

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.376 of 2013

Arising Out of PS. Case No.-62 Year-2009 Thana- KATIHAR MUFFASIL District- Katihar

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Md. Farooque, S/o Ishaque, Resident of Village - Gumti Tola, Jaralahi, P.S. -
Kursela, Distt. - Katihar

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Bakshi S.R.P. Sinha, Sr. Advocate Mr. Praveen Kumar Agrawal
For the State	:	Mr. Ajay Mishra (A.P.P)

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA)

Date : 21-12-2018

Heard Sri Bakshi S.R.P. Sinha, learned senior
counsel, assisted by Sri Praveen Kumar Agrawal, learned
counsel for the appellant and Sri Ajay Mishra, learned
Additional Public Prosecutor.

2. This appeal has been filed against the judgment
of conviction dated 30.03.2013 and order of sentence dated
02.04.2013, passed by Sri Housila Prasad Tripathi, *Adhoc*,
Additional Sessions Judge-II, Katihar in Sessions Trial No. 226
of 2011, arising out of Katihar (Mufassil) P.S. Case No. 62 of



2009, whereby the appellant has been convicted under section 302 of the Indian Penal Code and sentenced to undergo Rigorous Imprisonment for life and also to pay a fine of Rs. 25000/-, in default of which, further imprisonment for a term of one year for the offence committed by him under section 302 of the Indian Penal Code.

3. The facts of the case, in short, is that on the basis of the *fardbeyan* of informant Kaili Khatoon dated 09.06.2009, Katihar Mufassil P.S. Case No. 62 of 2009 was instituted against the appellant Md. Farooque and his brother Lal Mohammad, wherein it has been alleged that on 08.06.2009 while the daughter of the informant namely Shalia Praveen @ Pammi Khatoon was returning back to her home after taking tuition, on the way near the house of Md. Islam, her son-in-law, Lal Mohammad and this appellant along with 3-4 others came on a motorcycle and tried to take away her daughter forcibly on their motorcycle. On her protest, the appellant Md. Farooque took out pistol and shot her dead. Thereafter, the appellant and other accused persons fled away towards Katihar on motorcycle raising pistol upon the villagers, due to which, none of the villagers dared to come close to them. On receiving information, when the informant reached at the place of occurrence, she got



detailed information about the incident. It has been further alleged in the *fardbeyan* that the cause of occurrence is that these accused persons are accused in the case of murder of husband of the informant and they were putting pressure for compromising the case of murder.

4. On the basis of the written information of the informant, Katihar Mufassil P.S. Case No. 62 of 2009 was registered on 09.06.2009 for the offence under section 302/34 of the Indian Penal Code and 27 of the Arms Act, in which the appellant was made accused. After investigation, the police submitted charge-sheet under section 302/34 of the Indian Penal Code and 27 of the Arms Act on 24.03.2011 against the appellant and co-accused Lal Mohammad showing him absconder and thereafter, cognizance was taken on 20.04.2011 and the case was committed to the Court of Sessions for trial on 27.05.2011.

5. The charge was framed on 20.10.2011 for the offence under section 302/34 of the Indian Penal Code, to which the appellant pleaded not guilty and claimed to be tried.

6. During trial, the prosecution has examined altogether ten witnesses. P.W. 1/Narain Paswan, P.W. 2/Md. Islam, P.W. 3/Md. Azrul, P.W. 4/Md. Akhtar, P.W. 5/Naresh



Chandra Sah, P.W. 6/Md. Ekhlakh, P.W. 7 Kaili Khatoon, who is the informant, P.W. 8/Lalesh Kumar Mandal, P.W. 9/Dr. Arun Kumar and P.W. 10/Randhir Kumar Mishra.

7. In order to establish the charges, the prosecution has proved the following documents as exhibits :-

- Exhibit 1 Fardbeyan of the informant*
- Exhibit 2 Endorsement on the fardbeyan*
- Exhibit 3 Formal F.I.R.*
- Exhibit 4 Postmortem Report*
- Exhibit 5 Carbon copy of the Inquest Report.*

8. The appellant, in his statement under section 313 of the Code of Criminal Procedure, has said that he is innocent and has falsely been implicated in this case.

