

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.61 of 2020**

Arising Out of PS. Case No.-156 Year-2013 Thana- ARA NAWADA District- Bhojpur

PAVAN KUMAR RAI @ PAWAN KUMAR RAY S/o Harendra Singh
Resident of Village- Anghari, P.S.- Chauri, Distt- Bhojpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Adv. Ms. Vaishnavi Singh Adv. Mr. Ritwik Thakur, Adv.
For the Respondent/s	:	Mr. Ajay Mishra, APP

**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 09-08-2023

1. We have heard Sri Ajay Thakur, the learned advocate for the appellant and Mr. Ajay Mishra, A.P.P. for the State.
2. The appellant has been convicted under Sections 302 of the I.P.C. and 27(1) of the Arms Act vide judgment dated 16.12.2019 passed by the learned Additional Sessions Judge No XVI in Sessions Trial Case No. 359 of 2013/CIS No. 14000075 of 2013 and by



order dated 17.12.2019, he has been sentenced to undergo RI for life, to pay a fine of Rs. 50,000/- (rupees fifty thousand) and in default of payment of fine, to further suffer simple imprisonment of one month for the offence under Section 302 I.P.C. and RI for 5 years, fine of Rs. 10,000/- and in default of payment of fine, to further suffer simple imprisonment for one month for the offence under Section 27(1) of the Arms Act, 1959. The sentences have been ordered to run concurrently.

3. The deceased is the son of the informant / Ranjan Kumar, who has been examined as P.W. 7. He was informed by Shashi Raj (P.W.1) that the appellant who is distantly related to the informant and the deceased had shot at the deceased, leading to his death. On such information, he went to the place of occurrence only to find his son dead because of gun shot wound. He took him to hospital on a motorcycle but on way, he succumbed to the injuries. The F.I.R. was lodged by him on 06.05.2013 vide Ara Nawada P.S. Case No. 156 of 2013 alleging as noted above that at about 06 o'clock in



the evening, he heard a sound of firing at his house. Shortly thereafter, Shashi Raj (PW-1) informed him about the appellant having shot at the deceased. In his F.I.R., he has narrated that the deceased was standing before a furniture shop, run under the name and style of A-one furniture along with his friends when the appellant came on a motorcycle and misbehaved with him. This led to a scuffle between the deceased and the appellant but because of the intervention of the other friends of the deceased, a full fledged disputed was averted. P.W. 7 has further claimed that the appellant again came with another person on a motorcycle and fired the deceased from a close distance. It was only thereafter that Shashi Raj (P.W. 1) came and informed him.

4. On the basis of the aforementioned fardbeyan statement of P.W. 7 the F.I.R. was registered for the offences under Sections 302/34 of the I.P.C. and 27 of the Arms Act.
5. The police, on investigation, submitted charge-sheet against the appellant but kept the investigation against another accused namely Shekhar Kumar pending.



The records of this case does not reveal about the status of investigation against the other accused person.

6. The Trial court, after examining 12 witnesses on behalf of the prosecution, has convicted and sentenced the appellant as aforesaid.

7. Mr. Thakur, has submitted that though many persons have claimed to be the eye witnesses to the occurrence but on a detailed analysis of their deposition before the Trial court, it would appear that they have made wrong statements. Their own statements stand contradicted by the later part of their deposition. None of the witnesses, including the informant have seen the occurrence and the appellant has been chosen to be targeted because of an earlier dispute in the family. He has further submitted that the evidence would reveal that P.W. 7 had two daughters, one of whom had become a widow. Her husband was killed for which her mother-in-law had lodged a case in which P.W. 7, his wife/Sakuntala Devi (P.W. 8) and Munna Singh, the brother-in-law of P.W. 7, were made accused. Because of



such enmity, opportunity was availed of by P.W. 7 and his other family members to name the appellant as the assailant of the deceased. He has further submitted that the circumstances clearly reveal that the deceased died sometimes before what has been projected and the F.I.R. was lodged only after consultation amongst the family members.

8. Though the medical testimony is in complete consonance of the ocular version of the witnesses but that is not the only test to determine the quality of the evidence and whether the witnesses have displayed mendacity. He has argued that the place of occurrence was inspected and the mobile telephone, touted to be of the appellant and a blood stained wrapper were seized prior to the lodging of the FIR. The consistent case of the prosecution is that the police party had arrived at the place of occurrence where they had learnt that the injured was taken to hospital by his relatives and it was only then that the police party went to the hospital where the officer in-charge of the police station, namely,



Shivnarayan Ram (not examined) recorded the fardbeyan of P.W. 7.

9. In this factual background, it has been urged by Mr. Thakur that the entire case and specially the accusation against the appellant is an after thought.

