

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.397 of 1994

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Pawan Dass, Son of Nakur Dass, Resident of Refugee Colony, Palasi, Police
Station-Narpatganj, District-Araria (Purnea).

... .. Appellant/s

Versus

State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Ranveer Singh, Adv.(Amicus)

For the State : Ms. S.B. Verma, APP

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
and
HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 13-01-2018

Since nobody has appeared on behalf of the appellant, we
deem it appropriate to assign the task of defending the appellant to
Mr. Ranveer Singh, Advocate as an amicus.

Heard the learned amicus and the learned counsel for the
State.



Pawan Dass, the appellant has been convicted under Section 302 of the Indian Penal Code and Section 27 of the Arms Act by Judgment and order dated 04.08.1994, passed by the learned Sessions Judge, Araria Camp, Purnea and has been sentenced to undergo R.I. for life for the offence under Section 302 of the IPC and R.I. for three years for the offence under Section 27 of the Arms Act. The sentences have been ordered to run concurrently.

The appellant is alleged to have shot dead the deceased namely, Sreedhar Das.

The prosecution case is based on the fardbeyan of P.W.-2, Manohar Das, who is the brother of the deceased. He has alleged that in the night of 30.06.1992, while he was sleeping in his house, he heard the voice of the wife of the deceased. On hearing such voice, he went to the house of the deceased, where he was informed that the appellant had shot at the deceased. He has also stated in the First Information Report that while he was going to the house of the deceased, he had spotted the appellant running away towards eastern direction with a pistol in his hand. On seeing him, the appellant had opened fire, but it did not hit him. After reaching the house of the deceased, the informant (P.W.-2) saw in the light of earthen lamp that the deceased has been hit in his head by a gun-shot. His wife who has been examined as P.W.-1,



informed him that the appellant after removing the mosquito-net, fired from his weapon killing the deceased. In the meantime, it has been alleged in the First Information Report, the appellant came back again in the room where the deceased and others were present and tried to inquire as to who had killed the deceased. The informant (P.W.-2) then caught hold of him, but in the meantime, the father of the appellant, viz, Nakul Das came and managed to take him away. On the basis of the aforesaid fardbeyan/statement, Narpatganj P.S. Case No. 104 of 1992 dated 01.07.1992 was registered for investigation for the offences under Section 302 IPC.

The trial court, after examining eight witnesses on behalf of the prosecution, convicted the appellant and sentenced him as aforesaid.

In order to appreciate the prosecution case, it would be relevant to first scrutinize the evidence of the wife of the deceased, namely, Anjali Das, who has been examined as P.W.-1. She has stated in her deposition that in the night of the occurrence, she was sleeping inside her house along with her husband and an earthen lamp was burning. She saw the appellant entering the room with a pistol in his hand. After removing the mosquito-net from the bed, the appellant is alleged to have fired from his weapon which hit her husband in his head. She started wailing and on her alarm, the



elder brother of her husband, namely, Manohar Das (P.W.-2) came. She informed him that the appellant had fired at the deceased. It was at that time that the appellant again came back and asked for the name of the killer of the deceased. He was caught hold of by P.W.-1, but the father of the appellant, who also came after some time, managed to take him away.

P.W.-1 has named Prahlad Vishwas and Pitamber Das also as the persons who had come at the time of the occurrence. Later, in her deposition, she has also admitted of there being a dispute between the deceased and the father of the appellant with respect to a plot of land, for which a Panchayati was held and the father of the appellant was made to pay a fine of Rs. 100/-. P.W.-1 has, therefore, asserted that the occurrence took place only because of the aforesaid dispute over the said plot of land.

Manohar Das, P.W.-2 who is the brother of the deceased and the informant of this case, has supported the prosecution version and has stated that three persons of the village came to extricate the appellant who was in his custody. He has also stated that when an attempt was made to take away the appellant, no effort was made by anybody of the village to hold him back. In fact, he has stated that no body raised any protest and allowed the appellant to be taken away by his father. He has also reiterated the fact which



was stated by him in the FIR that there was a dispute between the father of the appellant and the deceased.

From deposition of the aforesaid two witnesses who have claimed to be the eye-witnesses to the occurrence, two things emerge. The wife of the deceased (P.W.-1) had seen the occurrence in its entirety and therefore she was only expected to lodge the FIR. The other aspect of the matter which was put to the notice of this Court is that the informant in his First Information Report has stated that when he saw the appellant running away, the appellant, without any provocation, fired at him which did not hit him. This story has not been stated by anybody else and therefore, the trial court did not convict the appellant under Section 307 of the Indian Penal Code.

