

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.383 of 2014

Arising Out of PS. Case No.-92 Year-2011 Thana- ARA NAGAR District- Bhojpur

1. Ravi Kumar and Ors. S/o - Lalbaboo Prasad
2. Md. Mimtiaz S/o - Md. Sobarati Both Are Resident of Muhalla - Tari, P.S. - Ara Town, Distt. - Bhojpur.
3. Md. Saheb Alam @ Banti S/o - Md. Samim Resident of Muhalla - Nasriganj, P.S. - Ara Town, Distt. - Bhojpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 508 of 2014

Arising Out of PS. Case No.- Year-1111 Thana- District-

Belal Miyan Son of Nijamuddin Resident of Abarpur P.S. Ara Town, District - Bhojpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 609 of 2014

Arising Out of PS. Case No.-92 Year-2011 Thana- ARA NAGAR District- Bhojpur

Ajay Ram @ Ajay Kumar Kahar @ Ajay Kahar, S/o Ram Bachan Ram, Resident of Muhalla – Magahiya Toli, P.S. -Ara Town, District- Bhojpur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 383 of 2014)

For the Appellant/s : Mr. Ravindra Kumar, Advocate

For the Respondent/s : Mr. A.Sharma, APP

(In CRIMINAL APPEAL (DB) No. 508 of 2014)

For the Appellant/s : Mr. Ravindra Kumar, Advocate

For the Respondent/s : Mr. A.Sharma, APP



(In CRIMINAL APPEAL (DB) No. 609 of 2014)

For the Appellant/s : Mr. Rajani Ranjan Pd. Singh

For the Respondent/s : Mr. A. Sharma, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 17-02-2024

All the three appeals have been taken up together
and are being disposed of by this common judgment.

2. We have heard Mr. Ravindra Kumar, learned Advocate for the appellants/Ravi Kumar; Md. Imtiaz and Md. Saheb Alam @ Sahab @ Banti in Cr. App(DB) No. 383 of 2014; and appellant Belal Miyan in Cr. App(DB) No. 508 of 2014; and Mr. Rajni Ranjan Prasad Singh for appellant Ajay Ram @ Ajay Kumar Kahar @ Ajay Kahar in Cr. App(DB) No. 609 of 2014.

3. Mr. Abhimanyu Sharma, learned APP has appeared in all the three appeals on behalf of the State.

4. Appellants/Ravi Kumar; Md. Imtiaz and Saheb Alam have been convicted under Section 302/120B of the IPC, whereas appellants Belal Miyan and Ajay Ram @ Ajay Kumar Kahar @ Ajay Kahar have been convicted under



Sections 302/120B of the IPC as also Section 27 of the Arms Act. The judgment has been awarded in Sessions Trial No. 222 of 2011, arising out of Ara Town P.S. Case No. 92 of 2011 by the learned Adhoc Additional Sessions Judge-I, Bhojpur at Ara on 24.04.2014.

5. By order dated 30.04.2014, all the appellants have been sentenced to undergo imprisonment for life, to pay a fine of Rs. 50,000/- each and in default of payment of fine, to further suffer S.I. for six months for the offence under Sections 302/120B of the IPC. Additionally, appellants Belal Miyan and Ajay Ram @ Ajay Kumar Kahar @ Ajay Kahar have been sentenced to undergo R.I. for three years, to pay a fine of Rs. 10,000/- and in default of payment of fine, to further suffer S.I. for three months for the offence under Section 27 of the Arms Act.

6. The sentences have been ordered to run concurrently. The fine amount has been directed to be paid to the family of the deceased.



7. The FIR has been lodged by Md. Samim Khan (P.W. 8), who is the own brother of the deceased, on 31.03.2011 at Pirbahore Police Station. He has alleged that in the night before i.e. on 30.03.2011, his brother/deceased/Sheru Khan was being shouted at by appellant/Md. Imtiaz, perhaps over the issue of refund of some money. Later, on the call of aforementioned Md. Imtiaz, the other appellants arrived. Appellants/Belal Miyan and Ajay Ram @ Ajay Kumar Kahar @ Ajay Kahar are then said to have fired from their weapons, hitting the deceased. The deceased fell down injured. He was taken to the local hospital at Ara, from where he was referred to Patna Medical College Hospital, Patna, for better treatment. However, the deceased succumbed to the injuries at P.M.C.H., when the FIR was registered at Pirbahore Police Station under which territorial jurisdiction, P.M.C.H. is situated.

