

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (DB) No.999 of 2015**

Arising Out of PS. Case No.-32 Year-2009 Thana- KACCHWA District- Rohtas

Lal Mohar Sah @ Basawan Sah Son of Ram Gobind Sah, resident of Village  
Dhodhan Dih, P.S. Kachhwa, District Rohtas.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

**Appearance :**

|                      |   |                                                                            |
|----------------------|---|----------------------------------------------------------------------------|
| For the Appellant/s  | : | Mr. Shankar Kumar,<br>Mr. Shashi Shekhar &<br>Mr. Sada Nand Roy, Advocates |
| For the Respondent/s | : | Mr. Ajay Mishra, APP                                                       |

**CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA**  
**and**  
**HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA**  
**C.A.V. JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA)**

**Date : 12-01-2024**

Heard learned counsel for the appellant and  
learned Addl. P.P. appearing for the State.

2. This appeal is directed against the judgment of  
conviction dated 31.08.2015 and order of sentence 04.09.2015  
passed by the Additional Sessions Judge, VIII, Rohtas at  
Sasaram in Sessions Trial No. 373 of 2009, whereby and  
whereunder the appellant has been convicted for the offence  
punishable under section 302 of the Indian Penal Code and  
sentenced to undergo imprisonment for life with fine of Rs.  
10,000/- and in default of payment of fine, the appellant has  
been directed to undergo further simple imprisonment for 1 year.



The appellant has been further convicted for the offence punishable under section 27 of the Arms Act and has been sentenced to undergo rigorous imprisonment for 7 years with fine of Rs. 5000/- and in default of payment of fine, he has been directed to undergo simple imprisonment for 6 months. Both the sentences have been directed to run concurrently.

3. The prosecution case, in brief, is that one Hira Lal Sah (P.W.4) gave his statement stating therein that his elder brother Lal Mohar Sah (appellant) was shouting at the *Darwaja* that Dilip Kumar son of the informant stolen Rs. 100/- from his pocket and thereafter he abused. In the meantime, his mother Sukeshwar Kuer told that he will return the aforesaid amount. The informant came out of his house and saw that his brother abusing and then inquired from his mother who disclosed about the same and thereafter, the informant gave Rs. 100/- to his brother. Further, it is stated that in the meantime, son of the appellant namely Sanjay Sah came and assaulted his mother and when informant came for rescue her then appellant fired which hit on the head of Dilip Kumar from where he was taken to hospital where his treatment was going on.

4. On the basis of the aforesaid statement, Kachhawan P.S. Case No. 32 of 2009 dated 08.06.2009 was



registered under Sections 323, 324, 307, 504, 379 of the Indian Penal Code and 27 of the Arms Act. Later on, after death of deceased, Section 302 I.P.C. was added on 16.06.2009.

5. The police after investigation, submitted charge-sheet against the appellant on 05.11.2009. After cognizance, the case was committed to the court of Sessions wherein charges were framed on 01.09.2010.

6. During trial, the prosecution examined altogether 7 witnesses. P.W. 1 Sukanti Devi @ Asha Devi, P.W. 2 Baidyanath Sah, P.W. 3 Sukeshwasr Kuer, P.W. 4 Hira Lal Sah (informant), P.W. 5 Jawala Singh, P.W. 6 Ramesh Jha (Investigating Officer) and P.W. 7 Dr. Rajendra Prasad.

7. In order to establish the charge, the prosecution has examined following documents as Exhibits:-

|           |                                              |
|-----------|----------------------------------------------|
| Exhibit-1 | Signature of Hiralal Sah on fardbeyan        |
| Exhibit-2 | Signature of Jawala Singh on Inquest Report. |
| Exhibit-3 | Formal F.I.R.                                |
| Exhibit-4 | Post-Mortem Report                           |

8. The statement of the accused recorded under section 313 of the Code of Criminal Procedure is of complete denial.

9. On the basis of the aforesaid evidence, the Trial



Court has convicted the accused.

**10.** The judgment of the Trial Court has been assailed on the ground that it is the specific case of the prosecution that the death took place due to firearm injury, but the doctor did not find any firearm injury on the body of the deceased rather as per the opinion of the doctor, the death has been caused due to the injury sustained by hard and blunt weapon. There is no motive of the murder. All the witnesses belong to the same family, therefore, it can be said that they are interested witnesses and there are many contradictions as well. Alternatively, it was also said that even if it is considered that the crime has been committed, it was the result of a sudden fight between two brothers and hence, instead of under Section 302 of the Indian Penal Code the punishment should have been given under Section 304 of the Indian Penal Code. A technical ground was also shown that the First Information Report of the incident dated 06.06.2009 is registered on 08.06.2006 and it reaches the the Court of C.J.M. on 11.06.2009, which casts a shadow of doubt on the entire incident.

