

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1172 of 2010

(Against the Judgment of conviction dated 17.09.2010 and Order of sentence dated 20.09.2010 passed by the learned Additional Sessions Judge, F.T.C.-III, Bhojpur, Ara in Sessions Trial No. 346 of 1991, arising out of Agiaon Bazar P.S.Case No. 53 of 1990).

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1. Satynarain Rai, son of Parshuram Rai
 2. Parshuram Rai, son of Late Haridwar Rai,
Both residents of village- Pharaura, Police Station- Agiaon, District- Bhojpur.

.... Appellants

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s	:	Ms. Sheela Sharma, Advocate. Ms. Jyotsna Kumari, Advocate. Ms. Smriti Kumari Singh, Advocate. Ms. Rita Kumari, 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: 13-02-2017

The present appeal, by the above named two appellants, has been preferred against the judgment of conviction, dated 17.09.2010 and order of sentence, dated 20.09.2010 passed by the learned Additional Sessions Judge, F.T.C.-III, Bhojpur, Ara in Sessions Trial No. 346 of 1991, arising out of Agiaon Bazar P.S.Case No. 53 of 1990, by which both the appellants have been convicted under Sections 302/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life.

2. The prosecution case, in short, as per the *fardbeyan* of



Ram Chander Rai (PW-7), son of Sri Kailash Rai (PW-1) of village- Faduara, P.S.- Agiaon, District- Bhojpur, recorded by A.S.I. of Agiaon Police Station on 11.11.1990 at 10:00 AM at the house of Ram Chander Ram, is as follows:

The informant in his *fardbeyan* stated that on 10.11.90 at about 6:00 P.M., he alongwith his father and one Ram Deep Rai, son of Karbari Rai, a co-villager, were talking about irrigation matter in their *Baithaka*. A lantern was also burning at that time. In the meantime, Parshuram Rai armed with a single barrel gun, Dhivjee Rai armed with country made pistol and Satya Narain Rai, son of Parshuram Rai, also armed with country made pistol, entered into his *Baithaka* and on the order of Dhivjee Rai and Satya Narain Rai (appellant no. 1), Parshuram Rai (appellant no. 2) fired from his gun, which hit Ram Deep Rai, who was sitting beside him fell on the ground. The informant thereafter tried to shut eastern door of his *Baithaka* and after taking his gun, also fired 2-3 rounds from the window. However, Parshuram Rai and his accomplice fled by that time. The informant further stated that the aforesaid three accused persons were accompanied with 3-4 persons, whom he could not recognize because of darkness. The informant thereafter went on to the roof of the house and also made 2-3 rounds of firing. On hearing the sound of firing, Vidya Sagar Rai and Gupteshwar Rai, both sons



of Mahendra, and others came to his house. When the informant returned to his *Baithaka*, after fleeing of the accused persons, he saw wound on the right eye and forehead of Ram Deep Rai, which were almost blown up and he was lying dead. The informant stated that there was an old litigation going on with the accused persons with respect to drainage and a proceeding under Section 107 Cr. P.C. was also pending between them. According to the informant, the accused persons had, in fact, come to kill him but unfortunately, bullet hit Ram Deep Rai, who succumbed to the injuries.

The informant claims that accused persons had come with a common intention to kill him but unfortunately one Ram Deep Rai was killed, who was sitting alongwith him in the *Baithaka*.

3. On the basis of the *fardbeyan* of the informant, Agiaon Bazar P.S.Case No. 53 of 1990 dated 11.11.1990 under Section 302/34 was registered by one R.R.Sharma, A.S.I. Agiaon Bazar Police Station. However, one R.P.Singh, Officer-in-charge of the said Police Station, started investigation. He, having investigated the place of occurrence, prepared the inquest report of the deceased Ram Deep Rai on 11.11.1990 at 10:30 P.M. He took statements of the witnesses and had also sent the dead body for postmortem. After receipt of the post-mortem report, charge sheet was submitted under Section 302/34 of the Indian Penal Code and 27 of the Arms Act against three named



FIR accused persons, namely Satya Narain Rai, Parshuram Rai and Dhivjee Rai. On receipt of the chargesheet, learned Magistrate took cognizance of offence and committed the case to the court of sessions for trial.

4. Charges were framed against all the three accused persons under Section 302/34 of the Indian Penal Code and 27 of the Arms Act to which they pleaded not guilty and claimed to be tried. During trial, accused Dhivjee Rai died and the case proceeded only against above named two appellants, Satynarain Rai and Parshuram Rai.

5. The prosecution, in support of its case, examined 09 witnesses, out of whom, PW-7- Ram Chander Rai is the informant and PW-1 Kailash Rai is the father of PW-7 Ram Chander Rai. PW-2 Vidya Sagar Rai and PW-4 Gupteshwar Rai, though have corroborated the prosecution case, but they have admitted not to have seen the actual commission of crime. PW-6 is Dr. Trivedi Narain Prasad who conducted postmortem report on the dead body of the deceased. PW-3 and PW-9, namely Lalan Rai and Dashrath Sah respectively turned hostile. PW-5 and PW-8, namely, Janardan Rai and Bishwanath Rai respectively are tendered witnesses. It is relevant to state here that the Investigating Officer of the case has not been examined and the informant during the trial was declared hostile by



the prosecution itself. Apart from the oral evidence, the prosecution has also adduced documentary evidence, namely, inquest report and the postmortem report as well as the *fardbeyan* and the formal FIR.

