

## IN THE HIGH COURT OF JUDICATURE AT PATNA

(Against the judgment of conviction, dated 14.06.2011, and order of sentence, dated 21.06.2011, passed by Sri Amrit Lal Yadav, learned Additional Sessions Judge, F.T.C.-I, Bettiah (West Champaran) in Sessions Trial No. 604 of 2009, arising out of Sikarpur P.S. Case No. 26 of 2009)

### Criminal Appeal (DB) No.746 of 2011

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Arjun Yadav, son of Murari Yadav, resident of Village- Kharkawa, P.S. Sahodara,  
District- West Champaran. .... Appellant

Versus

The State of Bihar .... Respondent

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#### Appearance :

For the Appellant/s : Mr. Satyavrat Verma, Advocate  
Mr. Shashank Chandra, Advocate

For the Respondent/s : 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: 18-05-2017

This appeal has been preferred against the judgment of conviction, dated 14.06.2011, and order of sentence, dated 21.06.2011, passed by learned Additional Sessions Judge, F.T.C.-I, Bettiah (West Champaran) in Sessions Trial No. 604 of 2009, arising out of Sikarpur P.S. Case No. 26 of 2009, by which the sole appellant, namely, Arjun Yadav, has been convicted under Sections 302 of the Indian Penal Code and 27(i) of the Arms Act and sentenced to undergo R.I. for life and a fine of Rs. 10,000/- under Section 302 of the Indian Penal Code and in default to undergo S.I. for six months. The appellant has been further sentenced to undergo R.I. for three years along with a fine of Rs.1,000/- under Section 27(i) of the Arms



Act and in default to undergo S.I. for one month. However, both the sentences have been ordered to run concurrently.

2. The prosecution case, in short, as made out in the fardbeyan of Subhashini Devi (P.W.2), resident of Village- Shivganj, P.S. Shikarpur, District- West Champaran, recorded by S.I. Mahendra Prasad of Shikarpur police station, on 23.01.2009, at 09.45 A.M., at P.H.C., Narkatiaganj, is as follows:

(i) The informant stated that on 23.01.2009, at about 6.00 A.M., in the morning, her husband left for work. Her son Sattan Kumar also left for his shop. The first son of the informant, namely, Biru Kumar, went to a nearby shop for taking tea. In the meantime, one Arjun Yadav, at about 8.00 A.M., had enquired about Biru. She informed him that he had gone out for tea. After some time, Biru Kumar returned. At about 8.30 A.M., the appellant Arjun Yadav again came to her house and talked with her son inside the room. Soon thereafter, the appellant shot her son from his country made pistol and fled away. Her son had sustained injury around his belly. On hearing sound of firing, Sattan Yadav (P.W.1) arrived there. The informant along with neighbours, carried her injured son to Narkatiaganj hospital, where he died.

(ii) On the basis of the Fardbeyan of the informant, Narkatiaganj P.S. Case No. 26 of 2009, dated 23.01.2009, was registered for the offences under Sections 302 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 and took further 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 the appellant submitted charge-sheet under Section 302 of the Indian Penal Code and 27 (i) of the Arms Act.

4. Thereafter the learned Magistrate took cognizance of the offence and committed the case to the Court of Sessions for trial. Charges were framed under Section 302 of the Indian Penal Code and 27 (i) of the Arms Act to which the appellant 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 Sattan Kumar is the younger brother of the deceased and has claimed to have seen the accused-appellant fleeing from the place of occurrence, P.W.2 Subhasini Devi is the mother of the deceased, she has claimed that the appellant fired at her son in her presence, P.W. 3 Vishun Mahto is own uncle of the deceased, who came to the place of occurrence after hearing the gun shot and he is a hearsay witness. P.W.4 Ashish Kumar Gupta is the witness of inquest report. P.W.5 Dr. Ashok Kumar Chaudhari conducted post-mortem on the dead body of the deceased



Biru Kumar and opined that the death was caused due to fire arm injury. P.W. 6 Mahendra Prasad is the investigating officer of the case.

