

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Against the judgment of conviction, dated 15.03.2011, and order of sentence, dated 18.03.2011, passed by Sri Bajrangi Sharan, learned Additional Sessions Judge, F.T.C.-III, Ara in Sessions Trial No. 167 of 2000, arising out of Sahar P.S. Case No. 40 of 1999)

Criminal Appeal (DB) No.284 of 2011

- =====
1. Murai Singh, S/O Budhan Singh
 2. Budhan Singh, S/O Late Sawaru Singh @ Sawaru Yadav
Both residents of Village- Delliyan, Police Station- Char Pokhari (Sahar),
District- Bhojpur

.... Appellants

Versus

The State of Bihar

.... Respondent

=====

Appearance :

For the Appellant/s : Mr. Neeraj Kumar @ Sanidh, Amicus Curiae
For the Respondent/s : Mr. A. K. Sinha, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

and

HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 20-06-2017

This appeal has been preferred against the judgment of conviction, dated 15.03.2011, and order of sentence, dated 18.03.2011, passed by learned Additional Sessions Judge, F.T.C.-III, Ara in Sessions Trial No. 167 of 2000, arising out of Sahar P.S. Case No. 40 of 1999, by which both the appellants have been convicted under Sections 302/34 of the Indian Penal Code and sentenced to undergo life imprisonment.

2. The prosecution case, in short, as made out in the fardbeyan of Rajeshwar Singh (P.W.6), resident of Village- Gilia, P.S.



Chauri, District- West Champaran, recorded by A.S.I. B. K. Singh of Chaury police station, on 20.05.1999, at 23.30 hours, at Narayanpur P.S. campus, is as follows:

(i) The informant Rajeshwar Singh stated that at about 7.00 P.M., in the evening of 20.05.1999, he was returning to his house along with his son Shivjee Singh, after answering the call of nature. The informant stated that his son was walking 10 steps ahead of him. In the meanwhile, he heard sound of firing coming from the side of the bush. He saw the appellant Murai Singh armed with country made pistol and Budhan Singh armed with Farsa, fleeing. He has claimed to have identified the accused persons in the torch light. He further stated that on hearing sound of firing Bharat Singh (P.W.2) and Kesho Singh (P.W.3) came running to the place of occurrence and witnessed the two accused fleeing away. The informant stated that the incident occurred, as there was some quarrel between the appellants' side and the prosecution side on the issue of nick naming a woman of the family of the accused side, a Daain.

(ii) On the basis of the Fardbeyan of the informant, Sahar P.S. Case No. 40 of 1999, dated 20.05.1999, was registered for the offences under Sections 302/34 of the Indian Penal Code and 27 of the Arms Act.

3. The police in course of investigation prepared inquest report of the dead body and inspected the place of occurrence. The



police took re-statement of the informant as well as statement of witnesses under Section 161 of the Cr.P.C. The police after obtaining the post-mortem report and finding the case to be true against both the appellants submitted charge-sheet under Sections 302/34 of the Indian Penal Code and 27 of the Arms Act.

4. On receipt of the charge-sheet, learned Magistrate took cognizance of offence and committed the case to the Court of Sessions for trial. The case record ultimately came to the file of learned Additional Sessions Judge, F.T.C.-III, Ara. Thereafter the learned Judge framed charge under Sections 302/34 of the Indian Penal Code against Budhan Singh and 302 of the Indian Penal Code and 27 of the Arms Act against Murai Singh, to which they pleaded not guilty and claimed to be tried.

5. The prosecution, in order to substantiate its case, examined as many as 7 witnesses. P.W. 1 Bhuneshwar Singh is the cousin of the informant, P.W.2 is Bharat Singh, P.W. 3 Kesho Singh is the own brother of the informant. P.W.4 is Kameshwar Singh. P.W.5 is Rajdeo Singh. P.W. 6 Rajeshwar Singh is the informant of the case. P.W. 7 is Dr. Rohit Ram Kanaujiya. P.W. 8 is Guddu Chaudhary and P.W. 9 is Kandu Singh. The prosecution, however, has not examined the investigating officer of the case.

