

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.332 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- DARBHANGA

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Krishna Mohan Rai, son of Satyadeo Rai, resident of village- Sudhrain, P.S-
Kusheshwarasthan, District- Darbhanga.

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : Mr. Prem Kumar Jha, Advocate.
Mr. Rajesh kumar Jha, Advocate.
Mr. Mukesh Mishra, Advocate.
Mr. S.N. Jha, Advocate.

For the State : Mr. A.K.Sinha, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

And

HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 08-03-2017

The appeal is filed against the judgment of conviction dated 28.02.2011, passed by the learned A.D.J., F.T.C., Benipur in Sessions trial No.242 of 1993, whereby the sole appellant has been convicted under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life along with a fine of Rs.20,000/- and in default of payment of fine to undergo further imprisonment for three months.

2. The prosecution case as made out in the written report dated 21.06.1992 made to Officer-in-Charge of Kusheshwar Asthan P.S. (Camp-Sudhrain) at about 8.30 P.M. in short is as follows :-

3. The informant stated that on 20.06.1992 at about



11.30 P.M., his sons, namely, Safaitul and Kafaitul @ Bauka were sleeping on “Chauki” at the door of the house of the Dr. Ahsanullah. One Sahdeo Rai came to his darwaza, whereas Krishna Mohan Rai, Mahendra Rai (now dead), Shiv Shankar Rai and Ram Pratap Rai advanced towards the courtyard. In the meantime, Krishna Mohan Rai fired at Safaitul, who died. Mahendra Rai fired at Kafaitul but he escaped. Sahdeo Rai ordered to drag all these persons with them. However, since there was hulla, the accused persons fled. The informant on the following morning came to learn that accused held meeting at the “darwaza” of Chandredeep Rai, who also made blank firing.

4. On the basis of written report, the police instituted Kusheshwar Asthan P.S. Case No.69 of 1992 dated 22.06.1992 under Sections 302/149 of the Indian Penal Code and 27 of Arms Act. The police prepared inquest report. There is overwriting in the time of preparation of inquest report, as to whether it was prepared at 18 hours or 19 hours on 21.06.1992. The police took statement of witnesses and restatement of the informant. The police inspected the place of occurrence and sent the dead body of Safaitul for postmortem examination. He also got Kafaitul examined on 22.06.1992. However, the injury report has not been brought on record. The police submitted charge sheet against five accused persons, namely, Sahdeo Rai, Shiv Shankar Rai, Krishna Mohan Rai, Ram Pratap Rai and Mahendra Rai. The learned Magistrate took cognizance and committed the case to the



court of Sessions for trial. Charge was framed under Section 302 of I.P.C. against the appellant Krishna Mohan Rai and 302/149 I.P.C. against all the four co-accused. Subsequently, Mahendra Rai died and as such the trial proceeded against four accused persons including the present appellant.

5. In support of its case, the prosecution examined as many as 14 witnesses, who are as follows :-

- (i) Md. Kafaytullah
- (ii) Md. Suleman
- (iii) Rasul Mian
- (iv) Md. Razzak
- (v) Ata Miyan
- (vi) Buchni Khatoon
- (vii) Md. Jumrati
- (viii) Ali Hussain
- (ix) Wasi Ahmad
- (x) Akhauri Ravindra Kishor
- (xi) Md. Moghel Mian
- (xii) Ram Sudhari Yadav
- (xiii) Anand Lal Yadav
- (xiv) Wasi Ahmad

6. The prosecution adduced documentary evidence including written report, inquest report as well as postmortem report. The defence also examined three witnesses in support of its case to



the effect that accused purchased the disputed land in the year 1990, whereas the informant's side went on to purchase the same land in the year 1991. The trial court, while acquitting the accused persons, has convicted the sole appellant under Section 302 I.P.C.

7. Out of 14 witnesses, the prosecution produced P.W.1, P.W.3, P.W.4, P.W.5, P.W.6, P.W.7, P.W.8 and P.W.11 (the informant) as eye witnesses to the occurrence. The doctor, Akhauri Ravindra Kishor (P.W.10) conducted postmortem on the dead body of the deceased on 22.06.1992 at 2.00 P.M. He stated that the deceased died of fire arm injury within 48 to 72 hours from the time of postmortem examination. He found the body in the state of decomposition.