6. The defence did not examine any witness nor adduced any documentary evidence. The case of the defence, as appearing from the mode of cross-examination, is one of false implication on account of suspicion.

7. The learned trial court relying upon the evidence of P.W.2, Subhasini Devi (mother of the deceased) convicted the appellant under Section 302 of the Indian Penal Code and 27 (i) of the Arms Act. Being aggrieved, the appellant has filed this appeal.

8. As noticed earlier, the prosecution in order to substantiate its case examined six witnesses. Subhasini Devi (P.W.2) has supported the prosecution case in her evidence. She stated that the occurrence took place about 1½ years ago, at about 8.00 A.M., in the morning. At that time, she was present in her house. Her son Biru Kumar had gone to the house of Arjun Yadav for charging his mobile early in the morning. After some time, Arjun Yadav asked him to proceed to his house, as he too would be coming to his house. Accordingly, her son returned to the house and sat in a cot in one of the rooms. Her son informed her that Arjun had kept a girl in his house. Soon thereafter, Arjun Yadav came to the house of the informant and asked Biru whether he had seen anyone in his house, to



which latter replied in negative. Arjun further warned that in case, if he divulged that he had seen someone in his house, he would be silenced for all time. However, the next moment, Arjun Yadav fired at the informant's son, which hit his belly, just above navel. On account of injury, the informant's son slumped on the ground, thereafter she raised halla, whereupon, her another son Sattan Kumar (P.W.1), Vishun Mahto (P.W.3) and others came. With the help of local people, she carried her son (Biru) to hospital, however, he died on the way. She further stated that the police came to the hospital, where she got recorded her statement.

9. P.W.1 Sattan Kuamr in his evidence stated that on the relevant day, at about 8.00 A.M., as soon as he had stepped 10 steps from his house, he heard sound of firing, whereafter he returned to his house and saw the appellant fleeing away with Katta in his hand. He saw his brother lying on the ground having sustained firearm injury.

10. P.W. Vishun Mahto is the uncle of the deceased. He stated that about 8.00 A.M., on the date of occurrence, he was milking his cow. On hearing gun shot, he rushed to the house of the informant, who narrated that Arjun Yadav killed her son by firing at him.

11. P.W.6 Mahendra Prasad, who is the investigating officer of the case, stated that he recorded the statement of the informant at about 9.45 A.M., where he prepared inquest report of the dead body of the deceased. Thereafter he came to the place of



occurrence, at about 11.40 A.M., and inspected the same. He took the statement of the witnesses and also got the post-mortem report of the deceased.

12. Mr. Satyavrat Verma, learned counsel appearing for the appellant, has assailed the impugned judgment of conviction and sentence on more than one ground. He submits that the informant has not seen the occurrence and in any view of the matter she is not a reliable witness. Similarly P.W.2 has claimed to have only seen the appellant fleeing away with pistol soon after firing and he too has not seen the occurrence. The other witness, P.W. 3, has admittedly not seen the occurrence and is a hearsay witness and had come to learn about the occurrence through the informant. Besides this, P.W.1 Sattan Kumar, stated that he has not put his signature on any document at the hospital and the police had come to his residence at about 10.00 A.M. The evidence of P.W.1 points that the police had recorded the fardbeyan at the house of the informant, when it first came to the house of the informant, at 10.00 A.M. in the morning and not at the hospital.

13. He submits that the informant did not allege any motive in the F.I.R., however, in her evidence, she has assigned different motives for the occurrence, which the prosecution has utterly failed to establish. The informant in her evidence has given go-bye to the prosecution case, as narrated in the F.I.R. The informant in her



fardbeyan stated that she did not hear the talks going on between the deceased and the appellant at her house, just before the occurrence; whereas in her evidence, she stated that she had heard the conversation of the duo. He also submits that all incriminating materials, on which the learned trial court had relied for convicting the appellant, were not put to him in the statement under Section 313 of the Cr.P.C. The investigating officer did not find blood in the house of the informant, whereas the occurrence is said to have taken place in one of the rooms. The investigating officer in his evidence has not stated as to whether he had found blood on the cot or either on the clothes of P.W.1 or the mother of the deceased (P.W.2).

