

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.121 of 1995

Arising out of judgment dated 26th May, 1995 passed by the learned
Additional District & Sessions Judge-I, Rohtas in Sessions Case No.462 of
1990

- =====
1. Lakshman Dubey, son of Sheo Murat Dubey
 2. Sheo Murat Dubey, son of late Kapildeo Dubey
 3. Ram Hankar Dubey
 4. Ram Chandra Dubey

Both sons of Sheo Murat Dubey

All residents of village-Dubauli, P.S.-Bhagwanpur, District-Kaimur (Bhabua).

.... Appellants

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Baxi S.R.P. Sinha, Sr.Adv.
Mr. Kumar Sunil, Adv.

Mr. Vinod Kumar Seth, Adv.

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

For the Informant : Mr. Krishna Prasad Singh, Sr.Adv.

Mrs. Meena Singh, Adv.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 29-03-2018

This criminal appeal has been preferred by a set of four
accused persons who have been convicted by the learned Additional
District and Sessions Judge-I, Rohtas in Sessions Case No.462 of
1990 for the offences committed under Sections 302/34, 307/34 I.P.C.
read with Section 27 of the Arms Act in connection with Bhagwanpur
P.S. Case No.151 of 1989 registered on 20.12.1989. All the accused-
appellants have been sentenced to undergo life imprisonment under



Section 302/34 I.P.C. Further they have been sentenced to undergo imprisonment for life under Section 307/34 I.P.C. No separate sentence has been passed under Section 27 of the Arms Act.

2. It appears from perusal of the records received from the trial court and the paper book filed in the instant case that on the fardbeyan of one Sri Kishun Dubey (PW-7), the then ASI Manmohan Jha (not deposed) lodged the formal FIR (Ext.-7) giving rise to Bhagwanpur P.S. Case No.151 of 1989 dated 20.12.1989 under Section 324/307/302/34 I.P.C. read with Section 27 of the Arms Act. According to fardbeyan (Ext.6) at about 7.00 am in the morning the informant and his younger brother Ram Awadh Dubey were cleaning the drainage towards northern side of his house, at this time his gotiya Sheo Murat Dubey, son of late Kapildeo Dubey and his three sons Ramkaran Dubey, Ram Hankar Dubey and Ram Chandra Dubey, whose house is adjacent to the house of the informant, came out from the eastern side door of their house, they were lashed with country made gun. The informant further alleged that they asked him and his brother not to clean the drainage but when the informant and his brother continued with the cleaning work, telling the accused persons that if they would not clean the drainage then from where the water will flow, while the talk was going on, accused Chalu Pahalwan, son of not known, resident of village-Huddi, P.S.-Karamchar, Sudama



Pandey, son of Ram Surat Pandey, resident of village-Amadhi, P.S.-Sonhan and Sri Kishun Mishra, son of Sri Gangadhar Mishra, resident of village-Sawaj Kundi, P.S.-Bhagwanpur who were already there in the house of the accused Sheo Murat Dubey started firing from the second floor of the house of Sheo Murat Dubey, they were firing from the hole of the window and the wall. The informant further stated that firing by these persons did not hit anybody. As the talk between the accused Sheo Murat Dubey and the informant was getting hot, Sheo Murat Dubey, Lakshman Dubey, Ram Hankar Dubey and Ram Chandra Dubey placed their gun on the informant and his brother and asked them to stop cleaning the drainage failing which they would shot them dead, but on this when the informant did not stop, Sheo Murat Dubey fired which hit the right patella and left side of his neck, by this time Laxman Dubey placed his gun on the chest of his brother Ram Awadh Dubey and fired twice because of which he fell down and died. Accused persons thereafter fled away. The informant named Baliram Dubey, son of late Satram Dubey, Rajendra Dubey, son of late Ramjag Dubey and other resident of village-Dubauli as eye witnesses. He has also stated that the reason for the occurrence is old enmity. On the basis of fardbeyan (Ext.6), the FIR (Ext.7) was lodged and after completion of investigation police submitted a charge-sheet against all the accused persons. After cognizance, the records were



transferred to the court of Session where the charges were framed against Laxman Dubey, Chalu Pahalwan @ Ravi Shankar Dubey, Sheo Murat Dubey, Ram Hankar Dubey, Ram Chandra Dubey and Sudama Pandey for the offences punishable under Sections 302/149 I.P.C. as also under Sections 307/149 I.P.C. read with Section 27 of the Arms Act.

