

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.758 of 2012

Arising Out of PS. Case No.-68 Year-2010 Thana- SINGHESHWARASHTHAN District-
Madhepura

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Om Prakash Roy, S/O Narendra Roy @ Nagendra Roy Resident of Village-
Madhaili, Police Station- Shankarpur, District- Madhepura

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Phulendra Kumar, Advocate
For the Respondent/s : Mr. Ashwani Kumar Sinha, A.P.P.

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date : 26-06-2018

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

The appellant has preferred this appeal assailing the judgment of conviction and order of sentence dated 5.07.2012 passed by Adhoc Additional Sessions Judge-V, Madhepura in Sessions Trial No. 2 of 2011 arising out of Singheshwar Asthan P.S. Case No. 68 of 2010 by which the appellant has been convicted for the offences punishable under Sections 302, 307, 323 of the Indian Penal Code and Section 27 of the Arms Act and he has been sentenced to undergo rigorous imprisonment for life with a fine of Rs.5,000/- under Section 302 IPC.



Further, he has been sentenced to undergo imprisonment for five years with a fine of Rs.1,000/- under Section 307 IPC. He has further been sentenced to undergo rigorous imprisonment for six months under Section 323 IPC. He has also been sentenced to undergo rigorous imprisonment for three years with a fine of Rs. 1000/- under Section 27 of the Arms Act. However, both the sentences have been ordered to run concurrently. In default of payment of fine, he has been sentenced to undergo simple imprisonment for six months.

The prosecution case, as per *fardbeyan* of the informant Radha Devi, is that on 28.07.2010 at about 4.30 P.M., the son of the informant, namely, Vijay Kumar was at his shop of Puja materials situated near 'Shivganga' in the campus of Singheshwar Temple. In the meantime, the accused Om Prakash Roy, a constable of Home Guard, came with 'Danda' and after abusing him started beating her son. Seeing her son beaten, when the informant went there to save him, the accused also assaulted her. On seeing a woman being assaulted, worshipers who came for worship protested. The accused person conflicted with them and crowd assemble there. Thereafter, accused person went to Guard room and came with rifle and proceeded to fire, then one another constable Vidyanand Yadav tried to stop him and tried to



snatch his rifle, upon which, the appellant shot fire and a constable Vidyanand Yadav was badly injured. When crowd tried to stop fire, then he fired second shot which hit the son of informant Vijay Kumar in his right thigh and the cartridge also hit in the thigh of Ramanand Yadav. Thereafter, the accused fired third shot which hit Vishnu Narain Sah @ Raju Sah who became injured and fell down. Anyhow crowd caught the guard and took his rifle from his possession and also assaulted him. It is further stated that during treatment, Vishnu Narain Sah @ Raju Sah died and other injured were treated at Sadar Hospital, Madhepura.

On the basis of aforesaid fardbeyan of the informant, the police registered Singheshwar Asthan P.S. Case No. 68/2010 for the offences punishable under Sections 302, 307, 323, 324 of the Indian Penal Code and Section 27 of the Arms Act.

After investigation, the police submitted charge sheet against the appellant. Thereafter, cognizance was taken 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 sixteen witnesses in support of its case. P.W.1 is Kailash Sah, P.W. 2 is Manoj Kumar Panda, P.W. 3 is Rajkishor Sah @ Babloo, P.W. 4 is



Subhash Kumar, P.W. 5 is Sonu Kumar, P.W. 6 is Vinod Goswami, P.W. 7 is Radha Devi, P.W. 8 is Vijay Kumar, P.W. 9 is Dr. Suman Kumar Jha, P.W. 10 Vidyanand Yadav, P.W. 11 is Ram Naresh Singh, P.W. 12 is Pappu Jha, P.W. 13 is Pramod Kumar Chaudhary, P.W. 14 is Ramanand Yadav, P.W. 15 is Birendra Kumar, P.W. 16 is Rajeshwar Singh.

The defence has not examined any witness in support of its case.

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. 2, 3, 4, 5, 6, 10, 12, 13 and 15 have been declared hostile by the prosecution. P.W. 1 is the father of the deceased. P.W. 7 is the informant of this case. P.W. 8 is the injured witness. P.W. 9 is a doctor, who has done the autopsy on the dead body of the deceased and also examined the injured. P.W. 14 is also an injured witness. P.W. 15 is the Investigating Officer of this case.



