

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.769 of 2016**

Arising Out of PS. Case No.-183 Year-2011 Thana- ARA NAGAR District- Bhojpur

Md. Ali Son of Md. Anish resident of village - Milki Mohalla, P.S. Ara Town,
District - Bhojpur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Arun Kumar Shrivastava, Adv.
For the State	:	Mr. S.B. Verma, APP
For the Informant	:	Mr. Ramendra Singh, Adv.

**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE HARISH KUMAR**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 10-05-2023

We have heard Mr. Arun Kumar Shrivastava for the appellant, Mr. S.B. Verma, learned A.P.P. for the State and Mr. Ramendra Singh for the Informant.

2. The appellant stands convicted under Section 302 of the Indian Penal Code and 27 of the Arms Act vide judgment dated 22.06.2016 and has been sentenced to undergo rigorous imprisonment for life, fine of Rs. 10,000/- and in default of payment of fine, to further suffer simple imprisonment for six months for the



offence under Section 302 I.P.C. and rigorous imprisonment for two years, a fine of Rs. 2,000/- and in default of payment of fine, to further suffer SI for six months for the offence under Section 27 of the Arms Act in Sessions Trial No. 306 of 2012 passed by Sri Yogesh Narain Singh, learned 4th Additional District and Sessions Judge,, Bhojpur at Ara. The sentences however have been ordered to run concurrently.

3. The deceased namely Md. Siraj is said to have been shot dead by the appellant.

4. Majhabi Begum/P.W.3, who is the elder sister of the deceased, has lodged the FIR on 01.07.2011 at 8.30 AM at her house alleging that she was telephonically informed on 01.07.2011 in the morning that her younger brother/Md. Siraj has been killed by the appellant. The deceased had left the house in the morning for going to a tea shop. No sooner had he left, P.W.3 learnt the aforementioned fact on telephone. She also learnt that local persons had taken the deceased to



Sadar Hospital where, after preliminary treatment, he was referred Patna but, on the way, near Koilwar, he died.

5. On the basis of the aforementioned Fardbeyan statement, a case vide Ara Town P.S. Case No. 183 of 2011 dated 01.07.2011 was registered for investigation against the appellant for offence under Section 302 I.P.C. and Section 27 of the Arms Act.

6. The police after investigation submitted charge-sheet whereupon cognizance was taken and the case was committed to the court of sessions for trial.

7. The learned trial court, after having examined the five witnesses on behalf of the prosecution, convicted and sentenced the appellant as aforementioned.

8. The learned counsel for the appellant while assailing the judgment and order of conviction and sentence has argued that the decision is perverse in as much as the trial court has not taken into account the



inconsistencies in the deposition of prosecution witnesses which has gone to the root of the matter and has rendered every evidence unbelievable. It has further been argued that according to the evidence collected during the trial, nobody can be said, with certainty, to be the witness to the occurrence and that some hearsay statement of a rickshaw-puller has been relied upon by the Trial court to convict the appellant.

9. The evidence, according to the learned counsel for the appellant, is completely lacking in material particulars and if one part of the deposition of one of the witnesses is believed, the other part of the statement made by the same witness stands discredited.

10. From the deposition of Majhabi Begum/ Informant/ P.W.3, it would appear that she has improved upon her statement made in the FIR. In her deposition before the Trial court, she has stated that at about 5 to 5.30 in the morning, the deceased came out of the house for going to the tea shop and within half an



hour, somebody called P.W.3 to inform her that the deceased has been killed by Md. Ali (Appellant). Who gave that information has not been disclosed by her. She also did not try to find out as to who was the caller giving information of the death of the deceased. Within an hour, P.W.3 asserts that Siraj, still alive, came on a rickshaw and the rickshaw-puller/Md. Kalim/ P.W.1 told her that the appellant has fired at Siraj. The brother of P.W.3 also told her that the appellant had fired at him. She directed the rickshaw-puller to take her brother to the hospital, Thereafter, she informed the police and later reached the hospital but, by that time, her brother had already been referred to Patna for better treatment. The P.W.3 then came back to her home when the police also arrived and she lodged the subject FIR.

