

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.185 of 2014

Arising Out of PS. Case No.-382 Year-2011 Thana- FATUHA District- Patna

Kaushlendra Yadav Son of Laxmi Narayan Singh Resident of Village-
Dumari, P.S.- Fatuha, District- Patna

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Fakhruddin Ali Ahmad Mr. Arun Kumar Bhagat Ms Nutan Sahay
For the State		Mr. S.N.Prasad, APP

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
and
HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL)

Date : 28-11-2017

Calling in question the judgment of his conviction under sections 302 and 447 IPC and section 27 of the Arms Act passed by the learned trial court in S.T. No. 692 of 2012, the appellant has filed the present appeal.

2. The FIR was lodged against four accused persons including the appellant. One of them namely Shiv Kumar Yadav was not sent up for trial. Two other accuseds namely Laxmi Narain Yadav and Shailendra Yadav were acquitted by the learned trial court.

3. The prosecution case spelt out in the Fardbayan lodged on 12.11.2011 at 11.00pm at the Patna Medical College & Hospital (PMCH) and recorded by Niranjana Kumar (P.W.6),



in brief, is that when the informant was near the school of the village the appellant started scuffling with him as he had left driving the tempo of the appellant. The appellant caught hold and twisted his hand and also slapped him. In the meantime, his mother (P.W.5) and the father (deceased) also rushed there and tried to save him. The appellant inflicted assault on the head of his mother with brick. However, the villagers gathered and the matter was pacified. They all returned to their home. After some time, the appellant with other co-accused(s) (since acquitted) reached the house of the informant. The appellant was armed with a gun whereas co-accused Shailendra Yadav (since acquitted) was armed with a pistol. They opened fire. The firing made by the appellant caused injury on the forehead and chest of his father. Her mother also received injury in her eye. Seeing the people assembling, the appellant and other co-accuseds escaped. Both the injured(s) were first taken to the local hospital whereafter they were taken to the PMCH where the father was declared dead. The mother (P.W.5) was admitted for treatment. On recording of the Fardbayan, an FIR was drawn and investigation ensued wherein a death inquest proceeding was carried out at the PMCH which was witnessed by Ravindra Singh (P.W.1) and Shivdhari Singh (P.W.2). The



deadbody was dispatched for the post mortem examination. After completing the investigation, the I.O. sent up only three accused persons including the appellant to face the trial. At the trial, charges were framed and read over/explained to the appellant to which he pleaded not guilty and claimed a trial.

4. To substantiate the prosecution case beyond the pale of doubt, the prosecution examined 07 witnesses. P.Ws 1 and 2 are the own brother of P.W.5. P.W. 1 has projected himself as an eye-witness to the occurrence whereas P.W. 2 became a formal witness to prove his signature (Ext.1/2) on the inquest report. P.W. 3 is another son of the deceased and brother of the informant. He, too, has described the occurrence as an eye-witness. P.W. 4 Mintu Devi is the wife of P.W. 1 who also deposed as an eye-witness to the occurrence. P.W. 5, as noted above, is the wife of the deceased and mother of P.Ws 3 and 6. She is also an eye-witness to the occurrence. According to the prosecution case, she received injury at the hands of the appellant when the quarrel had taken place near the school and subsequently at the house (place of occurrence) when a pellet fired by co-accused Shailendra Kumar injured one of her eyeballs. P.W. 6 is the informant. He has narrated the prosecution case as an eye-witness. P.W. 7 Dr. R.N.Chaudhary



is the autopsy surgeon who conducted the post mortem examination and provided the post mortem report (Ext.2). His evidence in court indicates that the victim had received one wound of entry with inverted margin size 1/8"x1/8"x chest cavity deep on mid portion of sternum just 4" below the sternal notch. Pellet passed through the injury and fractured the sternum. A pellet was found lodged in the body. He found another wound of entry with inverted margin size 1/8"x1/8"x bone deep over forehead just 1/2" above the fronto nasal junction which had caused fracture of fronto nasal bone. The pellet was also recovered from the site of the injury. Both the injuries were found caused by fire-arm. The death was due to hemorrhage and shock.

5. Heard the counsel for the appellant and learned APP for the State.

6. It is submitted by the counsel for the appellant that P.Ws 1,3,4 and 6 have actually not witnessed the occurrence in which the assault was inflicted on the deceased. All the witnesses produced by the prosecution are close relatives. Although the evidence on record shows that several villagers had assembled immediately after the incident but none of them have been produced by the prosecution which throws a doubt



on the veracity of the prosecution case. The I.O. has not been produced and examined. The defence was unable to extract contradiction in the statement of the witnesses resulting in serious prejudice to the defence. The place of occurrence has not been firmly established. Although the witnesses have stated about oozing out blood from the wounds received by the deceased at the site but in absence of the evidence of the I.O. there is no corroboration to the said fact.

7. Counsel for the State supported the findings of guilt. He argued that P.W. 5 is surely the eye-witness to the incident. She was present with the deceased when the incident occurred. She also received injury in her eye which was shown to the court. The defence has not elicited any material contradiction in her evidence. There is nothing on record to show that the witnesses were inimically disposed towards the appellant.

