

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.785 of 2018

Arising Out of PS. Case No.-33 Year-2002 Thana- KIUL RAIL P.S. District- Lakhisarai

Asharfi Bind Son of Late Karu Bind, Resident of Village- Karuna Chak, P.S.-
Halsi, District- Lakhisarai.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s	:	Mr. Sanjay Kumar, Advocate
		Mr. Ram Vinay Prasad Singh, Advocate
For the Respondent/s	:	Ms. Shashi Bala Verma, Addl.PP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 14-11-2024

Heard learned counsel for the appellant and learned
Additional Public Prosecutor for the State.

2. The appeal has been preferred for setting aside the
judgment of conviction dated 10.05.2018 (hereinafter referred to
as the ‘impugned judgment’) and the order of sentence dated
15.05.2018 (hereinafter referred to as the ‘impugned order’)
passed by learned Fast Track Court No. 1st Lakhisarai (hereinafter
referred to as the ‘learned trial court’) in Sessions Trial No. 920 of
2004 arising out of Kiul Rail P.S. Case No. 33 of 2002, G.R. Case
No. 112 of 2002.



3. By the impugned judgment, the appellant has been convicted for the offences punishable under Section 302/34 of the Indian Penal Code (in short 'IPC') and Section 27 of the Arms Act. By the impugned order, the appellant has been ordered to undergo rigorous imprisonment for life with a fine of Rs.5,000/- under Section 302/34 IPC and in default of payment of fine, he has to undergo further rigorous imprisonment for three months. He has also been ordered to undergo three years rigorous imprisonment with a fine of Rs.5,000/- under Section 27 of the Arms Act and in default of payment of fine, he has to undergo further rigorous imprisonment for three months. Both the sentences are to run concurrently.

Prosecution Case

4. The prosecution story is based on the *fardbeyan* of Raj Kumar Bind (PW-5) recorded by SI R.K. Brahmchari O/C Kiul G.R.P.S. on 28.08.2002 at 20:45 hours at the police station. In his *fardbeyan* (Exhibit '1'), he has stated that on 28.08.2002 at about 19:00 hours the informant along with his wife Batorni Devi, Son Vinod Kumar, Niece Dhukhni Kumar, Nephew Pappu Kumar and his sister (since deceased) were sitting and talking at their house which is situated at the South of Lakhisarai Railway Station premises. At about 7:30 pm, Kiran Devi, elder son-in-law of



Saithan Bind, Pramod Mandal, Ganesh Bind and two unknown persons came and Kiran Devi called for his sister Kari Devi and said “*Idhar Suno*” to which his sister replied “*Kya baat hai*” then Kiran Devi caught hold of his sister Kari Devi by her hair and elder son-in-law of Saithan Bind fired first gunshot at her from his pistol. Thereafter, Pramod Mandal fired second gunshot from his pistol and third gunshot was fired by Ganesh Bind from his pistol. Two unknown persons were also having pistols in their hands. The informant alleged that after the first gunshot his sister started running towards North and then she entered into the quarter of Prayag Yadav, liverman and died there. Thereafter, Prayag Yadav being afraid placed her dead body outside the quarter. The informant alleged that he caught hold of elder son-in-law of Saithan Bind and on hulla, people from Railway Premises Dompada came and started beating him, in the meantime, Ganesh Bind and Pramod Mandal returned and got him free. The informant alleged that four years ago, his elder brother Ramji Bind was killed by son of Saithan Bind and others for which they are in jail and his sister Kari Devi (since deceased) was informant in that case which is at its final stage. Few days back, elder son-in-law of Saithan Bind and Ganesh Bind threatened his sister Kari Devi of dire consequences if she would not compromise in the murder case



but she refused. The informant alleged that before his elder brother Ramji Bind, his younger brother Chotelal Bind was also murdered in the year 1990 in the village. The informant alleged that he had registered a case for kidnapping of his son against Kiran Devi and Pramod Devi in the Lakhisarai Police Station. He alleged that his son was found after three months. Kari Devi (since deceased) and Kiran Devi had dispute over money. Kari Devi (since deceased) was doing trading of wood and she was the bread earner of her family. The informant alleged that there was injuries on her eyebrow, above her left chest near armpit and left side of her waist.

