

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.376 of 2015

Arising Out of PS. Case No.-2 Year-2011 Thana- JANDAHA District- Vaishali

Ajay Kumar, Son of late Surendra Rai, Resident of Village- Kajari Bhat, P.S.
Jandaha, District - Vaishali at Hajipur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Vijay Kumar Sinha, Advocate Mr. Arvind Sriwastav, Advocate Mr. Satendra Bhatnagar, Advocate Mr. Krishna Murari Prasad, Advocate Mr. Kumar Shivam Sinha, Advocate
For the Respondent/s	:	Mr. Abhimanyu Sharma, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE NAWNEET KUMAR

PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 03-01-2025

We have heard Mr. Vijay Kumar Sinha, the learned Advocate for the appellant and Mr. Abhimanyu Sharma, the learned APP for the State.

2. One Pramod Rai was killed around 14 years ago after being dragged out of his medicine shop on 02.01.2011. The FIR was lodged by his brother/Vinod Rai(PW-6) alleging that four persons on two motorcycles had come to the shop of the deceased on



02.01.2011 at about 6 O'clock in the morning and after some conversation between the deceased and co-accused Ram Prasad, on the orders of Ram Prasad, the appellant fired at the deceased. Thereafter Ram Prasad also fired which hit the deceased in his chest, as a result of which he died instantaneously. The deceased was taken to the clinic of one Doctor/ Nagendra who has not been examined at the trial where he was declared dead. Later, the dead body was brought to the house of the deceased where the FIR was lodged by PW-6. Against the other persons named in the FIR, investigation was kept pending. However, since the investigation was completed with respect to the appellant, charge-sheet was submitted against him, whereupon cognizance was taken and his case was committed to the Court of Sessions for trial.

3. The Trial Court, after having examined 11 witnesses on behalf of the prosecution, convicted the appellant under Section 302 read with 34 of the Indian



Penal Code *vide* judgment dated 04.03.2015, passed by learned Additional Sessions Judge-II, Vaishali at Hajipur in Sessions Trial No. 322 of 2011. By order dated 09.03.2015, he has been sentenced to undergo RI for life and to pay a fine of Rs. 50,000/-.

4. Commenting adversely on the judgment of the Trial Court, the learned Advocate for the appellant has argued that the deposition of none of the witnesses including the informant (PW-6) inspire any confidence that they had actually seen the occurrence. The other part of the argument is that if the deposition of the so-called eye-witnesses are analysed, it would become very clear that if at all the occurrence had taken place, the shot fired by the appellant had not hit the deceased; rather the shot fired by Ram Prasad with whom the deceased had verbal scuffle sometimes before his death, had hit him which led to his instantaneous death.

5. It has further been argued that the deposition of Saroj Kumar @ Saroj Kumar Das (PW-1),



a relatively independent person again makes it very doubtful that the others including PW-6 had seen the actual part of the assault. The doubt regarding the correctness of their statements gets further exacerbated by the narration of Lalo Devi (PW-3), the mother of the deceased who has narrated a somewhat different story than what the prosecution has relied upon.

6. Kiran Devi (PW-4), the sister-in-law of the deceased and Sarita Devi (PW-5), the wife of the deceased had not spoken to the Investigator about their being present at the time of the occurrence.

7. Thus, for all practical purposes, it has been argued that only Vinod Rai (PW-6), the elder brother of the deceased and Ajeet Kumar (PW-7), the brother-in-law of the deceased, who were present at the time of the occurrence and both of them have testified that the shot fired by Ram Prasad had hit the deceased.

8. The postmortem examination was conducted by Dr. Umeshwar Prasad Verma(PW-9) who



had found only one injury on the chest of the deceased which was apparently a gun shot from close quarters and attributable to co-accused/ Ram Prasad and not the appellant.

9. The evidence is galore, as contended by the appellant, regarding the motive for falsely implicating the appellant.

10. Though several suggestions which were never accepted by the witnesses, were given, suggesting that the deceased had supported one Sanjay against Ram Prasad in the election for the post of *Mukhiya* where Sanjay had lost; the deceased along with aforesaid Sanjay was instrumental in getting a false case lodged against Ram Prasad and the own brother-in-law of the deceased being a brother of the appellant but at loggerheads and in their dispute, the deceased is said to have meddled in some way or the other. Though, it has been conceded by the learned counsel for the appellant that such suggestions were



never accepted or ratified but the background facts with the evidence on record clearly suggest that Ajay/ the appellant was falsely framed in the case.

