

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.600 of 2013

Arising Out of PS. Case No.-87 Year-2008 Thana- RUPAULI District- Purnia

Md. Kudrish S/O Bhokram Miyan Resident Of Village- Anjhar, P.S.- Rupouli
Mohanpur, District- Purnea

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Mukesh Kumar Jha

For the Respondent/s : Mr.Ajay Mishra App

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA)



Date : 15-05-2019

1. Heard learned counsel appearing for the appellant and the learned Addl. P.P. appearing for the State.

2. This appeal is directed against the judgment of conviction dated 22.05.2013 and the order of sentence dated 24.05.2013, passed by the 1st Additional Sessions Judge, Purnea in Sessions Trial No. 798 of 212 arising out of Rupouli (Mohanpur O.P.) P.S. Case No. 87 of 2008, whereby and whereunder the sole appellant has been convicted for the offence punishable under section 302 of the Indian Penal Code and Section 27 of the Arms Act and has been sentenced to undergo rigorous imprisonment for life with fine of Rs. 10,000/- for the offence under section 302 I.P.C.. In default of payment of fine, he has further been sentenced to undergo rigorous imprisonment for six months.

3. The prosecution case, in brief, is that the informant namely, Md. Mozahir gave his fardbeyan on 16.10.2018 alleging precisely therein that on 16.10.2008 at 6.45 p.m. he alongwith his younger brother Md. Mujeeb and son-in-law of his elder brother were coming on two motorcycles, but as soon as he turned towards his village, he saw in the light of



motorcycle 8-10 persons having firearms in their hands were standing by the side of the road and the said persons tried to stop them and co-accused, Mukesh Singh @ Wakil Singh fired but the informant managed to ran away but unfortunately another motorcycle on which Mujeeb and Perwez were sitting was stopped and they were killed by firing on them. He has further alleged that earlier co-accused Mukesh Singh @ Wakil Singh had threatened to kill Mujeeb and on complaint a proceeding under section 107 Cr.P.C. was initiated. After the occurrence several persons reached there but the miscreants managed to flee away.

4. On the basis of the aforesaid fardbeyan of the informant, Rupouli P.S. Case No. 87 of 2008 was registered on 16.10.2008 for the offence under section 302/34 of the Indian Penal Code and Section 27 of the Arms Act against Mukesh Singh, Vinod Kumar Jaiswal and Md. Kudrish (appellant) and 7-8 unknown persons. After investigation, the police submitted charge-sheet under section 302/34 I.P.C. and Section 27 of the Arms Act on 20.01.2009 against Vinod Kumar Jaiswal. On 31.05.2010, police submitted supplementary charge-sheet under section 302/34 I.P.C. and Section 27 of the Arms Act



against the appellant and 9 other accused persons showing the appellant absconder. Thereafter, cognizance has been taken on 27.09.2010. The appellant was arrested on 01.06.2012. The case was thereafter committed to the Court of Sessions for trial on 16.07.2012. Charges were framed against the appellant on 10.10.2012 for the offence under section 302/34 I.P.C. and Section 27 of the Arms Act, to which the appellant pleaded not guilty and claimed to be tried.

5. During trial, the prosecution has examined altogether 14 witnesses. P.W.1/ Md. Umar, P.W. 2/ Mozahir Alam (informant), P.W. 3/ Md. Sabir Khan, P.W. 4/ Seema Khatoon (wife of the deceased- Mujeeb), P.W. 5/ Dr. Umesh Kumar, who conducted the post mortem examination of both the deceased, P.W. 6/Md. Husain Ali, P.W. 7/ Ahmad Hussain, P.W. 8/ Pradeep Kumar Jaiswal, P.W. 9/Md. Nazmul, P.W. 10/Md. Murtaza Alam, P.W. 11/ Md. Zaliliddin, P.W. 12/ Gangety Raghav (I.O. of the case), P.W. 13/ Jaishankar Jha (I. O. of the case) and P.W. 14/ Mahboob Alam Khan (I.O. of the case).

6. In order to establish the charge, the prosecution has proved the following documents as exhibits :

Exhibit -1 Fardbeyan



Exhibit-1/1	Signature of the informant on the Fardbeyan
Exhibit-2	Seizure List
Exhibit-3 & 3/1	Post Mortem Reports
Exhibit-4 & 4/1	Signature of witnesses on Inquest Reports
Exhibit-5 & 5/1	Inquest Reports
Exhibit – 6	Formal F.I.R.