8. P.W. 3 is the brother of the informant. According to him, seeing the assembly/assemblage of the persons he along with P.W. 6 huddled themselves in the room and closed the door and remained enclosed for half an hour. Thereafter he could see his father only lying in an injured condition. According to the evidence on record, there was no window in the room.



P.W. 6 has, however, not claimed to have witnessed the incident while inside the room. In his cross-examination, he has stated that he was at the school when his mother and father were assaulted. On hearing the sound of gun firing, he went to the place of occurrence to find assembly of more than 100 co-villagers in the nearby field of Prakash. He could see the firing at his father from a distance of 20 ft. However, in para 29 when his attention was drawn to his CD statement he has stated that he had claimed to have witnessed the incident while peeping up through the door of his one room house. The evidence(s) of P.W.1 and P.W. 6 thus suffer from serious inner contradictions and render their testimony unreliable. P.W. 1 is the husband of P.W. 4. Both of them in their respective examinations-in-chief have claimed themselves as eye-witnesses to the occurrence but on a deeper scrutiny of their evidence it is explicit that they were present 10-12 houses apart from the house of the deceased. P.W. 1 has stated that while he was at his house he heard the sound of firing whereafter he went to the place of occurrence and found the deceased lying on the ground. He had gone alone. Conversely, P.W. 4, his wife, has stated that she was at her house with her husband (P.W.1). She heard three sounds of gunshots



whereafter she along with P.W. 1 rushed to the place of occurrence to find that slew of people were assembled there from before.

9. Having considered the inner contradiction apparent from their cross-examinations, the learned trial court found that P.Ws 1,3,4 and 6 were not the eye witnesses to the occurrence. In the light of the submissions made by the parties, we have also carefully analyzed their evidence and find no legal infirmity committed by the learned trial court in appreciation of their evidence. P.W 5 thus remains the solitary eye witness to the occurrence.

10. Diverse submissions have been advanced on behalf of the parties with reference to the evidence of P.W. 5. Learned counsel for the defence has submitted that the witness is not consistent in her evidence. While in her examination-in-chief she has alleged about firing by the appellant causing injury to the deceased but in her cross-examination at paragraph 19 she has narrated the manner of occurrence differently. Referring to her examination-in-chief where specific allegations were attributed to the co-accuseds Shailendra Yadav and Laxmi Narain Yadav who had faced the trial but acquitted for want of reliable evidence, it is submitted by the defence that



material part of the evidence of P.W.5 has already been disbelieved by the learned trial court.

11. Counsel for the State, in contra, submits that the evidence of P.W.5 gets full corroboration from the medical evidence. The doctor found two injuries on the deceased. It is submitted that one injury on the chest was inflicted by the appellant whereas the second injury was inflicted by co-accused Shailendra Yadav (since acquitted).

12. We have carefully examined the evidence of P.W. 5. In her examination-in-chief, she has narrated the prosecution case consistent with the case put up in the Fardbayan. It was alleged that the appellant fired from his gun causing injury to the deceased whereas the firing made by co-accused Shailendra Yadav caused injury in her eye. In her cross-examination she, however, contradicted herself and stated that co-accused Shailendra Yadav fired thrice. The fire shot by Shailendra Yadav hit the deceased as well as the witness. We are mindful that the trial court, on appraisal of her evidence on record, did not find the evidence of the witnesses including P.W.5 reliable insofar as the complicity of the co-accuseds Shailendra Yadav and Laxmi Yadav are concerned. To top it all, if P.W.5 was injured and operated upon as claimed by her,



the evidence in this regard ought to have been placed on record. We find there is none. Law is well- settled beyond cavil. Conviction can be rested on the solitary evidence if his/her evidence is found consistent and trustworthy. The courts have sustained conviction if the solitary evidence is found completely aboveboard. Unfortunately, this is not one of these cases. As noticed above, a doubt is created on major part of the prosecution narrated by her. The trial court disbelieved those integral part of her deposition. We have also noticed the material contradiction(s) insofar as the manner of occurrence is concerned in her examination-in-chief and cross-examination. The Court finds it difficult to rest conviction on her evidence. In her cross-examination, P.W.5 is emphatic that the firing made by co-accused Shailendra Yadav (since acquitted) caused injury to her and to the deceased. The prosecution case presented at the trial and also supported by P.W. 5 in her examination-in-chief is that the the appellant fired at the deceased causing two injuries on his body. To sum up, the Court does not find the evidence of P.W. 5 completely aboveboard and is of the considered opinion that it would be wholly unsafe to uphold the conviction of the appellant on the solitary ocular account narrated by P.W. 5.



13. Before parting with the case, the Court shall also state another reason to doubt the prosecution case. P.W. 6 in his evidence has stated that his statement was recorded by the police at the house on which the case was lodged. The Fardbayan (Ext.1) however discloses that the same was made on 12.11.2011 at the PMCH, Patna. Harping on this, it has been argued by the defence that the first version of the prosecution case has been suppressed which casts a serious doubt on the prosecution case presented at the trial. The Court finds substance in the submission.

14. Consequently, the appeal is allowed. The conviction of the appellant under the impugned judgment of the learned trial court in S.T. No. 692 of 2012 is set aside. Since the appellant is in custody, he is directed to be released from custody, if not required in any other case.

(Kishore Kumar Mandal, J)

(Vinod Kumar Sinha, J)

HR/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	08. 12.2017
Transmission Date	08.12.2017

