

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.506 of 2015

Arising Out of PS.Case No. -149 Year- 2004 Thana –Barauni District- Begusarai

(Against the judgment of conviction dated 02.06.2015 and order of sentence dated 04.06.2015 passed by 8th Additional Sessions Judge, Begusarai in S.T. No. 442 of 2004)

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Satish Kumar Son of Late Brahmdeo Singh, Resident of Village - Chak Husaini,
P.S. - Mansi, District - Khagaria.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ram Sumiran Rai

For the Respondent/s : Mr. S.N. Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

And

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL)

Date: 11-07-2017

The present appeal, filed by sole appellant, is directed against the judgment of conviction dated 02.06.2015 and the order of sentence dated 04.06.2016 passed by learned 8th Additional Sessions Judge, Begusarai in S.T. No. 442 of 2004. The learned Trial Court held the appellant guilty under Sections 302 IPC, 25 (1-B)(a) and 26(i) and 27 of the Arms Act. The maximum sentence imposed on him was under Section 302 IPC wherein he was directed to suffer R.I. for life. For other charges, he was convicted for lesser period of sentence with fine having default clause.

2. The prosecution case germinated out of the fardbeyan (Ext.5) lodged by P.W.7 on 15.05.2004 at 2 a.m. at the door of his



house recorded by the Officer-in-charge, Barauni Police Station (P.W.13) alleging that on the intervening night of 14/15th of May, 2004, his sister (deceased) was going to be married. Several people had assembled at his house. The bridegroom had also arrived. Varmala was to be performed for which the bride (informant's sister) had come out from the room onto the veranda where the bridegroom was also standing when suddenly the appellant, who is related to the informant, appeared from the northern door of the veranda and fired twice at the deceased from his pistol. The first shot hit the victim on her shoulder whereas the second shot hit her in the abdomen. The commotion ensued thereafter but the appellant was apprehended with the weapon of assault. The injured was carried to hospital but on way she succumbed to the injuries sustained by her whereafter they returned back to his house. The Police, on receiving an information about the occurrence, immediately reached the scene of occurrence and his fardbeyan was recorded. The appellant, who was apprehended with the pistol by the informant and other witnesses present there was handed over to the Police. The empty cartridge and front part of bullet were seized under a memo by the Investigating Officer (I.O.) in presence of P.W.3 and P.W.5. The seizure memo, prepared in this regard, is Ext.6 (production-cum-seizure memo). The inquest proceeding was carried by the I.O. at the veranda itself in presence of P.W.1 and P.W.4. The inquest report is Ext.7. The body of the victim



was dispatched for post mortem. P.W.10 who was then posted as the Medical Officer at Sadar Hospital, Begusarai held the autopsy on 15.05.2004 at 9.50 a.m. and submitted the post-mortem report (Ext.4). On conclusion of investigation, the charge-sheet was laid whereon cognizance was taken and the case was committed to the Court of Session for trial. On transfer, the case came on the file of the learned Trial Court where charges were framed, read over and explained to him to which he pleaded not guilty. The defence of the appellant was complete denial of his implication in the crime.

3. In order to bring home the guilt, the prosecution examined 16 witness. It is apt to give resume of the witnesses. P.W.1 (Ajeet Kumar Singh) is a neighbour/co-villager of the informant and an eye witness to the occurrence. He is also a witness to the inquest report (Ext.7). P.W. 2 (Susant Kumar Singh) is a relation of the deceased and an eye witness to the occurrence. P.W.3 Rajendra Prasad Singh is a co-villager. He has narrated the prosecution case as an eye-witness. He is also a witness to the seizure of the pistol and cartridges etc. which the appellant was possessed of on the date and time of occurrence. He has proved his signature (Ext.2) on the production-cum-seizure memo. P.W.4 Dharmendra Kumar Singh is another co-villager and also an attesting witness to the fardbeyan. In his examination-in-chief, he fully supported the prosecution case. He has identified his signature (Ext.1/1) on the inquest report. P.W.5