5. On the basis of this *fardbeyan*, Kiul Rail P.S. Case No. 33 of 2002 dated 28.08.2002 was registered under Section 302/34 IPC and Section 27 of the Arms Act against son-in-law of Saithan Bind (2) Ganesh Bind (3) Pramod Mandal (4) Kiran Devi and two unknown persons. After investigation, Police submitted chargesheet bearing No. 11 of 2003 dated 10.03.2003 against Asharfi Bind who is the son-in-law of Saithan Bind, under Sections 302/34 IPC and Section 27 of the Arms Act. On the basis of this chargesheet, the learned Railway Judicial Magistrate took cognizance on 25.03.2003 of the offences under Sections 302/34 IPC and Section 27 of the Arms Act and on 29.09.2004 committed the records to the court of sessions. After receiving the records,



Sessions Case No. 920 of 2004 was registered. On 15.12.2006, charges were framed under Section 302/34 IPC and Section 27 of the Arms Act. Charges were read over and explained to the appellant in Hindi to which he pleaded not guilty and claimed to be tried.

6. In course of trial, the prosecution examined as many as eight witnesses and exhibited two documents to prove the prosecution case. The names of the prosecution witnesses and the exhibits are being shown hereunder in tabular form:-

List of Prosecution Witnesses:-

PW-1	Dharmendra Kumar
PW-2	Binod Kumar
PW-3	Batorni Devi
PW-4	Dukhni Devi
PW-5	Rajkumar Bind
PW-6	Gyan Chandra Arya
PW-7	Harbhajan Ram Saroja
PW-8	R.K. Bhramchari

List of Exhibits

Ext-1	Fardbeyan
Ext-2	Inquest Report

Findings of learned Trial Court

7. After analysing the evidences on the record the learned trial court found that the appellant Asharfi Bind was caught on the spot just after the occurrence but he was rescued



forcibly by the other accused persons. PW-2 Binod Kumar, PW-3 Batorni Devi, PW-4 Dukhni Devi and PW-5 Rajkumar Bind all are the eye-witnesses to the occurrence and they all are telling in their evidences that this appellant along with Kiran Devi, Pramod Mandal, Ganesh Bind and two others came on 28.08.2002 at about 07:30 pm near the house of PW-5 and Kiran Devi called Kari Devi, and when Kari Devi came outside, accused Kiran Devi caught hold of her by her hair and this appellant fired upon her causing firearm injury near her eye. Other accused Pramod Mandal and Ganesh Bind also fired upon her which resulted in her death on the spot.

8. Learned trial court found evidences of these four eye witnesses PW-2 to PW-5 consistent and reliable so far as place of occurrence, manner of occurrence, time of occurrence and date of occurrence are concerned. Learned trial court found that the inquest report (Exhibit '2') of the deceased Kari Devi established the death due to firearm injuries. Learned trial court also found that though the postmortem report has not been brought on the record due to non-examination of the doctor but it is not fatal for the prosecution because *fardbeyan* of the informant and inquest report of the deceased Kari Devi have been legally proved and exhibited.



9. Learned trial court finally, held that the oral evidences of eye-witnesses PW-2 to PW-5 are sufficient by itself to establish the prosecution case that this appellant Asharfi Bind in furtherance with the common intention along with accused Kiran Devi, Pramod Mandal and Ganesh Bind committed murder of Kari Devi by firing from pistol.

10. This Court finds from the impugned judgment that while analysing the evidence led by the prosecution in the trial, learned trial court found that the I.O. of this case has submitted a final form against accused Kiran Devi, Pramod Mandal and Ganesh Bind, in spite of the fact that these accused were named in the FIR and all witnesses were stating the names of these accused, not only during their statement before police but also during the trial before the court. Learned trial court, therefore, though it just and proper to exercise its power under Section 319 CrPC to issue summons to the accused, namely, Kiran Devi, Pramod Mandal and Ganesh Bind to face trial. The office clerk was directed to separate their case by opening separate file from the original Sessions Trial No. 920 of 2004. It is not known as to what happened to the said trial of Kiran Devi, Pramod Mandal and Ganesh Bind.

11. Accordingly, learned trial court held that the prosecution has well proved the charges for the offences under



Section 302/34 IPC and Section 27 of the Arms Act against this appellant beyond all reasonable doubts, hence, he is found guilty under Sections 302/34 and Section 27 of the Arms Act.

Submissions on behalf of the Appellant

12. Mr. Sanjay Kumar, learned Advocate assisted by Mr. Ram Vinay Prasad Singh, learned counsel for the appellant has assailed the impugned judgment on various grounds. It is submitted that the learned trial court could not appreciate that the prosecution has failed to establish as to who is the assailant of the deceased. It is his submission that as per the Prosecution Witness No. 3, Asharfi Bind (the appellant) had fired on the chest of the deceased but the evidence of PW-3 is highly controversial.

