(2016) 07 PAT CK 0135

PATNA HIGH COURT

Case No: Criminal Appeal (DB) No. 317 of 2016 (Against the Judgment of conviction dated 20.02.2016 and Order of sentence dated 29.02.2016 passed by the Additional Sessions Judge-III, Jehanabad, in Sessions Trial No. 174 of 2015).

Gobind Dome, son of Late Bachan Dome, resident of village - Kinjar, P.S. Kinjar, District - Arwal - Appellant @HASH The State of Bihar — APPELLANT

Vs

RESPONDENT

Date of Decision: July 4, 2016

Acts Referred:

- Arms Act, 1959 - Section 27
- Penal Code, 1860 (IPC) - Section 302

Citation: (2016) 3 BBCJ 22 : (2016) 3 BLJud 271 : (2016) 4 ECrC 88

Hon'ble Judges: Anjana Prakash and Rajendra Kumar Mishra, JJ.

Bench: Division Bench

Advocate: M/s. Ajay Kumar Thakur, Nilesh Kumar and Kiran Thakur, Advocates, for the Appellant; Mr. Ashwani Kumar Sinha, A.P.P, for the State

Final Decision: Allowed

Judgement

Smt. Anjana Prakash, J.(Oral) - The sole Appellant has been convicted under Section 302 of the Indian Penal Code and Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for life under Section 302 of the Indian Penal Code with fine of Rs.25000/-, in default of which, to undergo further rigorous imprisonment for two years and sentenced to undergo rigorous imprisonment for five years under Section 27 of the Arms Act with fine of Rs.10,000/-, in default of which, to undergo further rigorous imprisonment for one year, vide Judgment of conviction dated 20.02.2016 and Order of

sentence dated 29.02.2016 passed by the Additional Sessions Judge-III, Jehanabad, in Sessions Trial No. 174 of 2015.

2. The case of the prosecution, according to the Fardbeyan of the Informant Gaina Dome (P.W.6), is that on 29.07.1998, when he along with the rest of the witnesses was going home with his father Fakirchand dome (deceased), 14 named accused persons including the Appellant, all belonging to his own family, surrounded him and, thereafter, the Appellant is said to have fired at the deceased whereas the accused Prabhu Dome and Pintu Dome assaulted him with ''Fasuli'' on account of which, his father Fakirchand died then and there. The reason for the occurrence was land dispute. This information was given on the same day at 09.00 P.M. at the place of occurrence.

3. During trial, the prosecution examined altogether 9 witnesses. However, the trend of examination and admission of the witnesses is that, in fact, none had witnessed the occurrence and the story was set up, later on, on account of previous enmity. We, accordingly, proceed to discuss the evidence of the prosecution witnesses.

4. P.W.1 Birju Dome stated that when he along with the Informant and rest of the witnesses were returning home, his uncle (Phupha) was caught hold of by all the accused persons and, thereafter, the Appellant fired at him with a pistol. All the other accused persons assaulted him with sharp cutting weapon.

In cross examination, he stated that on ''Hulla'' several persons ran towards the place of occurrence including himself, the Informant Gaina Dome (P.W.6), Mohan Dome (P.W.5), Ganesh Dome (P.W.4), Gabbar Manjhi (P.W.2), Ajay Dome (P.W.3). Subsequently, he stated that he had not been examined by the police which makes his evidence untrustworthy, specially, since the Investigating Officer has not been examined.

5. P.W.2 Gabbar Manjhi, reportedly, was also returning home with the deceased and rest of the witnesses where, on the way, 10-15 accused persons surrounded them and the deceased was shot by this Appellant and assaulted by two other accused with sharp cutting weapons.

In cross examination, his attention was drawn to the earlier statement that he had not named the accused persons and that he had also not stated about the Appellant having fired at the deceased which he denied. However, it appears that the Investigating Officer has not been examined and, therefore, a serious prejudice has been caused to the Appellant on this score.

In cross examination, he also stated that on ''Hulla'' several persons had gone to the place of occurrence including Mohan Dome (P.W.5), Ajay Dome (P.W.3), Birju Dome (P.W.1), Gaina Dome (P.W.6), the Informant and, therefore, it appears that, as per him, none of the aforesaid witnesses had seen the occurrence.

