

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.21 of 2019**

Arising Out of PS. Case No.-233 Year-2016 Thana- SALAKHUA District- Saharsa

Rajiv Kumar Bhagat @ Raja Late Chandrasekhar Bhagat Resident of Village
- Kajri, P.S.-Beldor, District-Khagaria

... .. Appellant/s

Versus

1. The State Of Bihar
2. Md. Safi Md. Wakil Hafiz Resident of Village-Kajari, P.S-Beldor, District-Khagaria
3. Md. Sijo Md. Kitabul @ Kuto Resident of Village-Kajari, P.S-Beldor, District-Khagaria
4. Md. Wakil Hafiz Late Kamaluddin Resident of Village-Kajari, P.S-Beldor, District-Khagaria

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Mukul Prasad, Advocate
For the Respondent/s : Mr.

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and**

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 20-01-2020

The instant appeal has been preferred by the appellant against the judgment dated 5.10.2018 passed in Sessions Trial no. 50 of 2017 by the learned Sessions Judge, Saharsa whereby he was pleased to acquit the respondent nos. 2, 3 and 4 of the charges under sections 147, 148, 341, 302/149 and 120B of the Indian Penal Code and section 27 of the Arms Act.



2. The prosecution case based on the written report dated 1.12.2016 of the informant (P.W 7 and the appellant herein) is that his brother Krishna Kumar used to run a shop and sold potato at Sugma Chowk in Sonbarsa Raj. In the evening he used to return home by cycle. It is stated that the informant's brother used to sell potato and onion at a small margin of profit which was objected to by the respondent no. 4, who also used to threaten that if the informant's brother did not sell at the rate on which the respondent no. 4 used to sell, the margin of profit of respondent no. 4 would reduce and the loss will have to be covered by the informant's brother. It was further stated that the informant's brother had another shop in village Kejri. A number of times the respondent no. 4 along with his son respondent no. 2 used to come and threaten his brother but the informant's brother did not pay any attention. It is stated by the informant that on 30.11.2016 at about 5 pm., his brother proceeded after closing his shop. Nitesh Kumar (P.W 6) and others were coming from behind. It is stated that at the shop the respondent nos. 2, 3 and 4 along with Md. Dilbar surrounded his brother and caught hold of him and his bicycle. Nitesh Kumar reached there. At this time the respondent no. 4 ordered to kill the informant's brother on which the respondent no. 4 and his son respondent no. 2 fired



hitting the informant's brother in the back. Thereafter, the respondent no. 3 fired hitting informant's brother in the back of his head as a result of which he fell down and died. It is further stated that they took away Rs. 10,000/- in cash from the shop and while going threatened them that they would also be killed in case they lodged any case.

3. On the written statement of Rajiv Kumar Bhagat (P.W. 7) FIR being Salkhua P.S. Case no. 233 of 2016 was registered on 2.2.2016 for the offence under sections 302, 379, 147, 148, 149, 341, 504, 506 and 120B of the Indian Penal Code and Section 27 of the Arms Act. After investigation charge sheet was submitted under sections 302, 341, 506, 120B, 147, 148 and 149 of the Indian Penal Code and section 27 of the Arms Act and the Court below was pleased to take cognizance. Thereafter, the case was committed to the Court of Sessions for trial. Charge was framed for offence under sections 302/149, 147, 148, 341 and 120B of the Indian Penal Code and section 27 of the Arms Act. In course of trial 8 witnesses were examined on behalf of the prosecution, being P.W. 1 Amit Kumar, P.W 2 Vinay Kumar Singh, P.W 3 Rupak Bhagat, P.W. 4 Dilip Kumar, P.W 5 Pramod Bhagat, P.W. 6 Nitesh Kumar, P.W. 7 Rajiv Kumar Bhagat and P.W. 8 Jitendra Sahni.



4. It may be stated here that the informant (P.W. 7) is not an eye-witness to the occurrence. He states that he received information about the occurrence from his 'Mama' namely Nitesh Kumar (P.W 6). Further P.W. 2 Dr. Vinay Kumar Singh is the doctor who conducted the postmortem examination on the body of the deceased brother of the informant. P.Ws. 1, 3 and 5, as would appear from their deposition are also not eye-witness. P.W. 4 Dilip Kumar is a seizure list witness. P.W. 8 is the Investigating Officer of the case.

