

(2016) 06 PAT CK 0093

PATNA HIGH COURT

Case No: Criminal Appeal (DB) No. 857 of 2015 (Against the Judgment of conviction dated 24.06.2015 and Order of sentence dated 27.06.2015 passed by Ist Additional Sessions Judge, Bhojpur, Ara, in Sessions Trial No. 189 of 2010 arising out of Udwant Nagar P.S. Case

Indradeo Ram, son of Late
Ramayan Ram, Resident of
village - Belaur (Chakardah), P.S.-
Udwant Nagar, District - Bhojpur
- Appellant @HASH The State of
Bihar

APPELLANT

Vs

RESPONDENT

Date of Decision: June 23, 2016

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302

Citation: (2016) 3 BLJud 238 : (2016) 4 ECRC 200 : (2017) 1 PCCR 45

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

Bench: Division Bench

Advocate: Mr. Amrendra Narayan Rai and Mr. Sanjay Kumar, Advocates, for the Appellants; Mr. A.K. Sinha, A.P.P, for the Respondents

Final Decision: Allowed

Judgement

Smt. Anjana Prakash, J.(Oral) - The sole Appellant has been convicted under Section 302 read with Section 149 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life and fine of Rs.1,00,000/- (one lac), in default of which, to undergo further six months simple imprisonment vide Judgment of conviction dated 24.06.2015 and Order of sentence dated 27.06.2015 passed by the Ist Additional Sessions Judge, Bhojpur at Ara, in Sessions Trial No. 189 of 2010.

2. The case of the prosecution, according to the Fardbeyan of the Informant Ayodhya Nath Chaudhary (P.W.4), the father of the deceased, is that on the evening

of 20.02.2009, he along with his nephew Ram Bhushan Choudhary (not examined) and his son Putal Choudhary @ Akhilesh Choudhary (deceased) had gone to the shop of Munna Mishra for buying mango wood as Puja was to be performed in the house of the Informant. On the way, his son, the deceased Putal Choudhary @ Akhilesh Choudhary sat down to relieve himself. In the meantime, a Milk Van came and stopped there, from which, four persons including the present Appellant got down. On seeing them, the Informant tried to alert his son, on which, his son started to run towards the south. He was chased by accused Upendra Choudhary and the present Appellant. While he and his nephew Ram Bhushan Choudhary were detained by the accused Lilu and Mirtunjay and unknown persons on the point of Pistol, his son was caught hold by the Appellant in front of the house of Ram Jee Banjara and while the Appellant caught hold of him, the co-accused Upendra Choudhary shot him dead. The reason for the occurrence was previous enmity. He further stated that he identified the accused persons including the Appellant in the light of approaching tractor. The Fradbeyan was recorded on the same night at 9.15 P.M. at the place of occurrence.

3. During trial, the prosecution examined seven witnesses.

4. P.W.1 Kanaiya Sah, P.W.2 Vindhyachal Ram and P.W. 5 Munna Mishra have been declared hostile.

5. P.W.3 Sheo Bhushan Choudhary, who is a signatory of the Fradbeyan, sated that on the date of occurrence when darkness was approaching, he had gone to the shop of Munna Mishra to buy mango wood. When he reached near the shop, he saw deceased Putul Choudhary @ Akhilesh Choudhary being assaulted by the Appellant, Upendray Choudhary and unknown persons, whose name he did not remember. They, all, were firing on the deceased Puttutl Choudhary @ Akhilesh Choudhary, on account of which, he fell down dead. The occurrence was also seen by the father of the deceased, i.e., the Informant (P.W.4).

In cross-examination, his attention was drawn to the fact that, in fact, he was not an eye witness as per his earlier statement which he denied but the Investigating Officer Rajiv Nayan Kumar Singh (P.W.6), corroborated the fact that he had said he was not present at the place of occurrence and thus, his evidence has to be discredited.

6. P.W.4 Ayodhya Nath Choudhary the Informant, the sole eye witness, has stated that on the date of occurrence, he along with deceased and his nephew Ram Bhushan Choudhary (not examined) had gone to buy mango wood. On the way, his son sat down to relieve himself. The accused persons came on a Milk Van and chased his son and while Appellant Indradeo Ram caught hold of his son, the accused Upendra Choudhry shot him on the face. He sent information through Chaukidar (not examined) to the Police Station, upon which, police came and then he gave his Fardbeyan, which he proves as Ext.1. He proves the signature of Ravi

Bhushan Choudhary as Ext. 1/A.

