

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.330 of 1994

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Mohan Yadav Son of Sadhu Yadav Resident of Village- Ramgarh, Police
Station- Siswan, District- Siwan.

... .. Appellant/s

Versus

State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Neeraj Kumar @ Sanidh, Adv, Mr. Raghav
Prasad, Adv, Mr. Manish Kumar, Adv and Ms.
Archana Sahi (Amicus Curiae)

For the Respondent/s : Mr. Ashwini Kumar Sinha, APP

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 31-08-2018

Heard parties.

2. This Criminal Appeal is directed against the judgement of conviction and sentence dated 06.05.1994, passed by 3rd Additional Sessions Judge, Siwan in Sessions Trial No. 135 of 1992 convicting the appellant under Section 302 of the IPC and sentenced to undergo rigorous imprisonment of life and also convicted appellant under Section 27 of Arms Act and sentenced to simple imprisonment of one year, both sentences to run concurrently.

3. Prosecution case is based upon fardbeyan of Gorakh Manjhi who stated that on 10.11.1991 at about 8:40 P.M. his nephew Brij Kumar Mali was studying in the light of



lamp, while sitting on a Cot inside the Palani and alongwith him PW-8 Ashok Bhagat and PW-3 Devendra Bhagat were also present with him. On hearing sound of fire informant went towards Palani and was informed by PW-8 Ashok Bhagat and PW-3 Devendra Bhagat, that Mohan Yadav(appellant) had shot the deceased and Laljee Yadav (since deceased) pointed a Pistol at them and threatened not to shout. Informant had identified the appellant while fleeing away in the Torch light.

4. On the basis of said fardbeyan(Exhibit-6) a formal FIR was drawn giving rise to Siswan P.S. Case No. 94 of 1991 instituted under section 302 of the IPC and Section 27 of the Arms Act.

5. After investigation police submitted chargesheet under Section 302 of the IPC and Section 27 of the Arms Act against the appellant and the case was committed to the Court of Sessions and charges were framed under Section 302 of the IPC and section 27 of the Arms Act. Appellant denied the charges and claimed to be tried.

6. Altogether 13 witnesses were examined on behalf of prosecution among whom PW-1 Kailash Bhagat, PW-3 Devendra Bhagat and PW-8 Ashok Bhagat are eye witness and have named Mohan Yadav (appellant) as the person who fired



and caused death of Brij Kumar.

7. PW-1 Kailash Bhagat in his examination-in-chief has stated that on Sunday between 8:00 to 8:30 pm, which was a day of Chhath Festival, PW-8 Ashok Kumar and PW-3 Devendra Kumar cried, loudly and he ran towards them and saw that Mohan Yadav has shot Brij Kumar by country made pistol. Many others also came. In the flash light of Torch he saw Mohan Yadav and Laljee Yadav fleeing away. In his cross-examination he has stated that on the North side of his house there is a Palani which is surrounded by bamboo and there is one more Palani, which is covered by bamboo and straw and is permanent which is West facing. There is one Palani in the South measuring 25 x 9 by hand and is closed on North-west and South and open in East. Murder took place in this Palani. Deceased Brij Kumar was matric pass and was student of B.A. When he heard the sound of firing he was in his house at a distance of 20 laggi. He saw the accused inside the Palani. He and his brother chased them. Police had come to the house in the early morning. He had stated before the Police of seeing accused fleeing from the place of occurrence but did not state that he saw them firing. Fire arm injury was below the right eye of the deceased.



8. PW-2 Yogendra Mali, has stated in his examination-in-chief that on hearing the sound of firing, he ran towards the place of occurrence and saw that Brij Kumar had sustained pellet injury. Gorakh and Devendra Kumar were shouting that Mohan Yadav (appellant) had fired on Brij Kumar and he was lying dead on the Cot. He was sitting at his door after having meal at the time of incident and reached the place of occurrence within 2 to 4 minutes. There were 8 to 10 persons assembled at the house of informant. He remained there for 15 to 20 minutes. Next day he went there and police took his statement.