5. P.W. 7 Rajiv Kumar Bhagat in his deposition, while supporting the allegations made in the FIR, clearly states that after the accused persons ran away, his 'mama' Nitesh Kumar (P.W. 6) who had seen the occurrence narrated to him about the murder on telephone. He further states that on his reaching the place of occurrence a number of persons had already gathered at the place of occurrence and the police arrived 10-15 minutes after his arrival. He further states that an inquest report was prepared where after they took the dead body on a tempo to Saharsa Sadar Hospital. Postmortem examination was conducted the next day whereafter they returned home and carried out the cremation. It is thereafter, that they lodged the FIR. Thus, admittedly, the informant (P.W. 7) is not an eye-



witness to the occurrence.

6. P.W. 1 Amit Kumar in his statement stated that while he was starting his motorcycle he saw the accused persons variously armed fleeing away. He further states that 3-4 persons came near him and informed that a boy namely Krishna Kumar had been shot dead. He states that thereafter he went and saw that Krishna Kumar was lying dead and he telephoned Kedar Bhagat. Thus, from his deposition it would be evident that P.W 1 Amit Kumar is also not an eye-witness to the occurrence.

7. P.W. 3 Rupak Bhagat states that on the date of occurrence i.e. 30.11.2016 at 5.30 pm while he was working in the field, he heard hulla on which he came running and saw the accused persons. Thereafter, he saw the dead body of Krishna Kumar lying there and was informed that it was the accused persons who had murdered him and had run away. Thus, P.W. 3 Rupak Bhagat also does not claim himself to be an eye-witness to the occurrence.

8. P.W 4 Dilip Kumar states that on 30.11.2016 at 7.30 pm. he was near the place of occurrence and reached there on seeing a crowd. He is a witness to the seizure list.

9. P.W. 5 Pramod Kumar after narrating about his movements finally states that he heard the sound of firing and



thereafter, in the light of the motorcycle saw the accused persons going away. Thereafter, he went towards the place of occurrence and saw that Krishna Kumar had been shot and was bleeding. He states that Nitesh (P.W. 6) reached there and he informed a number of persons on telephone and it is after about 40 minutes that the police reached.

10. P.W 6 Nitesh Kumar is said to be an eye-witness to the occurrence and the informant P.W 7 Rajiv Kumar Bhagat claimed that he received information from Nitesh Kumar. P.W. 6 Nitesh Kumar in his examination-in-chief has stated that the occurrence took place on 30.11.2016 which was a Wednesday at about 5.00 pm, in the evening. On his reaching the place of occurrence, the police reached. Krishna Kumar had been shot dead. The police took some soil and recovered the bullet. They prepared a seizure list on which he signed. He finally states that he identifies all the accused persons (in Court). Thus, from the deposition of P.W. 6 Nitesh Kumar it would be evident that he does not describe either the manner of the occurrence or who were the assailants of the deceased brother of the informant.

11. Having taken into consideration the deposition of the witnesses examined on behalf of the prosecution, the learned Sessions Judge, Saharsa by his judgment dated 5.10.2018



passed in Sessions Trial no. 50 of 2017 was pleased to hold that he does not find the accused persons' guilty for any of the offences. Giving them the benefit of doubt, he was pleased to pass the judgment of acquittal. It is against the said judgment of acquittal dated 5.10.2018 that the instant appeal has been preferred by the appellant who is also the informant (P.W. 7) in the case.

12. Heard learned counsel for the appellant and learned counsel for the respondent State of Bihar.

13. It is submitted by learned counsel for the appellant that the court below has committed serious error in not appreciating the evidence led by the prosecution in the right perspective. It is submitted that from the deposition of the witnesses it would transpire that the prosecution had been able to prove both the place as well as the manner of occurrence leading to the gruesome murder of the brother of the appellant. It was submitted that from the FIR as also the deposition of the witnesses the motive of the occurrence had also been established which was the deceased brother of the informant selling potatoes and onions at a price lower than that being sold by the accused persons and it was for this reason that the respondent nos. 2, 3 and 4 even in the past had threatened the



brother of the informant. It was further submitted that besides P.W. 6 Nitesh Kumar being an eye-witness, a number of witnesses namely, P.W. 1 and P.W. 3 had heard the sound of firing and had also seen the accused persons going away variously armed. It was further submitted that P.W. 2 Dr. B.K. Singh who conducted the postmortem examination clearly found the cause of death to be as a result of firearm injury.

14. Having heard learned counsel for the appellant and taking into consideration the deposition of the prosecution witnesses, it would transpire that from the deposition itself it is clear that P.W. 1 Amit Kumar, P.W. 3 Rupak Bhagat, P.W. 5 Pramod Bhagat and the informant P.W. 7 Rajiv Kumar Bhagat are neither eye-witness to the occurrence nor they claimed themselves to be. P.W. 4 Dilip Kumar is only a witness to the seizure list and is also not an eye-witness to the occurrence.