8. Later, the FIR was transferred to Ara Town Police Station, where it was registered as Ara Town P.S.



Case No. 92 of 2011 dated 31.03.2011 under Sections 302, 120B/34 of the IPC and Section 27 of the Arms Act.

9. The police after investigation submitted charge sheet against all the appellants, who were put on trial.

10. The learned Trial Court, after having examined ten witnesses on behalf of the prosecution and none on behalf of the defence, convicted and sentenced the appellants as aforesaid.

11. The learned Advocates for the appellants have urged that the entire case is false in as much as out of ten witnesses examined, only P.Ws. 3 and 4, who are the own brothers of the deceased, have supported the case whereas rest others, most of whom are other brothers of the deceased and the informant have been declared hostile.

12. The other argument raised on behalf of the appellants is that even Kamin Khan @ Pinku and Md. Salim (P.Ws. 3 and 4) who claimed to have seen the occurrence, cannot be believed as a deeper scrutiny of



their depositions would reveal that they were either not present at the time of occurrence or had arrived later and therefore they might not have seen as to who had fired at the deceased.

13. Even the investigation of this case, learned Advocates have argued, is very lopsided and only the oral statement of the witnesses were believed and the investigation proceeded only on those lines without any objective findings.

14. Lastly, it has been submitted that even the post-mortem report/medical testimony is not in sync with the ocular version of the deceased having been shot twice. There is only one wound of entry and the bullet appears to have stuck in the body, thereby there being no other wound of exit as well. The trajectory of the bullet was upwards, suggesting that somebody had fired at the deceased from a lower level. Even the informant, who is the own brother of the deceased, has been declared hostile.



15. On these grounds, it has been urged that the conviction and sentence of the appellants is highly unmerited.

16. As opposed to the aforementioned contentions, Mr. Abhimanyu Sharma, learned APP has submitted that merely because some of the witnesses have chosen to discard the prosecution case, the case cannot be thrown aside. The deposition of even the hostile witnesses can be perused and from which, it can clearly be gleaned that the occurrence had taken place in the night of 30.03.2011, when Md. Imtiaz had fought with the deceased and on his orders, the other appellants had arrived and two of them viz. Belal and Ajay Ram @ Ajay Kumar Kahar @ Ajay Kahar had fired at the deceased.

17. There could be some discrepancy in the statements by the aforementioned witnesses but the fact remains, it has been argued, that on the exhortation of Md. Imtiaz, the deceased was shot at by Belal and Ajay Ram.



18. Apart from this, it has been urged that the witnesses had heard two gun-shots and therefore, there was an allegation that two persons had shot at the deceased. However, such statements have been clarified by the makers/P.Ws. who deposed at the trial that they had heard two shots being fired but did not notice whether the second shot had hit the deceased.

19. Rejecting the prosecution case in its entirety on this score, it has been urged on behalf of the learned APP, is not in consonance with the mandate of law. In order to arrive at the truth, the facts collected through the mouth of witnesses have to be scrutinized in its proper perspective.

20. It has further been argued that the very fact that one of the appellants viz. Md. Imtiaz was held captive by the villagers, goes a long way to prove the prosecution case that it was at the instance of Md. Imtiaz that the other appellants had come to the place of occurrence and had shot at the deceased.



21. A closer look at the FIR would reveal that it was lodged at about 11:00 A.M. on 31.03.2011 at Pirbahore Police Station. The FIR was scribed by the ASI of Pirbahore Police Station viz. M.M. Ram, who has not been examined.

22. The salience of his non-examination results from there being no inquest report on record. After recording the FIR, the inquest ought to have been prepared.

