

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1502 of 2017**

Arising Out of PS. Case No.-1 Year-2012 Thana- TARIYANI CHOWK District- Sheohar

Brahmdeo Ram S/o Late Ramdeo Ram, R/o Village- Sogra Adalpur, P.S.-
Tariani, District- Sheohar.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Mahendra Thakur, Adv

Mr. Vijay Kumar, Adv

For the State : Ms. Shashi Bala Verma, APP

**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

and

HONOURABLE MR. JUSTICE JITENDRA KUMAR

CAV JUDGMENT

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH)**

Date : 09-11-2023

The appellant has preferred this appeal under Section 374(2) of the Code of Criminal Procedure assailing the judgment of conviction dated 16.10.2017 and an order of sentence dated 17.10.2017 passed by the learned passed by the learned 1st Additional Sessions Judge, Sheohar in connection with Sessions Trial No. 28 of 2013/ 70 of 2013, whereby and



whereunder the appellant has been convicted and sentenced as under :-

Penal Provision	Sentence		
	Imprisonment	Fine (Rs.)	In default of fine
under Section 302 of the IPC	Rigorous imprisonment for life	Rs. 50,000/-	SI for Six months
Section 27 of the Arms Act	Rigorous Imprisonment for 7 years	Rs. 10,000/-	SI for two months

2. The father of the deceased (PW-3) is the informant whose *fardbeyan* recorded by the SHO Samol Kant Jha (PW-5) Tariyani PS on 03.01.2021 at 10:00 pm at the house of Ram Narayan Mahto (PW-1) of Sultanpur Hurrahia, is the basis for registration of Tariyani P.S. Case No. 01 of 2012 disclosing commission of offences punishable under Sections 302, 120B and 34 of the Indian Penal Code and Section 27 of the Arms Act.

3. Briefly narrated, according to the informant, he was returning after irrigating his field in the evening and the moment he reached near the house of Ram Narayan Mahto (PW-1), he heard several rounds of firing. Thereafter, he noticed that this appellant, accused Lalu Sahni were firing indiscriminately upon



his son (deceased). The deceased fell down after sustaining fire arm injuries and started wriggling with pain. Soon thereafter, accused Sukhari Sahni started his motorcycle on which accused Lalu Sahni and the appellant sat and they proceeded towards South. They again returned near the place of occurrence and proceeded towards their village Adalpur. Upon hearing the sounds of gunshots and the screams of the informant, several persons including his son Sashi Bhushan Kumar (PW-11) came. All of them witnessed the accused persons fleeing away on the motorcycle who were brandishing pistols. As the informant reached near the deceased, he (the deceased) told the informant that appellant had shot at him, whereafter he breathed his last. The informant alleged that about 2-3 months ago the appellant was persuading the deceased to join his gang which was declined by the deceased which fact the deceased had also disclosed to the informant. Further, one of the accused Jaggarnath Sah had come to the house of the informant and threatened the deceased. The informant alleged that the wife of accused Jaggarnath Sah was in regular touch with the appellant and the appellant also used to visit Sumitra Devi (an accused) which the deceased always used to object. This was the reason behind the accused persons killing the deceased. He also



suspected that conspiracy to kill was hatched up by Jaggarnath Sah and his wife Sumitra Devi, the daughter-in-law of Kishori Mahto.

4. Subsequently, chargesheet was submitted upon completion of investigation by the police for the offences punishable under Sections 302/34 and 120B of the Indian Penal Code and Section 27 of the Arms Act. After taking cognizance of the offences, the case was committed to the court of sessions for trial. Charge was framed for the offences punishable under Sections 302/34 and 120B of the Indian Penal Code and Section 27 of the Arms Act against the appellant, co-accused Lalu Sahni, co-accused Kanti Devi and Jaggarnath Sah.

5. At the trial, the prosecution examined altogether 11 witnesses out of whom PW-1 Ram Narayan Mahto, PW-4 Ram Chandra Mahto, PW-7 Ganesh Das, PW-8 Kaushalya Devi and PW-9 Gajendra Mahto came to be declared hostile at the instance of the prosecution as they declined to support the prosecution's case. The informant and the informant's wife supported the prosecution's case as eye witnesses to the occurrence. Their son Shashi Bhushan Kumar (PW-11) is a hearsay witness. PW-10 is a formal witness who produced before the court material exhibits i.e. spent cartridges. The SHO



who had investigated the case deposed as PW-5 and Doctor who had conducted the *postmortem* examination has deposed as PW-6 at the trial. It is evident thus that the informant (PW-3) and his wife (PW-2) are the only witnesses who have claimed to have witnessed the occurrence with their own eyes.

