

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.672 of 2017

Arising Out of PS. Case No.-168 Year-2013 Thana- BHELDI District- Saran

Rajdeo Singh Son of Ram Ishwar Singh, resident of village Nawada Kothi,
P.S. Bheldi, District- Chapra, Saran.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Vikramdeo Singh, Advocate
For the Respondent/s : Ms. Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJIV ROY)

Date : 28-04-2023

The present appeal is directed against the judgment and order dated 08.05.2017 and 22.05.2017 passed by the learned Additional Sessions Judge – X, Saran at Chapra in Sessions Trial No. 575 of 2014 (arising out of UT No. 168/2013 in connection with Bheldi P.S. Case No. 168 of 2013) by which the appellant was convicted under sections 302/34 of the Indian Penal Code and was sentenced to undergo Rigorous Imprisonment for life and fine of Rs. 25,000/- under section 302/34 of the Indian Penal Code and in default of payment of fine, further imprisonment of six months and was further convicted under section 27 of the Arms Act and



sentenced to undergo imprisonment of three years. The sentences were to run concurrently.

2. First Information Report was registered on 11.09.2013 by the informant, Shiv Kumari Devi wife of Yadunath Sah (deceased) alleging that while her husband was returning home and had reached near an orchard of Hazari Singh, at about 17:30 hours, the accused persons, namely, Rajdeo Singh (the appellant herein), Rajnath Singh, Pukar Mahto, Kartik Mahto and Rudal Mahto came there on two motorcycles, intercepted and started assaulting him.

3. The further allegation is that when her husband tried to run away, the appellant herein took out a pistol and fired upon him causing injury on his waist. Thereafter, another accused, Rajnath Singh opened fire causing injury in the mouth of the husband of the informant who fell down and died on the spot. On hearing the sound of firing, people rushed towards the place of occurrence whereafter she alleged that accuseds fled away.

4. This led to registration of Bheldi P.S. Case No. 168 of 2013 for the offence registered under Sections 302/34 of the Indian Penal Code and Section 27 of the Arms Act against the accused persons.



5. The postmortem of the deceased, Yadunath Sah was conducted by Dr. Vijay Kumar, who was posted as Medical Officer, Sadar Hospital Chapra on 12.09.2013 at 8:30 A.M. and found following injuries:

“12. P.W. 6 is doctor Vijay Kumar. He has stated in his examination in chief That on 12.9.13 he was posted at Sadar hospital, Chapra as Medical Officer and on that day he conducted the post mortem examination on the dead body of Yadunath Sah aged about 60 years s/o late Balendra Sah of village Nawada Kothi, P.S. Bheldi, Dist. Saran at about 8.35 am. and found the following ante mortem and post mortem finding upon his dead body.

External Injuries:

(i) Lacerated wound over left lower back wound is oval and under terminal and the skin around the wound was charred size 1/3" long x 1/2" breadth x cavatiy deep. This is the entry wound

(ii) Lacerated wound over left angle of mouth wound is round under terminal and skin around the wound is charred, size 3/4" long, 3/4" breadth and bone deep depth.

On dissection:

(i) On dissection of wound over left lower back depth of wound entry accordingly skin superpaveers fact beneath the muscle peritonious



preforated small intestine, spleen and space moved, present left lung ruptured and huge blood clot present in chest cavity.

Heart:

(i) Specie moved through left venticle to left atrium, ribs fractured, fourth lower vastal region is mid axillary line, left side intercostal muscle ruptured. Fat on left side of the chest in mid axillary line region was fourth fifth intercostal space.

(ii) Dissolution wound over left angle of mouth invaded through skin of superficial fat muscle upto bone deep.

Mandible:

Angle of left side of mandible fractured rupture of mouth line, lacerated wound present in tongue. Bullet lodged in angle of mandible, left side two bullets found and preserved for further need.

Injuries opinion cause of death:

The cause of death was due to hemorrhage and shock caused by fire arm injuries. Time since death to post mortum within 16 to 18 hours.”