In cross-examination, he conceded that the deceased was an accused in murder case as also that there were many mango trees near his house but there was no dry wood. He further stated that there was no enmity between the present Appellant and the deceased. It was suggested to him that the deceased was, in fact, a veteran criminal and had been killed in another manner which he denied.

7. P.W.6 Rajiv Nayan Kumar Singh, the Investigating Officer, stated that on 02.02.2009 at about 8 P.M., he received information that some body had been shot at which he recorded the Sanha and went to verify the information. He then reached the place of occurrence and found the dead body of the deceased where the informant and several villagers had gathered. He recorded the Fardbeyan of the Informant which is Ext. 2 and instituted a formal First Information Report which he proves as Ext.3 and prepared the Inquest Report. He sent the dead body of the deceased for Post-Mortem Examination to Ara Sadar Hospital. He stated that on account of darkness, he could not inspect the place of occurrence on the same night and did so on the next morning. The dead body was reportedly found on the road. He recorded the statements of Kanhaiya (P.W.1), Vindhyachal Ram (P.W.2), Sheo Bhushan Chaudhary (P.W.3), Ayodhya Chaudhary (P.W.4) and Munna Mishra (P.W.5).

In cross examination, he stated that he had examined one Anita Devi, who stated that on the evening, she had heard a fighting going on outside of her house and, thereafter, she saw the deceased dead. Similarly, one Ramadhar Chaudhary stated that there were two rival groups operating in the area, one led by Deep Narayan Chaudhary and the other by Butan Chaudhary and several murders had taken place between two groups. P.W.2 Vindhyachal Ram had stated earlier that the deceased had come to his Tola to drink liquor. P.W.1 Kanaiya Ram, a hostile witness, had given a similar statement earlier. The Investigating Officer stated that he had recovered illegal arms from the possession of the deceased from which it can be deduced that the deceased was a criminal.

8. P.W.7 is Dr. A.H. Ansari, who held Post-Mortem Examination on the dead body of the deceased on 21.02.2009 and proved the Post-Mortem Examination Report of the deceased as Ext.4. He found the following injuries on the person of the deceased.

On External Examination:

(I). Rigor mortis was present on whole body, mouth was closed, eyes half opened, blood which was clotted was present outside the nose.

(II). Lacerated wound just right side of nose 4" X 4" leading to right maxillary cavity and cranial cavity.

On dissection:

(i). There was fracture of right maxillary bone and nasal bone along with fracture of cranial bone.

(ii). Skull-was full of blood. Ménanges and brain tissues-were lacerated. There was metallic substance dissembling bullet.

(iii).Chest-both lungs were pale, heart was also pale and empty.

(iv). Abdominal-Liver and spleen were pale, stomach having digested liquid material.

(v). Kidney-Both kidneys were pale. Urinary bladder contained about 150 cc. urine like.

In the opinion of the Doctor, the time elapsed since death-within 36 hours and cause of death-injury to vital organ, brain leading to shock and death.

Strangely, the Doctor did not mention as to by which object the injury was caused even though he has mentioned that a metallic substance was resembling and a bullet was lodged in the skull.

9. On going through the evidence of the aforesaid witnesses, we find that Ram Bhushan Chaudhary, who was mentioned as an eye witness in the Fardbeyan and was own nephew of the Informant, has not been examined on behalf of the prosecution instead his brother Sheo Bhushan Chaudhary, who was not an eye witness, has been set up as an eye witness. Strangely, he named the two accused persons with general allegation of making firing and has not attributed any specific overt act to the present Appellant.

P.W.4 Ayodhya Nath Chaudhary has conceded that the Appellant had no enmity with his family and, therefore, there was no reason for him to have alerted the deceased on seeing the accused alight from the Milk Van. Moreover, the identification of the Appellant from a certain distance in the headlight of the tractor, the driver of which has not been examined, appears to be highly shaky. It is also improbable that three persons would have gone to buy wood for a Puja, which is not usual practise in the rural areas, specially when it is stated by the Informant himself that there was many mango trees around his house. In the circumstances, on the sole evidence of P.W.4 Ayodhya Nath Chaudhary, the Informant, we are not inclined to confirm the conviction of the Appellant. Hence, we acquit the Appellant of the charges giving him benefit of doubt.

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