

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (DB) No.238 of 1994**

Sessions trial no. 504/1990 arising out of Nawanagar P.S. case
no. 126/1988 District- Buxar

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Raj Nath Ram Son of Sagar Ram resident of village/PO Kesai P.S. Dhangai District
Bhojpur

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Niraj Kumar @ Samidh
Mr. S.R.C. Pandey

For the Respondent/s : Mr. Shiwesh Ch. Mishra, A.P.P.

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
and**

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date: 03-01-2018

1. The sole appellant has been convicted under section 302 read with section 149 of the Indian Penal Code and ordered to undergo imprisonment for life for the offence punishable under section 302 read with section 149 of the Indian Penal Code by the impugned judgment of conviction and sentence order dated 24.3.1994 passed by the Addl. Sessions Judge II, Buxar in Sessions trial no. 504/1990 arising out of Nawanagar P.S. case no. 126/1988.

2. The aforesaid Nawanagar P.S. case no. 126/1988 was registered on 28.11.1988 at 7 p.m. on the basis of fardbeyan of PW4 namely, Upendra Kumar Chaudhary who



stated that on the same day at about 6 p.m. while he along with Deshbandhu Chaudhary (PW5) and Godhan Rai (deceased) were returning from village Bajnol and got down from bus at Sonbarsa bus stand, 15 FIR named accused including appellant came on a jeep having armed with rifles and guns and started indiscriminating firings. The sole appellant and two other accused namely, Ramnath Ram and Kaushal Bind also made firing. The firing of appellant hit to him whereas firing of Kaushal Bind hit to the deceased as a result whereof deceased fell down on the ground. Accused Ramnath Ram, too, fired to the deceased Godhan Rai and also cut neck by means of Kutta. The informant along with Deshbandhu Chaudhary came to Sonbarsa outpost and got recorded his fardbeyan. The formal FIR was prepared on 29.11.1988 and the same was sent before the concerned Magistrate on 02.12.1988. However, after completion of investigation, police submitted charge sheet against all the FIR named accused including appellant for the offence punishable under section 302 and other minor sections of the Indian Penal Code. In the charge sheet four accused persons, namely, Sri Chamar, Girija Chamar, Kaushal Bind and Ramdas Chamar were shown as absconder. The cognizance



was taken and the case was committed to the court of sessions in usual way. The appellant and accused were put on trial. Charges under proper sections were framed against accused persons including the appellant.

3. Prosecution got examined, altogether, seven witnesses and also got exhibited inquest report. The statements of the accused persons including appellant were recorded under section 313 of the Code of Criminal Procedure in which they denied the prosecution story and claimed their false implication.

4. No evidence was adduced by the accused persons including appellant in support of their defence but from perusal of the statements recorded under section 313 of the Code of Criminal Procedure as well as trend of cross-examination of prosecution witnesses, it would appear that accused persons including appellant completely denied the prosecution story.

5. Learned court below, having relied upon the deposition of PW 4 (Upendra Kumar Chaudhary), convicted the sole appellant whereas acquitted other ten accused persons.

6. Learned counsel appearing for the sole appellant



assailed the impugned judgment of conviction and sentence order arguing that the prosecution failed to prove charges levelled against the appellant but even then learned court below, only on the basis of surmises and conjectures, passed the judgment of conviction and sentence. Continuing his submissions, he drew our attention towards depositions of prosecution witnesses and submitted that prosecution witnesses no.1 is a formal witness who has proved inquest report whereas prosecution witnesses nos. 2 and 3 have stated nothing in respect of alleged occurrence and similarly, prosecution witness no.5 who is said to be one of the eye-witnesses of this case, has also stated nothing against appellant and so far as PWs 6 and 7 are concerned, they have also stated nothing regarding the alleged occurrence.

7. He, further, submitted that PW 4, though, supported the occurrence but while he was put on cross-examination, he fairly admitted at para 5 of his cross-examination that he had not seen who had fired at him and he, further, admitted at para 4 of his cross-examination that names of accused persons had been disclosed to him by PW5, namely, Deshbandhu Chaudhary and, therefore, in the aforesaid circumstances, there was nothing before the court



below to pass the judgment of conviction.

8. On the other hand, learned Additional Public Prosecutor appearing for the State supported the impugned judgment of conviction and sentence order arguing that appellant was member of unlawful assembly and having formed unlawful assembly along with other accused eliminated the deceased of the present case and, therefore, learned trial court rightly convicted and sentenced the appellant.

9. As we have already noticed that, altogether, seven prosecution witnesses have been examined and out of seven prosecution witnesses only PW4 supported the prosecution story to some extent but we find at para 4 of his cross-examination that he disclosed that names of accused persons were disclosed to him by PW 5 and similarly, at para 5 of his cross-examination, he admitted that he had not seen who had fired at him. Moreover, deposition of PW 5 goes to show that he has made contradictory statements as in para 1 of his deposition, he stated that the appellant had opened fired at him which hit the deceased Godhan Rai but in his fardbeyan, he has stated a different story leveling allegation against accused Kaushal Bind to this effect that it was co-accused



Kaushal Bind who opened fire causing injury to the deceased Godhan Rai. Moreover, neither fardbeyan, nor post mortem report nor injury report has been brought on the record by the prosecution and, therefore, we do agree with the submissions of learned counsel for appellant that trial court has passed judgment of conviction and sentence order only on the basis of surmises and conjectures.

10. On the basis of the aforesaid discussions, this criminal appeal is allowed and accordingly, the impugned judgment of conviction and sentence order dated 24.3.1994 passed by the Addl. Sessions Judge II, Buxar in Sessions trial no. 504/1990 arising out of Nawanagar P.S. case no. 126/1988 is, hereby, set aside. Appellant is discharged from the charges as well as liability of bail bonds.

(Hemant Kumar Srivastava, J)

Shahid/-

(Rajendra Kumar Mishra, J)

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	8.1.2018
Transmission Date	8.1.2018

