

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 300 of 2012

Arising Out of PS. Case No.-271 Year-2009 Thana- Gopalganj Town District- Gopalganj

Jahiruddin Alam @ Jahiruddin, Son of Shaikh Bechu Mian, Resident of
Mohalla- Sareya Mission Ward No. 2, Post and District- Gopalganj.

... .. Appellant

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant : Mr. Kanhaiya Prasad Singh, Sr.Adv.
Mr. Md. Aslam Ansari, Adv.
Mr. Pratik Mishra, Adv.

For the State : Mr. Ajay Mishra (APP)
For the informant : Mr. Naresh Chandra Verma, Adv.
Mr. Natraj Verma, Adv.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 06-10-2017

The present appeal has been preferred against judgment of conviction dated 18-02-2012 and sentence dated 23-02-2012 passed by Sri Mithilesh Kumar Rai, learned Additional District & Sessions Judge, Fast Track Court – III, Gopalganj (hereinafter referred to as ‘Trial Judge’) in Sessions Trial No. 146 of 2010/31 of 2010. By the said judgment, the learned Trial Judge has convicted the appellant under Sections 302, 307 of the Indian Penal Code and Section 27 of the Arms Act, 1959. Thereafter, by order dated 23-02-2012, the appellant was sentenced to undergo



rigorous imprisonment for life under Section 302 of the Indian Penal Code and he was imposed a fine of Rs. 5,000/- (five thousand) and in default, he was directed to undergo rigorous imprisonment for six months. The appellant was also sentenced to undergo rigorous imprisonment for 7 years for offence under Section 307 of the Indian Penal Code and was further imposed a fine of Rs. 5,000/- (five thousand) and in default, he was directed to undergo rigorous imprisonment for six months. Similarly, under Section 27 (1) of the Arms Act, 1959, the appellant has been sentenced to undergo rigorous imprisonment for 3 years and a fine of Rs. 2,000/- (two thousand) and in default, he has been directed to further undergo imprisonment for three months. All the sentences were directed to run concurrently.

2. Short fact of the case is that on 14-11-2009 at about 4:00 PM in Sadar Hospital, Gopalganj, the Sub-Inspector of Police Sri Ramagya Roy of Gopalganj Police Station recorded *fardbeyan* of informant Saddam Hussain (P.W.-5). In the *fardbeyan*, he stated that on the same date i.e. 14-11-2009 at about 1:00 PM, his land, which was on the southern side of his house, his villager Suraj Ram had called Amin for measurement of the land and said that he had purchased the said land from uncle of the informant. Thereafter, the informant told him that he



was having half share in the land. After hearing this fact, it was stated by the informant that his uncle Jahiruddin Alam (appellant) S/o Bechu Mian started assaulting the informant. On alarm being raised by the informant, his father Maksud Alam started running to save him and while he reached near the field of Vishwanath Ram, his uncle (appellant) leaving the informant ran towards his father. In the meanwhile, the father-in-law of his uncle Manjur and one Mansur Mian of his village, on their assertion to kill both father and son, his uncle Jahiruddin Alam (appellant) took out pistol from his waist and gave 4-5 shot of firing, which hit left of his arm and his father received two fire-arm injury on his chest and thereafter, he fell down and died. The informant tried to run towards the house, but he fell down and thereafter, he became unconscious. The informant stated that subsequently neighbours carried him to Sadar Hospital and after he regained his consciousness, his *fardbeyan* was got recorded.

3. After recording *fardbeyan*, on the same date i.e. 14-11-2009 at 5:00 PM, a formal F.I.R. was lodged against the appellant Jahiruddin Alam, Mansur Mian and Manjur Mian, vide Gopalganj P.S. Case No. 271 of 2009 for offence under Sections 302, 307, 34 of the Indian Penal Code and Section 27 of the Arms Act, 1959. During investigation, accusation against the



appellant was found true and chargesheet was submitted on 25-02-2010 against the appellant, however; other two F.I.R. named accused persons were not forwarded as accused in the chargesheet. After submission of chargesheet, on the same date, the learned Magistrate took cognizance of the offence. After completion of formalities under Section 207 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C."), the case was committed to the court of sessions on 11-03-2010 and finally, on 29-11-2010, charge under Sections 302/34, 307/34 of the Indian Penal Code and Section 27 of the Arms Act, 1959 was framed against the appellant. Since the appellant denied charges, the prosecution, to prove the accusation, examined altogether 8 witnesses. After closure of the prosecution evidence, the circumstances and evidences, which were collected during trial against the appellant, were explained and statement under Section 313 of the Cr.P.C. was recorded on 16-09-2011. The appellant denied all the evidences/accusations and claimed to be innocent and also stated to examine defence witnesses. Thereafter, three witnesses were got examined on behalf of the defence.

