

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.930 of 2017

Arising Out of PS. Case No.-13 Year-2015 Thana- BAHADURPUR District- Darbhanga

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1. Indu Jha, Son of Ram Binod Jha, resident of village – Balbhadrapur Navtol, Police Station -Bahadurpur, District – Darbhanga.
 2. Ajay Thakur, Son of Late Mahabir Thakur, resident of Mohalla – Shahgunj Benta, Police Station – Laheriasarai, District - Darbhanga

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Shambhu Nath Jha
For the Respondent/s : Mr.Shashi Bala Verma

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE JITENDRA KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 16-05-2024

1. We have heard Shri Shravan Kumar, the learned Advocate for the appellants and Mr. Abhimanyu Sharma, the learned APP for the State.
2. One Gangesh Kunwar is said to have been killed by appellant no. 1/ Indu Jha. Appellant no. 2/Ajay Thakur knew about the occurrence as it was told to him and from his house, the weapon of assault, namely, an automatic country-made pistol, was recovered.



3. Both the appellants, therefore, were charged for the offences under Sections 302/32, 201/34 and 34 of the IPC and Section 25(1-b)a of the Arms Act after obtaining sanction from the District Magistrate.

4. They were put on trial and the Trial Court viz. the learned 1st Additional District & Sessions Judge, Darbhanga in S.Tr. No. 315/2015 arising out of Bahadurpur P.S. Case No. 13/2015 after examining fourteen witnesses on behalf of the prosecution and none on behalf of the defence convicted the appellants for the offence under Sections 302/34 read with Section 120 (B) and 201/34 read with Section 120(B) IPC and Section 25 (1-B)a of the Arms Act vide judgment dated 29.05.2017. Apart from that appellant / Indu Jha has also been convicted for the offence under Section 27(1) of the Arms Act and appellant/Ajay Thakur for the offence under Sections 26 and 27



of the Arms Act. By order dated 01.06.2017, they have been sentenced to undergo imprisonment for life along with a fine of Rs. 20,000/- each and in default of payment of fine, to further suffer R.I. for six months for the offence under Sections 302/34; R.I. for three years, to pay a fine of Rs. 5,000/- and in default for payment of fine, to further suffer R.I. for two months each for the offence under Section 201/34 IPC and R.I. for three years, to pay a fine of Rs. 2,000/-each and in default of payment of fine, to further suffer R.I. for one month each for the offence under Section 25(1-B)a of the Arms Act. Apart from that appellant / Indu Jha has been sentenced to undergo R.I. for five years along with a fine of Rs. 5,000/- and in default of payment of fine, to further suffer imprisonment for three months for the offence under Section 27(1) of the Arms Act and appellant /Ajay Thakur has been sentenced to



undergo R.I. for five years along with a fine of Rs. 3,000/- and in default of payment of fine, to further suffer R.I. for one month for the offence under Section 26 and 35 of the Arms Act.

5. The sister of the deceased had lodged the FIR on 10.01.2015 at about 10.00 P.M. alleging that the deceased/her brother, had been residing alternately in the houses of his two aunts. A few days ago, the deceased had sold his land with the help of appellant no. 1, his cousin, but the entire money of the sale proceeds were not given by the vendees. On 10.01.2015, she learnt in the evening that her brother has been killed at Balbhadrapur, Navtol. On this information, she went to the place indicated to her, where she found her brother dead with gunshot wounds in his chest. The brother of the informant had come to his aunt's house, namely, Siya Devi only on 10.01.2015. She suspected that because of the dispute over sale of



land or the proceeds of the same, her brother was killed.

6. On such written report by the sister of the deceased (PW7), a case vide Bahadurpur P.S. Case No. 13/2015 dated 10.01.2015 was registered for investigation under Sections 302/34 of the IPC and Section 25(-b)a 26/35 of the Arms Act against unknown.

7. From the narration made in the written report, it clearly appears that no suspicion was raised against appellant no. 1, who is the cousin of the deceased as the informant stated that the land of the deceased was sold with the help of appellant no. 1. The murder could have been committed according to her by the vendee/vendees who had not yet paid the entire consideration amount.