8. Learned counsel appearing for the sole appellant has assailed the impugned judgment of conviction and sentence on a number of grounds. He submits that the prosecution case is fit to be discarded on the sole ground that interpolations are writ large in the F.I.R., the written report and the inquest report, which are the essentials limb of a criminal case. Besides this, the occurrence took place on 20.06.1992 at 11.30 P.M. but no case was lodged at least till 6.00 P.M. in the evening of 21.06.1992, though according to the prosecution the police had come to the house of the informant early in the morning. There is no explanation for delay in lodging the case. Even Kafaitul, an injured and the brother of the deceased who received gun shot injuries. Surprisingly showed no anxiety to inform



the police of the occurrence. The deceased himself was an accused in a double murder accused along with a veteran criminal Kasi Paswan and it is quite possible that the rival party may have killed him and due to land dispute, the appellant has been implicated in the instant case. The appellant next submits that the time elapsed since death mentioned in the postmortem report does not tally with the time mentioned in the F.I.R. The doctor, who conducted the postmortem at 1.00 P.M., stated that the occurrence took place between 48 to 72 hours from the time of examination of the deceased.

9. Conversely, Mr. Ashwani Kumar Sinha, learned counsel appearing for the State had defended the judgment of conviction and sentence. He submits that seven witnesses including the informant have supported the prosecution case and have claimed to have seen the commission of the occurrence. All these witnesses were sleeping very near to the door where occurrence took place. The postmortem report also corroborates the prosecution case that the deceased died on account of fire arm injury made from close range, as there was charring mark on the body of the deceased.

10. From perusal of written report, it appears that the time of making of the report was mentioned as 8.30 P.M. on 21.06.1992. But by cutting and overwriting, the prosecution has tried to show that the same was recorded earlier at 18.30 P.M. Besides this, we find that there is overwriting with respect to the time of preparation of inquest report and an attempt was made to change its



time from 18 hours to 19 hours. All these cast a suspicion that timing was changed as no written report was received, at least prior to 18.30 P.M., even assuming the prosecution case that the written report was made at 18.30 hours.

11. We next find that the informant in his F.I.R. has stated that both his son Kafaitul and the deceased Safaitul were sleeping on a Chauki at the door of Dr. Ahsanullah in the night at about 11.30 P.M. on 20.06.1992, when they were fired upon by the appellant and Mahendra Rai. P.W.6, Buchni Khatoon is the wife of the informant and the mother of the deceased says differently that they were sleeping in the house.

12. So far manner of occurrence is concerned, there is also material discrepancies in the statement of the witnesses. P.W.5, the nephew, who is own relative of the informant, stated that prior to the occurrence, there was altercation between the parties where after, this appellant Krishna Mohan Rai and others fired upon the deceased Safaitul and P.W.1, Kafaitul. But the informant and other witnesses stated that five accused persons came near the door of Dr. Ahsanullah, whereupon this appellant fired piercing the chest of the deceased Safaitul, whereas Mahendra Rai fired upon Kafaitul (P.W.1) wounding him too. In fact, P.W.1, Kafaitul stated that the fire arm opened by Mahendra Rai injured his punjra. Curiously enough, the injury report of P.W.2 has not been brought on record, which again raises a question mark whether in fact he sustained any such



injury and had witnessed the occurrence at all.

13. The informant too has claimed to be eye witness. According to him, he was sleeping close to the door of Dr. Ahsanullah, where the deceased was sleeping with Kafaitul on a cot. The informant stated that on hearing firing sound, he awoke and witnessed the occurrence. He stated that after 5 to 10 minutes, a number of persons gathered at the place of occurrence. In light of the evidence of the informant that other witnesses came subsequently. It is difficult to believe that they witnessed the occurrence. One thing is still very surprising that though the occurrence took place at 11.30 P.M. on 20.06.1992, still no F.I.R. was lodged till the evening of 21.06.1992, though a number of witnesses and Chowkidar soon assembled to the P.O. The prosecution has also not been able to explain as why no information was given to the police, though as per prosecution case, the police arrived to the informant's place in the morning. The postmortem report does not fully support the prosecution case. As per the opinion of the doctor, who conducted postmortem at 1.00 P.M. on 20.06.1992, the body was in the state of decomposition which would suggest that the occurrence took place at least 48 hours from time of examination which would not tally with time of occurrence mentioned in F.I.R.

14. We find that the land dispute is admitted between the parties. It has come in the evidence which has not been controverted by the prosecution that the deceased was an accused in a



double murder case along with Kasi Paswan, in which he was sent to jail. The submission of the defence that he might have been killed by the rival parties and is being falsely implicated in the case on account of land dispute, cannot be fully ruled out. The said view stands further strengthened, as no blood was found on the Toshak and Chadar on which the deceased was sleeping when he was fired upon and killed.

15. Situated thus and in the background of discussion made above, we are of the considered view that the learned trial court at least should have accorded benefit of doubt and acquitted the accused.

16. In the result, the appeal succeeds. The impugned judgment of conviction and sentence passed against the appellant are set aside and the appellant is set at liberty if not wanted in any other case.

(Samarendra Pratap Singh, J)

(Arun Kumar, J)

N.H./-

AFR/NAFR	NAFR
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