

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 68 of 2016

Arising Out of PS. Case No.-14 Year-1996 Thana- Sandesh District- Bhojpur

Chamaku Ram, Son of late Ram Prasad Ram, Resident of Village- Kori,
P.S. Sandesh, District Bhojpur(Ara).

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s : Sri Gopal Govind Mishra, Advocate
For the Respondent/s : Sri Ajay Mishra (A.P.P.)

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 13-03-2018

The sole appellant was convicted in Sessions Trial No. 164 of 1998 (arising out of Sandesh P.S. Case No. 14 of 1996). The appellant has been convicted by judgment of conviction dated 08-12-2015. He has been convicted for commission of offence under Section 302 of the Indian Penal Code, 1860 (for short “I.P.C.”) and Section 27 of the Arms Act, 1959 (for short “Arms Act”). By order dated 14-12-2015, he was sentenced under Section 302 I.P.C. to undergo rigorous imprisonment for life and to pay a fine of ₹ 20,000/- (twenty thousand) and in default of payment of fine, he has been directed to further



undergo simple imprisonment for five years. Under Section 27 of the Arms Act, he has been sentenced to undergo rigorous imprisonment for five years and to pay a fine of ₹ 10,000/- (ten thousand) and in default, he has been directed to further undergo simple imprisonment for two years. He has been convicted and sentenced by judgment passed by Sri Vishwanath Singh, learned 5th Additional Sessions Judge, Bhojpur, Ara (hereinafter referred to as the 'Trial Judge').

2. Short fact of the case is that on 09-02-1996 at 1:00 AM in the night, Sub-Inspector Sri Aditya Kumar Mishra, officer incharge of Sandesh Police Station recorded *fardbeyan* of Ramadhar Rai (P.W.4) in village Koshdihra in the house of Ramgahan Rai (P.W.1). In the *fardbeyan*, the informant disclosed that on 08-02-1996 at about 8:40 in the night, his servant Ram Awadhesh Yadav (deceased) sitting on a cot was having dinner. The informant and his brother Ramgahan Rai (P.W.1) were having discussion while sitting in *dallan* (दलान). In the meanwhile, they heard one sound of firing from outside. Thereafter, he and his brother came out. In the meanwhile, his servant, in an injured condition, arrived there and fell down in *dallan* (दलान). On his person, there was one fire-arm injury.



Immediately after being fallen down, he died. On hearing sound of firing, the number of villagers namely Ramyash Rai (not examined), Kamlesh Rai (not examined), Bharat Rai (not examined), Surya Narayan Rai (P.W.7), Ram Ayodhya Yadav (P.W.3), Raghupati Yadav (not examined), Janeshwar Yadav (not examined) and other villagers arrived there and started to search assailants. In this context, from a well, which was near the eastern side of informant's *Dallan*, they heard cry of a person. Thereafter, all the villagers reached near the well and noticed that one person from the well was crying to save him. On being asked by the informant and other villagers as to who was he and how he fell down in the well, the person from the well said his name as Chamku Ram S/o Ram Prasad Ram, R/o Kori, P.S. Sandesh, District – Bhojpur and he further said that he and one Collector Pasi S/o Lalmuni Pasi R/o Bartiyar, P.S. Sandesh, District – Bhojpur had gun down Ram Awadhesh Yadav (deceased) and thereafter, while he was fleeing away towards eastern side, he fell down in the well. The said person further said that his rifle and cartridges were also lying in the well. On hearing the said thing, the informant and all the villagers surrounded the well and information was given to



Bartiyar camp and police station. On information, police force from Bartiyar camp and officer incharge of Sandesh Police Station with force arrived at the place of occurrence. After the arrival of the police force, with the help of villagers, the accused Chamku Ram was taken out from the well, who was having multiple injuries on his person. On being asked by Bada Babu (बड़ा बाबू) of Sandesh Police Station as to what was his name, he disclosed his name and said that he had shot Ram Awadhesh Yadav by country-made rifle and the said rifle and remaining live cartridges were concealed in the well. He also disclosed the name of the accused, who fled away, as Collector Pasi. He also stated that Collector Pasi was also having a country-made rifle. Subsequently, with the help of villagers and *Jhagar* (झगड़/कौटा) from the well, country-made rifle and one cloth *windolia* (विंडोलिया) containing 11 live cartridges of .315 bore was recovered. On smelling the rifle, smell of explosive was noticed. In presence of two witnesses namely Ram Ayodhya Yadav (P.W.3) and Birendra Rai (P.W.2) by preparing seizure list, the recovered country-made rifle and live cartridges were seized. On the seizure list, Ram Ayodhya Yadav (P.W.3) put his L.T.I. and another witness Birendra Rai



