

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.236 of 2013

Arising Out of PS.Case No. -49 Year- 1997 Thana -HUSAINGANJ District- SIWAN

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Madan Chaudhary S/O Late Sheo Bachan Chaudhary R/O Village - Markan Ke
Tola, P.S. Hussainganj, District - Siwan

.... Appellant/s

Versus

The State Of Bihar

.... Respondent/s

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Appearance:

For the Appellant/s	:	Mr. Hemendra Singh, Sr. Advocate Mr. Bijay Prakash Singh
For the State		Mr. S.N. Prasad, APP
For the informant		Mr. Ramadhar Shekhar

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

And

HONOURABLE MR. JUSTICE SANJAY KUMAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL)

Date: 26-04-2017

The appeal filed on behalf of the sole appellate is directed against the judgment of conviction dated 20.12.2012 and the order of sentence dated 21.12.2012 passed by the learned Additional Sessions Judge-III, Siwan in S.T. No. 139 of 2011 (arising out of Hussainganj P.S. Case No. 49 of 1997) whereunder the appellant was held guilty under section 302 IPC and 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.

2. The prosecution case, as unfolded in the Fardbayan (Ext.2) lodged by P.W. 4 Ram Ekbal Bharti on 25.03.1997 at 10.00 A.M. at the Sadar Hospital, Siwan and recorded by S.I. of the town police station, Siwan, in brief, is that on the previous date at about 8.30 P.M. the informant was at



his house with his younger brother (deceased) when they heard a Hulla that one Rishi Raj Bharti was being assaulted. Both of them rushed towards the house of Firangi Sah where he could see the appellant armed with double-barreled gun and holding out threats to all to kill if any one dared to come in front of him. The deceased asked as to why he was doing so whereafter it is alleged that he was fired at which hit him in his head. The appellant brandishing his gun thereafter escaped from the place of occurrence. Several witnesses including P.W. 2 are said to have witnessed the occurrence. The injured was carried to the Sadar Hospital Siwan where he was declared dead. Old enmity has been cited as reasons for crime. Lodging of the Fardbayan initiated the investigation. Be it noted that the death inquest proceeding was carried out at Sadar Hospital Siwan itself whereafter the dead body was dispatched for holding the post mortem examination and report.

3. P.W. 3 Dr. Habibullah Khan conducted the autopsy on the cadaver on 25.03.1997 at 3.05 P.M. and found the following injury on his person:-

“External injury- Lacerated wound on vertex of skull 6”x4”, charred skin around the wound.

Fractured frontal parietal bone of skull. Pellet mark above left eye-brow.”

4. The post mortem report has been produced on record as Ext. 1. P.W. 6 investigated the case, in course whereof, the death inquest proceeding was made. The post mortem report was received by him from Siwan. The place of occurrence was inspected and the statements of the witnesses were recorded. In the meantime, on 02.05.1997 P.W. 5 took over the investigation and upon conclusion thereof submitted the charge-sheet against the sole appellant whereon cognizance of the offence was taken and



the case was committed to the court of sessions for trial. The learned trial court framed the charge(s) and read over/explained to the appellant to which he pleaded not guilty and claimed to be tried.

5. In order to bring home the guilt, the prosecution, in all, examined 06 prosecution witnesses. The defence, however, did not examine any witness or produce any document. The case of defence is complete denial of his implication in the crime. The occurrence had not taken place in the manner stated by the prosecution.

6. P.W. 1 Savru Chaudhary is a co-villager who, in his examination-in-chief, has claimed himself as an eye-witness to the occurrence. P.W. 2 is a close relative of the informant and is cited as an eye-witness in the Fardbayan itself. He has also claimed himself as an eye-witness to the occurrence. P.W. 3 is the doctor who conducted the post mortem and submitted the post mortem report (Ext.1). P.W. 4 is the informant himself. P.W. 5 is the second I.O. who submitted the charge-sheet whereas P.W. 6 is the I.O. who conducted the investigation and recorded the statements of the witnesses. On an appraisal of the evidence adduced by the prosecution, the trial court held him guilty and punished in the manner stated above.