7. 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.

8. During trial, two witnesses namely, Md. Habib and Md. Hakim have been examined on behalf of the defence.

9. Before reaching to any conclusion, it is felt necessary to firstly examine the evidence of all the witnesses.

10. P.W. 1, Md. Umar, has stated in his evidence that the occurrence is of 16.10.2008 at 6.30 P.M. in the evening he was coming back from his field. In the way he saw Vinod Jaiswal, Wakil Singh, Md. Kudrish and 7-8 others. They were going towards Tintanga. They all were armed with rifle and weapon. Thereafter, on hearing the sound of firing, he went to the place of occurrence and saw Mujeeb and Perwez having fire arm injuries. He saw that Wakil Singh, Vinod Jaiswal, Kudrish and others were fleeing away from there. Both the injured died



there itself.

In his cross-examination, he stated that when he reached at the place of occurrence at that very time the informant had also reached there. Tintanga village is nearest to the place of occurrence, but no one came from Tintanga. Police came to the place of occurrence after an hour and at that time this witness was present there.

11. P.W. 2, Md. Mozahir Alam, who is informant of this case, in his evidence has reiterated his statements given in the first information report, which is not necessary to be repeated, except that in the first information report he had stated about earlier dispute with Vinod Jaiswal and did not say any such thing in the evidence, and also stated that on which part of the body of the deceased persons the bullet hit and both the deceased in severe pain died in front of him. He also stated that when he reached at the place of occurrence, the accused persons started fleeing away from there. Police came at the place of occurrence, recorded the fardbeyan on which this witnesses put his signature. This witness has proved his signature on the fardbeyan as Exhibit-1 and identified the accused.



In his cross examination, this witness stated that the accused Kudrish has his Sasural in his village and for the last 15-20 years he is settled in his Sasural itself.

He has further stated that the three accused persons whose name he has taken had not covered their face, but the other accused persons had covered their faces.

S.P. sahab always used to call his brother Mujeeb and he had a very good relation with S.P. sahab.

He denied the fact that on the information given by his brother, the renowned criminal Ashok Rai was killed in police encounter and since he worked as spy for the police, criminals have killed his brother.

12. P.W. 3, Sabir Khan, who is a hearsay witness, has stated in his evidence that informant informed him that Wakil Singh, Vinod Jaiswal, Kudrish Mian and some others killed his brother Mujeeb and Parwez. This witness went to the place of occurrence and saw the two dead bodies.

He also stated that a gunfight took place between two criminal groups in order to establish dominance over a piece of land, which was informed to the Police by his brother Mujeeb. Mujeeb was anti-criminals and he always used to give



assistance to the police.

Police has seized empty cartridge and blood stained soil from the place of occurrence. He had also put his signature on the seizure list. Seizure list was prepared by the Officer-in-Charge Jay Shankar Jha, which is in his writing and signature. This witness has proved the seizure list as Exhibit-2. This witness also proved his signature as witness on the fardbeyan as Exhibit-1/1.

In his cross examination he stated that if any criminal activity was made in their area, Mujeeb used to inform the police.

This witness denied from the fact that criminals have killed Mujeeb and Kudrish has been falsely implicated in this case so that he would leave his Sasural.

13. P.W. 4, Sona Khatoon, who is wife of deceased- Mujeeb, has deposed that before the occurrence his husband used to tell that Wakil singh, Kudrish Mian and Vinod Jaiswal always used to give him threatening to kill. Her husband used to given assistance to the police and therefore the above mentioned persons after conspiracy have killed him.

In her cross examination, she stated that Mujeeb



used to give assistance to the police and there all nearby criminals had become his enemy.

14. P.W. 5, Dr. Umesh Kumar, has stated in his evidence that on 17.10.2008 he was posted as Medical Officer at Sadar Hospital, Purnea and on that day he had conducted post mortem on the dead bodies of Mujeeb and Perwez and found the following injuries :

Examination of Mujeeb

External Exam. - Rigor mortis present, one wound at left side of lower neck, one wound at right side of neck, 1/2" X 1/2".

On dissection - Head - Neck, Neck- full of blood, blood clots and tissues internally lacerated.

Chest - Heart - Rt. Chamber full, left - empty, lungs - congested.