(P.W.2) put his signature. The reason for the occurrence was explained by the informant that deceased Ram Awadhesh Yadav, since last about five months, was doing domestic work of the informant. Prior to the said work, he was working in the house of one Bhuneshwar Rai of village Bartiyar, however on Bhuneshwar Rai, Communist Party (M) had put economic restriction and in said context, accused Collector Pasi and others by threatening had ousted the deceased and he was threatened that he will never work for any *Bhumihar* (भुमिहार) caste people, otherwise he will be done to death. The informant further disclosed that Chamaku Ram (appellant) and Collector Pasi were supporters of *Maley* (माले). He claimed that in a pre-planned manner, both the accused had killed Ram Awadhesh Yadav by giving shot from country-made rifle. Thereafter, the informant put his signature on the *fardbeyan*.

3. After recording of the *fardbeyan*, a formal F.I.R., vide Sandesh P.S. Case No. 14 of 1996, was registered for offence under Sections 302/34 of the Indian Penal Code and sections 25(1-B)A, 26 & 27 of the Arms Act against the appellant Chamaku Ram and one another Collector Pasi. During investigation, accusation was found true and thereafter, on



08-05-1996 chargesheet was submitted against both the F.I.R. named accused persons showing accused Collector Pasi as absconder. On 15-05-1996, learned Magistrate took cognizance of the offence and thereafter, the case was committed to the court of sessions on 29-05-1998 and the case was numbered as Sessions Trial No. 164 of 1998. In the case, charge under Section 302 of the I.P.C. and Sections 25(1-B)A & 27 of the Arms Act was framed on 05-01-1999 against the appellant.

4. The appellant right from the date of occurrence was taken into custody and he remained in jail from the date of occurrence till the date of his release on bail. He was released after furnishing bail-bond on 03-09-2002. Thereafter, he is in custody after the judgment of conviction and sentence. The prosecution, to establish its case, examined altogether 9 witnesses, who are:

P.W.1 Ram Gahan Rai, who had proved his signature on inquest report as well as signature on inquest report of Ramadhar Rai (P.W.4), which were marked as **Ext. 1** and **Ext. 1/1** respectively. He also proved inquest report and same was marked as **Ext.2**. This witness, besides proving those



documents, had also stated that in his presence the appellant had made extra-judicial confession, in which, he confessed that he had killed the deceased and on his confession in extra-judicial confession, the recovery of country-made rifle and 11 live cartridges were made.

P.W.2 Birendra Rai had proved his signature on seizure list, which was marked as **Ext.4**. The seizure list was in relation to seizure of country-made rifle and 11 live cartridges of .315 bore. This witness has also elaborated regarding extra-judicial confession of the appellant.

P.W.3 Ram Ayodhya Rai, who is actually Ram Ayodhya Singh, is one of the witness to the seizure list and he had put his L.T.I. on the seizure list.

P.W.4 Ramadhar Rai is the informant of the case.

P.W.5 Dr. B. K. Rai had conducted *post-mortem* examination on the dead body of the deceased and he proved the *post-mortem* report, which was marked as **Ext.5**.

P.W.7 Suraj Narayan Rai is also formal witness, however; his cross-examination remained inconclusive.

P.W.8 Amar Nath Pandey is the formal witness, who has proved prosecution sanction in relation to according sanction for offence under the



Arms Act and said prosecution sanction was marked as **Ext. 'X'**.

P.W.9 Abdul Wahab was a police constable and he had produced seized country-made rifle and 11 live cartridges. He had also proved a letter, through which the material exhibits were forwarded i.e. letter dated 11-07-2006. Same was marked as **Ext.10** and regular rifle was marked as material **Ext. 'क'**, whereas 11 live cartridges were marked as **Ext. 'ख to ख/10'**.