4. Out of 8 prosecution witnesses, P.W.-1 Md. Jalil has been examined as hearsay witness, whereas, the informant



Saddam Hussain was examined as P.W.-5. Dr. Sanjay Kumar Singh, who conducted *post-mortem* examination on the dead body of the deceased namely Maksud Alam, father of the informant, was examined as P.W.-7. Dr. Jamshed Ahmad, who examined the injury on the person of the informant, was got examined as P.W.-8, whereas, P.W.-2 (Abdul Mazid), P.W.-3 (Bablu Ali) and P.W.-4 (Nurul Hoda) have turned hostile. The investigating officer Sri Dadan Singh in the case was examined as P.W.-6. The defence has examined three witnesses, who are Guli Ram (D.W.-1), Sheopujan Ram (D.W.-2) and Badri Ram (D.W.-3).

5. Sri Kanhaiya Prasad Singh, learned senior counsel assisted by Mr. Md. Aslam Ansari, learned counsel for the appellant, after placing entire evidences i.e. oral and documentary, has submitted that the prosecution has not established its case beyond all reasonable doubt and as such, it was a case of acquittal, however; the learned Trial Judge, only on the sole evidence of the informant who was injured, has held the appellant guilty and passed the judgment of conviction and sentence. He has argued that though, P.W.-5 the informant, in paragraph – 1 of his deposition, had made categorical statement that the entire occurrence was witnessed by: 1. Sunil Mahto, 2.



Noorjahan Khatoon, 3. Hassan Moin, 4. Lalan Ram, 5. Babu Lal Ram, 6. Nand Kumar Ram and other villagers, but during trial, none of those witnesses were got examined by the prosecution, rather to the reasons best known to the prosecution, evidence of those witnesses were withheld. He submits that suppression of those important witnesses creates serious doubt on the prosecution case. He has further argued that in paragraph – 14 of cross-examination of informant, he had stated that the place, where his father fell down, was north to his house, where there were also houses of Harijans namely Suresh, Naresh, Ramayan, Harish etc., however; none of those witnesses were either examined during trial or the investigating officer during investigation tried to get their statement recorded under Section 161 of the Cr.P.C. It has also been argued that it was case of the informant that dispute arose while Suraj Ram of his village had called one Amin to get the land measured, in which, the informant had claimed half share, even neither Sarju Ram nor Amin was examined as prosecution witness. He submits that in such cases, at least those persons were very important witnesses to say about the occurrence. He has also drawn our attention to paragraph – 6 of cross-examination of investigating officer to show that the investigating officer had not recorded statement of



Shivnath Ram, whose plot was just adjacent to the plot in dispute. Neither the investigating officer had found any mark in respect of demarcation of the land nor he recorded the statement of Amin or the person, who was using chain for the measurement of the land. Sri Singh has also drawn our attention to paragraph – 9 of the cross-examination of the investigating officer, who by way of referring to paragraph – 28 of the case diary, had said that in the said paragraph, this fact has come that name of co-accused persons was falsely incorporated. Sri Singh, learned senior counsel has further argued that in the present case, place of occurrence is also in dispute. He submits that it is consistent case of the prosecution that the informant as well as his father (deceased) received gun shot injury on the road, where after getting fire-arm injury, father of the informant instantaneously fell down and died, to the reasons best known to the prosecution, the inquest report was prepared near the *varandah* of the informant's house. He further submits that the investigating officer, during investigation, had not found any blood mark at the place of occurrence, otherwise, this fact would have been stated by the investigating officer. However, in the deposition, in paragraph – 1, the investigating officer (P.W.-6) had stated that he found one fired-cartridge, for which, a seizure list was