Abdomen - liver, spleen and kidney congested.

Stomach - containing semi digested food.

Small and large intestine - containing gas and food materials.

Urinary bladder- empty

Time elapsed since death - within 24 hours.

In the opinion of the doctor the cause of death is due to hemorrhage and shock due to above mentioned fire arm



injuries.

Examination of Perwez :

External Exam. - Rigor mortis present, 3 entry wounds- (1) on chest (2) On lower face (3) posterior ear.

On dissection - Head - NAD, Neck -One entry wound, left posterior part of ear. Exit wound at right side of back. One entry wound at right upper chest 1" X 1/2".Exit wound at left occipital area.

One entry wound - left side of lower back - Exit wound - left occipital area, Chest full of blood and blood clots. Heart- all chambers empty, Abdomen - Semi digested food, Small and Large intestine - Gas and focal matters. Urinary Bladder - empty.

Time elapsed since death - within 24 hours.

In the opinion of the doctor the cause of death is due to hemorrhage and shock due to above mentioned fire arm injuries.

The Doctor has stated both the post mortem reports to be in his handwriting and proved them as Exhibits- 3 & 3/1.

15. P.W. 6, Hussain Ali, has stated in his evidence that on 16.10.2008 at 6-6.30 P.M. he was working in his field.



Wakil Singh, Kudrish, Vinod and 5-6 other persons were going towards north. They all were armed with weapons. After 10-15 minutes he heard the sound of firing from northern side, he went to the place of occurrence and saw Mujeeb and Perwez lying dead there. The criminal were fleeing in the opposite direction. Kudrish, Vinod, Wakil and other persons were the persons fleeing away. At the place of occurrence, the informant was shouting and weeping. This witness reached at the place of occurrence within 2-4 minutes. After his arrival, many persons came but he cannot say their names since it was dark by that time.

16. P.W. 7, Ahmad Husaain, has stated in his evidence that on 16.10.2008 at 6.30 pm in the evening he was working in his field. He heard the sound of 6-7 firings; he went there and saw Mujeeb and Perwez dead. Informant was crying. This witness saw that Wakil Singh, Kudrish Mian, Vinod Jaiswal and 6-7 other persons were fleeing away from there having Gamchha tied on their faces.

In his cross examination this witness stated that the deceased was anti-criminals and used to go to police station. Criminals used to threaten him.



P.W. 8, Pradeep Kumar Jaiswal, has stated in his evidence that the occurrence is of the year 2008. It was 6.30-7.00 in the evening. He was at his field. On hearing the sound of firing, he went to the place of occurrence and saw the informant crying there. He was saying that Wakil Singh, Vinod Bhagat and Kudrish have killed. This witness saw 10-12 persons fleeing away, but could not identify anyone.

17 P.W. 9, P.W. 10 and P.W. 11, Md. Nazmul, Md. Murtaza Alam and Md. Jaliluddin, are formal witnesses and they have proved their signatures on the Inquest Reports of Mujeeb and Perwez as Exhibits 4, 4/1 and 5 respectively.

18. P.W. 13, Jay Shankar Jha, who is the Investigating Officer of this case, has stated in his evidence that on 16.10.2008 he was posted at Mohanpur O.P. On that day he took over the charge of investigation of Rupouli P.S. Case No. 87 of 2008, again recorded the statement of the informant, prepared the seizure list and the inquest reports of both the deceased and recorded the statement of other witnesses.

This witness has proved the place of occurrence and has stated about seizure of empty cartridge and blood stained soil from the place of occurrence.



He said about receiving both the post mortem reports on 26.10.2008. Identified the earlier mentioned Exhibits- 1, 2 and 5 and proved the Inquest Report of Mujeeb as Exhibit- 5/1.

He stated about hading over of charge of investigation to Mahmood Alam due to his transfer on 12.05.2009.

19. P.W. 14, Mahboob Alam Khan, has stated in his evidence that on 12.05.2009 he took over the charge of investigation of Rupouli P.S. Case No. 87 of 2008 from S.I. Jata Shankar Jha. Recorded the statement of witnesses and due to transfer handed over the charge of investigation of the case to S.I. Arun Kumar Suman (N.E.).

20. P.W. 12, Gangey Raghav, has stated in his evidence that on 25.05.2010 he was posted as Officer in charge of Mohanpur O.P. On that day he took over charge of investigation of Rupouli P.S. Case No. 87 of 2008 from Arun Kumar Suman and submitted charge-sheet against the accused persons.