11. As opposed to the aforementioned contentions, Mr. Abhimanyu Sharma, learned APP has argued that no doubt, Vinod Rai (PW-6) and Ajeet Kumar (PW-7) have clearly attributed the fatal shot to Ram Prasad and not the appellant but the evidence of all the witnesses including PWs-6 and 7 would clearly indicate that appellant had accompanied three other persons to the shop of the deceased; he was present there when the dispute between the deceased and Ram Prasad had occurred and he had also fired from his weapon in the first instance, but that shot did not hit the deceased. Even if this evidence is accepted, the appellant cannot be given a clean chit only for the reason that only one gun shot wound was found on the person of the deceased which apparently is clearly attributable to Ram Prasad and not the appellant. Apart from this, it has



been argued that the other witnesses, viz., the mother, wife and sister-in-law of the deceased have also testified that the appellant was present at the time of the occurrence and had also actively participated as on the orders of Ram Prasad, he was the first one to have fired from his weapon at the deceased.

12. We have examined the deposition of the witnesses in some detail.

13. Saroj Kumar (PW-1) has confirmed that at the time of occurrence, along with the deceased, his brother Vinod Rai and his brother-in-law Ajeet Kumar (PWs-6 and 7 respectively) were present in the shop at about 6 O' Clock in the morning of 02.01.2011. He too was present there. He had been sitting in a shop situated nearby and had come to the P.O. on the sound of firing. He went near the deceased. He had reached the P.O. when the deceased had already fallen on the ground and had died. He was the first person to reach near the dead body and he then shouted for help. On his



shouts, others including PWs-6, 7 and one Ram Nath Rai arrived. He was told by Vinod (PW-6) about the assailants. The deceased was taken to the clinic of Dr. Nagendra at Jandaha where he was declared dead. His statement was recorded by the police on the same day in his village home. If he were to be believed, then perhaps, as noted above, Vinod and Ajeet (PWs-6 and 7) came to the P.O. after him and, therefore, there is doubt whether PWs-6 and 7 actually saw as to who shot at the deceased.

14. Nebi Rai (PW-2), who was examined by the Investigator on the same day, has not supported the prosecution case and has been declared hostile.

15. Lalo Devi (PW-3), the mother of the deceased claims to have seen the assailants firing at the deceased. However, in her examination-in-chief, she has specifically stated that the second shot fired by Ram Prasad actually hit the deceased. In fact, she has not attributed the role of firing to the appellant at all.



16. Kiran Devi (PW-4) though had attributed the role of firing first at the deceased to the appellant but has specifically averred that the shot fired by Ram Prasad actually hit the deceased. Her statement before the Court is unacceptable for two reasons; one being that she was not named as an eye-witness to the occurrence by PW-6 in his written report and that she had made such statement before the Trial Court for the first time and had not given any statement to the police earlier.

17. Sarita Devi(PW-5) has come up with a totally different story. She also has claimed herself to be an eye-witness to the occurrence. According to her, Ram Prasad caught the deceased by his collars and the appellant fired at him. While this occurrence had taken place, PW-5 has asserted that the deceased was all alone and not with PW-6, PW-7 or anybody else. Only one old man, perhaps in need of medicines, was sitting along with the deceased. She has also denied all



suggestions of the deceased having been killed in some other transaction and for some ulterior purposes, the appellant and his associates were named.

18. On going through the deposition of PW-6 (the informant), it becomes very clear that the shot fired by the appellant never hit the deceased.

19. However, he has confirmed the relationship of the appellant with one Baiju Rai who is married to his cousin sister. Baiju Rai and the appellant are brothers and the appellant had dispute with Baiju Rai. This perhaps could be the reason for framing the appellant, even though the deceased had no personal dispute with him.

20. Surprisingly, Ajeet (PW-7) has stated in his examination-in-chief that the appellant was one of the assailants. When he had given his 164 Cr.P.C. statement before the Magistrate, he had specifically stated that the appellant had fired but his shot had not hit the deceased.



21. The Investigator (PW-8) had nothing concrete to offer to the Trial Court except that Lalo and Sarita (PWs. 3 and 5) had not disclosed about their presence at the P.O. at the time when the deceased was shot at. With respect to the cases against the deceased, the Investigator had inquired that the deceased and one Sanjay had got a false case instituted against Ram Prasad for which a case was instituted against him also. He had also inquired and had confirmed that the deceased and Sanjay had fought with one *Fighter*, a criminal.

22. These stray information about the dispute of the deceased with others leads us nowhere except for a vague motive for falsely implicating the appellant and others.

23. We have already noted that the deceased had received one lacerated wound with inverted and charred margin in his chest. The trajectory of the projectile was downwards; perhaps suggesting that the



deceased was standing at a lower plain than the shooter. This also does not fit in the prosecution version.

24. For these reasons, we find that the accusation against the appellant is enmeshed in severe doubts.

25. On such evidence, the conviction of the appellant appears to be unwarranted.

26. We, therefore, giving benefit of doubt to the appellant, set aside his conviction and acquit him of the charges.

27. The appeal is allowed.

28. The appellant is in jail for the last 14 years. He is directed to be released from jail forthwith if not required or detained in any other case.

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

30. The records of this case shall also be



transmitted to the Trial Court forthwith.

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

(Ashutosh Kumar, J)

(Nawneet Kumar Pandey, J)

Rajesh/Nirmal

AFR/NAFR	NAFR
CAV DATE	NA
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