9. Defence has neither produced any witness nor any document in support of its case.

10. Before reaching to any conclusion, it is felt necessary to examine the evidence of the witnesses:

i) P.W. 1/Narain Paswan has stated in his evidence that a girl was lying on the road. There was crowd on the road. He did not ask the villagers how she died. This witness has identified his signature on the Inquest Report (Exhibit-1). This witness further stated that he put his signature on the direction of *Darogajee*, but he did not see as to what was written.



ii) P.W. 2/Md. Islam has stated in his evidence only to the effect that someone had shot dead the deceased Pammi Khatoon near his house.

iii) P.W. 3/Md. Azrul has stated that a girl was killed near his house. On hearing the sound, he came out and saw that a girl was lying on the road. This witness has also stated that he had not given any statement before the police. This witness has been declared hostile by the prosecution.

iv) P.W.4/Md. Akhtar has stated in his evidence that the marriage of his niece Shalia Parveen @ Pammi was solemnized with Lal Mohammad six years ago. At the time of her marriage, it was decided that her *Vidai* will be performed only after passing of her matric examination. The accused persons used to force for her *Vidai*. Her father used to oppose their action and due to which accused persons killed him. After three years of murder of her father, Shalia Praveen @ Pammi was also killed by them.

On the alleged date of occurrence, this witness was coming from Katihar. On the place of occurrence, he saw the dead body of Shalia Praveen @ Pammi and also saw the bullet injury on her right temple. The persons, who had gathered there, informed that Farooque and Lal Mohammad have



committed this murder.

In his cross-examination, nothing such was asked from this witness, which could have benefited the defence.

v) P.W. 5/Naresh Chandra Sah has stated in his evidence that the alleged occurrence is of more than three years back. The time is of 09:00-9:30 am. At that time, this witness was going to cut grass. When he reached near the house of Afzal (P.W. 3), he saw that there was scuffle going on between Farooque and Shalia on the road in front of his house. Farooque was dragging Shalia and was trying to make her sit on his motorcycle to which she was opposing. Thereafter, Farooque fired at the temple of Shalia, as a result of which she fell down and succumbed to the injury. Thereafter, Farooque along with his brother Lal Mohammad fled away on the motorcycle.

The information of alleged occurrence was given to the mother of the deceased. She came at the place of occurrence and Police also came there. The statement of the witness was recorded. This witness further stated that about two and half years ago, father of the deceased was also killed. Both the accused persons are also accused in the case of murder of her father.

In the cross-examination, questions with regard to



the number of the motorcycle of the accused, colour of the clothes of the deceased etc. were asked, which this witness could not answer, but the evidence of this witness on the occurrence, could not be demolished by the defence.

vi) P.W. 6/Md. Akhlakh has stated in this evidence that he received information on phone that Shalia Parveen has been killed. On reaching to the place of occurrence, this witness found Shalia Parveen dead. He also saw the mark of bullet injury. Md. Azrul (P.W.3), Islam Mian (P.W.2) and Naresh Chandra Shah (P.W.5), who were present there, told him that Md. Farooque and Lal Mohammad fired at her and fled away.

The cause of occurrence, as told by this witness, is that Shalia wanted to study further and accused persons were trying to forcibly take her away after Vidai.

This witness has also stated that in the year 2006 the accused persons had also shot dead the father of Shalia.

vii) P.W. 7/ Kaili Khatoon (informant) has stated in her evidence that she received information that Farooque and Lal Mohammad have shot fire on Shalia. On information she reached at the place of occurrence and found Shalia lying on the earth in dead condition and there was bullet injury on her right



temple. Naresh Chandra Sah (P.W.5) and Azrul (P.W. 3), who were present there, told that the Devar, Farooque and husband, Lal Mohammad, fired at Shalia Praveen and fled away.

After about one and half hours, police also reached there and recorded the statement of witnesses on which this witness put his signature. The cause of occurrence is that Shalia wanted to go to her Sasural after passing of matric examination.

This witness also stated that about three years before the alleged occurrence, the accused persons had also killed her husband.

In the cross- examination, the defence could not ask anything which could have benefited them.

viii) P.W. 8/ Lalesh Kumar Mandal has stated in his evidence that on 09.06.2009 he was posted as Officer In-charge at Katihar Muffasil Police Station. In the morning at 9.30 someone informed him on phone that in village Udamarekha a girl has been shot dead by a motorcyclist. On this information, he alongwith the police force and Sub Inspector Randhir Mishra (P.W. 10) reached at the place of occurrence where found the deceased soaked with blood lying on the road and there was bullet injury on her head. Her mother and others were present



there. He recorded the statement of her mother and read out the same to her on which she put her thumb impression. The brother of the informant, Md. Akhtar (P.W. 4), who was also present there, put his signature on the *Fardbeyan* as witness. This witness at the place of occurrence itself handed over the investigation of the case to Sub Inspector Randhir Mishra. This witness has proved the *Fardbeyan* (Exhibit-1), endorsement on it (Exhibit-2) and formal *F.I.R.* (Exhibit-3).

