

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.764 of 2021

Arising Out of PS. Case No.-108 Year-2018 Thana- GOPALPUR District- Gopalganj

Pawan Rai Son of Late Baijnath Rai Resident of Village- Basaunapur, P.S.-
Gopalpur, District- Gopalganj.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Advocate Mr. Imteyaz Ahmad, Advocate Mr. Ritwik Thakur, Advocate Mrs. Vaishnavi Singh, Advocate Mr. Malay Kumar Choudhary, Advocate
For the Respondent/s	:	Mr. Binod Bihari Singh, APP

CORAM: HONOURABLE MR. JUSTICE A. M. BADAR
and
HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE A. M. BADAR)

4 23-01-2023 The Registry to get explanation of the concerned Judicial Officer in the light of report dated 07.01.2023 of the learned Additional Sessions Judge-V, Gopalganj, as well as order of this Court dated 21.12.2022.

The explanation be furnished withing a period of two weeks.

This appeal has come up for consideration of prayer for bail made by the appellant who is convicted of the offences punishable under Section 302 of the Indian Penal Code as well as under Section 27 of the Arms Act and is sentenced to suffer



rigorous imprisonment for life apart from imposition of some fine.

The learned counsel for the appellant took us through evidence of PW 1 Champa Devi, PW 2 Urmila Devi, PW 4 Manohar Mahto and PW 8 Kanti Devi apart from evidence of PW 3 Dr. Sanjeev Kumar and has argued that medical evidence is not corroborating the version of alleged eyewitnesses, so far as seat of injury and the way in which the deceased was fired is concerned. In his submission, the deceased was done to death by firing a bullet at his chest whereas medical evidence is to the effect that the bullet was fired at the back of deceased Azadi Noniya. It is further argued that though eyewitnesses are stating that the firing was from the point blank range, the medical evidence is not showing sooth or carbon particles as well as blackening and charring at the sight of the wound. Therefore, the prosecution case is suspect.

The learned Additional Public Prosecutor appearing for the State opposed the application.

We have considered the submissions so advanced and also perused the materials placed on record.

The incident took place at about 7:30 PM of 12.07.2018. This is a case of single accused. The witnesses are



family members of the deceased. In such eventuality, at this stage it is not possible to hold that by sparing the real culprit, the eyewitnesses who are near and dear ones of the deceased are falsely implicating the appellant in the crime in question. The witnesses are not specifically pointed out that the bullet was fired at the chest. Some are stating that the bullet was fired at the side of the deceased. Seat of injury at this stage is irrelevant and what is relevant is consistent evidence of firing a bullet by the accused on the victim of the crime in question. Medical evidence is merely corroborative piece of evidence and it cannot override the substantive evidence coming from the mouth of eyewitness. Hence, at this stage no case for grant of bail is made out. The interlocutory application is rejected.

Post this matter on 07.02.2023 under the appropriate heading.

(A. M. Badar, J)

(Sandeep Kumar, J)

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