3. In course of trial, prosecution examined as many as eight witnesses to bring the guilt of the accused for the offences alleged. PW-1 is Rajendra Dubey who is own gotiya of both the parties. He is said to be an eye witness and has supported the case of the prosecution. In his deposition, he has stated that he was present at the place of occurrence where he had gone to take the Ox of the informant for his cultivation work. He has supported the prosecution story that Sheo Murat Dubey fired and caused injury upon Sri Kishun Dubey (informant) and Laxman Dubey fired twice on Ram Awadh Dubey. In his cross-examination, he has reiterated that he was present at the time of occurrence and had seen the occurrence. He has narrated the story. He has stated that the deceased was Principal in Keuri village. He has stated that the deceased died immediately after he was shot. He has denied the suggestion of the defence that he has not stated these facts to the police.

4. PW-2 is Baliram Dubey who is also a co-villager. He



has also supported the prosecution story. He happened to be the cousin of the deceased and the injured both. He has stated that the land dispute has been there between the informant and the accused and he is a party in the land dispute and, therefore, deposed in the said case.

5. PW-3 is one Kamla Devi who is wife of the younger brother of the informant and wife of the deceased. She has supported the place and manner of occurrence as alleged by the informant. PW-4 is Satendra Kumar who was posted as Civil Assistant Surgeon at the relevant time in Sub-divisional Hospital at Bhabhua. He had conducted the postmortem of the dead body of Ram Awadh Dubey. In his deposition, he has stated that multiple circular lacerated wound of various sizes $\frac{1}{4}$ "X2 c.m. to $\frac{1}{3}$ cm diameter margin of which were inverted tattoos over covering his area extending from left side of neck, left shoulder both sides of chest dark clot blood oozing from the wound was observed. He has also proved one lacerated wound $1\frac{1}{2}$ "X $\frac{1}{3}$ "X into skin deep over right of chest at lower part, margin of which tattoos. He has further proved other injuries. He has found both right and left chamber ruptured at several places. He has further proved that two Pilates were recovered from the wound of the chest, the seized Pilates were sent to the police station through constable. He has proved the report prepared by him and bears his signature marked



Ext.2. He has stated that injuries were sufficient to cause death in the ordinary course of nature.

6. PW-5 is Dr. Rajdhari Ranjan who had examined the injuries of informant Sri Kishun Dubey. He has proved the injuries and nature of the injuries has been shown blacken. PW-6 is the informant himself who was also injured in the occurrence and whose injuries have been proved by PW-6. He has in his deposition once again stated the entire manner of occurrence. He has proved his fardbeyan which was marked as Ext.-5. In his cross-examination he has reiterated that he had shown the garbage which were taken out from the drainage to police. It was suggestion of the defence that there was no open drainage at the place of occurrence but the informant has reiterated that he along with his brother were cleaning the drainage and that was shown to the investigating officer. PW-8 is Jaikishore Singh who was the officer incharge of Bhagwanpur Police Station on the date of occurrence. He had received information that a firing had taken place in village-Dubauli which was entered in the Sanha diary register. He has stated that he had proceeded to Dubauli village with staffs and had reached Dubauli at 10.40 am. He had recorded the fardbeyan of the informant Sri Kishun Dubey. The fardbeyan has been marked as Ext.6. He has stated that the formal FIR is in the handwriting of ASI Manmohan Jha which he identified



leading to marking of the said signature as Ext.7. He has in his deposition stated that there is a drain which was covered by stone slabs. The dead body was found lying there in the middle of sahan. The drain is in the said sahan itself. He has found the injuries on the chest and neck from which bloods were coming out. He has also stated that he found the whole on the eastern wall of Sheo Murat Dubey. He prepared the inquest report which was marked as Ext.8. The postmortem report of the deceased Ram Awadh Dubey has been proved as Ext.2.