9. PW-3 is Devendra Bhagat, who in his examination-in-chief has stated that it was Sunday and between 8:00 to 8:30 pm he was talking with PW-8 Ashok Kumar Mali in the Palani. His brother Brij Kumar was studying in the light of lamp when Mohan Yadav (appellant) and Laljee Yadav (since deceased) came inside and Mohan Yadav (appellant) shot Brij Kumar, which hit him below his right eye and he fell down on the Cot and died. His uncle Gorakh and Kailash came running. Laljee Yadav threatened that if they will shout he will kill them and thereafter both fled away.

In his cross-examination he stated that the deceased



was his elder brother and was handsome. In the Palani where he was murdered there was a Cot. Kerosene Oil lamp was kept on the table. He saw blood spread on the Cot and bed and on Kurta. At the time when Brij Kumar was shot he was sitting on the Cot facing South. He was present at the time of firing and thereafter kept shouting. He had seen the arms used for killing. The house of accused is about one Km from his house. His statement was recorded by the Police. He had stated that Mohan Yadav (appellant) had shot Brij Kumar.

10. PW-4 is Ganesh Mali, who has stated in his examination-in-chief that on Sunday at about 8 to 9 pm he was sleeping in his house when he heard the sound of firing and hulla and saw Mohan Yadav (appellant) with one country made pistol in his hand. The inquest report was prepared in his presence upon which he put his signature.

In his cross-examination he stated that distance between his house and house of Gorakh is 20 to 25 Gaj and reached the place of occurrence within two minutes. The accused while fleeing away were ten steps ahead of him. His statement was recorded by the police on the next day.

11. PW-5 is Triloki Nath Singh, who had stated in his examination-in-chief that while he was coming, he heard hulla



and when he went there Gorakh, Devendra, Ashok and others were telling that Mohan and Laljee has committed murder and he saw Mohan and Laljee fleeing away in the flash light of Torch. He saw Brij Kumar lying dead on the Cot in pool of blood. He is a seizure list witness. The seized articles included stained soil, stained hawai chappal and other articles in the Palani.

12. PW-6 is Sachidanand Singh, who in his examination-in-chief has stated that he was 100 to 150 Gaz away from the place of occurence and whole family of Gorakh Mali was crying and shouting that Mohan Yadav and Laljee Yadav has shot his nephew and when he went there he saw Brij Kumar shot dead lying in a pool of blood.

13. PW-7 Kamal Deo Narayan Sharma in his examination-in-chief has stated that on hearing hulla in the house of Gorakh Mali, he went there and saw his nephew lying dead on the Cot in the Palani. He heard from them that Mohan and Laljee have fled away after killing him. The inquest report was prepared in his presence and he had put his signature over it.

14. PW-8 Ashok Kumar Mali has stated that on 10.11.1991 at about 8:30 pm he was in the Palani alongwith his



cousin brother PW-3 Devendra Kumar Mali and elder brother Brij Kumar was sitting on the Cot and studying in the light of lamp. He and PW-3 Devendra Kumar Mali, were talking to each other and they were sitting on the chauki. Mohan Yadav and Laljee Yadav came from South and reached near Brij Kumar and Mohan Yadav (appellant) shot Brij Kumar below right side of eye and Laljee Yadav overpowered them on strength of Pistol and threatened that if they will raise alarm he will shot them. Brij Kumar fell down after being shot. Mohan and Laljee Yadav fled away towards North they shouted upon which his father Gorakh Mali uncle Ram Kailash Mali, Yogendra Mali, Ram Nagina Mali came there and saw accused fleeing away. He recognized the accused in the light of lamp. His statement was recorded by Police.