7. Heard Mr. Hemendra Prasad Singh, learned Senior Counsel appearing for the appellant, Mr. S.N. Prasad, APP for the State as well as Mr. Ramadhar Shekhar, the counsel for the informant.

8. It has been urged on behalf of the appellant that on the strength of the deficient evidence of the prosecution the charges have not been proved beyond shadow of reasonable doubts. He next submits that on analyzing the evidence of P.Ws.1 and 2, it would appear that they are actually not the eye-witnesses to the occurrence. The medical evidence



does not fully support the prosecution case. P.W. 4 (informant) in view of the evidence of other witnesses including the I.O. does not inspire confidence and his evidence cannot be relied to convict the appellant. The genesis of the occurrence and the manner of occurrence has not been proved. There remains a serious doubt about the place where the occurrence had taken place as none from the vicinity has been produced by the prosecution.

9. The counsel for the State as well as the informant, in opposition, have supported the impugned judgment. It has been submitted that the evidence of P.Ws 1, 2 and 4 conclusively prove the guilt of the appellant.

10. We would examine the relevant evidence in the light of the submissions advance by the appellant as well as the State. P.W. 1, in his examination-in-chief, has stated that while he was at his Bathan, he could see the appellant crossing the Bathan armed with double-barreled gun. He followed him up to the house of Firangi Sah where the informant and his brother also arrived. When the deceased asked as to why he would assault, the appellant fired from his gun which caused injury in the front portion of his head whereafter the appellant escaped from the place of occurrence. The injured was carried by him and other witnesses to the hospital where he was declared dead. However, from para 11 of the evidence of the I.O. (P.W. 6) it is evident that this witness in his C.D. statement had flatly denied of having witnessed the actual assault. The defence has drawn attention of this witness to his previous statement before the police and thereafter the I.O. was cross-examined where the aforesaid disclosure was made by him in court. We also find from para 12 of his deposition that he had not stated about his presence at his Bathan when the appellant had



allegedly crossed the road near his Bathan. It has been submitted on behalf of the appellant that such statement having been made by this witness before the I.O. immediately after the occurrence would suggest that what this witness is stating in court was not claimed in his C.D. statement.

11. On the other hand, it has been submitted on behalf of the State as well as the informant that it was a clear lapse on the part of the I.O. in recording that nothing substantial was disclosed by this witness in course of his interrogation. Any laxity on the part of the I.O. would not fail the prosecution case.

12. P.W. 2 is the cousin brother of the deceased as he himself admits. If we carefully scan his evidence, it is found that the deceased on the relevant date and time was not with the informant. He was with this witness. On hearing a Hulla that one Raj Rishi Bharti was being assaulted, he along with the deceased proceeded to the place of occurrence where the informant was present from before. In order to verify his statement made before the police we turn to the evidence of I.O. (P.W.6). The I.O. in para 15 has clearly deposed that this witness had stated before him that on the relevant date he had not actually seen the assault perpetrated on his brother. When he rushed to the house of Firangi Sah he could see his brother (deceased) falling on the ground with the injury on his head. We further find from his evidence that the deceased had no animosity with the appellant whereas this witness (P.W.4/informant) was having a grudge against the appellant (para 5).

13. Now we turn to the evidence of the informant (P.W.4). He is full brother of the deceased. According to him, the deceased was with him at his house when he heard that Raj Rishi Bharti was being assaulted by someone



whereupon he along with the deceased went towards the house of Firangi Sah where the appellant was found standing with a double-barreled gun in his hand and was abusing and threatening that whoever comes in his way will be shot. The deceased questioned him whereafter he fired at him causing injury near his left eye. The appellant escaped towards east. He along with the villagers including Ashok Bharti and Munna Bharti (both not examined) and P.W. 2 and others carried him to the hospital at Siwan where he was declared dead. It was the day of Holi festival. In paragraph 5 he has, however, stated that neither Raj Rishi Bharti nor the deceased had animosity with the appellant. He had some animosity with him. More than 50 persons had assembled there. He further states that the injury sustained by the deceased was wrapped by him with a scarf (Gamcha) but blood had fallen on the ground. The I.O. (P.W. 6) has, however, stated that the informant has not said before him that he heard Hulla that Raj Rishi Bharti was being assaulted by someone. In paragraph 16, he has stated that in spite of his best efforts no one from the vicinity appeared to narrate the ocular version. If his evidence is contrasted with the deposition of P.W. 2, a serious doubt is created on the prosecution case. P.W. 2 at para 1 has stated that the deceased had accompanied him to the place of occurrence whereas the informant has claimed otherwise. There are serious omissions in their evidence which in the facts of the case would be considered as contradictions. P.W. 1 is yet another witness who, in course of trial, has claimed himself as eye-witness. However, from the evidence of the I.O. it is found that no such claim was made by him in his statement before the I.O.