In his cross-examination, he stated that nothing was seized in his presence from the place of occurrence.

ix) P.W. 9/ Dr. Arun Kumar has stated in his evidence that on 09.06.2009 he was posted at Sadar Hospital, Katihar as Medical Officer and on that date at 2.20 PM he conducted *postmortem* on the dead body of Shalia Parween with the help of Dr. D.N. Poddar and found the following facts :-

- “i. Rigor Mortis present in all four limbs.*
- ii. One round bleeding wound of approx – 1/4” x 1/4” cavity deep on the right side of skull posterior to right pinna of ear with charred and inverted margin. This is the wound of entry. Dissection of skull shows that the bullet impacted on the inner surface of the occipital bone. The bullet was collected and sampled and was handed over to the custodian of postmortem. Neck- within normal limit. Thorax – Both lungs intact and within normal limit. Heart intact, left side empty. Right side full. Abdomen – all the*



*abdominal viscera within normal limit.
Stomach contained 100 to 120 ml. of mucoid
fluid with semi digested food particles.
iii) Uterus – small and empty.
iv) External genitalia – within normal limit.
v) Cause of death due to neurogenic and
hemorrhagic shock as a result of the injury
sustained on head by firearm weapon.
3) Time elapsed since death within 24 hours.*

The above Postmortem Report is in his pen and signature and the same also bears signature of aforementioned Dr. D.N. Poddar. This witness has identified the *postmortem* report which has been marked as Exhibit-4.

x) P.W. 10/ Randhir Mishra, the Investigating Officer of this case, has stated in his evidence that on 09.06.2009 he was posted at Katihar Muffasil Police Station. On that day information was received that in village Udamarekha a girl has been shot dead. He went to the place of occurrence alongwith the Officer In-charge. Officer In-charge recorded the statement of the mother of the deceased at the place of occurrence and handed over the investigation of the case to him. This witness first of all prepared the Inquest Report and proved its carbon copy of Exhibit-5. He sent the dead body for its *postmortem*.

This witness has also established the place of occurrence. Conducted raid for arresting the accused persons,



but all were found absconding.

In his cross-examination, he stated that the place of occurrence was a road, and as such, blood could not be seized.

11. Sri Baxi S.R.P. Sinha, learned Senior Counsel appearing for the appellant submitted that Naresh Chandra Shah is the only eye witness of the alleged occurrence and all other witnesses are hearsay witnesses. Conviction can not be made on the evidence of only one witness since the medical evidence does not corroborate it. He further submitted that except P.W. 5, all other witnesses are family members.

12. Sri Ajay Mishra, learned Addl. P.P. appearing for the State opposing the present appeal submits that if the evidence of even a witness is believable, the same can be a reasonable ground for conviction. The evidence of P.W. 5 is believable and the *postmortem* report (Exhibit-4) corroborates it.

Appellant is a named accused in the case of murder of deceased's father. He was pressurizing the deceased not to give evidence in the said case and for that reason only he wanted her Vidai so as to make his plan successful and since the deceased was opposing for her Vidai, the accused has killed her. This is the only strong motive behind the alleged murder.

Except the P.W. 5 all other witnesses are hearsay



witnesses but their evidences are consistent. There is no contradiction and the defence in the cross-examination could not ask anything which could create doubt on the evidence of the witnesses.

13. Immediate reaching of the police to the place of occurrence, lodging of the *fardbeyan* (Exhibit-1) and formal *F.I.R.* (Exhibit-3), preparation of the *Inquest Report* (Exhibit-5), sending the dead body for *postmortem* and corroboration in the *postmortem report* (Exhibit-4) by the doctor about the time and manner of murder as stated by the witnesses, all these facts go to show that prosecution has been able to prove the case against the accused beyond all reasonable doubts and the trial Court has appropriately punished the accused. In the aforesaid background, the present appeal is fit to be dismissed.

14. In view of the facts and circumstances of the case and the discussions, as made above, this Court finds substance in the submissions advanced by the learned counsel appearing for the State and agrees with the same. Accordingly, the judgment of conviction dated 30.03.2013 and order of sentence dated 02.04.2013, passed by Sri Housila Prasad Tripathi, Adhoc, Additional Sessions Judge-II, Katihar in Sessions Trial No. 226 of 2011, arising out of Katihar (Mufassil)



P.S. Case No. 62 of 2009 does not warrant any interference and the same is, hereby, confirmed.

15. This appeal, accordingly, stands dismissed.

(Arvind Srivastava, J)

Rakesh Kumar, J :

(Rakesh Kumar, J)

Shailendra/Manish

AFR/NAFR	N.A.F.R.
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