23. It appears from the records that shortly after recording the FIR, the same was transferred to Ara Town Police Station, for the reason of the cause of occurrence being within the territorial jurisdiction of the Ara Town Police Station. Then also, before subjecting the dead body to post-mortem examination, inquest report should have been prepared. The importance of inquest does not only lie in getting the first impression about the cause of death but also about the place where the occurrence has taken place



and other incidental factors which would be essential links in arriving at the truth.

24. That there is no inquest report on record has made us look through the facts in some greater detail.

25. P.W. 8/the informant, has admitted Md. Imtiaz was held back by the villagers. If that were so, the persons who had held him back were necessarily to be brought to the witness-stand. In fact, none of them have been produced as prosecution witness. That apart, there no arrest-memo on record which would show that the appellant/Md. Imtiaz was handed over to the police by the villagers. The story, therefore, of Md. Imtiaz being kept captive could not be proved. There could be a possibility of his having been arrested by the police on the asking of the informant and others.

26. The occurrence is said to have taken place in front of the house of the deceased as well as the informant. However, the investigation revealed otherwise. The occurrence took place somewhere near the house of



Satish Prasad @ Munna (P.W. 2), who has not supported the prosecution case and has been declared hostile.

27. The Investigating Officer of this case, viz. P.W. 9 claims to have received information about the occurrence in the night of 30.03.2011 only, for which Station Diary Entry No. 901 of 2011 was recorded and investigation had begun. Unfortunately, the afore-noted station diary entry is not on record. That would have been the surest test of confirming that the appellants were the assailants of the deceased. As by that time, the information would have been received in the local police station, which is only at a short distance from the P.O. about the names of the assailants. The investigator came to the village on the night of the occurrence but did not find any incriminating materials near the place of occurrence; not even a trace of blood. No statement appears to have been recorded in the night of 30.03.2011.

28. The contention of the appellant before the Trial Court that he learnt about the death of the deceased



only on receiving the FIR recorded at Pirbahore Police Station on 31.03.2011 is also worth while to mention. If this were so, then perhaps it was not known till the recording of the FIR that on the hortatory calls of Md. Imtiaz, the other appellants had come to the P.O. and two out of them, viz., Belal and Ajay had fired at him from their weapons.

29. In this context, we have examined the deposition of other witnesses, most of whom are the own brothers of the deceased. One independent person viz., Md. Ali (P.W. 1) only claims to have learnt later that the deceased had been killed. As noted above, he has been declared hostile.

30. Similarly Satish Prasad @ Munna (P.W. 2), who is a local *Panchayat* functionary and in front of whose house, the occurrence has taken place, also has expressed complete ignorance about the manner in which the occurrence is said to have been committed.



31. The only support to the prosecution version has come through the mouths of two of the brothers of the deceased, viz. Kamin Khan @ Pinku and Salim Khan who have been examined as P.Ws. 3 and 4 respectively.

32. P.W. 3 has, in his examination-in-chief, claimed to have come to the P.O. on hearing the commotion and was also a witness to Md. Imtiaz being held captive by the villagers. He also claims to have seen the deceased being shot at. However, such tall claims do not appear to be correct for the reason that he again asserted to have taken the deceased, while he was still alive, to the local hospital and thereafter to the P.M.C.H. along with one Guddu (P.W. 7) on a motorcycle. His clothes were also drenched with blood because the victim was made to sit in between P.W. 3 and P.W. 7 on a motorcycle. However, the blood drenched clothes were never shown to the I.O. nor was it ever demanded from him. At Ara Hospital, P.W. 3 has claimed that police officers were present. No statement being made at that



place clearly signifies that till such time that the victim/deceased was referred to P.M.C.H. for better treatment, there was no idea about the assailants; or else the names would have been told to the police officers.

33. According to his deposition, he had remained at the P.O. for about one and a half hours which means that such time would be pre and post incident. However, during that time, nobody had informed the police about the occurrence nor had the police arrived, even though the police station is at a stone-throw distance. Once it was found that the deceased had received only one gunshot, P.W. 3 tried to darn his version by saying that he had heard two shots being fired but did not see whose shot actually hit the deceased and whether the second shot had hit the deceased. With respect to the source of light, there is no statement on record except the bald assertion of P.W. 3 that he had seen the occurrence in the solar light which was burning at the place of occurrence.