P.W.6 Manohar Prasad was the investigating officer, who conducted major portion of investigation in the case, however; before submission of chargesheet, he was transferred. This witness has proved *fardbeyan*, which was marked as **Ext. 6**, formal F.I.R. as **Ext. 7**, Seizure list in relation to country-made recovered rifle & 11 live recovered cartridges, which was marked as **Ext.8**, letter sent to Forensic Science Laboratory for obtaining report in respect of seized articles, which was marked as **Ext. 9**.

5. After conclusion of the prosecution evidence, circumstances and evidences brought on record were explained to the appellant and his statement under Section 313 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.")



was recorded on 30-08-2013, in which, he denied the charges and claimed about false implication.

6. Sri Gopal Govind Mishra, learned counsel for the appellant, after placing entire evidence, has argued that the entire case is neither believable nor on such evidence, the learned Trial Judge was required to pass judgment of conviction and sentence. He has argued that basically *fardbeyan* was recorded after recording confessional statement of the appellant and as such, no reliance was required to be placed on the *fardbeyan*. By way of placing reliance to the judgment of the Apex Court, reported in **AIR 1972 SUPREME COURT 922 (Khatri Hemraj Amulakh vs. The State of Gujarat)**, he has argued that in a case, in which, the case has proceeded on the basis of confessional statement of accused, there was no reason to place reliance on the *fardbeyan* or the F.I.R. He has specifically referred to paragraph – 14 of the said judgment, which is quoted hereinbelow:-

“14. The confessional statement, Ext. 27, which was made by the accused to Sub Inspector Rojia and which formed the basis of the first information report was not admissible in evidence as the same was hit by



Section 25 of the Indian Evidence Act. We may in this connection refer to the case of Aghnoo Nagesia v. State of Bihar, (1966) 1 SCR 134 = (AIR 1966 SC 119) wherein this Court held that no part of a first information report lodged by the accused with the police could be admitted into evidence if it was in the nature of a confessional statement. The statement could, however, be admitted to identify the accused as the maker of the report. The part of the information as related distinctly to the fact discovered in consequence of the information could also be admitted into evidence under Section 27 of the Indian Evidence Act if the other conditions of that section were satisfied.”

7. Sri Mishra has further argued that only confession leading to recovery of articles was admissible and in this context, he has placed reliance on **AIR 1966 SUPREME COURT 119 (Aghnoo Nagesia vs. State of Bihar)**. He submits that only on the ground of recording *fardbeyan* on the basis of confessional statement of the appellant made before the police, entire prosecution case is demolished. He has further argued that the prosecution during the trial has miserably failed to establish animosity of the appellant with the deceased. He has argued that in absence of animosity, the prosecution has failed to establish motive and as such, there was no question for application of Section 302 of the I.P.C. in



the present case. According to Sri Mishra, in absence of report of F.S.L. regarding use of weapon, the prosecution has miserably failed to establish its case. Besides this, though it was case of the prosecution that the firing, made on the deceased, was having entry wound and exit wound, from the place of occurrence, no fired pillate was recovered, which creates serious doubt on the prosecution case. Besides this, in the case, there is no eye-witness to the occurrence and entire case was based on circumstantial evidence and it is settled law that in a case of circumstantial evidence, in absence of completion of chain, no prosecution can be approved.

8. Sri Gopal Govind Mishra, learned counsel for the appellant has also placed reliance on another judgment of the Apex Court, reported in **AIR 2014 Supreme Court (Supp.) 38 (Dhan Raj alias Dhand vs. State of Haryana)** on the point that extra-judicial confession is a weak evidence and on such evidence, no one can be held guilty. On aforesaid ground, it has been argued that it was a fit case for acquittal, however; the learned Trial Judge has incorrectly passed judgment of conviction and sentence.



9. In reply, Sri Ajay Mishra, learned Addl. Public Prosecutor has placed reliance on **(1973) 4 SUPREME COURT CASES 17 (Abdul Ghani s/o Mohammad vs. The State of U.P.)** and submits that even in a case of sole extra judicial confession, the conviction and sentence can be approved. Sri Mishra, learned Addl. Public prosecutor opposing the appeal has argued that in the case, the appellant immediately after the occurrence had made extra-judicial confession and in said confession, he categorically disclosed that he alongwith one Collector Pasi had killed the domestic servant of the informant namely Ram Awadhesh Yadav. He submits that the extra judicial confession has been corroborated by other circumstances, which shows completion of chain of circumstances also. Besides this, it has been argued that on extra judicial confession or confession before the police made by the appellant, one country-made rifle and 11 live cartridges were recovered and as such, there is no reason to doubt on the prosecution case. According to Sri Mishra, the prosecution has proved its case beyond all reasonable doubt and as such, judgment impugned requires no interference.



