

Criminal Appeal (D.B.) No. 300 of 1995 (P)

[Against the Judgment of conviction dated 08.08.1995 and Order of sentence dated 11.08.1995, passed by learned Sessions Judge, Deoghar, in Sessions Case No. 60 of 1994]

Babloo Rout @ Pararu, Son of Bishwanath Rout, resident of Mohalla – Meghlal Puri Lane, Pachhim Tola, P.S. – Deoghar Town, in the Town and District of Deoghar.

... .. **Appellant**

Versus

The State of Jharkhand **Respondent**

P R E S E N T

HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY
HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

.....

For the Appellant : Mr. Birendra Kumar, Advocate.

For the Respondent : Mr. Pankaj Kumar, P.P.

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JUDGMENT

C.A.V. on 21.10.2024

Pronounced on 11.12.2024

Per Pradeep Kumar Srivastava, J.

- 1.** Heard learned counsel for the parties.
- 2.** The present appeal is directed against the judgment of conviction and order of sentence dated 08.08.1995 / 11.08.1995 passed by learned Sessions Judge, Deoghar in Sessions Case No. 60 of 1995, whereby and whereunder, the appellant has been held guilty for the offence under Section 302 of the I.P.C. and Section 27 of the Arms Act and sentenced to undergo R.I. for life for the offence under Section 302 of the I.P.C. and R.I. for three years for the offence under Section 27 of the Arms Act. Both the sentences were directed to run concurrently.

FACTUAL MATRIX

3. The factual matrix giving rise to this appeal in a narrow compass is that the informant's daughter Anita Devi (since deceased) was married with one Sanjal Prasad in February, 1993. It is alleged that Anita Devi returned from her *sasural* to her parental house on 26.02.1993. It is further stated that prior to marriage of Anita Devi with Sanjal Prasad, the appellant Babloo Rout was desiring to marry with her, which could not be solemnized, hence, he was having animous against the Anita Devi. It is further alleged that on 06.04.1993 at about 8:30 PM, the informant Laxmi Devi (P.W.-1) along with daughter Anita Devi (deceased) and another daughter Kalpana Kumari (P.W.-8) after taking dinner were talking with each other, meanwhile, electricity supply went off and lamp was lighting in the room. Suddenly, the appellant rushed in the room with a pistol in his hand and shot on Anita Devi at a close distance, exalting that he has come to take *bidagiri* of the deceased. The deceased sustained firearm injury, causing fracture of the scalp and also sustained injury over forehead and near the eyes. The informant (P.W.-1) and Kalpana Kumar (P.W.-8) tried to catch hold of the appellant, but he managed to flee away dropping his pistol in the room

of the informant. It is also alleged that the informant, her daughter and other family members raised hulla and chased the appellant and also saw his associate Dinesh Gupta, who was standing outside the house and both were fleeing away towards Pedagalli. The deceased was brought to Hospital, but was declared dead by the Doctor.

4. On the basis of fardbeyan (Exhibit-2) of the informant, the formal FIR (Exhibit-3) was registered as Sadar (Town) P.S. Case No. 70 of 1993 (G.R. No. 355 of 1993) for the offence under Section 302 / 120B / 34 of the I.P.C. and Section 27 of the Arms Act.
5. After completion of investigation, charge sheet was submitted against both the accused namely, Babloo Rout and Dinesh Gupta. After taking cognizance, the case was committed to the Court of Sessions; where above Sessions Case was registered and the appellant was charged for the offence under Section 302 of the I.P.C. and Section 27 of the Arms Act. The accused persons denied the charges and claimed to be tried.
6. In course of trial, the prosecution has examined altogether 12 witnesses and also adduced following documentary evidence:-

Exhibit-1 : Signature of Laxmi Devi on fardbeyan.

- Exhibit-1/1 : Signature of Badri Narayan Sah on the seizure list.
- Exhibit-2 : Fardbeyan.
- Exhibit-3 : Formal F.I.R.
- Exhibit-4 : Post Mortem Report of deceased Anita Devi.
- Exhibit-5 : Report of Sergeant Major.
- Exhibit-6 : Seizure List.
- Exhibit-7 : Carbon copy of inquest report of Anita Devi.
- Exhibit-8 : Sanction order of Deputy Commissioner for prosecution under Arms Act vide Order No. 27/93.