8. The Investigator of this case, namely, Deenanath Mandal had actually received an information at the police station at about 4.40 in the day on



10.01.2015 that a person belonging to Sinwar Gopal has received gun-shot injuries at Balbhadrapur Navtol and he has been taken to DMCH for treatment. A station diary entry was recorded by him and he along with the police party went to DMCH, only to find the deceased dead. An inquest report was prepared at 5.45 P.M. on the same day. The written report by the sister of the deceased was received thereafter and her further statement was recorded. Before the Trial Court, the Investigator has further narrated that in the hospital, he learnt that perhaps the deceased was killed in the cattle-house located behind Gyan Niketan School in Bahadurpur, Navtol. With the help of local Chowkidar, namely, Bilak Paswan (not examined), he visited the house of one Suraj Jha who owned the cattle-house. He had found one pellet and two empty cartridges in the cattle-house. The pellet was of 7.65 mm. In the afore-



noted cattle shed, few empty bottles of liquor were also found. Cigarette packets and match boxes were also found strewn on the floor. Everything which could be incriminating was seized from the cattle-house and a seizure list was prepared (Ext. 8). The map of the location of the cattle shed was also prepared. Thereafter, he visited the house of appellant no. 1 but he did not find him. It was at the house of appellant no. 1 that the Investigator learnt that one Bhaglu Bhagat (PW5), a mason by profession, had gone along with appellant no. 1. All attempts were made to look for afore-noted Bhaglu Bhagat, who was contacted and his statement was recorded. On 12.01.2015, he received the stuck-up bullet which was taken out from the body of the deceased during postmortem too was preserved by him. Thereafter, the other witnesses were examined. Since some information relevant for the purposes



for investigation was obtained from Bhaglu Bhagat (PW5), he was also made to give his statement under Section 164 Cr.P.C. By 19.01.2015, appellant no. 1 had surrendered to the process of law. The Investigator prayed for remand of appellant no. 1, which he could obtain and thereafter he interrogated him. He is said to have confessed before the Investigator and told him that it was an accidental firing which unfortunately hit the deceased. Thereafter, the deceased was taken to the hospital where he was declared "brought dead". After the occurrence had taken place, the appellant no. 1 had gone to the house of appellant no. 2, his friend, who was told about the occurrence and the weapon of assault was hidden in his house.

9. On the basis of the afore-noted confession of the appellant no. 1, the house of appellant no. 2 was raided and from the thatched roof of his house, the



weapon of assault was recovered in front of two independent witnesses. The weapon was a semi automatic country made pistol with six bullets of 7.65 mm loaded in it. The weapon and the bullets were seized (Ext. 10). The seized and sealed weapon of assault, the bullets loaded in the chamber of pistol, one pellet which was found in the cattle-house and two used cartridges found there were sent for forensic examination. Only thereafter, chargesheet was submitted against both the appellants.

10. During the course of investigation, the Investigator had recorded the statements of Munna Kumar Jha, Poonam Chaudhary, Kari Chaudhary and others.

11. At the Trial, Munna Kumar Jha (PW1) did not claim to have any information about the incident.

12. Poonam Devi (PW2) was declared hostile.

13. Kari Chaudhary (PW3) also did not offer



anything substantive and was declared hostile.

14. Manoj Jha (PW6) gave only a hearsay account of the occurrence but disclosed before the Trial Court that the deceased had died because of gunshot but he did not know who the perpetrator was.

15. The informant, namely, the sister of the deceased (PW7) knew only the fact that the deceased was killed by gunshot but had no clue about the manner in which the deceased was killed or who killed him. This was found to be against the prosecution theory and therefore she was declared hostile.

16. Rajeev Ranjan Singh (P.W. 8), Ashok Kumar, the Sergeant Major (P.W. 9), Sewanand Singh, a formal witness (P.W. 10), Mohan Mandal, a seizure list witness (P.W. 12), Vishnu Nath Jha, another seizure list witness (P.W. 3) and Shashinath Jha (P.W. 14) were also examined during the trial.



17. Rajeev Ranjan Singh (PW8) had produced the sealed packet of exhibits received from the forensic laboratory. Those were the fire-arms and cartridges which were recovered on the pointing of the appellant no. 1 from the house of appellant no. 2
18. The Sergeant Major (PW9), a ballistic expert deposed that the weapon of assault was effective and bullet of 7.65mm could be used by such weapon.
19. PW10 had proved the sanction given by the District Magistrate, Darbhanga for initiating prosecution under the provisions of the Arms Act.
20. Mohan Mandal (PW12) did not support the prosecution and denied that anything incriminating was recovered in his presence.
21. However, the recovery of two empty cartridges, packet of cigarettes, intoxicants from the cattle-house of Suraj Jha were proved by



Vishnu Nath Jha (PW13).

22. The postmortem on the deceased was conducted by Dr. Prafull Kumar Das (PW4) on 11.01.2015 at 10.00 A.M. He had found one rounded lacerated puncture wound $\frac{1}{2}$ " x $\frac{1}{4}$ " in the left chest with the projectile entering into the left chest cavity and moving over the left chest wall. It had pierced the ribs and left ventricle of heart. The diaphragm also was perforated. From inside the body of the deceased, a small metallic bullet with rounded tip was recovered, which was put in a sealed envelope and was labelled and then handed over to the I.O. of the case. The deceased had died of the afore-noted injury. The timing of the death was almost synchronous with the time of the occurrence suggested in the prosecution case.