10. As opposed of the afore-noted contentions, Mr. Ajay Mishra, the learned Additional Public Prosecutor has submitted that in view of definite eye-witness account of the mother, sister and aunt of the deceased, all these minor inconsistencies need not be given over-weightage. Shortly after the occurrence, one of the on-lookers informed P.W. 7 whereafter the injured was taken to the hospital but before he could be administered any treatment, he died. The deceased had suffered gun shot wound, the wound of entry being on the back of the head which is in complete consonance with the testimony of the witnesses. All the witnesses have deposed that the deceased was shot at by the appellant from a close range which hit him behind his head and he fell down. Perhaps he had died instantaneously but as a last hope, he was



taken to hospital. Under such circumstances, it has been urged by Mr. Mishra, the judgment of conviction and sentence by the Trial court ought not to be interfered with.

11. The FIR (Exhibit 1) reflects that Shashi Raj (P.W. 1), one of the friends of the deceased was in the company of the deceased alongwith many others namely Nikhil, Amrendra, Ramesh Bhardwaj etc. Out of these persons, only Shashi Raj and Ramesh Bhardwaj have been brought to the witness stand as P.W. 1 and 3 respectively. Both of them have not supported the prosecution version and have been declared hostile. They, in their deposition, have stated that they learnt about the deceased having been killed and thereafter they straightaway proceeded to the hospital.

12. The I.O. of this case namely Ranjeet Kumar (P.W. 11) has, in his deposition, stated that he had recorded the statement of Shashi Raj (P.W. 1), Ramesh Bhardwaj (P.W. 2), Sonu Chaudhary (P.W. 6) and many others at the police station. A look at the F.I.R., the



deposition of P.Ws. 2 and 3 as also of the I.O. (P.W. 11), would make it rather evident that Shashi Raj and Ramesh Bhardwaj had not seen the occurrence nor were present in the hospital when the fardbeyan was recorded and F.I.R. was registered. Had they been present, the I.O. would have said so and they would have had been the witnesses to the F.I.R. This makes us doubt whether P.W. 7 was making a correct statement from the beginning. He has alleged in the F.I.R. that he heard a sound of firing. If this statement is accepted to be correct, it would pre-suppose that the occurrence had taken place near his house for him to hear the sound of firing. The same is not borne out by records. As noted by us earlier, the only source of information to P.W. 7 is Shashi Raj who has not supported the prosecution case.

13. From the surrounding circumstances we have further found that there is every possibility of Shashi Raj and Ramesh Bhardwaj (P.W. 1 and 2 respectively) not being available either at the time of occurrence or when the F.I.R. was registered.



14. In order to test the veracity of the prosecution version, we need to examine the deposition of P.W. 7 at the trial. Right from his examination in chief to his replies in the cross-examination, P.W. 7 has been improving upon his case in order to make his deposition fit in the scheme of the prosecution version put forth before the trial court. At the trial, he reiterated that after he had heard the sound of firing, two-three persons came to him and informed him that his son has been shot dead by the appellant. He, on such information, rushed to the place of occurrence which is in front of a furniture shop where the deceased was found lying with a gun shot wound. According to P.W. 7, he took the injured/deceased to hospital on a motorcycle. Whose motorcycle was it? Who accompanied him? And who all were there at the place of occurrence are questions which have remained unanswered. Had it been either Shashi Raj or Ramesh Bhardwaj, P.W. 7 would have taken their names as having helped him take the injured to the hospital.



15. In this context, there appears to be sufficient weight in the submission of the counsel for the appellant that there was a specific purpose for naming the appellant as the assailant of the deceased. P.W. 7 in his cross examination has admitted that there was a case lodged by the mother of his son-in-law. The death of the son-in-law of P.W. 7 thus was not a natural death but a case of murder or suspected murder and the family members of P.W. 7 were made accused.

16. The slain son-in-law of P.W. 7 is the cousin of the appellant. The appellant and one Shekhar were witnesses in the case lodged by the mother of the son-in-law of P.W. 7. This perhaps could be the reason for feeding that the old grudge or perhaps, since we do not know what happened in that case, for opening a bargaining counter for abandoning the charges against P.W. 7 and his family members. Though P.W. 7 claims that prior to the occurrence, there was no enmity between the parties but such statement is of no value as from the deposition of other witnesses, it is apparent that even P.W. 7 was



made an accused in the murder case of his own son-in-law. Something must have gone really wrong for the suspicion against P.W. 7, his wife and his brother-in-law for the death of the son-in-law of the family.

17. Mr. Thakur, in the afore-noted background, has submitted that one of the nephews of P.W. 7 has also claimed to be an eye witness to the occurrence which statement cannot be believed and has to be outrightly rejected. The reason for saying so is that there is no reference of the presence of Munna Singh, the nephew, in the deposition of either P.W. 7 or P.W. 1. However, at the trial, he claims to have seen both parts of the occurrence viz the initial dispute between the deceased and the appellant and later the appellant coming with another and shooting the deceased dead. If Munna Singh / P.W. 4 would have been present there, his name would have been taken by P.W. 7 in the fardbeyan as also in his deposition before the Trial court. Since no attention has been drawn of the aforementioned witness as to the statement made by him before police, we have no idea



whether he was deposing before the court for the first time or was not even examined by the Police.

18. Similar discrepancy can be noted in the deposition of Shakuntala Devi and Sheela Devi (PW-8) and the mother and the sister of the deceased, who claimed to have seen the occurrence while coming back from the market.