prepared. It has been argued that if the story of prosecution case is true that the deceased received two fire-arm injury and he fell down on the road, then in that event, it was necessary to notice huge quantity of blood at the place of occurrence, however; nothing has been indicated by the investigating officer. According to learned senior counsel, in such case, in which, there is solitary evidence of the informant, such evidence is to be examined with full care and caution and only in a case of supportive evidence, relying on evidence of one witness, one can be held guilty, but in the present case, save and except evidence of the informant, who is injured, no other independent witness has come forward to support the case, rather even own brother of the deceased, who is P.W.-2, has turned hostile. This suggests that informant was adamant to implicate the appellant and due to this reason, the appellant was made accused. Similarly, P.W.-3 Bablu Ali, who is cousin brother of the informant, he too has turned hostile. Only one co-villager was cited as independent witness namely Nurul Hoda, who was examined as P.W.-4, and he too has turned hostile and not supported the prosecution case. Referring to aforesaid evidences, it has been argued that it was a case of clean acquittal, however; the learned Trial Judge, only on the basis of evidence of P.W.- 5



as well as evidence of doctor, has held him guilty and convicted & sentenced the appellant by the impugned judgement, which is required to be interfered with.

6. Sri Ajay Mishra, learned Addl. Public Prosecutor as well as Sri Naresh Chandra Verma, learned counsel for the informant have vehemently opposed the appeal. It has been argued that in a criminal trial, number of witnesses hardly matters. It is the quality of the evidence. It has been argued that in the case, informant/P.W.-5, who was also injured, was the best witness and he has stated truthfully during the trial, which was corroborated by the medical evidence. According to Sri Verma, learned counsel for the informant, once oral evidence of victim/informant was found corroborated during medical evidence, there was no reason for the learned Trial Judge to pass order of acquittal.

7. Sri Ajay Mishra, learned Addl. Public Prosecutor has also argued that truthfulness of the evidence of P.W.-5/informant is evident from the fact that in the *fardbeyan*, this witness had stated that his father was shot from a very close range, that was in between 2 or 3 steps and this fact has been corroborated by the *post-mortem* examination report, which suggests that two fire-arm injuries, which were found on the person of the



deceased, were having blackening mark and in cross-examination, P.W.-7 Dr. Sanjay Kumar Singh has accepted that such injury can only be caused in a case where firing is made from the close range. It has been argued that since the evidence of informant has been totally corroborated by the medical evidence, the learned Trial Judge has rightly passed the order of conviction and sentence, which requires no interference.

8. Besides hearing learned counsel for the parties, we have perused the entire evidence. Before dealing with the case, it is necessary to discuss the evidence of the informant, who was also injured. The informant has been examined as P.W.-5. In his evidence, in paragraph - 1, he stated that on the date and at the time of occurrence, he was at his residence and he heard that the land was being measured. Thereafter, he came out and noticed that son of Suraj Mahto namely Sunil Mahto was getting the land measured and his uncle Jahiruddin Alam (appellant) was also present there. Thereafter, the informant inquired from Sunil Mahto as to how his land was being measured. He also said that in the said land, he was having half share. After hearing this, Jahiruddin Alam (appellant) started assaulting him with slaps and fists. Thereafter, the informant raised alarm, on which, his father Maksud Alam came out from his house. While he reached



to the field of Vishwanath Ram, the uncle of the informant Jahiruddin (appellant) took out a pistol from his pocket and gave 3-4 shots of firing on his father (Maksud Alam). His father received two gun shot injury. The informant, with a view to save him, ran and thereafter, accused persons also fired at him and he received such injury in his left hand. He stated that his father fell down and he also fell down. In the meanwhile, others arrived there. He stated that his father, after felling down, died and the informant became unconscious. He further stated that on the said place 1. Sunil Mahto, 2. Noorjahan Khatoon, 3. Hasan Moin, 4. Lalan Ram, 5. Babu Lal Ram, 6. Nand Kumar Ram and other villagers were also present, who carried him to the Sadar Hospital, Gopalganj, where his *fardbeyan* was recorded. On perusal of the evidence of P.W.-5/informant, it appears that there are two major contradictions in his statement before the court and in his *fardbeyan*. In the *fardbeyan*, he had stated that his villager Suraj Ram was getting the land measured, however; in his deposition before the court, he stated that Sunil Mahto S/o Suraj Mahto was getting the land measured. Secondly in his *fardbeyan*, he stated that appellant took out pistol from his waist, however in his deposition before the court he stated that the appellant took out pistol from his pocket. Though, in his