23. With this evidence on record, it is without question that the deceased died of gunshot.

24. That the firing had taken place in the cattle-



house also stands proved. The used cartridges were the ones which would have fitted in the weapon of assault and the weapon of assault was recovered at the instance of appellant no. 1 from the house of appellant no. 2. All these seizures were proved by the witnesses, which have been referred to above. Such recovery is admissible under Section 27 of the Evidence Act.

25. No questions have been raised by the defence with respect to such recovery pursuant to the confession of appellant no. 1.

26. The Trial Court has primarily relied upon PW5, the mason, who had accompanied the deceased before he was shot dead as has been noted by us from the deposition of the Investigator. It was learnt at the house of appellant no. 1 that PW5 was the person who could have provided some clue about the details and the manner of occurrence. He had also given



his statement under Section 164 Cr.P.C. which is quite consistent with what he had to depose before the Trial Court. As PW5, he has narrated the entire incident that took place on 10.01.2015. On that day, he was working at the house of the deceased in Bariyagachhi. Along with him, there were two other masons and three labourers. He had accompanied the deceased to the local market for sharpening the spade which was to be used in the construction work. Thereafter, he accompanied the deceased to a shop from where mobile telephone was purchased. The deceased offered him food and also gave him Rs. 500/- to bring liquor for him. He procured the liquor for the deceased. In the meantime, the deceased received a telephone call and he talked to the caller for some time. On PW5 asking the deceased as to who had called, the deceased disclosed that appellant no. 1 had called him for some work. PW5 was



insisted upon by the deceased to accompany him. Both of them went to Balbhadrapur, where in a school, two-three persons were present from before. There was presence of a person by the name of Guru also. On the asking of the deceased, P.W. 5 gave Rs. 500/- to appellant no. 1 for again procuring liquor. P.W. 5 was then asked to wait at a shop and the deceased as well as the appellant no. 1 went somewhere. Later, he has clarified that both of them had gone to cattle-house of Suraj Jha. Later, P.W. 5 also went to that place. The deceased had requested appellant no. 1 to train him as to how a firearm weapon is used. While the same was being demonstrated by appellant no. 1, a bullet accidentally got fired and hit the deceased. He fell down injured. All of them were worried and appellant no. 1 was looking for a rickshaw to take the deceased, while perhaps he was still alive, to the hospital. It was at that point



of time that P.W. 5 developed cold-feet and he ran away. Beyond that, he had nothing else to offer.

27. From the evidence on record, we find his statement to be quite consistent. There is no reason to disbelieve him. The informant of this case, as we have noted, had no suspicion against appellant no. 1. In fact, even most of the witnesses did not even know appellant no. 2, who is the friend of appellant no. 1. That initial suspicion was against the vendees of the land which was sold by the deceased with the help of appellant no. 1. In fact, the deceased had been residing in the house of appellant no. 1. There was no dispute so far as the distribution of sale proceeds were concerned. Precisely for this reason, no suspicion was raised against appellant no. 1 or anybody.

28. During the course of investigation, it was secretly but reliably learnt, as we have already



noted, by the Investigator (PW11) that part of the occurrence might have taken place in the cattle-house. That the incriminating materials which were recovered and seized from the cattle-house throw much light on the prosecution case and the claim of the prosecution to that extent, stands completely proved. There is no dispute about the seizures made at the cattle-house. The occurrence, for sure, had taken place there.

29. The prosecution, however, is silent as to how the deceased was taken to the hospital. The gap in the evidence but can be explained. The deceased was declared to be "brought dead" at the DMCH. No sooner had the Investigator learnt about one person having been killed at Balbhadrapur Navtol, he proceeded to the DMCH. It was thereafter that the inquest proceedings were conducted. Till such time and even later, the name of no one had surfaced as the possible perpetrator(s) of the



crime. The evidence further reveals that there was no enmity with appellant no. 1. The appellant no. 1 had only been assisting and aiding the deceased in selling off his family property.

30. The version of PW5, therefore, appears to be the only possible explanation of the deceased having received gunshot in an accidental firing of the weapon, which was being operated by appellant no. 1, and that also on the asking of the deceased.

31. In the meantime, the written report of the informant, who is the sister of the deceased (PW7) was lodged at 10.00 P.M. All these facts could be hewn in one single thread, which explains the prosecution case.