11. During cross-examination, she has further stated that when the deceased had come on a rickshaw in an injured condition, many persons of the locality had assembled at her house but she could identify none of



them. She has denied that she did not make any such statement before the police. She has also denied any knowledge about the criminal antecedents of the deceased. All that she has offered to the Trial court was that another brother namely Md. Meraj was lodged in jail at that time. She has also denied the suggestion that the murder was committed by the appellant because the deceased had stolen the motorcycle of the appellant which ultimately was recovered from the deceased. She did not know the rickshaw-puller / P.W.1 from before.

12. From a bare perusal of the FIR and the deposition of P.W.3 at the trial, it would appear that there are many things amiss. According to P.W.3, the deceased was brought to the house in an injured condition by a rickshaw-puller/ P.W.1 when P.W.1 and the deceased in an injured condition told P.W.3 that the appellant was responsible for the injuries on the deceased.

13. This statement has not been made by



P.W.3 in her FIR. In the FIR, she has only alleged that she learnt telephonically that the deceased has been killed by the appellant and that the local persons had taken the deceased to the Sadar Hospital for treatment from where he was referred to Patna but, on way at Koilwar, he died.

14. In order to test as to which statement of P.W.3 is correct, we have examined the deposition of Dr. Sanjay Kumar/P.W.4 who has stated in his examination-in-chief that the dead body of the deceased was brought to the hospital and he had found two wounds, entry and exit, above the umbilical region. However, in the cross-examination, he has stated that he did not record the name of the person who identified the dead-body and from the nature of injuries, it appeared to him that the wound of entry was in the front.

15. The aforementioned statement of the Doctor/P.W.4 completely belies the assertion of P.W.3 that the deceased was brought to the hospital and was



referred to Patna for better treatment but, on way, he died.

16. The deceased had been brought dead in the Sadar Hospital. This further discredits P.W.3 inasmuch as she, by improving her statement from the FIR, had stated before the Trial court that when the deceased was brought in an injured condition to her home in the morning, he also disclosed before her that the appellant had killed him.

17. The deceased thus appears to have died much before P.W.3 had any opportunity to talk to him.

18. This takes us to the deposition of Md. Kalim/P.W.1, the rickshaw-puller. According to him, he was asked by the deceased to take him to the Mohalla Gopali Kuan where the deceased wanted to take tea from a shop located in Dabur Street. While the deceased was sipping tea, sitting on the rickshaw, somebody fired at him from behind as a result of which he fell injured.

19. P.W.1 made the deceased sit over rickshaw



and asked the deceased about the assailant. The deceased then is said to have told him that one Ali has killed him. P.W.1 claims to have learnt about the address of the deceased from the neighborhood and thereafter took him in an injured condition to P.W.3 and also handed over an amount of Rs. 3400/- and a mobile telephone which was in the possession of deceased. All through, P.W.1 asserts the injured/deceased kept insisting that the appellant had killed him.

20. The sister of the deceased (P.W.3) came to the hospital along with the police. Because the condition of the deceased was serious at that time, he was referred to Patna. He has denied to be related to the deceased or P.W.3. He had brought the deceased to the hospital but, did not have any idea whether any person in the hospital had taken the statement of the injured before he died. No effort, according to him, was made to have the statement of the injured/deceased recorded. The police had not taken the statement of Siraj in the



hospital. Siraj had also not told the police that Ali/appellant had killed him.

21. Birrendra Kumar Singh/P.W.5 is the Investigating Officer of the case. He had not prepared the inquest report. The inquest report had been prepared by one Shambhu Nath Mishra, ASI, who has not been examined. However, the inquest has been exhibited as Exhibit-1/3.

22. In the Fardbeyan and the further statement of the Informant/P.W.3, the Investigating Officer states that it was not indicated that the deceased had told his sister that the appellant had killed him; rather it was only telephonic information to the P.W.3 that the deceased had been killed.