Awadesh Kumar Singh is the brother of the deceased and an eye witness to the occurrence. He is also a witness to the production-cum-seizure memo prepared by the I.O. He has proved his signature on the said memo (Ext.2/1). He supported the prosecution case as an eye-witness and the implication of the appellant in the crime. P.W.6 Bishundeo Singh is the father of the deceased. He too has supported the prosecution case as an eye witness. P.W.7 Sujeet Kumar Singh is the informant and full brother of the deceased Nutan Kumari. He has also narrated the prosecution case as an eye witness to each and every incident that occurred on that date. He has proved his signature on the fardbeyan (Ext. 3/1). P.W.8 (Chandradeo Singh) is a co-villager and an eye witness to the occurrence. P.W.9 (Niranjan Kumar) is cousin brother of the deceased and deposed as an eye witness. P.W.10 Dr. Gopal Mishra is the doctor who held the autopsy on the dead body and submitted the post-mortem report (Ext.4). P.W.11 (Sulochana Devi) is the mother of the deceased and also an eye-witness to the occurrence. P.W.12 (Pukari Devi) is *mausi* of the deceased. She has narrated the prosecution case as an eye witness. P.W.13 Syed Md. Khursheed is the Officer-in-charge of Barauni Police Station and the I.O. of the case who conducted the investigation and laid the charge-sheet. According to him on receiving a rumour of killing of the bride during the wedding function, he immediately reached the place of occurrence and recorded the fardbeyan. He has proved the fardbeyan



(Ext.5). After the case remanded by this Court in appeal, the prosecution examined P.W.14 Deonath Singh, A.S.I. of Police who produced on the order of the Superintendent of Police, Begusarai the material exhibits (Ext.(I) (country made pistol) Ext. (II) (empty cartridge) and Ext. (III) (front portion of cartridge) seized by the I.O. of the case from the place of occurrence. P.W.15 Dhirendra Anand Murti is the A.S.I. of Police who has proved the *Sanha* No. 232 dated 15.05.2004 (Ext.8) which was recorded by the I.O. before proceeding to the place of occurrence on the relevant day. P.W.16 Md. Sakeel Ahmad is A.S.I. of Police who has proved the sanction order (Ext.9), the report of the Sergeant Major (Ext.10), who examined the recovered pistol and cartridge(s) and Ext.11 which is letter written by the Retired Sergeant Major and the case diary (Ext.13). On conclusion of the prosecution evidence, the statement of the appellant was recorded under Section 313 Cr.P.C. wherein he simply abjured the guilt.

4. On a critical analysis of the evidence produced by the prosecution, the learned Trial Court held that the prosecution case was fully established by the evidence of several eye witnesses including the finding of the doctor(P.W.10) in the post-mortem report. Accordingly, the appellant was held guilty and convicted in the manner stated above.

5. Heard Mr. Ram Sumiran Rai for the appellant and Mr.



S.N. Prasad, APP for the State.

6. Before we deal with the rival contentions made at the Bar, it would be relevant to first examine the evidence of the doctor. P.W.10 held the autopsy on the dead body on 15.05.2004 at 9.50 a.m. and found the following ante mortem injuries:-

“(i) Firearm projectile wound of entry $\frac{1}{2}$ in diameter with adjoining skin blackened and scorched in an area of $1\frac{1}{2}$ ” x 1” over epigastrium right side.

(ii) Firearm projectile wound of entry $\frac{1}{2}$ ” in diameter over right shoulder just below right coraocid process with margins blackened and communicating with injury no. (iii)

(iii) Firearm projectile wound of exit 1” x $\frac{3}{4}$ ” and communicating with injury no. (ii) over right deltoid on dissection (skull NAD (2) Thoracic cavity. Both lungs pale. (3) Abdominal cavity- Abdominal cavity full of blood and blood clots. Liver - lacerated, spleen kidney pale stomach empty, spleen and kidneys were pale. All major vessels in abdomen besides L4-L5 vertebra were lacerated and one bullet was present besides L4-L5 vertebra.

Time elapsed since death within 12 to 24 hours. The death of the deceased was caused due to haemorrhage and shock as a result of the above mentioned injuries caused by firearm.”

The post-mortem report (Ext.4) and the evidence of the Doctor read with the inquest report (Ext.7) conclusively prove that the death of the deceased was homicidal in nature caused by two firearm injuries inflicted on her. The defence has not seriously questioned the aforesaid factum.