13. Learned counsel submits that the statement of PW-3 in paragraph '13' of his deposition is completely different from the prosecution story hence, this prosecution witness is in the category of a wholly unreliable witness.

14. Learned counsel has further submitted that in this case, the prosecution has failed to establish the place of occurrence. Different prosecution witnesses have given different statements in this regard and they have stated differently with regard to presence of blood at the place of occurrence. No blood stain was found on the *verandah* of the house and it is difficult to



believe that even after sustaining injuries on her head, the deceased lady had managed to escape to some distance.

15. Learned counsel submits that PW-3 and PW-6 are hostile witnesses who have not supported the prosecution case. The I.O. had not seized the blood even as he says that blood was found on the road.

16. Learned counsel submits that Rajkumar Bind, who is the informant of the present case, as well as the deceased lady were notorious criminals, which would be evident from the evidence on the record.

17. Learned counsel submits that in this case, the postmortem report has, though been placed on the record but it has not been marked exhibit in course of evidence, hence, the cause of death by firearm could not be established.

Submissions on behalf of the State

18. On the other hand, Ms. Shashi Bala Verma, learned Additional Public Prosecutor for the State has contested the appeal. Learned counsel submits that in this case, the prosecution has examined as many as eight witnesses who have proved the case against the appellant beyond all reasonable doubts. The prosecution witnesses are consistent, the motive behind the occurrence, place of occurrence and the manner of occurrence as



also presence of the appellant at the place of occurrence have been duly proved beyond all reasonable doubts.

19. Learned Additional Public Prosecutor submits that this appellant happened to be the son-in-law of Saithan Bind, a co-villager of Kari Devi (the deceased). Brother of Kari Devi was allegedly murdered by Shiv Pujan Bind, who happened to be the son of Saithan Bind. In connection with the same murder case, Shiv Pujan Bind was in jail and this appellant was his *pairvikar* being brother-in-law. These materials are available on the record which may be found in the evidence of the prosecution.

Consideration

20. We have heard learned counsel for the appellant and learned Additional Public Prosecutor for the State as also perused the trial court records. In this case, the prosecution has examined as many as eight witnesses. Out of these eight witnesses, Rajkumar Bind (PW-5) is the informant of the case. He is the brother of the deceased lady. Binod Kumar (PW-2) and Batorni Devi (PW-3) are the son and wife respectively of the informant. Dukhni Devi (PW-4) is the daughter of the deceased. R.K. Brahmachari (PW-8) is the Investigating Officer of the case. Dharmendra Kumar (PW-1) is the nephew of the deceased who is a hearsay witness. Gyan Chandra Arya and Harbhajan Ram Saroja are PW-6 and PW-7



respectively who are the local residents and have turned hostile in course of evidence.

21. The I.O. (PW-8) has recorded the *fardbeyan* of the informant (PW-5) on 28.08.2002 at 20:45 hours at the place of occurrence. He has proved the *fardbeyan* in course of trial which has been marked Exhibit '1'. PW-8 had also prepared the inquest report, he has proved the carbon copy of the inquest report prepared by him and the same has been marked Exhibit '2' without objection. In paragraph '3' of his examination-in-chief, he has stated that the place of occurrence in this case is situated south to the Lakhsarai Railway Colony. He has given the boundary of the place of occurrence and has stated that blood were found fallen at the place of occurrence. He has also stated that towards the end of the road, there were signs of attempt to wash the blood by water and it appeared to him that the said place was washed off after the blood had fallen there. He has stated that in course of investigation, he had recorded the restatement of the informant and statement of other witnesses. After investigation, the case was not found true against other accused persons. He had arrested the appellant on 09.01.2003 and had submitted charge-sheet against him on 10.03.2003. He had also sent the extracted bullet which was taken out from the body of the deceased Kari Devi to Forensic



Science Laboratory (FSL). He has stated that the inquest report of the deceased was prepared at the place where the dead body was found. He had not seized the blood. From the evidence of the I.O. (PW-8), we find that he has proved the place of occurrence and in course of his cross-examination, the defence has not extracted any vital inconsistency or contradiction in his statement.