32. The deceased had attempted to sell his property with the help of appellant no. 1. While the process of sale was on, a construction also was going on in the house of the deceased, where PW5



worked as a mason. Evidence has also come that the deceased as well as the appellant no. 1 were regular in consuming liquor. They have tainted police record as well. However, no evidence came forth of any enmity with the deceased which could have been avenged by anyone. On the day of the occurrence, a spade, used in the construction work, had to be sharpened. PW5 offered to get it done on his own, but on the insistence of the deceased, PW5 accompanied him to the market. The first thing done by the deceased was to feed P.W. 5 and also get a bottle of liquor procured. Thereafter, the deceased and PW5 went to meet appellant no. 1 on the asking of appellant no. 1 on telephone. This could have been, perhaps, for completing the paper requirements for sale of land. Around three to four persons were present in the school, including one person by the name of Guru. All those persons left after some paper work was done. It was then



that P.W. 5, on the asking of the deceased, gave Rs. 500/- to appellant no. 1 to procure another bottle of liquor. All of them consumed liquor. At this point of time, in a playful banter, the deceased asked appellant no. 1, his cousin to train him for using a firearm weapon. It was at that point of time, a bullet accidentally got fired hit the deceased.

33. There does not appear to be any variance in this story from the prosecution case. The deceased was taken to the hospital where the inquest was done and on the next day, the dead body was subjected to postmortem examination. The postmortem examination report is absolutely sync with the prosecution theory of the deceased having been hit because of a bullet fired from the weapon of assault which was recovered from the house of Appellant No. 2, at the instance of Appellant No. 1.

34. Appellant no. 2 knew about the occurrence



but still agreed to keep the weapon and allowed it to be kept safely below the thatched roof of his house. The same was recovered from his house on the basis of confession made by appellant no. 1.

35. However, what is intriguing for us is the lack of any reason for convicting the appellants under Section 302 with the aid of 34 IPC. For an offence of culpable homicide, whether or not amounting to murder, intention is the basic ingredient. No evidence has been led by the prosecution for proving the charge of either culpable homicide not amounting to murder or murder at the hands of appellant no. 1.

36. Appellant no. 2 was not even in the picture when the deceased was hit by a bullet. That the appellant no. 1 and the deceased were drunk does not become very clear from the evidence of PW5. Both had consumed liquor, but the level of intoxication was not such that they could have



taken the defence under general exceptions of the Indian Penal Code. It was also not an accident in doing any lawful act. It was not an act likely to cause harm but done without criminal intent and to prevent other harm. It was not even an act of a person incapable of judgment by reason of intoxication, caused against his will. At best, the appellant no. 1 could have been charged for the offence of indulging in rash and negligent act in using a firearm weapon and trying to train the deceased to use the same. It was a locally procured weapon, which was not manufactured with any precision or finesse. He should have known the outcome of his act.

37. With this evidence on record with practically no variance in the deposition of P.W. 5, we are at a loss to understand as to how the Trial Court concluded that both the appellants are guilty of murder of the deceased. With the essential



ingredient of "intention" lacking and all evidence pointing towards the accidental firing of the weapon, the appellant no. 1 can only be said to have committed a rash and negligent act, punishable under section 304 (A) of the Indian Penal Code. For the reason of his having procured and being in possession of fire arm weapon unauthorizedly, his conviction under Sections Section 25 (1-B)a and 27(1) of the Arms Act is also justified.

38. The appellant no. 2 was not even in the know of what had happened till the time he was told by appellant no. 1 about the occurrence. The only fault of his was to allow the weapon of assault to be kept in his house. Beyond this, there is no evidence of any conspiracy or of having taken part in the occurrence in any manner whatsoever. However, he knew about the occurrence as it appears from the evidence but he still allowed the



weapon to be kept in his house. That makes him liable to be punished for the offences under Sections 201 IPC and 26 read with 35 of the Arms Act.

39. We thus do not approve of the judgment of the Trial Court, convicting both the appellants under Sections 302/34 read with Section 120 (B) and 201/34 read with Section 120(B) IPC.

40. The conviction of appellant no. 1 is converted into one under Section 304(A) and 201 IPC and Section 25 (1-B)a and 27(1) of the Arms Act.

41. The conviction of appellant no. 2 is converted into Section 201 IPC and Section 25 (1-B)a, 26 read with 35 of the Arms Act only.

42. The period of custody suffered by the appellants up till now would suffice and account for the offences for which we have held the appellants guilty.

43. Appellant no. 1 is in jail since 19.01.2015



and appellant 2 is in jail since 29.05.2017.

44. Both the appellants are thus directed to be released from jail forthwith unless their detention is required in any other case, as having served out the sentences.

45. The appeal stands partially allowed.

46. The interlocutory application/s, if any, also stands disposed of.

47. Let a copy of this judgment be communicated to the concerned Trial Court for record and compliance.

48. Let the records of this appeal be returned to the concerned Trial Court forthwith.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	17.05.2024
Transmission Date	17.05.2024

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