7. It has been submitted on behalf of the appellant that the deceased was done to death by her own family members as she was



adamant to marry with the appellant, who is brother of the husband of the elder sister of the informant. The place of occurrence has not been firmly established as the I.O. found few drops of blood on the place of occurrence (*veranda*) when the Doctor found that the injuries sustained by the victim could have resulted in profuse bleeding. There is no convincing evidence that on the date of occurrence, the wedding ceremony of the deceased was being performed. In this connection, he drew our attention to the evidence of the I.O. (P.W.13) who had not found presence of tents, *shamiyana* and chairs etc near the place of occurrence. He would also argue that the post-mortem report does not fully support the prosecution case as the findings of the Doctor with regard to the estimated time of death of the deceased does not fit in the prosecution case. He further submits that the Doctor found the injury on the person of the deceased having been caused from a close range whereas P.W.2 has stated that the deceased was fired at by the appellant from a distance of 8-9 ft. P.W. 6 is the father of the informant who has not supported the allegation of assault at the hands of the appellant as an eye witness.

8. Per contra, Mr. Prasad supported the impugned judgment. He submits that it is a case where the prosecution has not only proved the motive of the occurrence but also the participation of the appellant in the crime. Several eye witnesses have supported the prosecution case. The appellant was apprehended by the witnesses and co-



villagers at the spot with the weapon of assault. The I.O. reached the place of occurrence immediately when the appellant was handed over to the I.O. and the firearm and ammunition used by the appellant to assault the victim twice were handed over to him which were duly seized in presence of witnesses. He also submits that the ballistic report proved by the prosecution establishes that the weapon held by the appellant was used for assault on the victim which resulted in her death. It is also submitted that the *sanha* which was recorded by the I.O. before proceeding to the place of occurrence has also been brought on record and proved as an exhibit. It is submitted that the prosecution case on each material aspect has been fully established.

9. One of the contentions of the appellant is that the post-mortem report (Ext.4) does not fully corroborate the prosecution case. It has been submitted that the Doctor found the adjoining part of the skin around the wound of entry blackened and scorched. According to the defence, such finding suggests that the firing was made from a close range. Referring to the evidence of P.W.2, it has been submitted that this witness has stated that firing by the appellant was made from a distance of 8-9 ft. It is difficult to uphold the said contention of the appellant. The bullet used in the crime was .315 bore. The production-cum-seizure memo establishes the aforesaid fact. Charring skin around the wound of entry could have been possible if shot from a close distance. The report of the Sergeant Major (Ext.10) who



examined the recovered fire arm is that the seized pistol could fire cartridge of .303 dimension. The prosecution witnesses have consistently deposed that it was the appellant who appeared through the northern door of the veranda and shot at the deceased on two successive times. In face of the consistent ocular evidence, it is difficult to sustain the contention of the appellant and discredit the prosecution case. Law on this point is well settled.

10. Secondly, it has been argued by defence that the Doctor found the time elapsed since death within 12-24 hours. Such estimation of the time elapsed since death of the deceased belies the prosecution case. As per the prosecution case, projected at the trial, the occurrence had taken place at about midnight. The victim was carried to hospital but on way she died. Next morning, her dead body was dispatched for holding post-mortem examination. The Doctor (P.W.10) conducted the post-mortem on the cadaver on 15.05.2004 at 9.50 a.m. and found that the time elapsed since death is within 12-24 hours. It is just an estimation of the doctor. Based on this mere estimation of the doctor, the consistent evidence of several prosecution witnesses on the manner and time of death cannot be brushed aside. We find no reason to doubt the prosecution case on this score.

11. Another contention of the appellant is that the two bullets having hit the victim, in all probabilities, would have caused profuse



bleeding. The I.O. who inspected the place of occurrence found only a trail of blood drops on the veranda of the house where the victim was standing when the appellant shot at her. We would advert to the post-mortem report where the Doctor found the abdominal cavity full of blood and blood clots. The injuries at the middle of the abdomen, it appears, had caused profuse internal bleeding. Moreover, the victim was attended to immediately by several of her family members including the informant. She was immediately lifted and taken to the hospital. It may be possible that an attempt was made by them to stop the bleeding which, in ordinary course cause loss of blood causing death. Further, there is consistent ocular evidence on record that the appellant had fired twice at the victim which caused injury in her shoulder and the abdomen. Their evidence on the point of time and place of occurrence is consistent and reliable. The defence has not elicited any material contradiction in their evidence on these points. The contention of the appellant that the place of occurrence has not firmly been established by the prosecution, is held unsustainable.

