

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1027 of 2018

Arising Out of PS. Case No.-34 Year-2015 Thana- SULTANGANJ District- Bhagalpur

Mithilesh Kumar, S/o Suresh Mandal, R/o Vill.- Manjhli, P.S.- Sultanganj,
District- Bhagalpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Manoj Kumar Singh, Adv. Mr. Rohit Kumar Singh, Adv. Mr. Aman Raj, Adv. Mr. Sikandar Kumar Yadav, Adv.
For the State	:	Mr. Abhimanyu Sharma, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)
Date : 10-07-2024

Heard Mr. Manoj Kumar Singh, the learned
counsel for the appellant and Mr. Abhimanyu Sharma,
the learned APP for the State.

2. The appellant has been convicted for the
offences under Sections 302 of the I.P.C. and Section 27
of the Arms Act *vide* judgment dated 10.05.2018
passed by the learned 5th Additional District and
Sessions Judge, Bhagalpur in Sessions Trial No. 626 of



2015/Trial No. 603 of 2017, arising out of Sultanganj P.S. Case No. 34 of 2015. By order dated 11.05.2018, he has been sentenced to undergo imprisonment for life, to pay a fine of Rs. 5,000/- and in default of payment of fine, to further suffer S.I. for three months for the offence under Section 302 I.P.C. and to undergo R.I. for seven years, to pay a fine of Rs. 1,000/- and in default of payment of fine, to further suffer S.I. for one month for the offence under Section 27 of the Arms Act.

3. Both the sentences have been directed to run concurrently.

4. The Trial Court has also recommended for payment of compensation under Section 357-A Cr.P.C. to the legal heirs of the deceased.

5. One Upendra Mandal @ Dholan Mandal is alleged to have been shot at for no reason by the sole accused/appellant of this case.

6. The wife of the deceased, namely, Anita Devi (P.W. 7) had lodged the *fardbeyan* on 22.02.2015



at about 1:10 P.M. at the house of Awadhesh Mandal (P.W. 6) alleging that while she was sitting along with other witnesses at the house of Vinay Kumar Mandal (P.W. 2) and her husband/deceased who was sitting near the bridge situated about hundred meters from the house of P.W. 2, got up and proceeded for his home. While he was coming back, the appellant, who was coming from southern direction armed with a pistol, started abusing him. No sooner had he reached near her husband, he shot at the deceased from behind as a result of which, the deceased fell down on the ground. She and others rushed to the place of occurrence and lifted the injured/deceased and brought him to the house of Awadhesh Mandal (P.W. 6). While the villagers were making preparations for taking the injured/deceased to the hospital, he died. The information about the occurrence was given to the police, whereupon the police party arrived and there only she gave her statement. She has also alleged in the *fardbeyan* that the appellant



is a person of criminal dispensation and without any reason, he had killed her husband/deceased.

7. On the basis of the afore-noted *fardbeyan* statement, a case *vide* Sultanganj P.S. Case No. 34 of 2015, dated 22.02.2015, was instituted for the offences under Sections 302 of the I.P.C. and 27 of the Arms Act.

8. The police, after investigation, submitted charge-sheet against the appellant, whereupon he was tried for the offence of murder.

9. The Trial Court, after having examined twelve witnesses on behalf of the prosecution and none on behalf of the defence, convicted and sentenced the appellant as aforesaid.

10. Anita Devi (P.W. 6), who is the wife of the deceased, has supported the prosecution case in its entirety. During Trial, she has deposed that she saw the appellant firing at the deceased. When the appellant came near the house of Vinay Kumar Mandal (P.W. 2)



and started abusing the deceased, the deceased asked him the reason; on which the appellant is said to have told him that he always unnecessarily opposed every action of his. After saying all this, he fired at the deceased, as a result of which he died. However, in her cross-examination, she has stated that she had given her statement at the police station and there only had signed it.

12. This does not appear to be correct for the reason that the I.O. of this case, *viz.*, Vinod Kumar Jha (P.W. 11), who had recorded the *fardbeyan* of P.W. 7, has confirmed that the police party had reached the P.O. and at the house of Awadhesh Mandal (P.W. 6), the *fardbeyan* was recorded.

13. The dead-body was put to *post-mortem* examination by Dr. Sandeep Lal (P.W. 12). He has stated before the Trial Court that the *post-mortem* examination was conducted on 23.02.2015 at about 01:30 P.M. He had found one wound of entry with



inverted margin of the sizes 1/2" x 1/2" situated over left scapular area mid-point. On dissection, the projectile was found to have pierced the left lung apex, respiratory passages and it was found lodged in the supra clavicular area of the right side of the chest. He had found blood and blood clots in the chest cavity. The metallic distorted bullet which was recovered from the dead-body was handed-over to the constable under sealed cover. The injury was reported to be *ante-mortem* and caused by firearm weapon, which was dangerous and grievous in ordinary course of nature. The cause of death was opined to be hemorrhage and shock. The time of death was fixed at 12 to 36 hours from the time of *post-mortem* examination. The entry wound was on the back side of the deceased. However, the Doctor (P.W. 12) had not found any mark of charring, tattooing and blackening.