7. The prosecution has also exhibited material exhibits, which are as follows:-

- Material Exhibit-I : Country made Pistol.
- Material Exhibit-II : One empty Cartridge.

8. The case of defence is denial from occurrence, plea of innocence and false implication due to previous enmity.

9. The learned trial court, after evaluating oral as well as documentary evidence led by the prosecution, found the appellant guilty for the offence under Section 302 of the I.P.C. and Section 27 of the Arms Act and

sentenced him as stated above, but the co-accused Dinesh Gupta was acquitted extending the benefit of doubt.

10. We have heard the learned counsel for the appellant as well as learned P.P. for the State at length and perused the trial court record along with impugned judgment and order.

11. Learned counsel for the appellant has vehemently argued that out of 12 witnesses examined in this case, only P.W.-1 Laxmi Devi and P.W.-8 Kalpana Kumari have claimed to be eye-witness of the occurrence. It is admitted position that P.W.-2 Badri Narayan Sah (*bhaisur* of the informant), P.W.-3 Ram Chandra Sah (husband of the informant), P.W.-5 Basuki Devi (*gotni* of the informant) have reached the place of occurrence after hearing *hulla* raised by P.W.-1 and P.W.-8 and claimed that they have seen the appellant while fleeing from the place of occurrence. P.W.-4 Manoj Kumar Keshri, who happens to be the son of the informant has been tendered for cross-examination. P.W.-6 Anil Kumar Keshri, Son of *gotni* of informant is hearsay witness. P.W.-7 Ram Sharan Yadav, the then police office of Deoghar P.S. has recorded the *fardbeyan* of the informant. P.W.-9 Dr. Narendra Mohan Sharma has

proved the post-mortem report (Exhibit-4) of the deceased. P.W.-10 Krishna Ram is the Sergeant Major, who has submitted report with respect to the pistol and cartridge after examining the same. P.W.-11 Md. Jaimuddin is the Investigating Officer of the case and P.W.-12 Amal Kumar Barai is a formal witness, who has proved the sanction order passed by the Deputy Commissioner, Deoghar for prosecution under Section 27 of the Arms Act.

- 12.** Further elucidating his argument, learned counsel for the appellant has pointed out that P.W.-1 Laxmi Devi did not utter a single word about means of identification of the appellant and how she was knowing him. According to her evidence, at the time of occurrence, a lamp was lighting there and the accused suddenly came, fired upon the deceased and fled away, while she along with her daughter Kalpana Kumari (P.W.-8) was attempting to apprehend the accused. Both P.W.-1 and P.W.-8 have claimed to have raised alarm and the accused was seen fleeing away by several neighbours, but not a single independent witness have been examined in this case, who might have appeared in witness box to corroborate the above story. It is also admitted that the appellant was not muffling his face at the time of occurrence.

- 13.** It is further contended that P.W.-2 Badri Narayan Sah, P.W.-3 Ram Chandra Sah, P.W.-5 Basuki Devi, who have claimed to see the appellant while fleeing from the house of the informant have materially improved their earliest version and testified as an eye-witness. It is obvious from the evidence of P.W.-11 Md. Jaimuddin I.O. of the case that above witnesses have not disclosed before him in their statement recorded under Section 161 of the Cr.P.C. claiming to have seen the accused while fleeing from the house of the informant.
- 14.** It is further argued that just after 3-4 months of this incident of murder of the deceased, P.W.-8 Kalpana Kumari was married with the husband of the deceased namely, Sanjal Prasad. In this regard, P.W.-8 was suggested by the defence that having relation with the husband of the deceased, she has caused murder of the deceased and falsely implicated the accused / appellant in this case.
- 15.** It is further argued that P.W.10 Krishna Ram, Sergeant Major, who has examined the pistol and the cartridge has clearly opined that pistol was effective and was of .303 bore, whereas the empty cartridge allegedly found at the place of occurrence was of .315 bore, suggesting that the bore of the pistol and the cartridge were different.

