

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.83 of 2013

Arising Out of PS.Case No. -51 Year- 2003 Thana -HASPURA District- AURANGABAD

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Gola Rajwar @ Lal Muni Rajwar S/O Late Marchu Rajwar R/O Village -
Manpura, P.S. Haspura, P.O. Dumra, District - Aurangabad

.... Appellant

Versus

The State Of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Kanhaiya Prasad Singh, Sr. Advocate
Mr. B. J. Ojha, Advocate

For the Respondent/s : Mr. Satya Narayan Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

And

HONOURABLE MR. JUSTICE SANJAY KUMAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE SANJAY KUMAR)

Date: 07 -04-2017

1. The appeal has been filed by the sole appellant challenging the correctness of the judgment of conviction dated 14.12.2012 and the order of sentence dated 15.12.2012 passed by the learned Adhoc Addl. Sessions Judge-IV, Aurangabad in S.T. No. 110 of 2010/31 of 2012. The appellant was held guilty under section 302 IPC and Section 27 of the Arms Act and sentenced to undergo R.I. for life with fine having default clause and R.I. for 03 years with fine having default clause respectively. The sentences so imposed on him were directed to run concurrently.

2. The prosecution case as unfolded in the fardbeyan



(Ext.-2/A) lodged by the father (P.W.-2) and recorded by the Sub-Inspector of Police, Haspura Police Station Camp, Manpura on 10.06.2003 at 1.40 P.M., in brief, is that on 10.06.2003 at about 10.30 a.m., his son (deceased) had gone out from the house for playing in front of the house of the appellant. At about 11 a.m., the informant was coming back home after tending his buffalo when he heard sound of firing and turned behind to see from a distance of 10 yards the appellant fleeing towards north having pistol in his hand. He immediately rushed to the place and found his son lying on the ground in a pool of blood having received gun shot injury. He immediately raised alarm and chased the accused along with other witnesses/ villagers including P.W.-3 (Sitaram Yadav) P.W.-4 (Inderdeo Yadav) and P.W.-6 (Ramchandra Yadav) but the appellant managed to escape in the forest area adjoining north to the place of occurrence. The informant alleged that his son was fired at with pistol by the appellant which caused his death. He also imputed motive against Mithilesh Yadav and Nanku Yadav who had earlier threatened the informant with dire consequences. On receiving information, the Police arrived at the place of occurrence at about 1 o'clock in the noon where his fardbeyan was recorded. The death inquest proceeding (Ext.-3) was made by the Police at about 1.45 p.m. in presence of P.W.-2 (informant) and



P.W.-6. The dead body was thereafter dispatched for holding post mortem examination. Upon conclusion of the investigation and finding the allegations true, the charge-sheet was laid against the appellant which gave rise to the aforesaid sessions trial on the file of the learned Trial Judge.

3. To further the prosecution case, the prosecution examined 07 prosecution witnesses besides exhibiting documents. P.W.-1 Dr. Ravi Ranjan is the doctor who held autopsy on the deceased and submitted post mortem report (Ext.-1). P.W.-2 is the informant of the case who has proved the fardbeyan, his signature thereon as Ext.-2 as well as his signature on the *panchnama* (Ext.-3). P.W.-3 Sitaram Yadav is one of those villagers who, together with the informant, offered a chase to apprehend the appellant. P.W.-4 Inderdeo Yadav is full brother of the informant. He is also one amongst those who offered chase to apprehend the appellant who was trying to escape from the place of occurrence after assaulting the deceased by his pistol. P.W.-5 Kapildev Yadav is a co-villager. He deposed, to some extent, in favour of the prosecution case. However, the prosecution got him declared hostile and was permitted to be cross-examined. P.W.-6 Ram Chandra Yadav is again the witness named in the fardbeyan



together with the informant and P.Ws.-3 and 4 are said to have chased the appellant unsuccessfully soon after the assault perpetrated by the appellant on the deceased. P.W.-7 is a formal witness who has proved the writings of the formal F.I.R. (Ext.-4) and paragraphs 1 to 84 of the case diary. The defence also adduced oral evidence of D.W. -1 Ram Shlok Rajbanshi. He is maternal nephew of the appellant. On appraisal of the evidence adduced by the prosecution, the learned Trial Court found the charges proved beyond shadow of reasonable doubt and convicted the appellant in the manner stated above.

4. We have heard Mr. Kanhaiya Prasad Singh, learned Senior Counsel in support of the appeal and Mr. Satya Narayan Prasad, APP for the State.

5. While criticizing the impugned judgment, Mr. Singh has urged that on reading of the evidence of P.W.-3, it would appear that he is absolutely untrustworthy. He has narrated the prosecution case which is at much variance. P.W.-4 has also deposed in a different manner. His evidence is inconsistent with the prosecution case spelt out in the fardbeyan by the informant (P.W.-2). Neither the informant nor the witnesses examined in



this case are eye-witnesses to the occurrence. The appellant had no motive to commit murder of the deceased. The prosecution has further failed to prove the place of occurrence. The prosecution case suffers from a serious lacuna as the Investigating Officer has not been examined in order to establish the place of occurrence. The prosecution has further failed to prove the manner of occurrence and on this count also, the case has to be disbelieved.

6. The learned APP for the State, on the other hand, supported the impugned judgment. He submits that the prosecution has proved the case by convincing and reliable evidence. The occurrence took place in the daylight at about 11.00 A.M. and it was witnessed by the informant and other witnesses, who heard the sound of firing and turned towards the place of occurrence and saw the victim in pool of blood and also the appellant fleeing from the site with a firearm in his hand. The place of occurrence is near a lane adjoining / in front of the house of the appellant and all the witnesses have given vivid picture of the place of occurrence in their evidence and so, non-examination of the Investigating Officer does not



affect the prosecution version in any way. The prosecution has proved the place of occurrence as well as manner of occurrence and the court below rightly convicted the appellant.