6. In addition to the oral evidence of the prosecution's witnesses, the prosecution brought on record following documentary evidence:-

Sl. No.	Description	Exhibit Number
1.	Signature on the fardbeyan	Exhibit-1
2.	Signature of PW-11 on <i>fardbeyan</i>	Exhibit-1/1
3.	<i>Fardbeyan</i>	Exhibit-2
4.	Endorsement and Signature of the SHO on the <i>fardbeyan</i>	Exhibit-2/1
5.	Writing and signature over the formal FIR	Exhibit-3
6.	Writing and signature over the seizure list	Exhibit-4
7.	Writing and signature over the <i>postmortem</i> report	Exhibit-5
8.	Entry in the <i>malkhana</i> register of January-2012 relating to eight spent cartridges	Exhibit-6
9.	Signature of Kapileshwar Kumar on the seizure list	Exhibit-7
10.	Signature of Shashi Kumar on the seizure list	Exhibit-7/1
11.	Carbon copy of the <i>postmortem</i> report	Exhibit-8
12.	Signature of Shashi Bhushan Kumar (PW-11) on the <i>postmortem</i> report	Exhibit-8/1
13.	<i>Postmortem</i> report	Exhibit-9

7. After closure of the prosecution's evidence, the



persons put on trial were examined under Section 313 of the CrPC so as to afford them an opportunity to explain the incriminating circumstances emerging against them based on the evidence of the prosecution's witnesses. The appellant and other accused persons denied the incriminating circumstances against them as explained by the trial court and reiterated their plea of innocence.

8. The defence brought on record by way of Exhibit-A, an election certificate issued by the Returning Officer, Tariyani (Sheohar) to demonstrate that he was elected as a member of Gram Panchayat.

9. The trial court, after having appreciated the evidence adduced at the trial reached a conclusion that the prosecution could not establish the charge of conspiracy against co-accused Jaggarnath Sah and Kanti Devi and accordingly, acquitted them of the offences punishable under Sections 302 read with Section 120B of the Indian Penal Code. As regards, this appellant and co-accused Lalu Sahni, the trial court has held by the impugned judgment and order that the prosecution could establish against them beyond all reasonable doubts the charge of commission of offences punishable under Sections 302 read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act



10. After having convicted them of the aforesaid offences, the trial court has sentenced them to imprisonment and fine as noted above. It is worthwhile mentioning that Lalu Sahni had preferred an appeal against the same impugned judgment and order of the trial court, which is under challenge in the present appeal, giving rise to Criminal Appeal (DB) No. 1495 of 2017. The said appeal, however, abated as he died during its pendency. In the aforesaid background, the appeal of the present sole appellant has been heard by us.

11. Mr. Mahendra Thakur learned counsel appearing on behalf of the appellant has submitted that the prosecution's case has not been supported by any independent witness and conviction of the appellant based on the depositions of PW-2 and PW-3 is not at all justifiable for the reason that though they have claimed to be the eye witnesses they do not appear to be so. As per their own evidence, they are chance witnesses. Further, they are highly interested witnesses on whose deposition only it may not be safe for this court to uphold the finding of conviction recorded by the trial court. He has further submitted that the prosecution's case as developed during the course of trial is materially different from the foremost version of the occurrence as disclosed in the FIR. Further there are



inconsistencies in the evidence of PWs 2 and 3 who are not reliable witnesses. Referring to the evidence of PW-1, he submits that at the time of occurrence it was already dark and therefore, he could not identify the miscreants. PWs 2 and 3 who have supported the prosecution's case have not disclosed in their deposition any source of identification. This is an additional ground why their depositions are not reliable.

12. Ms. Shashi Bala Verma, learned Additional Public Prosecutor appearing on behalf of the State on the other hand has defended the finding recorded by the trial court and has argued that only because PWs 2 and 3 are mother and father of the deceased, their depositions cannot be discredited on the ground that they are interested witnesses. They are rather best witnesses to the occurrence who had seen it taking place and there is no reason why they would implicate the appellant and others falsely in a case relating to killing of their son having effect of protecting the main culprit. She submits that PWs 2 and 3 are eye witnesses who are reliable and conviction based on their deposition does not require any interference.

13. We have perused the impugned judgment of conviction recorded by the trial court as well as the lower court's records and have given our thoughtful consideration to



the rival submission advanced on behalf of the parties.

14. As has been mentioned hereinabove, PWs 1, 4, 7, 8 and 9 have been declared hostile having not supported the prosecution's case. The occurrence, according to the prosecution's case, had taken place near the house of PW-1. The *fardbeyan* was recorded at the house of PW-1. From the inquest report, it appears that the dead body was found lying in front of the house of PW-1 in an open space near a *kiosk (gumti)*. PW-1 has not denied in his deposition presence of the deceased with one Rajesh near his *kiosk*. He did support the prosecution's case that three persons on a red motorcycle came, one out of whom shot at the deceased consequent upon which he died. He, however, deposed in no uncertain terms that he could not identify the miscreants because of the darkness. From his evidence, it appears that the occurrence has taken place at about 6:15 pm. He also deposed that after the offenders had left the place of occurrence she had raised *hulla* whereafter the villagers had come. According to PW-1, thus, there was no person present at the place of occurrence when the occurrence had taken place.