6. The police investigated the matter and thereafter submitted charge sheet against all the accused persons including the appellant herein under sections 302/34 of the Indian Penal Code and section 27 of the Arms Act.



Thereafter, the learned Chief Judicial Magistrate, Saran at Chapra took cognizance of the offence against the accused persons and on 18.09.2014, the case was committed to the Court of Sessions and finally to the Court of learned Additional Sessions Judge – X, Saran at Chapra.

7. The charges were framed on 27.10.2014 against the accuseds/appellant. Before the Trial Court, the plea of the defence was complete denial of the alleged occurrence and the accused claimed himself to be innocent and as such, he was put on trial.

8. It is to be noted that Rajnath Singh against whom there was allegation of opening fire and causing injury in the mouth of the deceased never appeared before the Trial Court as is apparent from the record.

9. In support of its case, the prosecution put forward 9 witnesses as follows:-

- (1) P.W.1- Hiralal Sah, an eye witness
- (2) P.W.2 - Gani Nath Sah, an eye witness
- (3) P.W. 3 - Amarnath Sah, son
- (4) P.W. 4 - Marai Sah, an eye witness
- (5) P.W. 5 – Shiv Kumari Devi (informant
& wife of the deceased)



(6) P.W. 6 - Dr. Vijay Kumar

(7) P.W. 7 - Sujit Das, Sub Inspector

(8) P.W. 8 - Mintu Sah, an eye witness

(9) P.W.9 - Prabhat Shankar, the
Investigating Officer

10. P.W. 1, Hiralal Sah claimed himself to be an eye witness who had accompanied the deceased from the home to the Civil Court, Chapra and had put in their respective appearances in their civil cases and further claimed to be returning together from the Court. He deposed that at 4:00 O' Clock, both of them had left Civil Court, Chapra and reached Jogni Bazar 45 minutes later. There, they had a cup of tea. As some of the villagers, namely, Gani Nath Sah, Marai Sah and Mintu Sah were also present in the Jogni Bazar where they had come to purchase their household items, later, all of them started walking towards their village.

11. He further deposed that as they reached near the orchard of Hazari Singh at around 5:30 P.M., the appellant herein as also Rajnath Singh, Pukar Mahto, Kartik Mahto and Budhan Mahto came there on two motorcycles, surrounded Yadunath Sah, started assaulting him and when he tried to



escape, this appellant opened fire causing injury on his waist followed by another firing by Rajnath Singh which hit his mouth and he died on the spot. It has further been deposed by him that on '*hulla*', the villagers started assembling there whereafter the accused persons fled on motorcycle. Later, the police came on spot, took the '*fardbayan*' of the deceased wife, Shiv Kumari Devi (Exhibit-1) on which he also put in his signature.

12. P.W.1 further stated that he was threatened of dire consequences if he deposed before the Court. He also identified Rajdeo Singh (the appellant herein) in the Court.

13. P.W.2 Gani Nath Sah, in his deposition stated that while returning from Bazar, he met Hiralal Sah, (P.W.-1), Yadunath Sah (deceased), Marai Sah (P.W.-4) and Mintu Sah (P.W.8) and accompanied them. As they reached the orchard of Hazari Singh, the accused persons including the appellant herein came, surrounded, assaulted Yadunath Sah whereafter Rajdeo Singh opened fire causing injury on the waist while Rajnath Singh opened fire causing injury in the mouth which led to instantaneous death of Yadunath Sah

14. P.W. 4, Marai Sah is another eye witness to the alleged occurrence. He was also one of the co-villager who



was returning from the Jogni Parsa Bazar along with the deceased and other prosecution witnesses. He supported the prosecution's story as narrated by P.W.1 & P.W.2. He further identified the accused Rajdeo Singh in the Court.

15. P.W. 8 is Mintu Sah who also deposed that he was returning from Jogni Bazar along with Gani Nath Sah, Marai Sah and Hiralal Sah and as they reached the orchard of Hazari Singh, the accused persons came, assaulted and Rajdeo Singh & Rajnath Singh opened fire causing injury in the waist and mouth respectively of the deceased who immediately succumbed to the injuries. He also claimed to have identified Rajdeo Singh in the Court.