15. Thus, the only material witness who remains and who as per the informant was an eye-witness to the occurrence and source of his information which led to lodging of the FIR by him is P.W. 6 Nitesh Kumar. On examining the deposition of P.W. 6 Nitesh Kumar it transpires that he has not stated a single word about either the manner of occurrence nor has he given any account as to who were the assailants and how the brother



of the informant was killed. P.W 6 only states that the occurrence took place on a Wednesday 30.11.2016 at about 5.00 pm and on his reaching the place of occurrence police also reached. Krishna Kumar had been shot dead and was lying there. Police recovered a bullet and prepared a seizure list on which P.W 6 also signed as a witness. It is thereafter, noted by the learned court below before whom P.W 6 was deposing that P.W. 6 remained silent for considerable time. He (P.W. 6) thereafter, stated that he identifies all the accused persons. Thus, from the deposition of P.W. 6 Nitesh Kumar he cannot be said to be an eye-witness to the occurrence, not having deposed with respect to any material facts in course of trial.

16. It may also be relevant to take note of the fact that there has been serious discrepancies between the deposition of the witnesses with respect to their and the police reaching the place of occurrence. Further the inordinate delay in lodging of the FIR has also not been explained. While the occurrence is said to have taken place on 30.11.2016 at 5.00 pm, the written statement was made by the informant only on 1.12.2016, the same reached the police station on 2.12.2016 and the FIR was registered on 2.12.2016 at 10.30 am.

17. Besides the above it would be relevant to refer to the



deposition of P.W 8 Jitendra Sahni, the Investigating Officer of the case. From the deposition of the witnesses it is clear that the police had reached the place of occurrence soon after the occurrence on the same date i.e. on 30.11.2016. P.W 8 states that on 30.11.2016 at 5.30 pm, he received information on telephone about someone having been shot. The police reached there and saw that a number of persons had gathered. The villagers disclosed the name of the deceased as Krishna Kumar Bhagat. It is stated that an inquest report was prepared, the bullet was seized and the seizure list was prepared. Thereafter, the body was sent for postmortem examination. It is thereafter stated by P.W. 8 that he asked the relatives of the deceased to lodge a case on which they stated that they would take steps after the postmortem examination was over. It is thereafter stated that on 1.12.2016 at 2100 hours (9.00 pm), the brother of the deceased got a written statement, on the basis of which the FIR was registered. It is further stated that the written statement and the signature of the informant were in different hand writings and neither of the two were written/signed in his presence.

18. Thus, from the facts states herein above and the deposition of the prosecution witnesses, it transpires that P.W. 1 P.W 3, P.W. 4, P.W. 5 and P.W. 7 are not an eye-witness to the



occurrence. So far as P.W. 6 Nitesh Kumar is concerned, from perusal of his deposition, it would clearly be evident that he has neither narrated about the manner of the occurrence nor any detail thereof including the participants etc. In fact he states nothing except the date and time of occurrence and that on his reaching there the police also reached. Thus, he is also of no help to the prosecution. So far as the P.W. 8 the Investigating Officer is concerned, his deposition is extremely material for the reason that while admitting that he reached the place of occurrence soon after the occurrence on 30.11.2016 itself, inspite of his asking the relatives of the deceased to lodge a case, for no good reason, no case (FIR) was lodged. The written statement was given after much delay at 9.00 pm on the next day i.e. on 1.12.2016 and the FIR was registered after further delay on 2.12.2016 at 10.30 am. There is also no explanation forthcoming that as to why, when the relatives of the deceased did not lodge a case/FIR, why did the police themselves not register an FIR after sending the body of the deceased brother of the informant for postmortem examination, on 30.11.2016 itself.

19. Thus, from the facts stated herein above and on going through the deposition of the prosecution witnesses, it transpires that there is an unexplained delay in lodging of the FIR, there



are no eye-witness to the actual occurrence and it appears to be by way of an afterthought that after postmortem examination and cremation of the deceased, the informant lodged the FIR. Thus the case of the prosecution does not inspire confidence. The learned Sessions Judge after appreciating the evidence led on behalf of the prosecution has rightly acquitted the accused persons who are the respondent nos. 2, 3 and 4 herein.

20. Not finding any merit in the instant appeal, the same is dismissed.

(Ashwani Kumar Singh, J)

(Partha Sarthy, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	21.01.2020
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