10. Besides hearing learned counsel for the parties, we have minutely examined entire evidence i.e. both oral and documentary evidence. Before proceeding, it would be necessary to firstly discuss the evidence of informant/P.W.4 Ramadhar Rai.

11. The informant in his evidence in paragraph 1 has stated that on the date and time of occurrence, he was sitting in *baithak* (बैठक). Alongwith him, his brother Ram Gahan Rai (P.W.1) was also present. Ram Awadhesh Yadav (deceased) was taking meal sitting on a cot. The informant heard the sound of firing and thereafter, he saw that Ram Awadhesh Yadav had received fire-arm injury. On receiving such injury, he fell down and died. After hearing the sound of firing, number of persons assembled there and he disclosed the name of many of the witnesses including Birendra Rai (P.W.2) and others. Thereafter, all of them tried to locate as to from which place firing was made, in the meanwhile, from a well, which was near his *baithak* (बैठक), he heard the cry of a man. Thereafter, they reached near the well and noticed that accused Chamaku Rai was crying to save him. He was also saying that he alongwith Collector Pasi had shot Ram Awadhesh Yadav by



fire-arm and while after killing he was fleeing away, he fell down in the well. He also said that country-made rifle and cartridges were with him in the well. Police was informed. Darogaji of Sandesh Police Station arrived and thereafter, with the help of the villagers, the accused Chamaku Ram (appellant) was taken out from the well. He had received injuries on different parts of his body. Chamaku Ram (appellant) disclosed to Darogaji that he and Collector Pasi had fired on Ram Awadhesh Yadav and while fleeing away, Chamaku Ram fell down in the well alongwith rifle and cartridges. In paragraph – 2, he disclosed that subsequently with the help of *Jhagar* (झगड़), country-made rifle and cartridges, which were wrapped in a belt, were taken out from the well. This witness further stated that in his presence, Darogaji smelled the barrel of the rifle, which gave smell of explosives and thereafter in his presence seizure list was prepared. In paragraph 3 of his evidence, P.W.4 stated that appellant Chamaku Ram was member of a party, who were saying that no one will do work of any *Bhumihar* (भुमिहार), otherwise he will be gunned down. He stated that deceased was of the village Bartiyar. He further stated that due to



threatening given by the accused persons, the deceased had left the said village and thereafter, he was doing work in the house of P.W.4 and this was the reason that accused persons had gunned down Ram Awadhesh Yadav. He proved his signature on the *fardbeyan*, which was marked as **Ext. 3**. He also stated that on the seizure list, there was signature of Birendra Rai. In paragraph - 7 of his cross-examination, he stated that Chamaku was taken out from the well in between 10 and 11 in the night. He clarified that appellant was taken out after 10 minutes of arrival of the Darogaji. He stated that Darogaji had arrived in between 10 and 10.30 night and at that very time, the *fardbeyan* was recorded and after arrival of Darogaji, about one hour thereafter, rifle was taken out from the well. In paragraph - 9 of his cross-examination, he stated that Darogaji had recorded statement of Chamaku at about 12 in the night. Prior to recording confession of appellant, his *fardbeyan* was recorded. P.W.4 further stated that he was not having any direct animosity with the appellant. Ofcourse, this witness was cross-examined at length, but nothing could be extracted to create serious doubt on the prosecution case.



12. Similarly, P.W.1 Ram Gahan Rai has also stated as to how after hearing sound of the firing, the cry of the appellant was noticed from the well and in his presence also, the appellant had made extra-judicial confession. In paragraph 9 of his cross-examination, he has stated that on the eastern side of his village, there was vacant land. He, further in paragraph 10 of his cross-examination, has stated that the appellant has made extra-judicial confession before Ram Ayodhya Yadav (P.W.3), Birendra Rai (P.W.2) and Suraj Narayan Rai (P.W.7).

13. In similar manner, P.W.2 Birendra Rai has elaborated as to how the appellant made extra-judicial confession and regarding recovery of weapon from the well on extra-judicial confession of the appellant.