22. The informant (PW-5) has stated that the occurrence took place at 7:30 PM. At that time, he was at his *darwaja*, apart from him, his son Binod Kumar, *bhagini* Dukhni Devi, wife Batorni Devi, deceased sister Kari Devi and nephew Pappu Kumar were present. They were talking with each other. Kiran Devi, the eldest son-in-law of Saithan Bind, Pramod Mandal, Ganesh Bind and two unknown persons came from the other side and stood up. Kiran Devi called Kari Devi (deceased) on which Kari Devi went to Kiran Devi. Kiran Devi caught hold of Kari Devi by her hair and the son-in-law of Saithan Bind shot at Kari Devi. The second shot was fired by Pramod Mandal and the third one was shot by Ganesh Bind. Three other unknown persons were armed with pistol. After suffering the bullet, his sister Kari Devi entered inside the house of Prayag Yadav and died there. Thereafter, *hulla* was raised, this witness claims that he had caught hold of eldest son-in-law of Saithan Bind, then other four-five accused persons got the



eldest son-in-law of Saithan Bind freed and took him away while firing. PW-5 disclosed that the name of the eldest son-in-law of Saithan Bind is Asharfi Bind (the appellant). Prior to this occurrence, the son of Saithan Bind, namely, Shiv Pujan Bind had killed his brother, whose name was Ramji Bind. At that time, Kari Devi (the deceased) had lodged the case. PW-5 has further stated that in respect of the said case, the eldest son-in-law of Saithan Bind and other accused persons had threatened Kari Devi and she had been asked to lift the case otherwise she would be killed. Since his sister had refused to lift the case and at that time Shiv Pujan Bind was in jail, his sister Kari Devi had been killed by the accused persons. PW-5 has stated that Kari Devi had suffered one firearm injury at her left eye, one shot at her chest and one shot in the left side of her waist. This witness had lodged the case and his statement was recorded by Daroga which he was read over and explained and on finding the same correct, he had put his thumb impression on the same. In paragraph '6' of his deposition, he has stated that postmortem of Kari Devi was conducted. He identified the accused Asharfi Bind in the court. It appears from the pattern of cross-examination that the defence has cross-examined this witness on the point of his criminal antecedents and the witness was suggested that a murder case was also pending against Kari



Devi (the deceased). PW-5 has stated that he had gone to jail thrice but he was not aware of murder case against his deceased sister and he was also not aware that on how many occasions she had gone to jail. He was not aware that his sister Kari Devi was an accused in Lakhisarai P.S. Case No. 336 of 1992 and Lakhisarai P.S. Case No. 732 of 2001. This witness has stated that at the time of occurrence it was moonlight in which people could have identified each other. He has stated that he was in the *verandah* when the occurrence took place. He has stated that all the three shots were fired from a close range at a distance of one palm. He has stated that blood had fallen at the place where his sister had died and he had not made any attempt to wash off the blood. Police had taken away the dead body. Some reading and writing was done at the place of occurrence in the night at 8:30 PM. He has also stated that his statement was recorded by police at the place of occurrence. He denied the suggestion that there was no moonlight at the time of occurrence. He has denied the suggestion that no blood had fallen near his house and he had not shown any blood to police. He has also denied the suggestion that the people who are coming to the station use the passage near his quarter for going to market. He has stated that on the sound of firing nobody had come, he along with his children were there. In paragraph '29'



of his deposition, he has stated about the place of occurrence which is in consonance with the description given by the I.O. PW-5 was suggested by defence that this appellant was involved in *pairvi* of Shiv Pujan Bind, therefore, he has been falsely implicated. This witness was also suggested that there was a quarrel between him and his sister in which he had fired upon his sister and in order to conceal the murder, he tried to wash the blood and falsely implicated the accused persons. PW-5 denied the suggestions of the defence. The defence also suggested that Kari Devi (deceased) was informer of police. This witness has stated that he was not aware that Kari Devi was informer of police. In paragraph '35' of his deposition, this witness has stated that about 10-15 days prior to the date of occurrence, Asharfi Bind had come to threaten his sister and his sister had told her about this.

23. Again from the evidence of informant (PW-5), this Court finds that the defence is unable to shake the credibility of this witness. He is an eyewitness to the occurrence and has supported the prosecution case. His statements are consistent.

24. Binod Kumar (PW-2) has also supported the prosecution case. He is the nephew of the deceased. He has stated that he was sitting in the *verandah* of his house along with father, mother and other family members when Kiran Devi came there



and called her *fua* Kari Devi. PW-2 has stated that her *fua* Kari Devi was caught by her hair by Kiran Devi and in the meantime, Asharfi Bind, the eldest son-in-law of Saithan Bind fired upon her from his pistol which hit her eyes and thereafter accused Pramod Mandal also shot fire upon her which hit her chest and then Ganesh Bind shot fire upon her. His father Rajkumar Bind as well as people of Dom Toli had caught accused Asharfi Bind and they had assaulted him but after some time accused Kiran Devi, Pramod Mandal and Ganesh Bind reached there, they fired in the air and rescued Asharfi Bind from the custody of the informant. This witness has stated that he as well as all family members are residing in front of the quarter of Railway by constructing a *jhopra* and at the time of occurrence, the night was moonlit. In his deposition, PW-2 has stated that at the time of occurrence he and his family members came out of the house for saving Kari Devi but accused Asharfi Bind had shot fired upon her from a short range.

