of deceased informant recorded in presence of I.O (P.W. 6) in which it has been stated that P.W. 2 son of deceased and P.W.3 wife of deceased are witness of the occurrence. Exhibit-5 is the statement of P.W. 2 recorded by Pirbahore Police in P.M.C.H. after death of informant. There is no material contradiction in fardbeyan, Exhibit-2, statement of P.W. 2 as recorded in P.M.C.H. (Exhibit-5) and deposition of P.W. 2 and P.W. 3 in the trial court and there is nothing to disbelieve them and charge against petitioner that he caused single firearm injury on the abdomen of the deceased is corroborated by postmortem report (Exhibit-1) and deposition of doctor as well as deposition of I.O. (P.W. 6) and



(P.W.-5) before the trial court and all have stood the Test of cross-examination as such charge framed under Section 302 of I.P.C. against appellant stands proved beyond all reasonable doubt.

17. On the basis of evidence adduced before the trial court by the prosecution, the trial court has held charges against appellant to be proved beyond all reasonable doubts and after hearing the parties and going through the evidence adduced before the trial court and materials available on record this court doesn't find any error in appreciation of evidence and conclusion reached by the trial court and is in agreement with the finding of the trial court that the charge stands proved against appellant beyond all reasonable doubt. However, it is also a fact that incident was a result of sudden provocation and appellant fired upon deceased informant in a fit of anger and had lost control over his mind as such the conviction of appellant is modified to that of section 304 part 1 of I.P.C. and order of sentence is modified to the period already undergone. As the appellant is already on bail, he is discharged from liability of his bail bond.

18. The Criminal Appeal No. 272 of 1994 is partly allowed.



19. The Legal Service Authority is directed to pay the remuneration to Mr. Aaruni Singh Advocate who appeared in this case on behalf of appellant as Amicus Curiae to assist this court in accordance with circular and prevalent practice.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

veena/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	25.09.2018
Transmission Date	N.A

