

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.923 of 2012

Arising Out of PS. Case No.-18 Year-2010 Thana- JANDAHA District- Vaishali

Awadhesh Singh, S/O Rajeshwar Singh, R/O Village - Rampur - Borhan, P.O.
Bhan Borhan, P.S. Jandaha, Distt. - Vaishali

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Manish Chandra Gandhi, Advocate Ms. Smriti Singh, Amicus Curiae
For the Respondent/s	:	Mr. S.N. Prasad (APP)

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

and

HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date : 16-01-2018

We have heard parties and perused the records of this case.

The appellant has filed this appeal assailing the judgment of conviction dated 31.07.2012 and order of sentence dated 1.08.2012 passed by Additional Sessions Judge-II, Vaishali at Hajipur in Sessions Trial No. 425 of 2010 by which he has been convicted for the offences punishable under Sections 302, 120 (B) of the Indian Penal Code and Section 27 of the Arms Act and has been sentenced to undergo rigorous imprisonment for life with a fine of Rs.20,000/- under Section 302 IPC and in default of payment of fine, he has been directed to further undergo imprisonment for three months. Further, he has been sentenced to undergo rigorous



imprisonment for three years under Section 27 of the Arms Act. However, both the sentences have been ordered to run concurrently. No separate sentence has been awarded under Section 120 (B) of the Indian Penal Code.

The prosecution case, as per *fardbeyan* of the informant, is that on 1.3.2010 at about 5.00 P.M., co-accused Ambika Singh came to the informant and took the informant and Bhola Singh to the house of Chulhai Rai @ Mithilesh Rai for having feast on the eve of *Holi*. When the informant Krishna Kumar and his *Bhagina*, namely, Bhola Singh started to proceed from there, Awadhesh Singh, the present appellant, opened fire at Bhola Singh causing firearm injury in the left side of his chest. Bhola Singh instantly fell down on the ground and a profused bleeding started from firearm injury. The informant raised alarm and with the help of people reached to his house on the Bike. The injured was taken to Mahua Private Nursing Home from where, he was referred to P.M.C.H., Patna and was admitted there in the same night, but he succumbed to his injuries during the course of his treatment.

On the basis of aforesaid written report, the police registered Jandaha P.S. Case No. 18/2010 for the offences punishable under Sections 302/34 of the Indian Penal Code and Section 27 of the Arms Act.



After investigation, the police submitted charge sheet against the appellant under Sections 302, 120 B/34 I.P.C. and Section 27 of the Arms Act. Thereafter, the Chief Judicial Magistrate took cognizance of the offences and the case was committed to the court of sessions, where charges were framed, to which, the accused person pleaded not guilty. Thereafter, trial started.

During trial, the prosecution has examined altogether nine witnesses in support of its case. P.W.1 is Kedar Singh, P.W. 2 is Ram Ekbal Singh, P.W.3 is Shrawan Singh, P.W.4 is Ram Bilash Singh, P.W.5 is Usha Devi, P.W.6 is Krishna Kumar, P.W.7 is Sanjeev Singh, P.W.8 is Sushir Kumar and P.W.9 is Dr. Arbind Kumar.

The defence has also examined five witnesses on its behalf. D.W. 1 is Bhuneshwar Rai, D.W. 2 is Daroga Rai, D.W.3 is Mahtab Rai, D.W. 4 is Lal Babu Rai and D.W. 5 is Rajeshwar Singh @ Rajeshwar Prasad Singh.

The trial court after hearing learned counsel for the parties and considering the evidence on record came to the conclusion that the prosecution has been able to prove the charges against the appellant and, as such, judgment of conviction and order of sentence has been passed against the appellant.



After hearing the parties and on going through the entire materials on record and after careful scrutiny and evaluation of evidence of the prosecution witnesses, it appears that P.Ws. 1, 2, 3 and 4 are material witnesses. Though they are not the eye witnesses of the occurrence but in their respective depositions, they have unequivocally stated about the sustaining of firearm injury by the deceased Bhola Singh, who was brought to the Darwaja of Shrawan Singh and was still alive and in feeble voice, he uttered the name of the assailant Awadhesh Singh, who shot fire at him. So, the statement given by the deceased before his death in presence of these witnesses, who have been examined by the prosecution, fetch reliance. Their credibility cannot be overlooked because these witnesses are not eye witnesses of the said occurrence. The death of the deceased by the firearm injury has not been denied by the defence. P.Ws. 5 and 7 have stated about how the deceased was taken away from their house and subsequently after one and half hour Bhola Singh (deceased) was brought in injured condition, who named the appellant as an assailant in their presence.

PW.6, who is informant of the case, is the sole eye witness to the occurrence, who has fully supported the prosecution case that



the appellant shot fire at Bhola Singh causing firearm injury in the left side of the chest.

P.W. 8 is the investigating officer of this case. He has stated that after registration of the case, he visited the place of occurrence and found misfired cartridges at the place of occurrence and a seizure list was prepared to this effect. He submitted a charge sheet.

P.W. 9 is the doctor, who conducted autopsy on the dead body of the deceased, has opined that the injuries are to be antemortem and injury no. A, i.e., firearm entry wound present on anterior chest wall 10 c.m. below left nipple in 7th intercostal space with inverted, irregular, contused, burnt and blackened margin (1x1 cm. X chest cavity). On dissection the track of the wound found to cross diaphragm and down and back and the projectile found lodged in the first lumbar vertebrae (the recovered projectile was 1x1 ½ cm. partially modified and tapered at one end). Chest and abdomen cavity have blood half liter in each cavity. The intervening viscera are perforated and contused and lacerated (including the lung, diaphragm, stomach and other abdominal viscera), are due to firearm injury and other injuries are caused by hard and blunt forces. This witness has proved postmortem report (Ext. 7).



In his cross-examination, he has stated that he found no exit wound from the person of the deceased rather bullet was recovered from the body. He also opined that such firearm injury is possible from a close range.

It appears that witnesses examined in the case are much consistent on the point of killing the deceased by the appellant by using firearm. Not only this, the ocular evidence has also been corroborated by medical evidence. The involvement of the appellant finds support with the evidence of the informant and other witnesses who heard from the mouth of the deceased before his death that the appellant opened fire causing firearm injury in his chest.

Considering the facts and circumstances of the case and also materials on record, it appears that the prosecution has succeeded in proving its case beyond all reasonable doubts and the trial court has rightly convicted the appellant. Thus, no interference is required by this Court in the impugned judgment of conviction and order of sentence.

As a result, this appeal is dismissed.

Ms. Smrit Singh, Advocate was appointed to appear on behalf of appellant as *Amicus Curiae* vide order dated 05.12.2017 as none had appeared on behalf of the appellant. However, later



on, Mr. Manish Chandra Gandhi appeared and filed fresh *Vakalatnama*. Thus, we heard both of them.

The Legal Services Authority shall make payment to Ms. Smriti Singh, Advocate as per schedule.

(Dr. Ravi Ranjan, J)

(Prakash Chandra Jaiswal, J)

V.K.Pandey/-

AFR/NAFR	N.A.F.R.
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