

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.522 of 2011

Arising Out of PS.Case No. -99 Year- 2009 Thana –Ganga Bridge District- VAISHALI(HAJIPUR)

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Vikash Kumar @ Langra S/o Sri Dashrath Singh R/O Vill.- Shahdullahpur, P.S-
Ganga Bridge, Distt.- Vaishali

.... Appellant/s

Versus

The State Of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Hemendra Prasad Singh, Sr. Adv Mrs. Usha Kumari Singh, Mr. Hitesh Suman, Adv
For the State	:	Mr. Shievesh Chandra Mishra, APP
For the Informant	:	Mr. Rakesh Kumar, Adv Mr. Neeraj Kumar Sainidh, Adv

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
and

HONOURABLE MR. JUSTICE SANJAY KUMAR

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE SANJAY KUMAR)

Date: 19-01-2017

1. The sole appellant aggrieved by the judgment recoding guilt dated 31.03.2011 and the order of sentence dated 04.04.2011, passed by the learned Addl. Sessions Judge, F.T.C. No. IV, Vaishali at Hajipur in Sessions Trial No. 486 of 2009 has filed the present appeal. By the said judgment and order of sentence, the appellant was held guilty under Section 302/34 of the Indian Penal Code for having caused murder of the brother of the informant (P.W. 3) sentenced to undergo R.I. for life. He has also been imposed fine of Rs. 20,000/- with default clause. The learned trial court also held him



guilty under Section 27 of the Arms Act and sentenced to undergo R.I. for 5 years with imposition of fine of Rs. 5,000/- in default whereof to further undergo S.I. for 15 days. Both the sentences were, however, to run concurrently.

2. According to the prosecution case as unfolded in the fardbeyan (Ext. 1) lodged by the brother of the deceased (P.W. 3) on 26.03.2009 at about 09:30 A.M., he was going to Bank on his motorcycle. When he reached near the Nawada Chowk on the main road, he saw his brother Pranav Kumar Pandey (deceased) also coming on the main road on his motorcycle and as soon as he reached on the road and turned towards Hajipur, the appellant and two other accused(s) persons riding the motorcycle armed with country made pistol followed the deceased and opened firings and they succeeded in intercepting him, whereafter, the appellant and two other accused(s) persons are said to have fired indiscriminately on the deceased. The brother of the informant had received gun shot injuries, whereafter all the three accused(s) persons riding the said motorcycle drove away. The brother of the informant upon receiving gun shot injuries died at the spot. Immediately, the police was informed and the Investigating Officer arrived at the place of occurrence and made inquest of the body of the deceased and drew up the inquest report (Ext. 2). The Investigating Officer also collected the empty shells of the cartridge



lying near the place of occurrence vide Seizure Memo (Ext. 3). The Investigating Officer noticed blood stain marks at the place of occurrence and the scratch mark over the road caused by fall of the motorcycle. The motorcycle was lying besides the dead body. The dead body was sent for post mortem. P.W. 7 conducted the autopsy on the dead body of the deceased and submitted the report drawn by him (Ext. 4). The doctor found the following anti mortem:

“(i) Lacerated wound right side of the cheek with margin inverted is 2 cm. x 1.5cm. x 20 cm. deep with blackening 3 c.m. diameter area.

(ii) Left side of cheek contains bullet sub-cutaneously which has been preserved.

(iii) Lacerated wound right parotid area 5 cm. long x 2.5 cm. wide and 5 cm. deep lower part of wound towards angle of mandible have charring and margins inverted. Upper part of wound lacerated with enerted margin, wound of entry and exit are side by side in a single wound.

(iv) Lacerated wound right side of the shoulder 1.25 cm. in diameter, margin inverted with charring in one cm. diameter.

(v) Lacerated wound left front of chest 3 cm. long x 2 cm. wide margin enerted. These two wounds are communicating with each other.

On dissection

(i) Skull- Base of skull fractured with laceration of brain stem.

(ii) Neck- vessel and tralcia- normal, tralcia-



pole

(iii) Chest- Bony cages (including both maxilla fracture on right scapula and third rib anteriorly. Right upper lobe lungs lacerated left upper lobe lacerated with blood in both plural cavity.