14. P.W.7 Suraj Narayan Rai has also stated in the similar manner, however; after his cross-examination, on the prayer made by the defence side, his cross-examination was deferred and thereafter, his further cross-examination remained inconclusive and as such, much reliance is not required to be placed on his evidence. However, at the place of occurrence itself, inquest report in respect of dead body of



deceased was prepared and through dead body *challan* (चलान) and *chowkidar* (चौकिदार), the dead body was sent for *post-mortem* examination.

15. On the dead body of the deceased, Dr. B.K.Rai, who was posted as Civil Assistant Surgeon at Sadar Hospital, Ara on 09-02-1996, held *autopsy* at 10:30 AM and he noticed following facts:-

“On External Examination:-

(i) Lacerated wound ¼” x ¼” x cavity deep with inverted margin over right side of chest just below nipple (wound of entry);

(ii) Lacerated wound 1” x 1” x cavity deep with everted margin over back of the left lower chord (wound of exit).

The injury no. (i) and (ii) were inter-communicating.

On internal examination:-

On opening the skull - brain pale

On opening the chest – pleural cavities contain blood & blood clot. Right lung, heart and left lung lacerated. Heart wall torn.

On opening the abdomen - left Diaphragm over perforated and lacerated. Fundus of stomach lacerated and perforated. Stomach contained one pint of food material. Liver, spleen, kidney pale. Urinary bladder empty.

Time elapsed since death:- Between 6 to 36 hrs. of Post-mortem examination.

Cause of death:- Due to haemorrhage and shock, as a result of above injury caused by fire-arm.”



P.W.5 further said that *post-mortem* report was in his pen & signature and same was marked as **Ext. 5**.

16. The investigating officer/P.W.6, besides proving documents, which has been discussed hereinabove, had also inspected the place of occurrence and while inspecting place of occurrence, he had noticed blood mark at the place of occurrence. Besides this, it was noticed that western side of the boundary wall of the well was not present. This suggests that while the appellant after the occurrence was fleeing away without noticing any boundary wall, accidentally he fell down in the well and thereafter, in presence of witnesses, he made extra-judicial confession regarding his involvement and on such disclosure, weapon and cartridges were also recovered. It is true that though the seized rifle was sent to F.S.L. for its chemical examination, but on record, there is no expert report. However, while examining the evidence, we may not be oblivious of the fact that case was investigated by the Bihar Police and in such investigation, it is difficult to perceive that the investigating agency will conduct such scientific investigation. It is failure on the part of the investigating agency, but only due to failure of investigating officer, in the



facts and circumstances of the present case, entire prosecution case may not be brushed aside. There is evidence of extra-judicial confession, which was made immediately after the occurrence, and weapon was also recovered.

17. However, we are of the opinion that it is not only extra-judicial confession, but circumstances categorically indicate that after the occurrence, the appellant, who was of a different village, was found lying in a well and he himself made extra-judicial confession that while he was fleeing away after committing the offence, accidentally fell down in the well. In the case, it has been noticed by the investigating officer that boundary wall of well from the western side was damaged and as such, there was possibility that accidentally the appellant, who himself has said that he was fleeing away towards eastern side, had fallen down in the well and as such, it is not a case simply based on the extra-judicial confession, rather there are other connecting circumstances and as such, judgment relied upon by the appellant has got no relevance in the facts and circumstances of the present case.

18. So far as submission of learned counsel for the appellant that F.I.R. based on confessional statement is



inadmissible is concerned, we are of the opinion that such submission is only required to be noticed for its rejection. In the present case, it was not the case of the prosecution that F.I.R. was lodged on the basis of confessional statement rather it was a case of extra judicial confession of the appellant, which was made just after the occurrence and this appellant, after committing crime was fleeing away, had fallen down in the well and he from the well was crying for help and on his extra-judicial confession as well as confession before the police, rifle as well as live cartridges were recovered.

19. Considering the facts and circumstances, particularly the admissible evidences, we are of the opinion that the learned Trial Judge has rightly passed judgment of conviction and sentenced, which requires no interference.

20. Accordingly, the appeal stands dismissed.

(Rakesh Kumar, J.)

(Arvind Srivastava, J.)

Anay

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	17.03.2018
Transmission Date	17.03.2018

