

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.410 of 2023

Arising Out of PS. Case No.-77 Year-2020 Thana- SONBERSHA RAJ District- Saharsa

Azad Kumar, Son of Late Sikandar Mandal, Resident of Village- Kanuwa,
Ward No.12, P.S.- Sonvarsa, District- Saharsa

... .. Appellant

Versus

1. The State of Bihar
 2. Upendra Mandal, Son of Late Kailash Mandal, Resident of Village-
Kanuwa, Ward No.12, P.S.- Sonbarsa Raj , District- Saharsa
- Respondents

Appearance :

For the Appellant/s	:	Mr. Chandra Mohan Jha, Advocate
For the State	:	Mr. Bipin Kumar, Addl PP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 20-02-2024

Heard learned counsel for the appellant and Mr. Bipin
Kumar, learned Additional PP for the State.

2. This appeal has been preferred for setting aside the judgment dated 23.01.2023 passed by learned Sessions Judge, Saharsa in Sessions Trial No. 2 of 2022 arising out of Sonbarsa Raj P.S. Case No. 77 of 2020 registered for the offences under Sections 147, 148, 149, 323, 302, 504 of the Indian Penal Code and Section 27 of the Arms Act whereby and whereunder the Respondent No. 2 has been acquitted from the charges under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act.

Brief Facts of the Case

3. As per the prosecution story, on 21.05.2020 at about 03:00 A.M. in the morning, the informant heard the sound of screaming of his mother and sound of gun shot from his father's room. When he went to his father's room, he saw that all the FIR named accused persons including this appellant armed with pistol, *bhala*, *farsa*, *lathi* were fleeing from there. When the informant entered into the room, he saw the dead body of his father lying on the bed. He found two bullet injuries on the head and chest of his father. The informant alleges that he had seen pistol in the hands of Upendra Mandal.

4. On the basis of the *fardebyan* of the son of the deceased, Sonbarsa Raj P.S. Case No. 77 of 2020 dated 21.05.2020 was registered under Sections 147, 148, 149, 323, 304 and 504 of the Indian Penal Code (in short 'IPC') read with Section 27 of the Arms Act.

5. After investigation, police submitted a chargesheet bearing no. 102 of 2020 dated 31.08.2020 against accused Upendra Mandal (Respondent No. 2). Again, a chargesheet bearing no. 44 of 2021 dated 31.08.2021 was submitted against accused Pawan Mandal showing him absconder under Sections 302/34 IPC and Section 27 of the Arms Act. The remaining named accused persons were not sent up for trial.

6. The learned Magistrate took cognizance of the offences under Sections 302/34 IPC and Section 27 of the Arms Act. The case record of Pawan Mandal was separated and the records of Upendra Mandal (Respondent No. 2) was committed to the court of Sessions where charges were framed against him under Sections 302/34 IPC and Section 27 of the Arms Act on 25.01.2022. The charges were explained to the Respondent No. 2 who denied the charges and claimed to be tried.

7. The prosecution examined altogether seven witnesses. PW-1 is one Soni Devi who is wife of the elder brother of the deceased, PW-2 Azad Kumar is the son of the deceased, PW-3 Vinod Kumar is the first Investigation Officer, PW-4 Dr. S.K. Azad is the doctor who conducted autopsy on the dead body, PW-5 Akmal Hussain is the second Investigation Officer of the case, PW-6 Rajendra Mandal is one of the brothers of the deceased and PW-7 Buddhni Devi is the wife of the deceased. The defense did not examine any witness.

8. On behalf of the prosecution, the signature of Azad Kumar (PW-2) on his *fardebyan* was marked as Exhibit '1', postmortem report has been marked as Exhibit 'P-2' and the endorsement on fardebyan has been marked as Exhibit 'P-3/P5'.

9. The statement of the accused was recorded under Section 313 Cr.P.C. on 10.11.2022. The defense of the accused is a complete denial of the occurrence and false implication in this case.

10. The learned trial court has examined the evidences of the prosecution witnesses and came to a conclusion that the prosecution has failed to establish the guilt of the accused beyond all reasonable doubts. Accordingly, on the basis of the available evidences, the learned trial court held that it would not be justified to convict the accused for the charges leveled against him.

Submissions on behalf of the Appellant

11. Mr. Chandra Mohan Jha, learned counsel for the appellant has assailed the impugned judgment. It is his submission that the learned trial court has failed to appreciate the evidence of PW-1, PW-2, PW-6 and PW-7 who have categorically supported the prosecution case. It is submitted that they are trustworthy witnesses.