6. The defence neither examined any witness nor produced any document in support of its case. However, the case of the defence is of false implication and total denial of the involvement in the crime. The learned trial court relying upon the evidence of PW-1 (the father of the informant), the postmortem report and the evidence of two corroborative witnesses, namely, PW-2 Vidya Sagar Rai and PW-4 Gupteshwar Rai, convicted the appellants under Section 302/34 of the Indian Penal Code.

7. Learned counsel appearing on behalf of the appellants submits that the case of the persecution is based on solitary evidence of PW-1, whose evidence has not been corroborated by any other legal evidence. The informant, who happens to be the son of PW-1, has not supported the prosecution case and has been declared hostile. The place of occurrence has also been established beyond all reasonable doubt, as the Investigating Officer of the case has not been examined and the dead body was removed from the place, where it was lying even before arrival of the police. Furthermore, no blood was found in course of preparation of the inquest report. Furthermore, there are glaring infirmities in the evidence of two corroborative



witnesses, namely, PW-2 Vidya Sagar Rai and PW-4 Gupteshwar Rai, who are own brothers said to have reached the place of occurrence after hearing the sound of firing.

8. *Per contra*, Mr. A.K.Sinha, learned A.P.P. submits that PW-1, the father of the informant, has also fully supported the prosecution case. Furthermore, his evidence also finds corroborated by the postmortem report. He submits that conviction can be sustained only on a solitary evidence of a witness, if his evidence otherwise inspires confidence.

9. We have heard learned counsels for the parties and perused the materials on record. It would appear from the *fardbeyan* as well as the prosecution case that at the maximum, there could have been only two witnesses at the place of occurrence, namely, PW-1 the father of the informant and PW-7, the informant himself. It is not the prosecution case that anyone else was present at the time of occurrence. We, however, find that out of these two witnesses, the most important witness PW-7, who is the informant of the case, has not supported the prosecution case and the prosecution was forced to declare him hostile. As such prosecution case rests on the solitary evidence of PW-1 Kailash Rai, who is the father of the informant, PW-7, Ram Chander Rai. It is true, as submitted by the learned A.P.P., that Ram Deep Rai was shot dead by fire arms. The issue for



consideration is whether prosecution has been able to prove the involvement of these two appellants in the crime beyond all reasonable doubts.

10. We find that PW-3 has been declared hostile and PW-5 and 8 have been tendered. PW-9 Dashrath Sah has not supported the prosecution case and was even declared hostile. The prosecution case, as noticed earlier, hinges on the evidence of PW-1 Kailash Rai. The trial court has convicted the appellants on the evidence of PW-1 Kailash Rai and two corroborative witnesses, namely, PW-2 Vidya Sagar Rai and PW-4 Gupteshwar Rai. We find that learned counsel for the appellants had argued that there are inherent contradictions in the statement of PW-2 and PW-4, to which we would broadly agree. For instances, PW-2 stated that after hearing the sound of firing, he along with his brother PW-4 reached the place of occurrence whereas in his cross-examination, he has stated that when they reached the place of occurrence, no one else was present. PW-4 stated that when they reached at the place of occurrence, many people were already there from before him. Furthermore, they have not seen even any of the assailants fleeing away from the place of occurrence.

11. The prosecution case, as submitted by the learned A.P.P., can be sustained on the solitary evidence of a witness, if the same inspires confidence. In the light of the settled position of law,



we would now examine whether the evidence of PW-1 is unflinching and is of standard in which conviction can be rested on his solitary evidence. PW-1 has stated that initially he along with his son Ram Chander Rai, was talking in *Baithaka*. In the meantime, Ram Deep Rai came and Ram Chander Rai (PW-7) shifted back and gave his place to Ram Deep Rai to sit. PW-7 sat behind him. PW-1 stated that three named accused persons alongwith others came and on the order of the two accused, namely, Dhivjee Rai and Satya Narain Rai, Parshuram Rai (appellant) opened fire, which hit Ram Deep Rai. However, it is surprising that the fire arm, opened from 4-5 steps, did not, in any manner, injure Ram Chandar Rai, who was sitting just behind Ram Deep Rai. Furthermore, it is also worth considering that as to why accused persons would not make any attempt to kill informant Ram Chander Rai or his father Kailash Rai, when both were sitting together at the time of occurrence. Furthermore, the informant in his examination-in-chief, stated that it was complete dark and as such he could not see the faces of two accused persons. It is still difficult to comprehend as to how PW-1 in the circumstances was able to recognize the other three accused persons. He could have also thrown light whether there was any lantern burning, as initially it was claimed by the prosecution that in the light they had seen the accused persons. The inquest report also not supports the prosecution case as



no blood was found either on the body of the deceased or at the place of occurrence.

12. Situated thus, we are of the considered view that the prosecution has not been able to produce sufficient evidence to establish the charge under Section 302/34 of the Indian Penal Code against the appellants. In the circumstances, the appeal is allowed and the judgment of conviction dated 17.09.2010 and order of sentence dated 20.09.2010 passed by the trial court against the appellants, above named, are set aside and they are, accordingly, acquitted of the charge. The appellants are set at liberty, if they are not found wanting in any other case.

(Samarendra Pratap Singh, J)

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
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