(iv) Heart- all chambers are near empty

(v) Abdomen- all vessels pole, stomach contains 150ml. of semi digested food material. Urinary bladder contains 200 ml. of urine.

The time elapsed since death is 8 to 24 hours, substance used- Fire arm weapon. The witness has further stated that in their opinion his death is due to brain-stem injury and hemorrhage following fire arm injury which in normal circumstances cause death. The witness has identified his writing and signature on his report which has been marked as Ext. 4”

3. The Investigating Officer (P.W.5) upon conclusion of investigation submitted charge sheet against the appellant showing two other accused(s) as absconders, whereafter, the learned Magistrate took cognizance and later committed the case on 22.12.2009 to the court of Sessions for trial which gave rise to Sessions Trial No. 486 of 2009 on the file of the learned trial court. Charges were framed on 08.02.2010 under Sections 302/34 of the Indian Penal Code and 27 of the Arms Act to which the appellant pleaded not guilty. Hence, the Trial. Upon conclusion of evidence, the statement of the appellant was recorded under Section 313 of the



Code of Criminal Procedure.

4. In order to prove the gravamen of charge(s), the prosecution examined, in all, six witnesses. From the record, however, it appears that P.W. 6 (Shashi Mohan Jha) was again examined by the trial court as P.W. 7. Out of them, P.W-1 (Pravan Kumar Pandey @ Ranju Pandey), P.W-2 (Vanti Pandey @ Mala Pandey) and P.W. 3 Prappan Kumar Pandey @ Sanju Pandey, (the informant) have supported the prosecution case. P.W. 6 is a formal witness who has proved the writing(s) and endorsement on the fardbeyan (Exts. 13 and 13/A) respectively.

5. Be it noted here that P.W. 3 has only claimed himself as the eyewitness to the actual assault by the appellant on the deceased, whereas P.Ws. 1 and 2 have given the evidence with regard to other attending circumstances under which the occurrence was committed and the implication of the appellant was made. The Investigating Officer, in course of investigation, also collected materials to find that the appellant had criminal antecedent(s). The prosecution, in this connection, has brought on record Exts. 5, 6, 7, 8, 11 and 12 to demonstrate that the appellant was facing several criminal charges against him prior to the present occurrence. The defence also produced documentary evidence as Exts. A, A/1 and A/2 in order to show that there was previous animosity between the accused(s) and



the prosecution.

6. On analysing the evidence adduced by the prosecution, the learned trial court found the evidence of P.Ws. 1, 2, 3 and 4 reliable and convincing and held the appellant guilty of the charge(s) and sentenced him in the manner indicated above.

7. Learned counsel for the appellant while assailing the judgment has contended that there is no eye witness to the occurrence. All the three witnesses, i.e., P.Ws.1, 2 and 3 who have supported the prosecution version are partisan witness on account of being family members of the deceased. P.Ws.1 and 2 are full brother and mother respectively of the deceased and they are not the eye witnesses to the occurrence. P.W.3 is the informant and full brother of the deceased. He has claimed to be an eye witness to the occurrence. On careful scrutiny of his evidence, it would reveal that he was not present at the time of occurrence. The learned counsel further submitted that the appellant has been implicated on account of previous enmity. The informant earlier had committed murder of one Sanjeev Kumar and caused fire arm injury to Md. Mohid. In order to save his skin from the said offence, he lodged Ganga Bridge P.S. Case No.418 of 2007 against the appellant and his men with false and frivolous allegation. The second contention is that the informant has not assigned any motive in his *fardbeyan* given before the police at earlier stage but



during trial, he developed a new story by stating that a ransom of Rs.4,00000/- was demanded by this appellant which was not fulfilled and in consequence of which the appellant alongwith other accused entered into his house and caused him fire arm injury for which he lodged a case bearing Sadar P.S.Case No.418 of 2007(Ext-13). The other two witnesses, who allegedly reached at the place of occurrence, have also stated about the motive of occurrence as demand of ransom for the first time during trial. The prosecution has further failed to prove the circumstance and also the genesis of occurrence. The time of occurrence as disclosed also does not find corroboration from the postmortem report and evidence of doctor P.W.4 who conducted autopsy on the dead body. Learned counsel has further submitted that the court below has erred in not considering the above facts while convicting the appellant.