**11.** It was submitted on behalf of the prosecution that the judgment of conviction has been passed after considering the available evidence and there is no error in it,



hence, the appeal is not fit to be allowed.

**12.** Before reaching to any conclusion, it is necessary to examine the evidence of the witnesses.

**13.** P.W. 1 Sukanti Devi, who is the mother of the deceased, in her evidence has stated the same version as in the F.I.R. and the same need not be reiterated. Apart from this, it was also said that the bullet pierced the forehead and came out of the head and her son became unconscious. She, her husband and her mother-in-law took the deceased to the hospital by vehicle. From there they went to Dr. Ashok's clinic where he died. It was also said that there was a lot of blood spilled where the bullet hit.

**14.** The evidence of P.W. 2 Baidyanath Sah is that the informant Hira Sah came to his house and told that the accused Basawan Sah had shot his son. This witness along with the informant and the injured went to the hospital where the injured was bandaged, they came home, next day morning they went to the private clinic of the doctor, where he was admitted, underwent treatment for three days and then he died in the doctor's clinic. He also said that the deceased had also come with the informant in an injured condition, he was conscious, he talked to this witness as also with the doctor in the clinic. He got



tired due to walking so this witness carried him in his lap and took him to clinic. He also said that blood had fallen on his door too.

**15.** P.W. 3 Sukeshwar Kuer, who is the grand mother of the deceased, said that the informant and the accused are her sons, there was a fight between them, she went to intervene, fell in the scuffle and apart from this, she did not know anything else. She also said that her grandson died in the fight but she did not see the incident.

**16.** P.W. 4 Hira Lal Sah, who is the informant and father of the deceased, has repeated the same version as in the F.I.R., which need not be reiterated. He also said that the bullet was given to the Inspector but he had thrown it away.

**17.** P.W. 5 Jawala Singh has been declared hostile. He has proved his signature on the Inquest Report.

**18.** P.W. 6 Ramesh Jah, who is the Investigating Officer, in his evidence has proved the formal F.I.R. (Exhibit-3). He also proved the place of occurrence. He also stated that nothing was found at the place of occurrence which could be seized and no mark of firing was found. The occurrence is of 06.06.2009 and the injured died on 12.06.2009, but he did not record the statement of the injured in the meantime. It has been



recorded in the case diary that the cause of death of the injured was due to assault on the head by blunt weapon.

**19.** P.W. 7 Dr. Rajendra Prasad has proved the post-mortem report (Exhibit 4). He found a wound on the forehead of the deceased which was caused by hard and blunt weapon and was the cause of death. He also said that there was no fire arm injury on the body of the deceased.

**20.** After hearing both the parties and on perusal of the records, the following facts emerges :

(a) The cause of death has been said to be shooting, but the doctor did not find any bullet injury rather he is of the opinion that the injury was caused by a hard and blunt weapon.

(b) The evidence of P.W. 4 (father) and P.W. 1 (mother) is that the bullet went through the head which they handed over to the I.O. , which he threw away, but the evidence of P.W. 2 is that the deceased came to his house and went to the hospital and he talked to the witness and doctor, which does not seem to be possible that a bullet piercing the head went through the head of a 12 year old child and he keeps walking and talking.



(c) The evidence of all the witnesses is that a lot of blood was spilled at the place of occurrence, but the Investigating Officer does not find any blood. He does not find anything at the place of occurrence, which could be seized.

(d) The prosecution has examined only the doctor who conducted the postmortem of the deceased, not the two doctors, who first saw the injured, or the place where he was admitted for four days where he died, nor any medical document has been brought on record in this regard.

(e) The date of occurrence is of 06.06.2009, F.I.R. was registered on 08.06.2009 and was presented before the Magistrate on 11.06.2009.

(f) The prosecution has failed to establish any motive of the occurrence.

(g) The investigation has been carried out in a very careless manner.

**21.** For the aforesaid reasons, it can be said that the prosecution has not able to prove its case beyond every shadow of doubt and the accused/convict is entitled to be given the benefit of doubt.



22. Accordingly, the appeal is allowed. The judgment of conviction dated 31.08.2015 and order of sentence dated 04.09.2015 passed by the Additional Sessions Judge, VIII, Rohtas at Sasaram in Sessions Trial No. 373 of 2009 are set aside.

23. The appellant is acquitted of the charges levelled against him. He is directed to be released from the jail forthwith, if not wanted in any other case.

(Arvind Srivastava, J)

Sunil Dutta Mishra, J.

( Sunil Dutta Mishra, J)

mcv/-

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