19. If seen in totality, those are bogus claims of the relatives of the deceased.

20. Meera Devi, the aunt of the deceased who has been examined as P.W. 3 has deposed that she along with Shakuntala Devi (P.W. 8) was coming on a rickshaw when both of them saw that the deceased was standing before a furniture shop along with his friends and the appellant came on a motorcycle, alighted himself, and shot at the deceased. Whether these witnesses had seen any part of occurrence is not known. Had they seen the occurrence, which apparently took place very near the house of the deceased, they would have rushed back to the house to inform P.W. 7. If they would not have done



so, they would have stayed at the place of occurrence rather than go back home and not say anything to anybody. Be it noted that the only person who came back to home to inform about the occurrence to PW 7 was Shashi Raj (P.W-1), whose presence at the place of occurrence is itself in doubt.

21. In this context, it would also be profitable to examine the deposition of Munna Singh (PW-4), who though claims to be an eye witness to the occurrence, has told the court that he came at the place of occurrence after Shashi Raj (P.W. 1) arrived there. All these aspects, taken together, lends credence to the defence version that the deceased no doubt had been killed but the name of the assailant was not known to anybody.

22. That the deceased has died a homicidal death is proved by the postmortem and the doctors proving such report. The deceased was shot behind his head, completely smashing the meninges.

23. The investigating officer of the case (P.W. 11)



claims to have learnt about a murder while checking vehicles at a picket along with the officer in-charge of the concerned police station. On such information, the Investigator and the officer in-charge along with the other members of the police party reached the place of occurrence which is on Mission Road, Pakri. Blood was found on the ground at that place. At that place only, seizure list was prepared (Exhibit 3). A mobile telephone suggesting the presence of the appellant at the time of the occurrence at or near the same place and a blood stained wrapper belonging to the appellant are said to have been seized. By that time, the F.I.R. had not been registered. There is no statement of the I.O. or for that matter of any of the witnesses that the police party was informed that the assailant was the appellant and none-else.

24. After preparing the seizure list, the police party claimed to have gone to the hospital where P.W. 7 got his fardbeyan recorded. The inquest was done thereafter. The timing of inquest is later than the timing



of the seizure. All this was done by around 7:30 PM but the F.I.R. appears to have been registered by around 11:30 PM. A delay of 2 or 3 hours in lodging the F.I.R. would not necessarily become significant under all circumstances. However, in the present case, the delayed registration of the F.I.R. only affirms the proposition of the defence that after the deceased was declared dead, P.W. 7 and others scouted and found that the best person to be made accused for their future, specially in the context of a criminal case have been lodged against P.W. 7 and others, the appellant would be the most suited person.

25. What could be the motive of the appellant in killing the deceased ?

26. We do reckon that motive is no factor in deciding a criminal case specially when eye witnesses account are available on record but once motive is introduced and the circumstances smack of suspicion, it would be really profitable for the prosecution to prove such motive. In the present case, the deceased was not an accused in the



case of murder of the cousin of the appellant, even though he hailed from the same family. The appellant is said to be on visiting terms with the family of the deceased. Immediately prior to the occurrence the salutation of the appellant was abusive. This had led to a minor scuffle between the appellant and the deceased. Irked by the this, the appellant is alleged to have come back along with his brother and shot at the deceased.

27. Could this be the provocation strong enough to kill a relative? It is but difficult to accept. Thus, the reason for framing the appellant is not far to seek. The father of the deceased (P.W. 7) had no idea about the assailant of the deceased. The person who is said to have informed him, namely, Shashi Raj/ P.W. 1 himself claims to have straight away gone to the hospital after learning about the deceased having been shot at. This leaves nobody, at least for record, as to who informed P.W. 7 for him to rush to the place of occurrence. True it is that a witness would not spare the assailants for falsely implicating others with whom the relationship has soured but such



falsehood can always be resorted to when the name of the assailant is not known and the enmity exists between the families.

28. From all these aspects, we find that Munna Singh (P.W. 4), Shakuntala Devi (P.W. 8), Sheela Devi (P.W. 9) and Mira Devi (P.W. 3) cannot be relied upon as eye witnesses to the occurrence.

29. We have already noted that the very source of information to P.W. 7 / the informant and father of the deceased is Shashi Rai (P.W. 1) who has been declared hostile.

30. Thus, we do not find any reason to concur with the findings of the Trial court that it was the appellant only who killed the deceased, deserving to be convicted and sentenced.

31. Perforce we set aside the judgment and order of conviction and acquit the accused of all charges.

32. Since, the appellant is in jail, he is directed to be released forthwith unless his detention is required in any other case.



33. The appeal stands allowed.
34. The Interlocutory Application, if any, also
stands disposed of.
35. Let a copy of this judgment be transmitted to
the Superintendent of the concerned jail for compliance
and for record.
36. The records of this case be also returned to
the concerned court below forthwith.

(Ashutosh Kumar, J)

(Alok Kumar Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	11.08.2023
Transmission Date	11.08.2023