15. It is worthwhile mentioning that in the FIR of PW-3 there is no mention of the fact that PW-2 was also present at the place of occurrence when the occurrence had taken place. PW-2,



however, deposed that the deceased had left his house at 7:00 in the morning and had not returned till 5:00 in the evening. This information, she had gone to give to her husband (PW-3). While returning back to house she had seen this appellant, co-accused Sukhari Sahni and Lalu Sahni going towards the *gumti*. Out of suspicion she turned towards the *gumti* and saw that co-accused Sukhari Sahni had caught Sunil by his hair and Rajesh by his hand and this appellant shot at the deceased. The deceased attempted to escape to save his life whereafter co-accused Sukhari Sahni, this appellant, Lalu and Rajesh, caught him and fired multiple shots. PW-3 rushed to save the deceased and he laid his body over the body of the deceased. PW-2 also lay on the body of the deceased, whereafter the accused persons including this appellant fled away.

16. It is worthwhile mentioning that there is manifest contradiction in the prosecution's case as disclosed in the *fardbeyan* of the informant and that deposed by PW-2 at the trial. PW-2 was not in picture when the occurrence had taken place according to the narration in the *fardbeyan* whereas PW-2 deposed at the trial that not only that she had witnessed the occurrence, she had attempted to save the life of the deceased by laying herself on the body of the deceased. Similarly, PW-3, the



father of the deceased and the informant deposed that after he was informed by PW-2 that the deceased had not returned after he having left the house at 5:00 pm she had asked his wife to go back to the house and that he had followed his wife. Further, from the evidence of PW-3, it appears that PW-2 was not there at the place of occurrence when the occurrence had taken place. As a matter of fact, PW-3 has not supported the prosecution's case as narrated by PW-2 in her deposition about her presence at the place of occurrence. Whereas PW-3 deposed that after the deceased had sustained injuries, PW-3 had attempted to lift him without any reference to the presence of PW-2. PW-2 in her evidence, on the other hand deposed that she had lied down with her husband on the body of the deceased.

17. On a close reading of the evidence of PW-2 and 3 we are of the considered view that PW-2 cannot be said to be an eye witness to the occurrence. PW-2 does not appear to be a reliable witness. The evidence of PW-3 that he had seen the occurrence taking place also does not appear to be reliable for the reason that PW-1 clearly deposed at the trial that because of darkness the miscreants could not be identified. It had become dark when the occurrence had taken place. The prosecution has not proved any source of identification.



18. Taking a holistic view of the matter and considering the evidence of the prosecution's witnesses in totality, we are of the considered view that the prosecution cannot be said to have proved the charge against the appellant beyond all reasonable doubts.

19. It is true that *postmortem* examination corroborates the prosecution case of the deceased having died of multiple injuries. Following *antemortem* injuries have been found on the person of the deceased:-

"I. Lacerated wound over left side of chest below left eye size about 1"X 1/2" cavity deep oval in shape charged and inverted margin (wound of entry).

II. Lacerated wound right of chest size about 1/2" diameter oval shaped cavity deep, charged margin inverted (wound of entry).

III. Lacerated wound oval shaped everted margin left side of the back size about 1" diameter cavity deep (wound of exit).

IV. Oval shaped lacerated wound inverted shaped 3 (three) in number over abdomen size about 1/2" diameter and cavity deep (wound of entry)

V. Oval shaped lacerated wound everted margin 3 in number over back size 1" diameter cavity deep (wound of exit)

VI. Oval shaped lacerated wound inverted and charged margin over left side of abdomen size about 1/2" diameter cavity deep (wound of entry).

VII. Oval shaped lacerated wound everted margin right side of abdomen above waist size about 1" diameter and cavity deep (wound of exit).



VIII. Oval shaped lacerated wound charged and inverted margin over Rt. Arm size 1" diameter muscle deep (wound of entry)."

20. From the evidence of the investigating officer, it transpires that he had received the information about the occurrence telephonically. The nature of information which he had received and the source from which the information was received has not been brought on record by way of evidence which amounts to suppression of the foremost version of the prosecution's case. The case of prosecution thus becomes doubtful.

21. We, therefore, do not consider it safe to uphold the conviction recorded by the trial court. The appellant deserve to be acquitted by giving him benefit of doubt in the facts and circumstances as noted above.

22. Accordingly, the impugned judgment of conviction dated 16.10.2017 and order of sentence dated 17.10.2017 passed by the learned passed by the learned 1st Additional Sessions Judge, Sheohar in connection with Sessions Trial No. 28 of 2013/ 70 of 2013, are hereby set aside.

23. This appeal is allowed.

24. Since the appellant is in custody, let him be released from jail forthwith, if not required in any other case



25. Let this order be communicated to the court below to consider award of compensation to the victim within the meaning of section 2(wa) of the CrPC in accordance with the victim’s compensation scheme under Section 357A thereof.

(Chakradhari Sharan Singh, J)

I agree.

Jitendra Kumar, J.

(Jitendra Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.11.2023
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