14. On close perusal of the prosecution evidence, it is concluded that the prosecution has miserably failed to prove the genesis as well as the



manner of occurrence. The I.O. (P.W. 6) has neither stated about the presence of the blood at the place of occurrence nor seizure thereof. P.W. 5 who had taken over the investigation has stated that he was not given the sample of any memo of collection of blood from the place of occurrence. The evidence of P.Ws 2 and 4 cannot go together. According to P.W. 2, the deceased was at the relevant date and time with him whereas according to the informant (P.W.4) the deceased was with him at his house from where they proceeded to the place of occurrence.

15. The autopsy surgeon (P.W. 3) found the lacerated wound on the vertex of the skull having charred skin around the wound causing fracture on the frontal and parietal bone. In para 2, on a query, he has opined that the injury found on the body of the deceased was not possible in standing position. In course of his cross-examination, he has stated that the kind of injury having charred skin around it was only possible when fired from very close range. The prosecution case is not of firing on the deceased from such a close range. The urinary bladder was found empty which is a condition generally found in the morning hours when the person wakes up. We have no reason to doubt the findings of the doctor.

16. On a close appraisal of the entire evidence available on record we are of the considered opinion that the prosecution case materially lacks on several counts. It is difficult to place reliance on the evidence of P.W. 2 and P.W. 4. What surprises us is that the prosecution failed to adduce any evidence on the genesis of the occurrence as alleged in the FIR. The genesis of the occurrence as alleged in Fardbayan is that the informant heard a rumour that his villager Raj Rishi Bharti was being assaulted by someone. Thereafter, he along with the deceased rushed to the place of



occurrence near the house of Firangi Sah (just 100 yards away from his house). In his evidence, he has narrated the said fact. From police report, it appears that the I.O. had recorded the statement of the aforesaid Firangi Sah and Raj Rishi Bharti during investigation. These two witnesses are also cited in the charge-sheet but the prosecution has neither examined them nor there is any explanation for their non-examination. The evidence of Raj Rishi Bharti who was being assaulted by someone and for whom the informant and the deceased had rushed to intervene, was very crucial to establish the genesis of the case, particularly in view of the fact that there was no enmity or motive for the appellant to cause firearm injury. Non-examination of those witnesses lead us to conclude that the prosecution failed to establish the genesis of the occurrence. We have appreciated the case in the background of the deposition of P.W. 5(second I.O.) at para 6) that strong remuour was doing the rounds that one person had received injury on the day of Holi on account of scrambling (China Jhapti). We have also taken into account the positive evidence of the informant that the appellant absolutely had no motive to assault the deceased as there was absolutely no enmity between them. Having suspected the evidence of P.Ws 2 and 3 we find no other witness, much less the independent witness, produced by the prosecution to corroborate the genesis of occurrence, the manner and the place of occurrence. In these factual scenario appearing from the records we do not find it safe to convict the appellant. He is entitled to the benefit of doubt.

17. Resultantly, the appeal is allowed. The judgment of conviction and order of sentence dated 20.12.2012 and 21.12.2012 respectively, recorded by Ad hoc Additional Sessions Judge-III in S.T. No. 139 of 2011



against the appellant Madan Chaudhary is set aside. He shall be released from the jail custody forthwith, if not required/wanted in any other case.

(Kishore Kumar Mandal, J)

I agree (Sanjay Kumar, J)

HR/-

AFR/NAFR	NAFR
CAV DATE	04.04.2017
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