7. In their statement under Section 313 Cr.P.C. the accused persons denied their participation in the alleged occurrence and claimed themselves innocent. The learned trial court having gone through the deposition of the prosecution witnesses and the materials available on the record found that there was no contradiction in the statement of the witnesses. PW-1 Rajendra Dubey, PW-2 Baliram Dubey and PW-3 Kamala Devi have corroborated the prosecution story as stated by Sri Kishun Dubey (PW-7). The trial court was also of the view that PW-8, the investigating officer, has also corroborated that PW-7 has stated that on relevant day about 9.00 am he received information of incident of shooting having taken place in the village Dubauli. He mentioned it as Station Diary Entry No.292 dated 20.12.1989 and set out for verification. At about 10.40 am he reached



in village Dubauli and visited the place of occurrence that was Sahan land of the informant located adjacent to the house of the informant. A drain covered with stone slabs existed in Sahan land. Dead body of Ram Awadh Dubey bore with pilates injuries on chest and neck was lying in the middle of Sahan land. He had found some sprinkle of blood and stone slabs put on the drain. The trial court found that the prosecution witnesses had stated about place, date and time when the occurrence took place.

8. In course of argument before the learned trial court, learned defence counsel has submitted that all the alleged eye witnesses are interested, relative and partisan witnesses, therefore, their statement in regard to the place of occurrence is inconsistent. It was also submitted that no independent witness has come to support the prosecution version, therefore non-finding of garbage of drain at the site of occurrence and non-sending of blood stained earth for chemical examination throw doubt on the prosecution story. Learned trial court held that no doubt all the alleged witnesses are relative of informant and deceased, but at the same time they are related to accused persons too. All the prosecution witnesses have supported the prosecution story and they are consistent as regards the place of occurrence. Finally, from the evidences on record, the trial court found that guilt has been proved beyond all reasonable doubts and



prosecution has been able to prove that the accused Sheo Murat Dubey, Laxman Dubey, Ram Chandra Dubey and Ram Hankar Dubey have committed the murder of Ram Awadh Dubey and also committed an attempt to murder of Sri Kishun Dubey in furtherance of their common intention and accordingly the learned trial court convicted them under Section 302 read with Section 34 I.P.C. and Section 307 read with Section 34 I.P.C. and Section 27 of the Arms Act.

9. During the pendency of the appeal, one of the appellants namely Sheo Murat Dubey, against whom only the allegation of causing injuries to the informant (PW-7) was proved, died and, therefore, the present appeal in so far as it relates to appellant no.2 Sheo Murat Dubey stands abated. The appeal therefore survives in respect of appellant no.1 Lakshman Dubey, appellant no.3 Ram Hankar Dubey and appellant no.4 Ram Chandra Dubey.

10. While assailing the impugned judgment Sri Baxi S.R.P. Sinha, learned senior counsel representing the appellants assisted by Mr. Kumar Sunil and Vinod Kumar Seth, learned advocates, would submit that the learned trial court has committed grave error in relying upon the statements of PW-1, PW-2 and PW-3 who are all related to the informant and had been inimical to the family of the accused. Learned senior counsel submits that when the



police reached at the place of occurrence they did not find any garbage near the drain and there was no sign of cleaning of drain, moreover the drain was covered and the story of prosecution that the informant and his brother were cleaning the drain stands falsified as the drain was a covered drain. Learned senior counsel has further submitted referring to the deposition of investigating officer that there are material contradiction in the statement of the I.O. (PW-8) and that of the statement of the informant (PW-7). Learned senior counsel relies upon the statement of the I.O. that he had not prepared any map of the place of occurrence. He had also not found any instrument used for cleaning of the drain. He had also not recorded the length and breadth of the wall and the window. Learned senior counsel submits that the learned trial court has not considered the material contradictions in the statement of I.O. which would prove fatal to the prosecution.

11. He has stated in his cross-examination that he had recorded certain facts in the case diary and has not recorded some other facts. Learned senior counsel further submits that the learned trial court has convicted all the accused persons by virtue of Section 34 I.P.C. by assuming a case that they had common intention to kill the deceased and to commit attempt to murder the informant. According to learned senior counsel no evidence has come on the



point that all the appellants have been acting in furtherance of common intention and therefore those who have not actively participated in the alleged occurrence were not required to be convicted and sentenced.

