

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.400 of 2014

Arising Out of PS. Case No.-284 Year-1991 Thana- MADHEPURA District- Madhepura

1. Arun Yadav S/o Late Shiv Prasad Yadav Resident of Village Gamahariya,
Police Station Sour Bazar, District Saharsa.

... .. Appellant/s

Versus

1. The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Vikramdeo Singh, Advocate
Mr.Sanjay Kumar Singh, Advocate
For the Respondent/s : Mr.Ajay Mishra, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH)

Date : 04-04-2023

By the impugned judgment and order dated
26.3.2014/28.3.2014 passed by the Additional Sessions Judge,
Adhoc Court No.II, Madhepura, in Sessions Trial No. 29 of
1992, the appellant has been convicted and sentenced as under:

Conviction under Section	Sentence		
	Imprisonment	Fine (Rs.)	In default of fine
302 of the IPC	For Life	5,000/-	SI for six months

2. Fardbeyan of P.W. 7 recorded by Abdul Raquib, a
Sub-Inspector of Police posted at Madhepura Police Station on



27.10.1991 at 8:00 P.M. at Sadar Hospital, Madhepura is the basis for registration of the concerned Madhepura P.S. Case No. 284 of 1991 disclosing commission of the offence punishable under section 302 of the Indian Penal Code.

3. It is the prosecution's case, as set out in the *fardbeyan*, that at about 6:15 P.M. on the said date, the informant had come to a place known as Matahi *Chowk* searching for his son, Shatrughan Yadav (the deceased). There he saw his son taking refreshment near the shop of one Bino Sah (not examined). In the meanwhile, a Maxi Taxi bearing registration No. BR-11M8141 stopped there. Thereafter, the appellant, who was sitting in the said Maxi Taxi, called the deceased, in response to which, the deceased went to the gate of motor vehicle.

4. The appellant, thereafter, fired at his son and attempted to escape alongwith his other associates. He was, however, overpowered by some of the persons present there with the cooperation of local *Choukidar* Suresh Paswan (not examined), co-villager, Raj Kishore Yadav (not examined), Maxi driver, Safique Alam (P.W.2), cleaner of the vehicle Shamim Khan (P.W.3), Ganesh Yadav (not examined) and other villagers of village Matahi. One country made pistol and a



cartridge was recovered from the possession of this appellant by the persons who had apprehended him. The deceased was brought to a nearby hospital where he died during the course of treatment.

5. The police upon completion of investigation submitted charge-sheet against the appellant for commission of the offence punishable under Section 302/34 of the Indian Penal Code, whereupon, the cognizance was taken on 22.02.1992. The case was committed to the Court of Sessions for trial, giving rise to the present Sessions Trial No. 29 of 1992. The charge was subsequently framed for commission of the offence punishable under Section 302 of the Indian Penal Code. As the appellant denied the charge framed against him, he was put to trial.

6. At the trial, altogether, nine prosecution's witnesses were examined, out of which, P.W.-1 (Ganesh Bhagat), P.W.-2 (Md. Safique), P.W.-3 (Shamim Khan) and P.W.-4 (Lakhan Paswan) came to be declared hostile at the instance of the prosecution. The informant (P.W.-7) supported the prosecution's case as an eye-witness. The Doctor, who had conducted the postmortem examination came to be examined as P.W.-6, whereas P.W.-8 proved the signature and handwriting of the Sub-Inspector of Police who had recorded the *fardbeyan*.



7. P.W.9 proved the signature of the Officer-in-Charge of the police station on the FIR. Apparently, P.Ws. 8 and 9 are the formal witnesses. The postmortem report was proved by the Doctor (P.W.-6) and was exhibited as Exhibit-1. The signature and handwriting of the Sub-Inspector of Police, who had recorded the *fardebayan*, was proved by P.W.-2 and was exhibited as Exhibit-2 and the signature of the Officer-in-Charge of the police station on the FIR was exhibited as Exhibit-3.

8. After closure of the evidence of the prosecution's witnesses, the materials coming against the appellant in the evidence of the prosecution's witnesses were explained to the appellant and he was given an opportunity to explain the circumstances coming against him, in compliance with the requirement under Section 313 of the CrPC. The appellant, however, denied all such accusations/allegations/materials coming against him to establish the charge of commission of the offence punishable under Section 302 of the Indian Penal Code.

9. P.W.-5 (Satyanarayan Bharti), though supported the prosecution's case to the extent the same related to the occurrence, he did not support the same regarding the appellant's involvement in commission of the offence. Thereafter, two defence witnesses, namely, Natho Devi, the wife



of the deceased (D.W.-1) and Rambali Yadav, a co-villager of the informant (D.W.-2) were examined.

10. The defence got exhibited at the trial as Exhibit A, a judgment of acquittal recorded by the trial Court in a trial arising out of Madhepura P.S. Case No. 285 of 1991 which was registered in relation to the same occurrence relating to commission of the offence punishable under various provisions of the Arms Act.

