

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.175 of 1995

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Against the Judgment of conviction and sentence order dated 17.05.1995 passed by 2nd Additional Sessions Judge, Purnea, in Sessions Trial No. 168 of 1993/Tr. No. 10 of 1994.

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Kishori Roy @ Chunnu Jha @ Chunni Jha @ Chunni Jha, son of Sarb Narain Jha of Village- Manjhari, P.S. Nirmal, District - Saharsa.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant : Mr. Animesh Kumar Mishra, Advocate.

For the State : Mr. Shiwesh Chandra 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: 06-01-2018

No one appears on behalf of the appellant on repeated calls. Mr. Animesh Kumar Mishra, Advocate, is appointed as amicus curiae to argue the case on behalf of the appellant.

2. Heard Mr. Animesh Kumar Mishra, amicus curiae on behalf of the appellant as well as Additional Public Prosecutor, Mr. Shiwesh Chandra Mishra.

3. This Criminal Appeal has been preferred against the Judgment of conviction and sentence order dated 17.05.1995 passed by 2nd Additional Sessions Judge, Purnea, in Sessions Trial No. 168 of 1993/Tr. No. 10 of 1994, by which and whereunder, he convicted the



appellant under Section 302 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for life whereas two accused persons, namely, Ajay Kumar Srivastava and Rabindra Kumar Sinha were acquitted of the charges by the same impugned Judgment.

4. P.W.7, Panchanand Yadav, gave his Fradbeyan, on 02.06.1992, at about 8.30 P.M., before the Sub-Inspector Rajendra Singh, Officer-In-Charge of K. Hat Police Station in Nagar Palika, Gudri Market, Madhubani near the shop of Mahadeo Kesri (Shanti Store) to this effect that on the same day at about 8 P.M., while he was purchasing the vegetables in the market, he heard sound of firing and noticed that people started running from there raising alarm that some one had shot fire on Satya Narayan Yadav. He went running towards the place of occurrence where he found that Satya Narayan Yadav was lying on the ground in pool of blood and assailant was running towards north side and he was being followed by several persons. He further stated that he, too, started chasing to catch the assailant, but in the meantime, he again heard the sound of explosion of bomb and noticed that heavy smoke was coming out near the shop of Kanhaiya Kesri. People, who were chasing the assailant, stopped out of fear. However, immediately, the people realized that the bomb was being carried by assailant, but due to fall from the assailant, the bomb got exploded. The informant and other people again started



chasing the assailant, who entered into the Biscuit factory, but before entering into the Biscuit factor, he threw three nut. However, the assailant was caught in Biscuit factory and on query, he disclosed his name as Kishori Ray @ Chunnu Jha and also made his extra judicial confession that he was hired by one Sukra Singh for committing the murder of the deceased. The assailant was in injured condition and blood was oozing out from his body and thereafter he was brought to Sadar Hospital, Purnea. In the meantime, police party reached there and recorded the Fradbeyan of P.W.7, Panchanand Yadav.

5. On the basis of Fradbeyan of P.W.7, Panchanand Yadav, K. Hat P.S. 270 of 1992, under Section 302 of the Indian Penal Code, Section 27 of the Arms Act and Sections 3/4/5 of the Explosive Substance Act was registered and formal F.I.R. was drawn up against the appellant. The matter was investigated by the Investigating Officer. After completion of investigation, the charge sheet was submitted against the appellant and two others for the offence punishable under Section 302/34 of the Indian Penal Coe and Section 27 of the Arms Act.

6. The appellant and rest two accused were put on trial and accordingly, they were charged for the offences punishable under Section 302/34 of the Indian Penal Code. It is pertinent to note here that no charges either for the offence under the Arms Act or for the



offence under the Explosive Substance Act was framed. However, the charges were read over and explained to the appellant as well as other accused, who denied the charges and claimed to be tried.