14. With the nature of injuries suffered by the deceased, it was almost certain that the deceased



would not have survived.

15. The *post-mortem* examination and the deposition of the Doctor (P.W. 12), therefore, proves that the deceased died a homicidal death out of gunshot, which has been attributed to the appellant.

16. In this context, we have also examined the evidence of the Investigator, namely, Vinod Kumar Jha (P.W. 11) in some detail. He had learnt on 22.02.2015 that there has been a shooting incident in village-Manjhli and one person has been hit. For confirmation of the afore-noted incident, he along with the police party came to village-Manjhli. When he reached near the house of Awadhesh Mandal (P.W. 6), he found that a large number of persons had collected there and a dead-body was kept on a cot. On enquiry, it was learnt that the name of the deceased was Upendra Mandal, who was a resident of Manjhli village, and a co-villager, namely, Mithilesh Kumar (appellant) had killed him. Near the dead-body, the wife of the



deceased/Anita Devi (P.W. 7) was present who gave her *fardbeyan* statement, which was recorded by him.

17. P.W. 11 has identified his signature and his handwriting (Exhibit-1/3). The afore-noted *fardbeyan* was endorsed by Sub-Inspector/Anwar Ahmad (Exhibit-1/4). The formal F.I.R., the Investigator (P.W. 11) has stated, is in the handwriting of one Janardan Rai, which has been countersigned by Sub-Inspector/Anwar Ahamd (Exhibit-2).

18. P.W. 11 had prepared the inquest report and had taken the further statement of Anita Devi (P.W. 7) and the statement of other witnesses. The P.O. was found to be near *Krishna Chowk* on a PCC road near the house of Vinay Mandal (P.W. 2) and Rudal Ram (not examined). It was at this place where the appellant is said to have fired at the deceased. After investigation, he had submitted *charge-sheet* against the sole accused/appellant.

19. In the cross-examination, P.W. 11 has



stated that he had gone to the house of the accused/appellant, but he was not present there. The sister of the accused/appellant had shown his photograph and on that basis, he identified the appellant in the dock. Nothing was worth collecting and seizing near the P.O. and, therefore, nothing was collected. Because the accused/appellant had absconded, the weapon of assault also could not be recovered. He could not record the statement of Rudal Ram, whose house was situated very near to the P.O. as he was not available in his house at that time. He has but denied that two of the witnesses, namely, Vinay Mandal and Awadhesh Mandal (P.Ws. 2 and 6 respectively) had spoken to him that they too were sitting along with the deceased at the bridge; rather they had said that they were standing on the PCC road.

20. Awadhesh Mandal (P.W. 6) had not disclosed before the I.O. that at the time of the occurrence, he was present at the house of Vinay Kumar



Mandal (P.W. 2); rather he had stated that he had come out of his house on hearing the gunshot.

21. He (P.W. 11) did not inquire about the criminal antecedent of the accused/appellant.

22. Beyond this, the Investigator had nothing important to offer to the Trial Court.

23. From the deposition of P.W. 7/Anita Devi, P.W. 12/the Doctor and P.W. 11/the Investigator, it stands proved that because of the shot fired by the appellant from behind, the deceased died.

24. In support of the accusation, besides P.Ws. 7, 11 and 12, the prosecution brought forth Sadanand Mandal (P.W. 1); Vinay Kumar Mandal (P.W. 2); Bindeshwari Mandal (P.W. 3); Chandan Kumar Mandal (P.W. 4); Ramashish Mandal (P.W. 5); Awadhesh Mandal (P.W. 6); Anjani Devi (P.W. 8); Suman Kumar (P.W. 9) and Dilip Kumar (P.W. 10) as witnesses to the occurrence.

25. Out of the afore-noted witnesses,



Bindeshwari Mandal and Chandan Kumar Mandal (P.Ws. 3 and 4 respectively) have been declared hostile.

26. Dilip Kumar (P.W. 10) does not claim to be an eye-witness to the occurrence.

27. Sadanand Mandal (P.W. 1) had seen the accused/appellant firing at the deceased. He was looking for a vehicle for taking the deceased to hospital. He and others had informed the police about the occurrence. The police party had arrived after half an hour. Similarly, Vinay Kumar Mandal (P.W. 2) has also supported the prosecution case in its entirety. Both of them (P.Ws. 1 and 2 respectively) are related to the deceased, though distantly.