The learned amicus appearing for the appellant has argued that if the appellant would have been spotted by P.W.-2, he would not have dared to come back again in the house to inquire about the death. Apart from that, he has also submitted that it appears to be apparently unbelievable that if it was certain by that time that the appellant had killed the deceased, and many persons had assembled immediately after the occurrence, the appellant would have been allowed to go out of the house without there being any protest. It has also been submitted by learned amicus that even the



identification of the appellant appears to be doubtful as from the testimony of other witnesses it would appear that for the first time, the appellant was spotted by the informant (P.W.-2) at about 15 to 20 yards in the dead of the night, without any source of light.

It has been submitted by learned amicus that even though an explanation was attempted to be given by P.W.-2 that because of P.W.-1 not being in a position to speak in Hindi, P.W.-2 had lodged the FIR, but the aforesaid explanation does not appear to be trustworthy inasmuch as P.W.-1 has given a graphic description of the sequence of events in Hindi and there does not appear to be any hesitation in P.W.-1 getting her statement recorded during investigation as well.

Jokhan Yadav, P.W.-3 is a witness to the inquest who had come to the place of occurrence in front of the I.O. of this case. The inquest report has been signed by him. He has stated that when he had gone to drink water in the village, he learnt that there was a dacoity in the village and he was not informed by any one about the identification of the appellant.

No doubt, P.W.-3 does not claim to be an eye-witness to the occurrence, but his statement that in the village there was a talk of dacoity having taken place and no body telling him about the appellant, assumes importance. In this context, it would be



relevant to examine the testimonies of the other witnesses who also claim to have come to the place of occurrence immediately after the act of firing by the appellant.

Nakul Das (P.W.-4) is a neighbour of the informant and the deceased. He has alleged that his younger brother Nemai Dass woke him up and informed that he had heard a sound of gun shot. On waking up, P.W.-4 also claims to have heard the sound of cry. Thereafter, he went to the house of the deceased and saw him injured in his head. He had also seen that P.W.-2 had kept the appellant in confinement. Aforesaid prosecution witness claims to have seen the other persons of the village, namely, Prahalad Bishwas, Pitamber Dass, Gopal Dass and Subodh Kumar Dass in the house of the deceased, but none of whom have been examined during trial. In the meantime, the father of the appellant came and took him away. When questioned, the aforesaid prosecution witness has also stated that while the father of the appellant was taking him away, there were about 10-12 persons of the village inside the courtyard and no body tried to prevent the appellant from being taken away.

Haren Chandra Dass, who has been examined as P.W.-5 has stated that his house is situated near the house of the deceased. In the night of the occurrence, while he was sleeping, the son of P.W.-



2 woke him up and told him that some miscreants had killed the deceased. On this information, he claims to have gone to the house of the deceased and saw that the wife of the deceased was crying. He first asked the family members to take the deceased to the doctor. Thereafter, the deceased was taken to the hospital, but on way, he died. Prior to the present occurrence, P.W.-5 has clearly stated that there occurred a dispute between the father of the appellant and the deceased. What is of relevance in his deposition is that he had stated that when he reached the house of the appellant, he saw about 30-40 persons in the courtyard and with some of whom, he had some talk. The nephew of the deceased as well as the son of P.W.-2 informed him that some criminal had killed the deceased. Both the aforesaid persons who are related to the deceased, did not name any body as the assailant of the deceased.

One of the sons of the deceased namely, Dhrupad Das, who at the time of his deposition, was 16 years of age, has been examined as P.W.-6. Though, he has supported the case of the prosecution that the appellant had killed the deceased, but has stated that he did not see the act of firing and only when he reached near his injured father, he was informed that the appellant had fired at him.



At this stage, it would be relevant to scrutinize the deposition of the I.O. of this case who has been examined as P.W.-7. He has stated that on 30.06.1992, he was posted in Narpatganj Police Station. On 01.07.1992, he learnt at the police station that some body in Refugee Colony, Palasi, has been killed. A station diary entry was recorded by him and thereafter, he proceeded towards the place of occurrence. At the place of occurrence, he recorded the statement of the brother of the deceased (P.W.-2). The house of P.W.-2 was found to be contiguous to the house of the deceased. At the place of occurrence, he did not find any place where earthen lamp could be kept or any earthen lamp. He has deposed that no body showed to him the source of light in which the appellant was identified. He has also stated that P.W.-1, the wife of the deceased, because of mistake, took the name of one Nakul as the assailant. Be it noted that Nakul is the name of the father of the appellant. He has also stated that the informant of this case viz, P.W.-2 did not tell him at the time of recording of the FIR or in his further statement that he had, on the cry of wife of the deceased, came out from the house with torch. In fact, P.W.-2 had not even tendered the torch. At the place of occurrence, no empty cartridge was found.