7. In course of trial to prove the charge, prosecution examined, altogether, nine witnesses and also got exhibited the signature of P.W.7, Panchanand Yadav on Fradbeyan as Ext. 1, Postmortem Report got exhibited as Ext.2 and formal F.I.R. got exhibited as Ext.3. The statement of appellant and other accused were recorded under Section 313 Cr.P.C., in which, they reiterated their innocence and the appellant, specifically, stated that he had gone to Gudri Market to purchase the Masala, but in the meantime, some one threw bomb, which caused injury to him and later on, he was caught by the people. Neither the appellant nor other accused adduced evidence in support of their defence.

8. Learned court below having analyzed the evidence available on record and having relied upon the testimony of P.W. 7, Panchanand Yadav, coupled with the deposition of P.W.8, Dr. O.P. Saha, and postmortem report (Ext.2) convicted the sole appellant whereas acquitted the remaining two accused as stated above.

9. Mr. Animesh Kumar Mishra, learned amicus curiae appearing on behalf of the appellant submits that except P.W.7, Panchanand Yadav, none of the prosecution witness has supported the



prosecution story and moreover, P.W.7, Panchanand Yada, admitted in his deposition that he had not seen the actual killing of the deceased and he also admitted in his cross-examination that when he reached in the Biscuit factory, the appellant had already been caught by the people, therefore, the aforesaid evidence is not sufficient to prove that it was the appellant who committed the murder of deceased.

10. On the other hand, learned Additional Public Prosecutor supported the impugned Judgment of conviction and sentence order arguing that the testimony of P.W.7, Panchanand Yadav, is sufficient to convict the appellant as he was caught on the spot just after the alleged occurrence.

11. Having heard the contentions of both parties and from perusal of the record, we find that P.W. 2, P.W.3, P.W.4 and P.W.5 have been declared hostile whereas P.W.1 and P.W.6 have been tendered by the prosecution. P.W.7 is the informant and P.W.8 is the Doctor, who conducted the postmortem examination of the deceased, whereas P.W.9 is the formal witness who proved the formal F.I.R. as Ext.3. It is obvious from the aforesaid facts that on the point of alleged occurrence, there is only one witness, i.e, informant (P.W.7), who stated that having heard the sound of firing he went running to his brother and noticed that his brother was lying in front of Shanti Store Grocery Shop in pool of blood and some persons were



chasing the assailant. He further stated that he also started chasing the assailant, but in the meantime, a Bomb was exploded and one person became injured due to explosion of the aforesaid Bomb. This witness further stated that the person who was being chased by the people as well as by him threw three nut while fleeing away. Further the aforesaid person was caught and disclosed his name as Kishori Ray @ Chunnu Jha @ Chunni Jha and also confessed his guilt. It is obvious from perusal of the deposition of P.W.7 that he had not seen the appellant making firing on the deceased. Although, he stated that the appellant was caught after the alleged occurrence, but, admittedly, neither any Bomb nor any firearm was recovered from the conscious possession of the appellant. He further admitted at paragraph 10 of his deposition that when he reached at Biscuit factory, he saw that the appellant was being assaulted by several persons and, therefore, it is obvious from perusal of the aforesaid statement that the appellant had already been caught by the people prior to arrival of this witness. Moreover, the Investigating Officer of the present case has been cross-examined and there is nothing on the record to show that any firearm was recovered or any sign of explosion of the Bomb was found on the place of occurrence. Therefore, in our opinion, prosecution failed to prove its case beyond all shadow of reasonable doubts and the appellant is entitled to get the privilege of benefit of



doubt.

12. On the basis of the aforesaid discussion, this Criminal Appeal is allowed and the impugned Judgment of conviction and sentence order is hereby set aside. Accordingly, the appellant is acquitted of the charge and is set at liberty. He is on bail, hence, he is discharged from the liability of his bail bonds.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Bhardwaj/-

AFR/NAFR	AFR
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