6. P.W.3 Ajay Dome, who had given the same version as that of the rest of the witnesses and that at the place of occurrence they were waylaid by all the accused persons and the Appellant fired at the deceased Fakirchand Dome whereas Prabhu Dome and Pintu Dome assaulted him with ''Fasuli''. In cross examination, his attention was drawn to the earlier statement that he had not stated that he was going home with rest of the prosecution party and in course of returning they were waylaid by the accused persons and the Appellant had fired at the deceased.

In cross examination, he stated that in course of fleeing away, he heard the sounds of gun shot and, therefore, there is no question for this witness having seen the Appellant firing at the deceased. He further stated in his cross examination that none of them took pains to inform the authorities.

7. P.W.4 Ganesh Dome also stated that he was returning with the rest of the prosecution party when the accused persons surrounded and assaulted them and in this course, the Appellant fired at the deceased at a close range and the accused Prabhu Dome and Pintu Dome assaulted him with ''Fasuli'' on his body.

In cross examination, his attention was drawn to the earlier statement that he had not stated about the accused surrounding and assaulting the deceased and the Appellant having fired at the deceased but he denied such suggestion. He further stated that after the occurrence, several persons including P.W.3 Ajay Dome, P.W.5 Mohan Dome, Satyendra (not examined) and the Informant Gaina Dome (P.W.6) had gathered.

Thus, it appears that none of the witnesses, according to him, had seen the occurrence.

8. P.W.5 Mohan Dome even though supported the factum of returning with the deceased and seeing the occurrence but in cross examination, he stated that when the accused persons were chasing them, he was ahead of them. Therefore, there could be no possibility of him being an eye witness to the occurrence. It was suggested to him, in fact, the deceased was killed by unknown persons and the case was set up on account of previous enmity which he denied.

However, he conceded that after the occurrence, several witnesses arrived including Gabbar Manjhi (P.W.2), Birju Dome (P.W.1), Ganesh Dome (P.W.4), Suresh (not examined) and Satendra (not examined) from which it appears that none of them were eye witnesses to the occurrence.

9. P.W.6 Gaina Dome is the Informant. He supported the factum of the occurrence as given in the Fardbeyan and proves his signature on the same as Ext.1.

In cross examination, he denied that he and his father had ever gone to jail and said that he was chased for about 10-15 steps and on ''Hulla'' 40-50 persons gathered, by which time, the deceased had died.

10. P.W.7 Urmila Devi and P.W.8 Shyam Sundari Devi are the family members of the deceased and are on the point of reaching at the place of occurrence after "Hulla" and seeing the dead body there.

11. P.W.9 Dr. Harish Chandra Hari conducted the Post-Mortem Examination on the dead body of the deceased. He proves the Post-Mortem Examination Report of the deceased as Ext.2. He found the following injuries on the person of the deceased.

(I) Lacerated wound on the face damaging whole of face including facial bone and soft tissue between mandible and skull, marked bleeding on margin of face.

(II) Sharp cutting injury on left forearm with damage of both bones of forearms.

On Dissection:- Heart-Empty, Lungs-Pale, Stomach-Partial undigested food material found, Liber and Spleen-Pale, Urinary Bladder-Empty.

Cause of death-shock and hemorrhage caused by firearm.

The Doctor found the aforesaid two injuries on the person of the deceased but the injuries sustained by him by firearm, evidently, was not from close range which belies the prosecution case.

12. We also take note of the fact that the Investigating Officer has not been examined and in the light of the several contradictions on material points in the evidence of the so-called witnesses, we hold that serious prejudice has been caused to the Appellant. The place of occurrence has also not been proved which creates a serious doubt regarding the veracity of the prosecution case.

13. On fair appreciation of the evidence of the witnesses, we are inclined to hold that none of them had, in fact, witnessed the occurrence and they all arrived at the place of occurrence, after the occurrence had been committed and, therefore, the Appellant deserves to be given benefit of doubt.

14. In the result, this Appeal is allowed. The Judgment of conviction and Order of sentence passed against the Appellant, above named, is set aside. He is acquitted of the charges. The Appellant is in jail custody, therefore, he is directed to be released forthwith, if not wanted in any other case.