16. Thus, all the witnesses who claimed to have accompanied the deceased on the date of occurrence back home and had witnessed the crime came forward and supported the prosecution's story and were further consistent in their respective deposition.

17. The other witnesses put forward by the prosecution were P.W.5 and informant, Shiv Kumari Devi, the wife of the deceased who supported the prosecution's story and further claimed to have recorded her statement before the police and put her thumb impression on it which led to the



lodging of the First Information Report. She also identified Rajdeo Singh in the Court.

18. The other witness is Amarnath Sah (P.W.3), the son of the deceased Yadunath Sah who claimed that he was going to market from his house when he heard the sound of fire. As he reached the orchard of Hajari Singh, saw Rajdeo Singh and Rajnath Singh standing there. He also claimed to have seen his mother, Shiv Kumari Devi, who had also rushed to the spot. Amarnath Sah further deposed that on the date of occurrence, his father had gone to Chapra Court for doing some 'pairvi' along with Hiralal Sah and while returning, he was murdered.

19. P.W. 6, Dr. Vijay Kumar, who was posted at Sadar Hospital, Chapra also appeared/deposed and identified the post-mortem report penned by him (Exhibit 2).

20. P.W.7 is Sujit Das, the Sub-Inspector of Police who having been posted as Police Inspector at Bheldi P.S. on 18.02.2014 took charge of the investigation of Bheldi P.S. Case No. 168 of 2013 and had submitted charge sheet against Rajdeo Singh under sections 302/34 of the Indian Penal Code and Section 27 of the Arms Act on 13.03.2014.

21. Then the last witness P.W.9, Prabhat Shanker,



was the earlier Investigating Officer of this case and had conducted investigation. He also claimed to have recorded the statements of the prosecution witnesses. He further deposed that the supervision note of the Superintendent of Police, Chapra as also Deputy Superintendent of Police, Chapra were also incorporated in the case diary and after his transfer handed over the charge to the new Officer in-charge.

22. Thus from the aforesaid deposition of the prosecution witnesses before the Trial Court, this Court finds that the four of the witnesses had seen the occurrence and further P.W.1, Hiralal Sah was present with the deceased Yudunath Sah all through the day and had supported the original version in the Court and narrated the entire story. The same is supported by the deposition of other eye witnesses and the post-mortem report is in line with the prosecution case.

23. The Trial Court held that the prosecution has been able to establish the entire story. It further held that all of them supported the fact that the occurrence took place at 5.30 P.M. which found corroborated by the post-mortem report which was conducted the next day at 8:30 A.M. and the time lapsed was recorded between 16-18 hours.

24. Learned Trial Court further found that there is



consistency in the statement made by all the eye witnesses as also the other prosecution witnesses and they are trustworthy which cannot be brushed aside. He further held that the Doctor (P.W.6) who conducted the post-mortem of the deceased fully supported the prosecution story and narrated that the two bullets were embedded in the body which were removed. It was further held that all the eye witnesses withstood the lengthy cross-examination conducted by the defence counsel.

25. Accordingly, the learned Trial Court held the sole accused Rajdeo Singh guilty for the offences under sections 302/34 of the Indian Penal Code and Section 27 of the Arms Act vide order dated 08.05.2017 and further convicted him under sections 302/34 of the Indian Penal Code and section 27 of the Arms Act vide an order dated 22.05.2017 sentencing the sole appellant to undergo imprisonment for life and also imposed a fine of Rs. 25,000/- for the offence under Section 302/34 of the Indian Penal Code and further directed to undergo imprisonment for three years and fine of Rs. 5,000/- for the offence under Section 27 of the Arms Act and in default of fine, to undergo imprisonment of six months. It was further ordered that all the sentences shall run concurrently.