6. Out of these 09 witnesses, P.W.1, P.W.2 and P.W.3 have claimed to have seen only the accused fleeing away after the



occurrence. P.W.2 and P.W.3 are also witness to inquest. P.W.4 and P.W.5 are hearsay witness. P.W.6 has claimed to be the eye witness. P.W. 7 Dr. Rohit Ram Kanaujiya has conducted post-mortem on the dead body of the deceased and opined that the deceased died on account of fire-arm injury. P.W.8 and P.W.9 have turned hostile.

7. Apart from the oral evidence, the prosecution also adduced documentary evidence in support of its case. The defence did not examine any witness nor adduced any documentary evidence. The case of the defence in the statement under Section 313 Cr.P.C. is one of false implication.

8. The learned trial court on consideration of materials on record convicted both the appellants under Sections 302/34 of the Indian Penal Code, whereas acquitted them of charge under Section 27 of the Arms Act. Being aggrieved, the appellants have filed this appeal.

9. Learned counsel appearing for the appellants has assailed the impugned judgment of conviction and order of sentence on more than one grounds. He submits that in fact no one including the informant has seen the occurrence, and the appellants, who are close relatives of the prosecution side, have been falsely implicated. He further submits that falsity of the prosecution case is apparent from the fact that there would be sufficient light generally around 20th of May, at about 7.00 P.M., still the informant claimed to have identified



the accused persons in the light of torch, when the two sides are known to each other, being close relatives. Furthermore, the torch was also not produced before the police. The prosecution has failed to prove the place of occurrence, as the investigating officer of the case has not been examined. Learned counsel also submits that in fact no offence took place at 7 'o' clock and the occurrence in all probability had taken place after 10.00 P.M. in the night, as the doctor, who conducted post-mortem on the dead body of the deceased, found semi digested food in the stomach of the deceased. He submits that if the time of occurrence is 7.00 P.M., as given by the prosecution side, then the deceased would have had some food in between 3.00-4.00 P.M., which according to the appellants is very improbable, as the villagers generally take their food between 6.00-7.00 P.M. in the evening. He next submits that in the statement under Section 313 of Cr.P.C. no explanation was sought with respect to the motive, which was very essential, as the case was based on circumstantial evidence.

10. Counsel for the State has defended the impugned judgment of conviction and sentence. He submits that the time mentioned by the informant was a mere estimate, as generally the villagers do not wear watch, much less while going to answer call of nature. Thus, it cannot be pin-pointedly said that the occurrence took place at 7:00 PM. He next submits that presence of semi digested food in the stomach of the deceased by the doctor is not improbable, as the



former may have taken some snacks between 3:00-4:00 P.M. However, he does not dispute that the deceased sustained only one fire-arm injury and as per the prosecution case, only one of the two appellants, namely, Murai Singh, was so armed.

11. We have heard the counsel for the parties and perused the materials on record.

12. We may agree with the submission of the learned counsel for the appellants that they ought to have been given an opportunity under Section 313 of Cr.P.C. to explain that did not have any motive for killing of the deceased, as the case is based on circumstantial evidence. For that purpose, it would be equitable to remand the matter to the trial court, so that none of the sides is prejudiced. However, in the facts of the case, the allegation against appellant no.2, namely, Budhan Singh, at most is that he was seen armed with Farsa along with his son Murai Singh. There is no direct or indirect allegation of any overt act against him. There is no material to suggest that he shared common intention with his son to kill the deceased. We do not find it fair to remand his case also to the trial court, and we, accordingly, acquit appellant no.2, namely, Budhan Singh, of the charge under Sections 302/34 of the Indian Penal Code. Since the appellant Budhan Singh is on bail, he is discharged from the liabilities of his bail bonds.

13. In the facts of the case, we remand the case of only



appellant no.1, namely, Murai Singh, to the trial court for providing an opportunity to make his explanation in regard to the motive alleged against him. The order of conviction and sentence passed against appellant no.1, namely, Murai Singh, is also set aside with the aforesaid direction. It is expected that the trial court would conclude the fresh hearing within a period of four months from the date of receipt of a copy of this judgment along with the lower courts record. However, we are not inclined to enlarge the appellant no.1, Murai Singh, on bail, as the trial court is directed to conclude the fresh hearing within four months.

15. The appeal is partly allowed.

(Samarendra Pratap Singh, J.)

(Prakash Chandra Jaiswal, J.)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.07.2017
Transmission Date	30.07.2017