12. Learned counsel further submits that even though PW-7 is an eye witness to the occurrence but her statement was not recorded by the Investigating Officer and this is a fault on the part of the investigation which cannot prove fatal in this case and the accused cannot be allowed to come out of the prosecution because of faulty investigation. Learned counsel, therefore, submits that the learned trial court has failed to appreciate and analyze the evidences which were on the record and on mere contradiction of the

witnesses, the learned trial court acquitted Upendra Mandal (Respondent No. 2).

Submissions on behalf of the State

13. Mr. Bipin Kumar, learned Additional PP for the State has opposed the appeal. It is submitted that the learned trial court has categorically discussed the evidences of the prosecution witnesses. It has been found that Azad Kumar (PW-2) has stated that he heard the cry of his mother at about 03:00 A.M. (morning) and then he heard the sound of firing whereafter he went to his father and found that at the *baramdah* of his father, Upendra Mandal, Meera Devi, Arun Mahto, Varun Mahto and Manoj Mahto were present. Upendra Mandal was having a pistol in his hand whereas Arun Mandal, Varun Mandal and Manoj Mandal were carrying *lathi*. He went inside the room of his father and from there he saw that about ten persons were standing in front of the door with *lathi*, he had telephoned his uncle Rajendra Mandal, Rajendra Mandal came then PW-2 informed him that the accused persons, namely, Upendra Mandal, Meera Devi, Arun Mahto, Varun Mahto and Manoj Mahto had together killed his father. Thereafter, he gave a telephonic call to the police, police came and the *fardebyan* of PW-2 was recorded.

14. Learned Additional PP submits that in this case, the *fardebyan* of the informant (PW-2) has been recorded on

21.05.2020 at 14:30 hours i.e. after about eleven hours of the occurrence. PW-2 is not an eye witness and the learned trial court has found that no other prosecution witness has seen the occurrence. PW-2 has stated in paragraph '15' of his testimony that police had not recorded statement of his mother because she was in nervous condition. He has further stated that when his mother gained consciousness then he did not get her statement recorded before police. It is submitted that PW-7 is not a chargesheet witness, though she claims that she was sleeping with the deceased.

15. Learned Additional PP has further pointed out that all other prosecution witnesses are hearsay witness. The Investigating Officer (PW-3) has contradicted PW-2 in saying that he had informed his uncle Rajendra Mandal over telephone. In paragraph '10' of his cross-examination, PW-3 has stated that he had not recorded the statement of any independent witness. In paragraph '6' of his deposition, PW-3 has stated that he had not recorded the statement of Budhni Devi (PW-7).

16. Learned Additional PP further submits that from the deposition of PW-2, it would appear that his father had partitioned with his brothers 10-12 years back and PW-2 or any other prosecution witness does not talk of any land dispute or immediate cause behind the occurrence. It is, thus, submitted that the learned

trial court has not committed any error in appreciating the prosecution witnesses.

Consideration

17. We have heard learned counsel for the appellant and learned Additional PP for the State. Pursuant to the order of this Court passed on 12.01.2024, learned counsel has produced before us a certified copy of the prosecution evidences and the exhibits which we have perused.

18. On going through the prosecution evidences, we are in agreement with the learned trial court as regards the materials which have come on the record. In this case, PW-1 who is the wife of Rajendra Mandal and *Bhabhi* of the deceased has been declared hostile. She is not an eye witness. PW-2 is son of the deceased who is also not an eye witness. This Court finds that this witness has not talked about any prior enmity between his uncle and his father. Upendra Mandal (Respondent No. 2) is the full brother of the deceased. The deceased and his brothers had partitioned 10-12 years back and the witnesses do not talk about any land dispute. PW-2 has admitted in paragraph '6' that his mother is not a chargesheet witness. He has himself stated that his mother was nervous so he had not made her a witness.

19. In course of trial, his mother has deposed as PW-7 and she has claimed in her examination-in-chief that she was

sleeping and got awaken on hearing the sound of firing to see that the assailant was fleeing away. She got to know that her husband was killed by Upendra Mandal (Respondent No. 2). From her examination-in-chief also, it does not appear that she had seen the assailant.

20. We, therefore, find that neither PW-2 nor PW-7 is an eye witness to the occurrence. PW-6 is Rajendra Mandal who is one of the brothers of the deceased and he has also been declared hostile. In such circumstance, the learned trial court has rightly reached to a conclusion that the prosecution has failed to prove the guilt of Respondent No. 2 beyond all reasonable doubts.

21. We find no error in the impugned judgment. This appeal is dismissed.

22. Let the certified copies of the deposition and the exhibits be kept on the record.

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

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CAV DATE	
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