14. On the other hand, learned A.P.P. has defended the judgment of conviction and order of sentence. He submits that the circumstances indisputably points to the guilt of the appellant. He submits that post-mortem report also supports the prosecution case.

15. We have heard counsel for the parties and perused the materials on record. The issue for consideration before us is whether the prosecution has been able to bring home the charge under Section 302 of the Indian Penal Code and Section 27 (i) of the Arms Act against the appellant. It would appear from the evidence of doctor that the deceased sustained charred firearm injury on the belly, which is the cause of death, as such, there is no dispute that the deceased was done to death by fire-arm injury.



16. The prosecution in support of its case has relied upon three witnesses, primarily on informant (P.W.2) and two corroborative witnesses, namely, P.W.1 and P.W.3.

17. Learned counsel for the appellant has argued that the witnesses are unreliable and not trustworthy and none of them have seen the occurrence. We may agree with the submission of the learned counsel for the appellant that two of these witnesses, namely, P.W.1 and P.W. 3, may not have seen the occurrence, as per their testimony.

18. However, as per prosecution case, Subhasini Devi (P.W.2), the mother of the deceased, was present in the house along with her deceased son. P.W.1 Sattan Kumar was not present in the house, as he has gone to his shop. P.W.1 has claimed that he did not proceed further when he saw the appellant entering into his house. Soon thereafter, he heard sound of firing, whereupon he rushed towards his house and saw the appellant fleeing away. The other witness, namely, P.W. 3, is admittedly not an eye witness and is a hearsay witness. His evidence is based on the version of the informant (P.W.2), as such the main witness is P.W.2 herself. Thus, in view of own testimonies of these witnesses, we have no hesitation in holding that both P.W.1 and P.W.3 have not seen the occurrence.

19. Besides this, P.W.1 further stated that the investigating officer came to the house of the informant at about 10.00 A.M., whereas the investigating officer (P.W.6) in his evidence stated



that he came at the house of the informant at 11.40 A.M., only after recording the fardbeyan of the informant at the hospital, which contradicts the statement of the informant (P.W.2) that the investigating officer came to the place of occurrence at 10.00 A.M. This apart, P.W.1 stated that he did not sign any document in the hospital, whereas the evidence shows that the fardbeyan was signed at the hospital. Furthermore, as per F.I.R., this witness had gone out before 8.00 A.M. and when the occurrence took place at about 8.30 A.M., he could not have been in a position to return and see the appellant fleeing away from the place of occurrence. Thus, we do not find that this witness to be trustworthy and his evidence is liable to be discarded from consideration.

20. It thus emerges, that the prosecution case hinges on the sole testimony of P.W.2 (informant).

21. Counsel for the appellant argued that this witness (P.W.1, the injured) too has not seen the occurrence, as such, her evidence is required to be examined cautiously. The informant, both in F.I.R. and in her evidence, stated that occurrence took place in the morning between 8.00-8.30 A.M. Her husband had gone out for work and so had P.W.1 for his shop. P.W.2 alone was in the house along with her elder son Biru Kumar (deceased). She stated that at about 8.00 A.M., the appellant Arjun, who is her neighbour and close friend of the deceased, had come to her house to enquire about her son, who



was not present in the house, and had gone out for taking tea. In her evidence, she stated that her son returned and informed her that he gone to the house of Arjun Yadav. Soon thereafter, Arjun Ydav also came to the house of the informant and enquired from the deceased whether he had seen anyone in the house or not to which he replied in negative. The appellant warned that in case he opens his mouth and reveals anything damaging, he would be silenced. Some hot talk ensued between them, thereafter the appellant opened fire at Biru, who died.

22. The informant claims to have seen the incident and her presence in the house cannot be doubted, as she is the mother of the deceased. The post-mortem report also corroborates the case of the informant that the deceased was shot at by fire-arm from a very close range. The doctor, who conducted the post-mortem on the dead body of the deceased found following injuries on the person of the deceased:

External examination:

(i) One lacerated wound with charring around the wound with inverted margin- ½” in diameter:- wound of entry.