23. Niyaz Ahmed/P.W.2 is the brother-in-law of the deceased who has stated that he had gone to the Sadar Hospital on the asking of P.W.3 where the deceased was still alive and had told him about the appellant having fired at him. His attention was also



drawn to his earlier statement made before the police which was different from what he had stated before the court.

24. On the basis of the aforementioned deposition of the witnesses, we do not get an impression that P.W.3 or for that matter any of the P.Ws. have made correct statement at the trial. We say so for the following reasons:-

(i) The Informant did not say in the FIR that the deceased was brought in an injured condition to her home which she has asserted before the Trial court.

(ii) Dr. Sanjay Kumar/P.W.4 has stated that the deceased was brought to the hospital dead. With such statement, it cannot be presumed that the deceased before his death would have spoken to either P.W.3 or other P.Ws. about the appellant.

(iii) Admittedly, somebody had shot the



deceased from behind which fact also gets corroborated in the medical testimony. How did the deceased see the assailant is a question which haunts us.

(iv) If P.W.3 was making a correct statement, her conduct was unusual in allowing a rickshaw-puller to take the deceased in an injured condition to hospital. She also accepted an amount of Rs. 3400/- and a mobile telephone of her brother through P.W.1.

(v) No person of the locality has been brought forward to confirm the fact that the deceased was brought to his home in an injured condition and only thereafter was taken to hospital.

(vi) If the deceased was brought dead to the hospital, where was the question of any referral to higher hospital. The fact remains that the deceased died near Koilwar. What had happened in the interregnum?



(vii) These fault-lines in the evidence do not make out a necessary chain of sequence and, thereby, creates serious doubt about the truthfulness of the witnesses.

25. The deceased has died of gun-shot about which there could be no two opinions; but the question is who fired the shot and what happened thereafter. We are also not able to make ourselves believe that early in the morning, the deceased would come out of his house to have tea, hire a rickshaw and then go to a great distance to take tea at Dabur Street, when, while sipping tea on the rickshaw, he was shot from behind.

26. It had been raining at that time as that was the reason ascribed for the deceased to have come and sat on rickshaw for sipping his tea. The rickshaw-puller then inquires about the address of the injured and brings him to his house. The nature of injury suffered by the deceased appears to be such that without a help, the deceased would not have been in a position to sit on the



rickshaw for him to be pulled over to his house at a distance.

27. P.W.1 has, at all times, stated that there was profuse bleeding and it is not the case of the prosecution that any attempt was made to examine the rickshaw, collect the blood spots or visit the place of occurrence. Where was the tea shop? If the tea shop would have been the place where the murder has been committed, why was the tea vendor not examined.

28. These questions have kept on troubling us through the entire course of arguments.

29. Thus, there is great force in the argument of the appellant that the deceased was killed somewhere else, in some other transaction and was brought to hospital dead. It was only an afterthought that the name of the appellant was introduced.

30. There is a background of criminal proclivity of the deceased. There, again, could be a possibility of some other enemy of the deceased having killed him.



There does not appear to be any investigation with respect to the old enmity with the appellant except for a bald suggestion to P.W.3 that the deceased had stolen the motorcycle of the appellant and which motorcycle was recovered from the possession of the deceased. P.W.3, in this context, has stated that pressure was being exerted on the appellant only not to prosecute the deceased any further. Where was the occasion for the appellant to harbour any enmity to such an extent as to kill him on a rainy morning.

31. We therefore find the evidence in this case to be faltering as the seams.

32. We are thus left with no option but to set aside the judgment and order of conviction and acquit the appellant of all the charges.

33. The appellant is in custody. He is directed to be released forthwith from jail, if not required or detained in any other case.

34. The records of this case be sent back to the



Trial court and a copy of the judgment be transmitted to the Superintendent of concerned jail for record and compliance.

(Ashutosh Kumar, J)

(Harish Kumar, J)

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AFR/NAFR	AFR
CAV DATE	NA
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