8. The learned counsel for the Informant as well as the learned APP, on the other hand, submitted that the prosecution case has been established beyond shadow of doubt. The evidence of informant P.W.3 is enough to establish the prosecution version and prove the guilt of appellant. The evidence of P.Ws.1 and 2 even if is ignored or discarded the conviction is still sustainable. The presence of P.W.3, (informant) stands established from the evidence of P.Ws.1 and 2 who immediately reached at the place of occurrence. So far non-



examination of other witnesses of the locality is concerned, it was contended that the appellant is a veteran criminal and on account of fear, none of the local witnesses are ready to come forward to speak against the culprit. This fact finds support from the evidence of I.O. (P.W.5).

9. In view of contention of both parties, we would like to scrutinize the evidence on record. We find that the death of the deceased at the place of occurrence is not in dispute. The only dispute arises as to whether or not the deceased was murdered at the time as asserted by the prosecution. The informant admittedly is the sole eye witness to the occurrence. He has stated that he reached at the place of occurrence at about 10 A.M. in course of going to Bank of India where his deceased brother also reached from Sahdullapur. He further stated that in the meanwhile this appellant as pillion rider along with two others came on the motorcycle and started indiscriminate firings. They intercepted the motorcycle of his brother and this appellant shot two or three times on him on account of which his brother died on the spot. This appellant along with two others thereafter escaped towards southern side. The informant immediately informed the police over telephone. In fardbeyan Ext-1, the informant has stated that the occurrence was witnessed by several local people who would disclose about the manner of occurrence but he has not mentioned the name of



his brother and mother (PWs 1 and 2). From the evidence of the prosecution witnesses it is established that the informant has got their houses at village-Sahdullapur and also in Hajipur Town at SDO road. The place of occurrence situates on Hajipur Mahnar road at a distance of about half kilometer from the village house situated at Sahdullapur. The informant P.W.3 in his examination-in-chief has stated that this appellant after committing murder escaped towards southern side, i.e., towards his village Sahdullapur. In fardbeyan Ext-1, also he has stated that the appellant escaped towards south from the place of occurrence. The informant P.W.3 at para-15 has stated that immediately after five minutes of occurrence, his mother and brother P.W. 1 and 2 reached at the place of occurrence. The mother of the deceased P.W.2 reached at the P.O. from her village home Sahdullapur which situates south of P.O. The appellant has also got his residence in front of the village house of the informant. If the mother of the informant would have reached at the place of occurrence within or by five minutes after the occurrence, she might have, in all probability, the occasion to see the appellant and other co-accuseds who admittedly escaped in the direction of the village home of the informant. The informant P.W.3 in examination-in-chief has stated that he reached at the place of occurrence and saw that his brother as well as all the accused persons reached there at the same



time. The local police reached the P.O on receiving the information on phone (para-1) and thereafter his Fardbeyan was recorded. In Fardbeyan Ext. 1, we find that nowhere the presence of his brother and mother (PWs 1 and 2) is mentioned as witness to the incident. In cross-examination at para-14 he has stated that he saw the occurrence from a distance of 2-3 laggi and he was watching the occurrence by hiding himself behind a palm tree leaving his motorcycle by the side of road. This appellant and two others could not see him as he was hiding himself. The appellant and informant's family are resident of same place having their houses intervened by a road. They are fully known to each other face to face having case and counter case against each other and so it is not supposed that the appellant or his accomplice would have left the informant at the place of the occurrence to become a witness of crime.

10. So far motive is concerned, the informant in his fardbeyan has not asserted any motive for committing murder of his brother but during trial they have introduced a story of motive. He has stated at para-4 that this appellant had demanded an amount of Rs.4,00000/-. The demand was not fulfilled and so he committed murder of his brother. In para-16, he has admitted that he had not given any information to the police as regards the said demand. The brother of this appellant P.W.1 at para-2 has also stated that reason behind the



occurrence was non fulfilment of demand of Rangdari and previous enmity. The mother of the deceased P.W.2 at para-4 of her evidence has also stated that her son was murdered on account of non-payment of demand of Rs.4,00000/- to the appellant. The prosecution version regarding demand of Rs.4,00000/- appears to have been developed during trial. The investigating officer P.W.5 at para-12 has clarified by stating that no such statement was given under Section 161 of the Cr.P.C. by the informant during investigation and similarly at para-11, the I.O. has stated that none of the witnesses had stated about the motive of committing murder on account of non-payment of demand of Rs.4,00000/-. In fardbeyan (Ext-1) also, the informant has not stated about the cause of occurrence as refusal to pay the demand of Rs. Four lacs.