34. He has admitted that the wife of the deceased had earlier filed a case of torture for non-fulfillment of dowry against him and other brothers of the deceased but completely denied the suggestion that the deceased had been killed at the hands of his own brothers for appropriating his property and ousting his estranged wife from the family property. There was no prior or existing enmity of the deceased with anyone of the appellants. All the appellants are persons of the same village who had been residing in the neighborhood.

35. The reason for our reluctance to place implicit reliance on his deposition is that according to him, the other witnesses who have not supported the prosecution version and claimed to have reached the P.O. only after the incident, are stated to have come to the P.O. before P.W. 3. P.W. 3 was also given the suggestion that the deceased dabbled in supply and purchase of illegal weapons and the dispute with Imtiaz was only because of that.



36. In any view of the matter, it appears that the claim of P.W. 3 of having seen the occurrence does not appear to be correct.

37. Similarly, Salim Khan, another brother of the deceased (P.W. 4) has stated in his cross-examination that when there was a hulla at the P.O., he was in the market. He had no idea whether other persons had reached the P.O. before or after. When he came back from the market, the time was almost 09:00 P.M. Around 12 to 14 persons had assembled in the street where the occurrence had taken place. He saw that the deceased had fallen on the ground. The deceased was completely motionless. Thereafter, the deceased was taken to the hospital. He has clarified in Para-22 of his deposition that he does not know as to who had fired at the deceased nor was he told by anyone, who had assembled at the P.O. shortly after the incident, about the name of the assailants.

38. Rest all witnesses have given a complete go-by to the prosecution version.



39. The body was subjected to the post-mortem examination at about 12:30 on 31.03.2011. As noted above, the Doctor (P.W. 10) had found only one gun-shot. He had extracted one bullet from the body.

40. We have also noted that the *rigor mortis* was present in the body and had no till the time of post-mortem examination, vanished. We are conscious of the fact that the occurrence took place sometimes in the end of the month of October. Even then, with the doctor having given a long margin of the time of death *i.e.* within 6 to 24 hours of the post-mortem examination, the time when the deceased was shot at also does not get proved to the hilt.

41. The trajectory of the bullet was upwards. This appears to be slightly inexplicable, especially in the context of the deposition of P.Ws. 3 and 4 regarding the manner of occurrence.

42. The arrest-memo of none of the other appellants are on record.



43. The weapon of assault was neither found nor attempted to be found as would appear from the deposition of the Investigating Officer.

44. Lastly, we have found huge crevasses in the prosecution story on going through the deposition of the investigator (P.W. 9).

45. The information about the occurrence was received by him in the police station on 30.03.2011 at about 10 P.M. That was the first information to the police, after which the investigation had started. Not bringing it on record or not registering the details of the names of the assailants assumes significance.

46. In the same night, the investigator had visited the village and had recorded the statements of some of the witnesses. If this were so, the name of Belal and Ajay would have been agog by them in the entire village, especially when one of the appellants viz. Md. Imtiaz was held captive. Even before him, most of the witnesses, who



have been declared hostile, had stated about their having arrived at the P.O. after the deceased had been shot.

47. These factors lead us to the only opinion that the wedges left in the prosecution case are too wide to be covered up for the prosecution case to have been proved beyond all reasonable doubts.

48. For the aforementioned reasons, we do not get persuaded to put our imprimatur on the opinion rendered by the Trial Court regarding the guilt of the appellants.

49. Per force, we set aside the judgment and order of conviction and sentence and acquit the appellants of their charges, giving them the benefit of doubt.

50. All the appellants are on bail except appellant/Ajay Ram.

51. Ajay Ram @ Ajay Kumar Kahar @ Ajay Kahar [Cr. App(DB) No. 609 of 2014] is directed to be released from jail forthwith, if not wanted in any other case.

52. The other appellants are discharged of their liabilities under their bail bonds.



53. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

54. The records of this case be returned to the Trial Court forthwith.

55. Interlocutory application/s, if any, also stand disposed off accordingly.

(Ashutosh Kumar, J)

(A. Abhishek Reddy, J)

krishna/Gaurav

AFR/NAFR	NAFR
CAV DATE	NA
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