P.W. 7, Radha Devi is the informant of the case whose son namely Vijay Kumar also received firearm injury on the date and time of occurrence. In view of the fact that majority of the prosecution witnesses have been declared hostile by the prosecution, her testimony becomes very important. She has fully supported the prosecution case. In fact, she has stated that her son Vijay Kumar was being assaulted by the appellant, Om Prakash Roy who was a guard posted in the temple for its security. When she intervened to pacify him she was also assaulted by him then Om Prakash Roy went to his room and came with his rifle and started firing from it. First shot hit homeguard, Vidyanand on his leg then he fired second shot which hit Vijay Kumar on his right thigh. He again fired third shot which hit Raju Shah. Then police came and firearm was seized from him and injured Raju Shah was taken to hospital where he was declared dead. She had identified the accused persons and has withstood the test of cross-examination.

The second prosecution witness of prime importance is P.W. 8, Vijay Kumar who actually received firearm injury as stated by her mother, the informant, P.W. 7. He has fully supported the case and stated that Om Prakash Roy, appellant came to his shop when he was opening it and started abusing and assaulting him by



“Danda”. His mother questioned as to why he is assaulting her son then he started assaulting his mother also then the people of locality started abusing for such act then he went into the guardroom and came with his rifle and started firing. The first shot hit Vidyanand Yadav, home-guard who tried to stop him. He again fired which hit the right leg of this witness and after exit it also hit Ramanand Yadav. Then he again fired from his rifle which injured Vishnu Narayan Shah @ Raju who died of the firearm injury. People present there stopped him and ultimately snatched the rifle and at that point of time police also came and took the accused into custody. He was taken to hospital and he was treated there. He identified the accused also in the court room. He has also withstood the test of examination.

The third important witness is another injured, Ramanand Yadav who has been examined as P.W. 14. He has stated that he received firearm injury on his right thigh and further that Om Prakash was making indiscriminate firing. He has identified the accused and has withstood the test of examination.

Dr. Suman Kumar Jha, who has done autopsy upon the dead body of the deceased and has also examined the injured, has been examined as P.W. 9. He has found the entry wound above scapular region of the size of 1/2”x1/2” margin inverted and also wound of



exit on left side abdomen with laceration around the wound of the size of 1½"x1½" margin everted on the body of the deceased. He has stated that he has examined injured, Vijay Kumar and has found one entry wound on right thigh of the size of ½"x½" margin inverted and wound of exit of the size 1"x1" margin everted. Both wounds were interconnected with each other. He has found the injury to be caused by firearm. Similar report is with respect to Ramanand Yadav, i.e., P.W. 14 also. A entry wound of ½"x½" margin inverted and wound of exit 1"x1" margin everted was found. A foreign particle was removed from the wound and sealed in a plastic jar and was deposited in the office of the Sadar Hospital, Madhepura which was handed over to the Investigating Officer. The third injury which was also caused by firearm is lacerated wound of the size of ½"x½" over the left thigh and abrasion of 1"x1" over left fore arm.

P.W. 11, Ram Naresh Singh has stated that when he was posted at Police Line, Madhepura he had examined the rifle seized from the accused which was made in England and of 303 bore. He had also found two live cartridges and three empty cartridges of 303 bore rifle and on examination he found that the rifle which was seized of police personnel was capable of firing and in fact firing was done from it.



Investigating Officer, Pramod Kumar Choudhary, has been examined as P.W. 13. He has stated that the occurrence took place in temple at 4 P.M. when the home-guard Om Prakash Roy had fired from his rifle thrice. He got information from some mobile phone and reached there and found that two home-guards were in injured condition. He took the injured to the hospital out of which, viz, Vishnu Narayan Shah @ Raju was declared brought dead. He recorded the fard-e-beyan of the informant in the morning of next day after occurrence. He seized the rifle and the empty cartridges from place of occurrence and prepared the seizure-list. He has given the detail of place of occurrence and has stated that he found blood all along on the spot.

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. It is a peculiar and unfortunate case in which the homeguard, who was posted for security of the temple and safety of the worshipers, resorted to indiscriminate firing after a quarrel with one of the injured person which was not at all expected from him.



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.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

V.K.Pandey/-

AFR/NAFR	N.A.F.R.
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