(ii) One lacerated wound with everted margin near right side of scrotum over the right thigh 1” diameter: wound of exit.

On dissection: Above injuries were confirmed. A probe pamed, which communicated injury no.(i) and (ii). Abdomen: Full of



blood. Laceration of intestine and mesenteric vessels found. Chest-heart: both side empty. Lung, liver, spleen- pale. Stomach- empty. Urinary bladder- empty.

Time elapsed since death- within 24 hours.

All injuries were ante-mortem, caused by fire-arm. In the opinion of the doctor, the cause of death is due to haemorrhage and shock, due to above injuries, caused by firearm.

23. The appellant submitted that as per prosecution case, the appellant shot at the deceased while scuffle with each other in standing position. But there is everted margin near right side of scrotum over the right thigh 1" in diameter, which is the wound of exit, though the wound of entry is from the belly. On these premise, learned counsel argued that the exit wound is through a lower portion of the body, which is not possible, if a persons shoots at another in standing position.

24. As per record, the deceased was 25 years old and the appellant was about 20 years of age at the time of occurrence. We also find that no question was put to the doctor that such injury would not be possible when both, the shooter and the victim, are in standing position. Besides this, if one shoots at another one from close range pointing the arms down ward, such injury could be very much possible.

25. Learned counsel for the appellant has argued that the



witnesses stated that some blood fell on the cot and the bed, but the investigating officer did not find any blood either on the cot or on the bed or on the shirt of deceased on the clothes worn by the mother of the deceased (P.W.2).

26. It is relevant to point out that soon after the occurrence, the deceased was taken to hospital for treatment from the house. The investigating officer came to the house at 11.40 A.M. after recording the fardbeyan of the informant at the hospital, as such, he may not be able to notice the blood on the cot or on the bed. Besides this, P.W.1 and P.W.2 stated that no blood was found on the cot.

27. On careful examination of the evidence of the informant, we do not find any material discrepancy, which may go to the root of the prosecution case. It is true that in the F.I.R., the informant stated that she did not hear the talks between her son and the appellant, soon before the occurrence, whereas in her evidence she stated that she heard their conversation.

28. In our view, the discrepancy is not of such a nature, which would render the entire prosecution case unreliable, in view of the consistent evidence of the informant pointing unequivocally at the guilt of the appellant. We find that the evidence of P.W.2 fully reliable. It is well settled that conviction can be sustained on the evidence of a solitary witness, if the same is free of doubt and trustworthy, which is the situation in the present case, As such, we



hold that the prosecution has succeeded in establishing the charge under Section 302 of the Indian Penal Code against the appellant.

29. The other issue is whether the occurrence took place on the spur of moment because of sudden fight between the appellant and the deceased. It would appear from the evidence of informant itself that the deceased had gone to the house of the appellant, where he stopped for some time, but no untoward incident took place. However, after some time, the appellant came to the house of the informant, where some altercations took place between her son and the appellant leading to firing by the appellant at the deceased. All these aspects point out that the firing took place because of a sudden fight and, as such, the case of the appellant would fall under Section 304, Part-I of the Indian Penal Code. Accordingly, we alter the conviction of the appellant to one under Section 304, Part-I of the Indian Penal Code from section 302 of the Indian Penal Code. However, the conviction and sentence passed under Section 27(i) of the arms act is sustained.

30. On the quantum of sentence, learned counsel for the appellant submits that the appellant has remained in custody for about 7 years and 9 months and he had just emerged from his childhood, when the occurrence took place. Besides this, it was his first offence and he has already served the sentence awarded under Section 27(1) of the Arms Act.



31. Having regard to the facts and circumstances of the case, we hold that the period undergone in jail will meet the ends of justice and we order accordingly. The appellant accordingly would be released from custody, if not wanted in any other case.

32. With the aforesaid modification in conviction and sentence, the appeal is dismissed.

**(Samarendra Pratap Singh, J.)**

Uday/-

**(Arun Kumar, J.)**

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