

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.184 of 1995

Arising Out of PS.Case No. -null Year- null Thana -null District- BHAGALPUR

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Jaldhar Mandal son of late Mushahru Mandal, resident of village- Fulkiya, P.S-
Ismailpur, Dist- Bhagalpur

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Saghir Ahmad

For the Respondent/s : Mr. Dilip Kumar Sinha

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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: 27-04-2018

This Criminal appeal has been preferred against the judgment of conviction and sentence order dated 31.05.1995 passed by the Additional Sessions Judge, Naugachhiya in Session Trial no. 38 of 1992 by which and whereunder he convicted the sole appellant for the offence punishable under section 302 and 27 of the Arms Act and sentenced him to life imprisonment. No separate sentence has been passed under section 27 of the Arms Act.

2. Gopalpur P.S.Case No. 96 of 1991 was registered on the basis of fardbeyan of PW-4 (informant), who gave his fardbeyan to PW-9 (I.O) on 14.08.1990 to this effect that on 13.08.1990 at about 7.30 P.M while his wife namely, Kailee Devi was going to her home



and when she reached near Larha Bandh, some unknown person shot fire as a result of which she died then and there. PW-4 claimed that he heard the sound of firing but it was Narain Mandal (PW-2), who having seen the dead body of deceased lying on the ground raised alarm which attracted him and then, he went running near the place of occurrence and saw the dead body of his wife. PW-4 also claimed that having heard the alarm, Rohit Mandal(not examined), Hari Prasad Mandal (PW-1) and Yogendra Mandal etc came there and saw the dead body. PW-4 expressed his suspicion against the appellant on the ground that six months prior to the alleged occurrence, the appellant had given threatening to kill his wife namely, Kailee Devi, levelling allegation of Witchcraft against her and furthermore, the appellant just after the alleged occurrence went running to the BASA of Mahendra Mandal (PW-6) and said that he has come there after hearing the sound of firing.

3. PW-9 investigated the case and after completion of investigation, he submitted charge sheet for the offence punishable under section 302 of the Indian Penal Code and 27 of the Arms Act against the sole appellant. The cognizance of the offence was taken and the case was committed to the court of session.

4. The appellant stood charged for the offence punishable under section 302 of the Indian Penal Code and 27 of the Arms Act.



However, from perusal of the charge framed under section 27 of the Arms Act , it appears that the aforesaid charge is defective in nature because in the aforesaid charge, it has, no where, mentioned that the appellant had used firearm in committing murder of Kailee Devi. However, the appellant denied the charges and claimed to be tried.

5. In course of trial, altogether, nine witnesses were examined and apart from this, some documents were also got exhibited.

6. PW-1, PW-6, PW-7 were declared hostile and PW-2 namely, Narayan Mandal was tendered. It would appear from perusal of the lower court record that only PW-3, PW-4 and PW-5 supported the prosecution case but PW-3 and PW-4 stated that PW-6 Mahendra Mandal had disclosed that it was appellant Jaldhar Mandal, who had shot fire at deceased. It is pertinent to note here that PW-6 has been declared hostile and he has not supported the statement of PW-3 and PW-4.

7. PW-4 is the informant and has supported the prosecution case and stated that it was PW-2 Narayan Mandal who raised alarm having seen the dead body of Kailee Devi and, thereafter, he went running there and saw the dead body of Kailee Devi. Admittedly, this witness is not an eye witness of actual killing of deceased Kailee Devi. This witness, further, admitted that Mahendra Mandal (PW-6)



told him that appellant having committed the murder of deceased had come to his BASA but PW-6 stated in his chief that appellant had come to his BASA and told that one person was crying and after that he left the BASA. It is obvious that PW-6 Mahendra Mandal had also not seen the actual killing of the deceased. According to PW-3 and PW-4, it was Narayan Mandal (PW-2) who first raised the alarm having seen the dead body of the deceased but said Narayan Mandal (PW-2) has been tendered by the prosecution and has stated nothing. PW-4 further admitted that PW-5 and others had come near the place of occurrence. No doubt, PW-5 claimed that he had seen the appellant in the light of torch while the appellant was fleeing from the place of occurrence just after the alleged occurrence but it is surprising enough, that PW-5 Lakho Mandal had not disclosed the aforesaid fact to PW-4 especially in the circumstance when he had reached the place of occurrence just after the alleged occurrence. Similarly, PW-3 had also not disclosed to PW-4 that PW-6 had named the appellant as assailant, though PW-3 had gone to the police station along with PW-4. Therefore, after perusing and scrutinizing the entire evidences available on the record, we find that except suspicion there is no cogent evidence against the appellant and the learned court below convicted and sentenced the appellant only on the basis of suspicion and in our view, suspicion, however, may be strong, can not take



place of evidence.

8. On the basis of aforesaid discussion, this Criminal Appeal is allowed and the impugned judgment of conviction and sentence order are, hereby, set aside and accordingly, the appellant is acquitted of the charges. The appellant is on bail hence, he is discharged from the liabilities of the bail bonds.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

N.K/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	09.07.2018
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