26. Heard Mr. Vikram Deo Singh, learned counsel for the appellant as also Ms. Shashi Bala Verma, learned Additional Public Prosecutor who represented the State.

27. Learned counsel for the appellant submits that the First Information Report seems to be improbable inasmuch as the informant although claims to be an eye witness, she was actually not present at the place of occurrence. She later came to the place and lodged her '*fardbayan*' before the police in which she claims to have seen the entire occurrence including the shoot out by the present appellant causing injury on the waist of the deceased as also another fire arm injury by Rajnath Singh, which hit the mouth of the deceased.

28. He as such claims that when the FIR itself becomes improbable, the specific role attributed to the accused persons including the sole appellant herein becomes highly doubtful. He further submits that even his son, Amarnath Sah who claims that he was going to the market and upon hearing the gun shot, returned and saw presence of the appellant herein as also Rajnath Singh at the place of occurrence, was not eyewitness to actual shooting.

29. The second submission is that all the other witnesses who claimed themselves to be the eye witnesses are



actually interested witnesses inasmuch as they had dispute with the accused persons relating to land and they got an opportunity to implicate the appellant.

30. Ms. Shashi Bala Verma, learned Additional Public Prosecutor for the State, on the other hand, submits that the contention put forward by the learned counsel for the appellant is fit to be rejected inasmuch as there are number of eye witnesses who consistently claimed to have seen the occurrence. Their statements were recorded before the police, deposed in the Court and have withstood the cross-examination of the defence. She as such, submits that the allegation against the sole appellant, Rajdeo Singh of opening fire causing injury on the waist which along with another injury in the mouth by accused Rajnath Singh proved fatal, have been ably proved by the prosecution side. She thus submits that the findings arrived at by the learned Trial Court cannot be faulted at.

31. We have gone through the facts as also the entire records of the case, the statements of the witnesses as also their respective depositions before the learned Trial Court and find force in the submissions put forward by the learned Public Prosecutor inasmuch as P.W. 1, Hiralal Sah, P.W.2,



Gani Nath Sah, P.W. 4, Marai Sah, and P.W. 8, Mintu Sah who were the persons accompanying the deceased, Yadunath Sah from Jogni Parsa Bazar to home gave consistent version that the accused persons intercepted Yadunath Sah (deceased), assaulted him followed by opening of fire by Rajdeo Singh and Rajnath Singh which hit the waist and mouth of the Yadunath Sah respectively that led to his immediate death. Thus the contention that the informant as also her son who subsequently arrived at the place of occurrence were not present when the actual shooting took place has to be rejected.

32. P.W.1, Hiralal Sah was accompanying the deceased from morning itself as they went together to the Civil Court, Chapra and were returning home after staying for a while to have a cup of tea at Jogni Parsa Bazar whereafter the other witnesses also accompanied them. He consistently supported the prosecution's story and withstood cross examination.

33. Even the P.W.6, Dr. Vijay Kumar, who conducted the post-mortem report found two injuries in the mouth and waist of the deceased and the time lapsed from the time of injury till post mortem examination was 16-18 hours on 12.09.2013 at 8.30 A.M. which clearly shows that the time



of occurrence 5.30 P.M. on 11.09.2013 was the correct version.

34. The second contention put forward regarding eye witnesses being interested persons as they were on litigating terms with accused persons again has to be rejected in the backdrop of the consistent evidence of the informant, the lady who lost her husband as also her son clearly prove the appellant’s complicity in the alleged crime.

35. Taking into account the aforesaid facts, we do not find any illegality in the conclusions arrived at by the learned Trial Court in convicting the sole appellant for the offence punishable under sections 302/34 of the Indian Penal Code and Section 27 of the Arms Act.

36. The appeal accordingly fails and is hereby dismissed.

(Rajiv Roy, J)

(Chakradhari Sharan Singh, J)

(Chakradhari Sharan Singh, J)

Jagdish/Neha-

AFR/NAFR	NAFR
CAV DATE	07.04.2023
Uploading Date	29.04.2023
Transmission Date	29.04.2023