11. The informant PW-3 at para-7 has stated that he had disclosed about the demand of Rangdari made by this appellant in the FIR lodged with respect to the occurrence dated 19.12.2007 vide Ext-14 but on perusal of Ext-14, we find that there is no such averment regarding demand of Rangdari or demand of Rs.4,00000/-. It shows that the informant and his family members developed the story of demand of Rs.4,00000/- and causing murder of deceased on account of its non-fulfilment as motive to the occurrence.

12. The learned court below has attached a lot of weight to the



evidence of the said witness, i.e., P.Ws.1, 2 and 3 on account of being eye witnesses. All the three witnesses are family members related as brothers and mother of the deceased. On perusal of the record, it appears that the informant, P.W.3 has only claimed to be an eye witness to the occurrence. The remaining two witnesses, namely, P.Ws.1 and 2 reached at the place subsequent to the arrival of P.W.3. Admittedly, P.Ws.2 and 3 reached subsequent to the occurrence and they have stated what they heard from P.W.3. This being the fact, it is important to analyze the jurisprudence of interested witnesses. It is a settled principle that the evidence of interested witnesses needs to be scrutinized with utmost care. It can only be relied upon if the evidence has a ring of truth to it, it is cogent, credible and trustworthy. This witness can be referred as a chance witness to the occurrence also. It is to be seen that although the evidence of chance witness is acceptable, yet the chance witness has to be reasonable, causing his presence at the particular point more so when his deposition is being assailed as being tainted. The informant proceeded from his residence situated at SDO road in Hajipur Town and reached at the place of occurrence at 10 A.M. He has further stated that he has another house at village-Sahdullapur. It further appears that he had deposed at para-16 in his cross-examination that he had a telephonic talk with his deceased brother at the time when he left the house. The mother of



deceased P.W.2 at para-7 has stated that she resides alone at village-Sahdullapur. She has not stated that her deceased son had visited Sahdullapur and from there he had gone to the place of occurrence. So the version of P.W.3 becomes suspicious on the point of his telephonic talk and also regarding the arrival of his deceased brother at the place of occurrence at the pointed time. The doctor P.W.4 has conducted autopsy at 2 P.M., i.e., within four hours of the alleged time of occurrence. He has stated that at the time of conducting postmortem rigor mortis was present all over the dead body. He further stated that rigor mortis starts occurring after six hours. So taking into consideration it may safely be said that the death had occurred much before 10 A.M. as rigor mortis started occurring after six hours of the death. The investigation officer, P.W.5 in his evidence at para-2 has stated that he found dried blood at the place of occurrence. None of the three witnesses who allegedly reached within five minutes of occurrence has stated that blood was found oozing from the wound caused upon the deceased so nor the I.O. found fresh blood on the place of occurrence. All these materials suggest that the death of deceased occurred much earlier to the time as alleged by the prosecution.

13. It is well settled that the motive is not necessary to be proved in such type of crime but when the prosecution asserts that there was



some motive for committing murder, the duty is cast upon the prosecution to discharge the onus of proving the motive of committing murder. In the case in hand, the prosecution has miserably failed to prove the motive of non-payment of Rs.4,00000/- resulting commission of his murder. The presence of P.W.3 at the place of occurrence also appears doubtful in face of his evidence particularly the facts emerged in his cross-examination.

14. In view of the discussions made above, we find that the informant is not the eye witness to the occurrence and further the prosecution has failed to prove the charge beyond reasonable shadow of doubt. The order of conviction and sentence passed by the court below is not sustainable and, accordingly, is set aside. The appeal is allowed. The appellant be set at liberty, if not required in any other case.

(Sanjay Kumar, J)

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(Kishore Kumar Mandal, J)

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