11. We have heard Mr. Vikramdeo Singh, learned counsel appearing on behalf of the appellant and Mr. Ajay Mishra, learned Additional Public Prosecutor for the State.

12. Learned counsel for the appellant has at the outset drawn our attention to the conflicting evidence of the father of the deceased (P.W.7) and the wife of the deceased (D.W.1). He has submitted that on the one hand, the P.W.7 in his deposition has claimed that he had seen the occurrence taking place as he was present at the place of occurrence, D.W.1, the wife of the deceased on the other hand in her deposition testified that as a matter of fact, the informant was in his house alongwith D.W.1 at the time when the occurrence had taken place.

13. He has further submitted that it is evident from



the evidence of P.W.7 that he was a chance witness since in natural course he was not supposed to be present at the place of occurrence. According to P.W.7, he had gone to the place of occurrence in search of his son (the deceased). He has secondly submitted that non-examination of *Choukidar*, Suresh Paswan is fatal to the prosecution's case since according to the FIR, the appellant was apprehended by the persons present at the place of occurrence with the aid of others including the aid of *Choukidar* Suresh Paswan. He has thirdly submitted that it is evident from the testimony of the witnesses that four of them have been declared to be hostile at the instance of the prosecution.

14. He would further submit that the material witnesses, (who according to the prosecution's case as disclosed in the First Information Report were present at the place of occurrence), have been withheld by the prosecution, they having not been examined at the trial. He has submitted that as a matter of fact, no prosecution's witness has supported the prosecution's case of the appellant committing murder of the deceased in the manner as disclosed in the *fardbeyan* and as set up by the prosecution at the trial.

15. Mr. Ajay Mishra, learned Additional Public Prosecutor, *per contra*, has submitted that there is no reason



why the evidence of P.W.7, father of the deceased, should be doubted. He submits that the prosecution's case has been duly supported by the medical evidence. He has accordingly submitted that finding of conviction recorded by the Trial court does not suffer from any legal infirmity requiring this Court's interference.

16. We have perused the impugned judgment and order of the learned Trial court as also the lower court records (LCR). We have carefully analyzed the evidence of prosecution as well as the defence witnesses and have also given our thoughtful consideration to the rival submissions made on behalf of the appellant and the State.

17. On careful perusal of the evidence of witnesses, we find that none of the prosecution's witnesses except P.W.7, the informant has supported the prosecution's case of the appellant firing at the deceased leading to his death. P.W. 5 in his testimony deposed that just before the occurrence had taken place, he (PW-5) as well as the deceased were having refreshment together. In the meanwhile, the Maxi taxi came. A shot was fired which hit the deceased, whereafter the miscreants fled away.

18. The appellant was apprehended by the public on



chase but nothing was recovered from his possession. In paragraph-3 of his cross-examination, he deposed that he had seen the person who had shot the fire and specifically deposed that the person who was present in the dock was not the one who had opened the fire. Apparently thus, the P.W.5 did not prove the prosecution's case of the appellant having shot at the deceased.

19. So far as the evidence of P.W.-7 is concerned, in our considered opinion it needs to be read with the evidence of D.W.-1. On the one hand, the P.W.-7, the father of the deceased, in his evidence deposed that he had gone to Matahi in search of his son. Further, after the deceased was shot at, the person who had opened the fire was chased and was apprehended by the local persons. They brought the person (Arun Yadav) who was apprehended by them before the informant whereafter he identified him.

20. However, the D.W.-1, who is the widow of the deceased, on the other hand, deposed that the informant (P.W.-7) was in the house and when he heard that the deceased was killed, she (D.W.-1) and the informant (P.W.-7) had gone to the place of occurrence. She further deposed in paragraph 3 that no one had told her as to who had killed the deceased.



21. As has been noted hereinabove, the other prosecution's witnesses have not supported the case of the prosecution. The persons who were present at the place of occurrence whose names figure in the First Information Report were not examined at the trial. According to P.W.-7, *Choukidar* Suresh Paswan was present at the place of occurrence when the occurrence had taken place, and he was the person who had helped the locals in apprehending the appellant. He was however, not examined at the trial.

22. Upon taking into account the entire evidence on record, both oral and documentary, we are of the considered view that the prosecution cannot said to have proved the charge of commission of the offence punishable under section 302 of the Indian Penal Code against the appellant beyond all reasonable doubts. The finding of conviction recorded by the Trial court thus requires interference.

23. The impugned judgment of conviction and order of sentence dated 26.3.2014/28.3.2014 passed by the learned Additional Sessions Judge, Adhoc Court No.II, Madhepura, in Sessions Trial No. 29 of 1992 is accordingly set aside. The appellant stands acquitted of the charge of commission of the offence punishable under section 302 of the Indian Penal Code



by giving him the benefit of doubt.

24. This appeal is allowed accordingly.

25. The appellant is in jail custody. Let he be released forthwith if not required in any other case.

(Chakradhari Sharan Singh, J)

(Rajiv Roy, J)

Rajesh/Ravi

AFR/NAFR	NAFR
CAV DATE	NA
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