deposition, P.W.5 had referred to number of witnesses, who were present at the place of occurrence, to the reasons best known to the prosecution, none of those persons were got examined on behalf of the prosecution. In his cross-examination, this witness has accepted that Bechu Mian was his grand father, who was having four sons, namely; 1. Maksud Alam (deceased) father of the informant, 2. Abdul Mazid (P.W.-2), 3. Jahiruddin Alam (appellant) and 4. Alam, who had already died. In the same paragraph, he admits that all sons of Bechu Mian had already separated and they were residing separately since 20-25 years. It appears that even thereafter the dispute was continuing in respect of the land, regarding which, it was alleged that measurement was going on. So, the land dispute in between the parties appears to be in existence. So, in that background, it would not be safe to approve the order of conviction and sentence only on the sole evidence of the informant. It is true that allegation made by the informant was got corroborated during medical evidence, but fact remains that the investigating officer in his evidence has stated that while he was in police station, he received information regarding firing in the village in question and thereafter, recording station diary entry, he proceeded to the place of occurrence. At 3:00 PM, he arrived at the place of



occurrence, which was said to be place of occurrence, but dead body was not found there, rather the dead-body was found near the *varandah* of the house of the informant and as such, inquest report was prepared at 3:00 PM. On perusal of the inquest report i.e. **Ext. 5** at column - 3, it is evident that inquest report was prepared in respect of dead body of Maksud Alam in the village - Sareya Mission Ward No. 2 adjacent to the house of deceased on 14-11-2009 at 15 hrs (3:00 PM).

9. On examination of the evidence of investigating officer, it is further evident that the investigating officer has not at all stated as to whether at the alleged place of occurrence, which was said to be place of occurrence i.e. road, any blood mark was available or not. Had there been any blood mark, it was expected that investigating officer would have recorded such fact in the case diary, which has not been done by the investigating officer. This creates serious doubt regarding the place of occurrence.

10. Moreover, in this case, besides informant i.e. P.W.-5, there is one more witness i.e. Md. Jalil, cousin of the deceased, who was examined as P.W.-1. This witness was simply a hearsay witness and has stated how he heard about the



occurrence and thereafter, he reached and noticed the dead-body near the *varandah* of the house of the deceased.

11. P.W.-2 Abdul Mazid was full brother of the deceased and he has been declared hostile.

12. Similarly, Bablu Ali (P.W.-3), who is son of P.W.-2 Abdul Mazid, he too has turned hostile. It is necessary to notice that this witness (P.W.-3) was also witness to the *fardbeyan*.

13. In this case, only one independent witness was cited, who was Nurul Hoda (P.W.-4). He too has turned hostile.

14. Considering the fact that in the case, there is no other independent witness, save and except the injured i.e. informant (P.W.-5) and the dispute regarding place of occurrence as well as non-finding of the blood mark or preparation of the seizure list in respect of seizure of any articles soaked with the blood or having any blood on the cloth of the deceased, only on the basis of evidence of informant (P.W.-5), it would not be safe to held the appellant guilty. In any event, it is evident that the prosecution has not proved its case beyond all reasonable doubt and as such, extending the benefit of doubt, the appellant is required to be acquitted.

15. Accordingly, the Judgment of conviction and Sentence dated 18th February, 2012 and 23rd February, 2012



respectively passed by Sri Mithilesh Kumar Rai, learned Addl. District & Sessions Judge, F.T.C. - III, Gopalganj in Sessions Trial No. 146 of 2010/31 of 2010 (arising out of Gopalganj P.S. Case No. 271 of 2009) is, hereby, set aside and appeal is allowed. Since the judgment of conviction and sentence has been set aside and the appellant is inside jail, it is directed to release him forthwith, if not required in any other case.

(Rakesh Kumar, J.)

(Mohit Kumar Shah, J.)

Anay

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