28. Ramashish Mandal (P.W. 5) is the own brother of the deceased. He also saw the occurrence being committed in his presence. He had immediately reported the matter to the police and also identified the accused/appellant in the dock. All suggestions that he had only narrated what Anita Devi (P.W. 7) had told him



were denied by him.

29. Anjani Devi and Suman Kumar (P.Ws. 8 and 9 respectively) have been named by Anita Devi as being present at the P.O. They have also made crisp statements about the accused/appellant having fired at the deceased from behind. Both are also related to the deceased.

30. Thus, from the entire evidence on record, the accusation of firing at the deceased is attributed to the appellant only.

31. We are a bit surprised to notice that neither was there any specific reason for the appellant to have committed the murder nor we could find any reason to falsely implicate the appellant, who is a co-villager.

32. Mr. Manoj Kumar Singh, the learned Advocate for the appellant, has submitted that mere consistency of the witnesses is not the only test of truth. All the witnesses, who have supported the prosecution



case are closely related to the informant and the deceased. Independent persons of the village have not been examined, especially Rudal Ram whose house was situated in front of the P.O. The explanation offered by the I.O. of his not being present does not appear to be satisfactory. There was no effort of tracing Rudal by the investigator to take his statement.

33. The other argument raised on behalf of the appellant is that no *fardbeyan* was recorded at the *darwaja* of Awadhesh Mandal (P.W. 6). Mr. Singh has made such assertion on the strength of the statement made by Anita Devi (P.W. 7) in her cross-examination that at the police station, whatever she said by her was recorded by the I.O. and that after her statement was recorded, she had signed on it at police station only. This, it has been argued, clearly establishes that the *fardbeyan* was recorded at the police station.

34. The afore-noted argument is not acceptable for the reason that Awadhesh Mandal (P.W.



6), Ramashish Mandal (P.W. 5), Anjani Devi (P.W. 8) and Suman Kumar (P.W. 9), all eye-witnesses, had put their signature or thumb impression on the *fardbeyan* which was recorded at the *darwaja* of Awadhesh Mandal (P.W. 6). The recording of the *fardbeyan* was almost contemporaneous with the occurrence and the arrival of the police.

35. However, what is noticeable is that the *post-mortem* examination was conducted on the next day, *i.e.*, on 23.02.2015 at 01:30 P.M.

36. Where was the dead-body kept for all this while? There is no evidence to that effect. Whether the dead-body taken by the police to hospital on the same day or on the next day, is not clear.

37. The Doctor (P.W. 12) has only stated that the dead-body was brought and identified by a *Chawkidar*, *viz.*, Hardeo Paswan, which, perhaps, was on the same day when the *post-mortem* examination was conducted. However, the absence of any evidence to



this effect would not weaken the prosecution case in any manner.

38. Another argument raised on behalf of the appellant is that the firearm weapon was never recovered.

39. We have found that the I.O. made efforts for recovering the weapon of assault, but because the appellant had run away, the same could not be recovered. He has also urged that from the narration of events and the statement of eye-witnesses, it appeared that the deceased was accosted by the appellant from the front. In that case, it appears to be rather unusual that the wound of entry would be at the back.

40. In this context, we have referred to the deposition of the almost all the witnesses, who have supported the prosecution case and have said that the deceased was shot from behind. The Doctor (P.W. 12) has also confirmed that the wound of entry was found on the back of the deceased.



41. Though in the 313 Cr.P.C. statement, the appellant has explained his innocence and has stated that he had been working outside the village and when he was informed by his brother that he has been named as an accused for the murder of the deceased, he avoided to come in the village, but surrendered to the process of law only later.

42. This does not appear to be acceptable at all.

43. Thus, in view of the eye-witnesses account and the evidence of the Doctor (P.W. 12), it is proved beyond all reasonable doubts that it was the appellant who had shot at the deceased, but without any reason whatsoever.

44. One cannot account for such erratic behaviour of a person. Precisely, for no reason having been assigned for the murder, we tried to look for the same, but could decipher for nothing from the evidence on record.



45. The evidence of all the witnesses, who have supported the prosecution case including the informant and others, except two who have been declared hostile and one who did not claim to be an eye-witness, are cogent and clear and do not appear to be doubtful in any manner.

46. Thus, the Trial Court has rightly convicted and sentenced the appellant and the judgment and order of conviction and sentence, referred to above is not required to be interfered with.

49. The appeal is accordingly dismissed.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

Praveen-II/-

AFR/NAFR	NAFR
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