7. In view of the submissions made by both the parties, we shall now examine the evidence adduced by the prosecution to see as to whether the prosecution has been able to prove the guilt of accused of committing murder of the deceased by causing firearm injury.

8. The death of the deceased by firearm injury is not in dispute. The Doctor P.W. 1 had conducted autopsy on the cadaver on 11.06.2003. He has found the following:-

“(1). an oval wound of diameter 1/2” of right side of chest below cavity (right) and margin regular and inverted- wound of entry.

(2). lacerated wound of size 2” x 2” margin irregular and inverted behind left shoulder- wound of exit.



On dissection:-

The Doctor has reported that the death caused due to hemorrhage and shock on account of firearm injury. The post mortem report has been marked as Ext. 1.

Thus, the evidence of Doctor and post mortem report establish the fact that the deceased died due to injuries sustained by firearm at the relevant time on the date of occurrence.”

9. The informant P.W. 2 in his evidence has stated that on the date of occurrence at about 11.00 A.M. when he was returning after tending his buffalo and reached near the place of occurrence, heard the sound of firing and saw his son screaming in pool of blood. He further saw the appellant running towards north with a pistol in his hand. He raised alarm and along with the witnesses P.Ws. 3, 4, and 6 started chasing the appellant. The appellant, however, succeeded in his escape. He has stated that he had some dispute between Mithlesh and Nanku Yadav who had threatened him to do away with the life of his children. They have got the



occurrence committed by making payment to the appellant. The other witnesses P.Ws. 3, 4, 5 and 6 are villagers and they in one tone have stated that they heard the sound of firing and turned towards the place of occurrence. They saw the victim in pool of blood and after committing the crime the appellant was fleeing away. All the witnesses have stated that at that time the appellant was holding a firearm in his hand while escaping from the place of occurrence. The defence in course of cross- examination has given suggestions to the witnesses that the victim was killed by the extremist as the extremist had threatened the villagers not to graze their cattles in the jungle and the father of victim had violated the command of the extremist. The witnesses have been cross-examined also on the manner of occurrence and place of occurrence. The witnesses have stated about the place of occurrence by mentioning the boundaries. P.W.5 has stated that he had seen the deceased lying in front of the house of appellant. There was firearm injury on his chest. This witness has been declared hostile as he stated that he had not given statement before Police. This witness has further stated that he had seen



the appellant fleeing. The informant and others were chasing the appellant. All the witnesses are residents of same village and they had offered chase to the appellant. There is nothing in their cross-examination to show any animosity or grudge of the witnesses to depose against the appellant unless he was not the culprit. Their evidence is consistent and we do not find any serious contradiction affecting the prosecution case either on the manner of causing firearm injury by the appellant or the place of occurrence. The prosecution could not be able to show as to how the appellant has been prejudiced on account of non-examination of the Investigating Officer. Thus, we find that non-examination of the Investigating Officer does not prejudice the defence in any way in the face of consistent evidence of the eye-witnesses, who were present at the place of occurrence.

10. From the evidence of witnesses, we find that the informant and the appellant are residents of same place. The informant P.W.2 has stated that his house situates just after five or six houses of the appellant. The place of occurrence is a lane connecting village road in front of the house of the



appellant. The Police reached at the place of occurrence and prepared inquest report in presence of informant and P.W.6 who put their signature (Ext. 3) on the inquest report. Both of them have stated that they saw profused bleeding at the place of occurrence. The defence although cross-examined all the witnesses but there is neither cross-examination nor any suggestion to any of the witnesses on the point of place of occurrence. All the witnesses are the residents of the same place and they had occasion to see the occurrence from a close range. The appellant has not alleged any enmity with the informant. In his statement given under Section 313 Cr.P.C., he has not alleged his false implication on account of any grudge. He has simply stated about his innocence. The place of occurrence is the front lane of his house and not the jungle area as suggested by the defence. The defence has not given suggestion to this effect that the victim was done to death at any other particular place other than the place of occurrence. In view of evidence of witnesses, we have no doubt in our mind that the place of occurrence is the place as stated by the witnesses. The appellant has not denied the place of



occurrence which is just in front of his house. In this regard D.W.1 has been examined. He has stated that the victim was murdered in the forest but has not indicated any particular place. This witness is interested witness as he has admitted that the appellant is the full brother of his mother. The appellant in his statement given under Section 313 of Cr.P.C. has simply pleaded his innocence. It has been held by the Hon'ble Apex Court in ruling reported in AIR 1997 S.C.C. 969 that the examination of accused persons under Section 313 Cr.P.C. is not a mere formality. Answers given by the accused to the questions put to them during such examination have a practical utility for the criminal courts. Apart from offering an opportunity to the delinquent to explain incriminating circumstances against them, they would help the court in appreciating the evidence adduced in the Court during trial. So, the argument of the appellant on the point of false implication has no force.

11. In view of the discussions made above, we find that the prosecution has established the charge under Section 302 of the Indian Penal Code against the appellant beyond shadow



of doubt. The learned trial court rightly found and held the appellant guilty and convicted.

12. For the reasons stated above, we do not find any merit in the appeal. Accordingly, this appeal is dismissed.

(Sanjay Kumar, J)

I agree/-

(Kishore Kumar Mandal, J)

ajaypd./-

AFR/NAFR	NAFR
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