12. On the other hand, Sri Krishna Prasad Singh, learned senior counsel, assisted by Mrs. Meena Singh, learned advocate, for the informant and Ms. S.B. Verma, learned APP for the State have jointly submitted that the learned trial court has committed no error in appreciation of the evidences which are available on the record. Learned senior counsel has pointed out from the postmortem report which has been proved by Dr. Satendra Kumar (PW-4) that the doctor found tattoos on the body which clearly indicates that the injuries found were in the nature of burn injuries and such burn injuries could be inflicted from a close range. Learned senior counsel has submitted that the entire prosecution story has been corroborated by prosecution witnesses and the fact that the informant of this case (PW-7) is himself an injured, his deposition has to be given much weightage because a person who has been injured would never like that those persons who had caused him injury be allowed to go scot-free and person who have not caused injuries be punished. In the present case, PW-7 has narrated the entire manner of occurrence and the other witnesses have supported the prosecution case. The trial



court has not found any contradiction in their statements.

13. We have heard learned counsel for the parties and perused the records. On a threadbare reading of the deposition of the prosecution witnesses and on going through the materials available on the record, we find that there is no material contradiction in the statement of the prosecution witnesses which they have made in support of the prosecution story of PW-7. PW-1, PW-2 and PW-3 are no doubt related to the prosecution, but only because they are related to the prosecution, in the facts of the present case, cannot lead this Court to disbelieve their testimonies. This Court finds that the witnesses are consistent as to the place of occurrence, the I.O. (PW-8) has also visited the place of occurrence within few hours from the said occurrence which took place at 7.00 am, the I.O found the dead body near the place of occurrence and even sprinkle of bloods were found on the stone slabs by which the drain was covered. The postmortem report proved by PW-4 and the injury report proved by PW-5 are fully supporting the prosecution story and the manner of occurrence causing death of Ram Awadh Dubey. The postmortem report and injury report coupled with the statement of PW-7 corroborated by PW-1, PW-2 and PW-3 would lead to an irresistible conclusion that all the witnesses are consistent about the place of occurrence and the manner of occurrence. The motive behind the occurrence is also



proved from the fact that the informant and his brother were cleaning the drainage and the accused persons did not want them to do that as they were having prior enmity.

14. In course of perusal of the evidences, we find that according to informant (PW-7) Sheo Murat Dubey fired the first shot which hit the right patella and left side of his neck but by that time Laxman Dubey fired twice by placing his gun on the chest of Ram Awadh Dubey. So far as the question of common intention to kill or common intention to commit an attempt to murder are concerned, even though we find that the appellant nos.3 and 4 were allegedly there on the place of occurrence but the witnesses have not stated anything about their active participation. We are, therefore, of the opinion that while the guilt of the appellant no.1 Laxman Dubey is proved beyond all reasonable doubts, the appellant nos.3 and 4 namely Ram Hankar Dubey and Ram Chandra Dubey are entitled to get the benefits of doubt. We accordingly dismiss this appeal in so far as it relates to the appellant no.1 Laxman Dubey. His conviction and sentence as awarded by the learned trial court is affirmed. So far as appellant no. 3 Ram Hankar Dubey and appellant no.4 Ram Chandra Dubey are concerned, their conviction and sentence is hereby set aside and the appeal preferred by them is allowed. The appellant nos.3 and 4 are acquitted from the charges and they are discharged from the



liability of their respective bail bond.

15. Appellant No.1 Laxman Dubey who is on bail is directed to surrender forthwith for undergoing the remaining period of the sentence. In case of failure of Laxman Dubey to surrender forthwith in the court below, the Superintendent of Police, Bhabua shall arrest him and produce before the learned court below.

16. The criminal appeal is, therefore, partly allowed.

(Rajeev Ranjan Prasad, J)

Rajendra Menon, C.J.- I Agree

(Rajendra Menon, CJ)

Arvind/-

AFR/NAFR	NAFR
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