This witness has proved the Formal F.I.R. as Exhibit- 6.



21. Defence has examined two witnesses. D.W. 1, Md. Habib and D.W. 2, Md. Hakim.

22. D.W. 1, Md. Habib has stated in his evidence that he knew the Mujeeb and Perwez, both have died. Both were agents of police, and therefore, Naxalite persons have killed them. Earlier also they had threatened them to kill.

23. D.W.2, Md. Hakim, has stated in his evidence that on hearing the sound of firing he went to the place of occurrence and saw the dead bodies of Mujeeb and Perwez. Vehicle was lying down near them. Shooters were not there, they had fled away. Informant had reached at the place of occurrence. Later on many people gathered there.

24. Sri Mukesh Kumar Jha, learned counsel appearing for the appellant submitted that all the prosecution witnesses are neither eye witness to the alleged occurrence nor they are reliable witnesses. He further submitted that due to village politics the appellant has been falsely implicated in this case. The reason for false implication is that the informant and other witnesses have accepted that the appellant has Sasural in their village and he is settled in his Sasural for the last 15-20 years. It is evident that due to there being no heirs in the



Sasural, the son-in-law is living there which is an obstacle in the way of the informant and other witnesses in grabbing the property in question. Therefore, due to implicating in the false case, this obstacle will itself vanish.

It is quite surprising that a person who is living in the village for the last 15-20 years, he will come to shoot someone without hiding his face and other unknown criminals will hide their face by Gamchha.

The occurrence is of 6.30 in the evening of 16th October when darkness takes place early. P.W. 6 also states that he immediately reached at the place of occurrence and other villagers also came, but due to darkness he could not identify anyone. It is quite surprising that due to darkness he could not identify any witness, but in the same darkness he identified the accused persons.

Informant even could see that which part of the body of the deceased was hit by the bullet firing.

Informant was moving forward on motorcycle, and in such circumstances, it is quite difficult to see what happened behind him. Most surprising is that the informant has no weapon with him and all the 10-12 accused persons were



armed with deadly weapons, but even after murder of two persons in front of his eyes, informant did not try to save himself, rather he reaches to the criminals and due to the fear of the informant who was not armed with anything, all the accused persons fled away from the place of occurrence leaving him alive so that he could lodge the formal F.I.R.

Informant and other witnesses have also accepted that the deceased Mujeeb had good relations with the S.P. Sahab and he always used to call him. It is worth considering as to how a person of village background could keep a good relation with S.P. It is clear that he was an agent of police and due to that criminals had become his enemy which fact has also been stated by prosecution witnesses and due to this reason unknown criminals might have shot him dead.

According to P.W. 1, Tintanga village is situated most near to the place of occurrence. Even after 6-7 firings and two murders, no one from this village came to the place of occurrence whereas from the village of the informant, which is far away from the place of occurrence, many witnesses reaches there.

In this case, there are four Investigating Officers, in



which one has even not been examined as witness and the investigation is faulty one. Absence of seizure of the motorcycle from the place of occurrence, falsifies the entire prosecution case. None of the investigating Officer saw the motorcycle at the place of occurrence nor any seizure list was prepared.

The conduct of the witnesses is unnatural. They say that firings were made in front of them and all the accused persons fled away. Both the deceased died in front of them, but they did even not try to save them. They neither tried to stop the blood coming out from the body nor tried to take the injured persons to hospital although there were many persons present there and two motorcycles were also there.

25. Sri Ajay Mishra, learned Addl. P.P. appearing for the State opposes the prayer of the appellant and submits that it is a heinous crime of double murder. The witnesses have seen the occurrence from their eyes and as they have said, the post mortem report corroborates the same.

26. Considering the facts and circumstances of the case, the submissions advanced on behalf of the parties and the materials available on records, this Court is in agreement with the submissions made by Sri Jha.



Accordingly, this appeal is allowed and the judgment of conviction dated 22.05.2013 and the order of sentence dated 24.05.2013 is, hereby, set aside.

27. Since the appellant, Kudrish Mian is in custody, he is directed to be released forthwith, if not required in any other case.

(Arvind Srivastava, J)

Rakesh Kumar,J : I agree.

(Rakesh Kumar, J)

mcv/-

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