The postmortem report has been proved by P.W.-8, the Doctor. In the postmortem (Ext.-6), a wound of entry 1/3 inches in diameter just inside of left ear and blackening of the skin around the wound were found. On dissection it was observed that the maxillary bone was fractured. Muscles and soft tissues in and around area were also found to be lacerated. However, no bullet or pellet could be found in the body even on extensive search. No wound of exit also could be discerned.

From the postmortem report as well as the deposition of P.W.-8, it stands established that the deceased died because of gunshot. Now the question is whether the version of P.Ws.- 1, 2 and 6 could be taken into account for sustaining the conviction of the appellant.

As has been seen and stated in the earlier paragraphs, what strikes us is that despite the wife of the deceased (P.W.-1) appearing to be well versed in Hindi, which fact is evident from the quality of her deposition before the trial court as well as her statement under Section 161 before the investigating agency, she did not choose to initiate the prosecution case herself. Though, there has been an explanation by the informant (P.W.-2), but such explanation does not appear to be trustworthy. True it is that any body can bring and set the criminal law in motion, but in a case of



this kind, where P.W.-1 is a witness to every part of the occurrence, and she being present at the time when the Officer-In-Charge came to record the FIR, it was expected that she should have been the informant of this case. That apart, what is of relevance is that P.W.-2 has narrated in the FIR as well as in his deposition that he saw the appellant running away with a pistol in his hand. In the first place, the identification of the appellant from such a distance in the night appears to be doubtful. In the second place, the story of the appellant having come back after running away, inside the court yard of P.W.-1 to enquire about the cause of death also does not appear to be believable. Had he really fired on the informant while running away, he would not have mustered up the courage to come back to the courtyard of the deceased again. There is another aspect to the story. If it was known, by that time, by all the persons present in the house of the deceased that the appellant had caused the fatal injury, he would not have been allowed to go without any protest. From the deposition of two of the independent witnesses, it has been established that at the time when the appellant was kept in confinement at the instance of P.W.-2, there were more than a dozen persons of the village available inside the house. Neither the appellant nor his father who had come to the rescue of his son were armed with any lethal



weapon. In that view of the matter, the story regarding the appellant having been allowed to go away from the captivity of P.W.-2 does not inspire confidence. These facts, seen in the background of the deposition of P.W.-3, who does not claim to have heard anyone about the name of the appellant, makes prosecution case and the implication of the appellant highly doubtful. On the next day of the occurrence, when a person becomes witness to the inquest, it appears to be rather surprising that he would not, by that time, be told by the villagers or the family members about the name of the appellant. In this context it would also be relevant to again see the deposition of P.W.-5, namely Haren Chandra Dass who has stated that the son of P.W.-2 had awakened him and had told him that some criminal had killed the deceased. He has categorically stated before the trial court that the nephew of the deceased as well as the son of P.W.-2 did not name the appellant or any body else.

Thus it appears that because of old dispute between the father of the appellant and the deceased, the appellant has been named as the assailant.

It is also apparent from the deposition of the witnesses that the source of identification of the appellant could not be established as witnesses have given inconsistent statement



regarding the source of light. Some of the witnesses have talked about the burning of lantern, whereas the informant as well as the wife of the deceased (P.Ws.-2 and 1 respectively) have stated about the burning of earthen lamp. So far as identification of the appellant by the informant is concerned, he is said to have seen him in the torch light. Neither the I.O. was informed about P.W.-2 carrying a torch or the torch was ever tendered during the course of investigation. The I.O. has not found any place where lamp could be put in the house. He has stated that he was not informed about the source of light for the appellant to have been identified in the night of the occurrence.

The inconsistency in the statement of two of the witnesses with respect to timing of the death also becomes relevant in this context. One of the witnesses has said that at the hospital, the deceased was declared dead. Surprisingly, all the other witnesses who have spoken about the death of the deceased have stated that while the deceased was being taken to the hospital, he died on the way before the Railway crossing. This further makes it doubtful as to the cause and manner of the death of the deceased.

Considering the materials discussed above, it is difficult to rely upon the deposition of P.Ws.-1 and 2 about the appellant having killed the deceased by firing at him.



The prosecution has not proved the case beyond all reasonable doubt.

For the reasons aforesaid, the judgment and order of conviction is set aside. The appeal is allowed and the appellant is acquitted of all the charges.

From the records, it appears that the appellant has been released on bail after remaining in custody for about six years. The appellant is, therefore, discharged from the liabilities of his bail bonds.

We express out appreciation at the efforts of the learned amicus. The Legal Services Authorities shall ensure payment of the prescribed fee to the learned amicus.

(Dinesh Kumar Singh, J)

(Ashutosh Kumar, J)

Amrendra/-

AFR/NAFR	
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