12. Counsel for the appellant has next contended that the victim was done to death by her own family members as she was insisting on being married to the appellant. In this connection, he has drawn our attention to Ext. A to A/3 which are the photographs of the victim with the appellant taken in Allahabad when the victim had visited the place in connection with the marriage of the daughter of



her elder sister. It is a defence of the appellant which the appellant was required to prove by convincing material/evidence. We do not find from the record that any reliable evidence was led by the defence on this point except suggestion(s) given to some of them. That apart, when we turn to the statement of the appellant recorded under Section 313 Cr.P.C., it is found that no such plea was taken by him as his defence in such statement. Recording of statement under Section 313 Cr.P.C. is a solemn occasion when the Court directly interacts with the accused. In the case reported in AIR 1997 SC 768 [Rattan Singh versus State of H.P.) the Hon'ble Apex Court in paragraph 20 held as under:-

“20. Learned counsel for the appellant tried to make out much from the fact that no finger impression of Sheela Devi was found on the gun. We do not find any consequence on account of it in this case. In fact, appellant did not seriously dispute when the trial Judge put the question to him regarding that circumstances during his examination under Section 313 of the Code of Criminal Procedure (question No. 25 related to the evidence that gun was produced by Sheela Devi and was taken into possession by the police. The answer given by the appellant to that question was "I do not know"). Examination of the accused under Section 313 of the Code is not a mere formality. Answers given by the accused to the questions put to him during such examination have a practical utility for Criminal Courts. Apart from affording an opportunity to the delinquent to explain incriminating circumstances against him, they would help the Court in appreciating the entire evidence adduced in the Court during trial. Ex. P1 - gun - admittedly belongs to the assailant. Therefore, when PW 10 said in Court that she succeeded in snatching it from the assailant and she surrendered it to the police, we see no reason to disbelieve her, particularly in view of the evasive answer given by the appellant to the question concerned.”



13. The Counsel for the defence has further argued that the I.O. while inspecting the place of occurrence did not find the shamiyana, tent and chair etc. to suggest that on the date of occurrence, the victim was being married. It is found from the inquest report (Ext.7) prepared at the spot that she was clad in red attire which is usually put on by the bride on the eve of her wedding. The ocular evidence of the P.Ws is also consistent on this point. The defence has examined one witness to prove that the victim was in love with the appellant and wanted to marry him which was protested by the family members of the bride and to satisfy their false honour, they killed the deceased and they falsely implicated him due to land dispute. On scrutiny of the evidence of the D.W., it is not found that land dispute between him and the prosecution witnesses has been proved. The story propounded by the defence, in our view, appears imaginary. There is nothing on record to show that the brother of the appellant being brother-in-law of the informant had any such dispute. We are thus not satisfied that a plausible defence supported by reliable evidence has been presented by the appellant to disbelieve the prosecution case which finds support from a host of prosecution witnesses. We have closely perused and analysed the evidence of P.Ws.3, 4, 5, 7, 8, 9 and 11. There is hardly any suggestion given to these witnesses about the reason for his false implication by them



owing to land dispute. The presence of the appellant at the wedding function, being related to the family of the informant, was not unnatural as the appellant was the younger brother of the brother-in-law of the informant. Although, the prosecution is not burdened to prove the motive but, in the case at hand, the motive has clearly been crystallized through the evidence of the prosecution witnesses. The appellant had disclosed to P.W.11 (mother of the deceased) only few days prior to occurrence about his utter desire to marry the deceased which was not acceded to by the family members. This was the reason for the appellant to do away with the life of the deceased on the day when she was being married to another man.

14. Our attention has also been drawn to some of the discrepancies in the evidence of the prosecution witnesses. All omissions are not contradictions unless they are shown to be fundamental cutting at the root of the veracity of the evidence. We find that barring few minor contradiction(s) in the testimonies of the prosecution witnesses narrating the case as eye witnesses, they have supported the prosecution case in substance.

15. The Counsel for the State, on the other hand, has rightly submitted that the ballistic report (Ext.10) proved by P.W.16 clearly established that the weapon seized from the possession of the appellant was used in the crime.

16. On a careful consideration of the evidence on record and



in view of the discussions made above, we find and hold that the prosecution has been able to prove the charges levelled against the appellant beyond shadow of reasonable doubt. We find no infirmity in the judgment of conviction recorded by the learned Trial Court against the appellant.

17. Consequently, the appeal fails. It is, accordingly, dismissed.

(Kishore Kumar Mandal, J)

(Madhuresh Prasad, J)

Pankaj/-

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