15. PW-9 Gorakh Nath Mali is the informant who in his examination-in-chief has stated that on 10.11.1991 Sunday at 8:40 pm after having meal he was washing his hand in Chapakal. Brij Kumar was studying in the Palani and his son Ashok PW-8 and nephew Devendra Bhagat PW-3 were also sitting there. He heard the sound of firing from the said Palani and ran towards it and saw Mohan Yadav and Laljee Yadav fleeing from Palani both were carrying Pistol in their hand. My



son was shouting that Mohan and Laljee has shot dead his brother. He could identify the accused in flash light of torch. He saw Brij Kumar lying dead in a pool of blood. He chased the accused but they threatened by revolver and as such he returned. Other family members also chased them and returned to his Palani. On motorcycle of son of Ram Narayan Badhai he went to Siswan Police Station. There was no one in the police station as all had gone in night patrolling. One old constable wrote his name and village name and said that when Daroga will come he will sent him. He came back to his house. Police came at 7:00 am in the morning and recorded his statement. He put his signature over his fardbeyan. The motive behind killing is that accused were arrested in a case of theft instituted by his younger brother.

16. PW-10 Dr. Ramaji Choudhary performed the post mortem on dead body of Brij Kumar Mali, who has proved post mortem report (Exhibit-5). He has found a big hole of 1^{1/4} diameter just below the right eye and charring of skin around the wound. The cause of death is fire arm injury leading to haemorrhage, shock and injury to brain. Fire arm may be country made Pistol.

17. PW-11 is the I.O. Apil Ram who has investigated



the case and has stated in his examination-in-chief that he recorded the fardbeyan of Gorakh Mali at about 7:00 am which has been marked as Exhibit-6 and thereafter he prepared the seizure list of blood stained soil, books, lantern and prepared a seizure list which has been marked as Exhibit-2/1. He had also prepared the inquest report which has been marked as Exhibit-3. He also instituted the FIR i.e. Siswan P.S. Case No. 94 of 1991 which was prepared by him under his signature and FIR was marked as Exhibit-7. He has given complete description of place of occurrence which has been fully established by the prosecution and had stated that blood was spread at the place of occurrence. He recorded the statement of other witnesses. On 02.04.1992, he gave the charge of investigation to Officer-in-charge Thakur Devendra Prasad Singh who has submitted the chargesheet.

18. PW-12 is Incharge of P.S. who took the charge of investigation and from A.S.I. Apil Ram on 02.04.1992 and thereafter investigated on the issue of enmity and submitted the chargesheet.

19. PW-13 is a formal witness.

20. After hearing the parties and considering the materials available on record, the witnesses have been able to



prove the manner, time and place of occurrence and same stands established as evidences are consistent and witnesses have also stood the test of cross-examination and there is nothing to discard their evidence. PW-3 Devendra Bhagat, PW-8 Ashok Kumar Mali who are eye witness have stated that they were present in the Palani and Brij Kumar(deceased) was studying in light of the lamp and they were talking when Mohan Yadav (appellant) and Laljee Yadav entered and Mohan Yadav fired upon deceased Brij Kumar below the right eye and both have been cross-examined at length by defence and their deposition are consistent that Mohan Yadav entered the Palani and fired upon Brij Kumar from a close range below the right eye of Brij Kumar(deceased) as a result he fell on the Cot and died. Both are eye witnesses who were present at the place and time of occurrence when Mohan Yadav fired upon deceased Brij Kumar and there is nothing to disbelieve their statement. Other witnesses are also consistent in their deposition that soon after hearing the sound of fire they came to the palani and saw Mohan Yadav and Laljee Yadav fleeing away from the place of occurrence holding country made pistol in their hand. The witnesses also chased them but they could not be apprehended but were identified by all the witnesses. The ocular evidence is



corroborated by Post Mortem Report in which one fire arm injury has been found below the right eye with charring which supports the ocular evidence of firing from close range below the right eye. The trial court after considering the entire evidence has come to the conclusion that prosecution has been successful in establishing charge against appellant beyond reasonable doubt and this Court also finds that there are sufficient materials on record proving the charge against the appellant beyond reasonable doubt and as such the conviction of appellant under Section 302 of IPC and sentence to undergo rigorous imprisonment for life requires no interference and is, accordingly, dismissed.

21. The Criminal Appeal (DB) No. 330 of 1994 stands dismissed. The appellant is on bail, as such his bail bond is cancelled and is directed to be taken into custody to serve the remaining part of his sentence in jail.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

ranjan/-

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