25. Batorni Devi (PW-3) is the wife of the informant who has consistently deposed on the pattern of the other family members who are eye-witnesses to this occurrence and had deposed as PW-2 and PW-5. She has stated that the occurrence took place at a distance of one hand away from her house in the



open area. Kari Devi was killed by firearm from a very short range.

26. Dukhni Devi (PW-4) is the daughter of the deceased. She has stated that at the time of occurrence, she was sitting in her house along with her maternal uncle Rajkumar Bind, maternal aunt Batorni Devi, brother Binod Bind, Pappu and her mother Kari Devi. Kiran Devi called her mother so she went outside her house and thereafter Kiran Devi caught her hair and accused Asharfi Bind fired upon her mother which hit her eye. Thereafter, accused Pramod Mandal fired upon her mother and accused Ganesh Bind had also fired upon her mother which caused injury. PW-4 has further stated that Asharfi Bind was caught by her maternal uncle and other villagers near Bajrangbali Temple but accused Kiran Devi, Pramod Mandal and Ganesh Bind forcibly rescued him from the custody of Rajkumar Bind and villagers.

27. From the evidence of PW-2, PW-3 and PW-4, we find that even though they are family members of the deceased and they are related to the deceased, their evidence has remained intact. A careful perusal of their evidence would show that the occurrence took place at about 07:30 pm which is the time when normally the family members remain present in their house and,



therefore, their presence at the time of occurrence cannot be doubted.

28. This Court finds that all the prosecution witnesses have stated consistently with regard to the manner of occurrence. It has been argued on behalf of the appellant that the postmortem report in this case has not been brought on record and the non-examination of the Doctor would prove fatal to the prosecution. The learned trial court has answered the submissions succinctly in paragraph '9' of the impugned judgment. The learned trial court is correct in recording that the evidence of the four eye witnesses, namely, PW-2 to PW-5 are consistent and reliable so far as the place of occurrence, manner of occurrence, time of occurrence and date of occurrence is concerned. The prosecution has duly proved the *fardbeyan* as well as the inquest report through the I.O. (PW-8). The learned trial court has noted that though the postmortem report has not been brought on record due to non-examination of the Doctor but it is not fatal for the prosecution because the *fardbeyan* of the informant and the inquest report of deceased Kari Devi have been legally proved and exhibited. We would only add here that the postmortem report was though placed on the record by the prosecution and it forms part of the police charge-sheet but due to some negligence of the prosecution, the Doctor who



conducted the autopsy on the dead body has not been examined. So, the post-mortem report has not been exhibited. Notwithstanding the same, we find that non-exhibition of the postmortem report would not prove fatal to the prosecution. The prosecution witnesses are consistent that Asharfi Bind (the appellant) had fired from his pistol and that hit the left eye of the deceased. The entire pattern of cross-examination of the defence would show that at no point of time, they have questioned these witnesses with regard to the cause of death being a firearm injury. The prosecution has duly established that the victim Kari Devi had been shot at by the firearm. The I.O. has stated that he had sent the bullet which was extracted from the body of the deceased to FSL for examination. The defence has not questioned this in course of cross-examination of the I.O.

29. We have found that the defence has also not questioned the evidence of the prosecution that Asharfi Bind had been caught by PW-5 after the occurrence. His presence at the place of occurrence is an additional link to prove the prosecution case that he had gone there with an intention to kill Kari Devi who was the informant of the murder case in which Shivpujan, brother-in-law of Asharfi Bind (the appellant) was in jail.



30. On re-appreciation of the entire evidences on the record, we find no error in the impugned judgment and order of the learned trial court.

31. This appeal has no merit. It is dismissed accordingly.

32. Let a copy of this judgment and the trial court records be sent back to the learned court below.

33. The District and Sessions Judge, Lakhisarai shall satisfy itself with the compliance of the order of the learned trial court as regards the registration of separate trial and progress in the said case.

(Rajeev Ranjan Prasad, J)

(Jitendra Kumar, J)

SUSHMA2/-

AFR/NAFR	
CAV DATE	
Uploading Date	29.11.2024
Transmission Date	29.11.2024