- 16.** The place of occurrence as stated by P.W.-1 and P.W.-8 is not identifiable as per description of the P.O. given by the Investigating Officer. No lamp was seized from the place of occurrence nor was produced by the witnesses which was lighting at the time of alleged occurrence as per the evidence of P.W.-1 and P.W.-8.
- 17.** The Investigating Officer has seized a blood-stained chappal allegedly belonging to the appellant, but foot print were never got matched with the appellant nor put under TIP to identify that it belonged to the appellant. It is also surprising that the pistol allegedly dropped at the place of occurrence by the appellant was admittedly was not touched by any of the witness, but no finger print was obtained to establish that it bears the finger print of the appellant.
- 18.** The trend of prosecution evidence as testified by witnesses and the material omissions / laches in the investigation does not connect the appellant with alleged offence of murder.
- 19.** The material exhibits like pistol and empty cartridge are immaterial for the purpose of establishing the guilt of the appellant. There is no evidence regarding firing upon the deceased by the pistol recovered in this case. Even if, the said pistol might have been used for firing, there is absolutely no concrete

evidence to establish that firearm was used by the appellant.

20. The learned trial court has ignored the vital contradictions appearing in the evidence of witnesses and arrived at wrong conclusion recording the guilt of the appellant for the offence of murder. Therefore, it is prayed that the impugned judgment and order may be set aside and this appeal may be allowed.

21. Per contra, learned PP appearing for the State while refuting the aforesaid contentions raised on behalf of the appellant has argued that the learned trial court has very wisely and aptly appreciated the evidence of eye witnesses i.e. P.W.-1 and P.W.-8, who have identified the accused / appellant. It is proved beyond doubt that the appellant desired to marry with the deceased, but when her marriage was solemnized with another person, he was dissatisfied and annoyed. The appellant also happens to be neighbor of the prosecution witnesses and his identity in a little light cannot be disputed. There is no reason to falsely implicate the appellant. It is further submitted that so far laches or lacuna in the investigation on the part of I.O. regarding taking finger print from the seized pistol, TIP of blood stained chappal and ballistic expert report about pistol and cartridge does not give

any premium to the accused for his innocence. In this connection, he has placed reliance upon recent judgment of Supreme Court in the case of ***Maqbool @ Zubair @ Shahnawaj & Anr. Vrs. State of Andhra Pradesh*** reported in ***(2010) 8 SCC 359***.

22. It is further argued that the learned trial court has committed no illegality or infirmity in arriving at the guilt of the appellant for the offence of murder of the deceased. This appeal has no merit and fit to be dismissed.

23. We have meticulously examined the record. There is no doubt that the deceased died due to injuries caused by firearm at a touch distance. P.W.-9 Dr. Narendra Mohan Sharma has found two injuries on the dead body of the deceased; **one wound of entry** - lacerated wound over left side of face, lateral to left orbit over zygomatic process left, skin margin and muscles were charged, causing injury to scalp, lacerated wound about 8" upto middle of the right parietal and exposing fracture of left and right parietal bones, frontal bone, left eye ball, left side of nose, nasal, meninges and part of brain tissue were found lacerated.

24. Another injury is **wound of exit** – lacerated wound 1½ x ½ x cranial cavity, inverted margin of scalp with fracture of right parietal bone.

- 25.** It is opined that the entire injuries were found sufficient in ordinary course of nature to cause death.
- 26.** In order to prove that the appellant was author of the said crime two ocular witnesses P.W.-1 and P.W.-8 have been examined.
- 27.** We find that P.W.-2 Badri Narayan Sah, P.W.-3 Ram Chandra Keshri, P.W.-5 Baski Devi, P.W.-6 Anil Kumar Keshri are hearsay witnesses of occurrence and claimed to have saw the accused while fleeing after commission of offence, but admittedly these witnesses have not disclosed before the Investigating Officer (P.W.-11) in their statement under Section 161 of the Cr.P.C. that after hearing sound of firearm and hulla raised from house of informant, they rushed towards place of occurrence and saw the accused while fleeing, rather this fact was disclosed to them by P.W.-1 and P.W.-8, which has been reiterated in their evidence before Court. Therefore, the evidences of above witnesses have no evidentiary value and probative force in this case.
- 28.** We find that the re-appreciation of the evidence of P.W.-1 Laxmi Devi and P.W.-8 Kalpana Kumari is required for better analysis of case.
- 29. P.W.-1 : Laxmi Devi,** who happens to be informant and mother of the deceased has deposed that at the

time of occurrence, she along with her daughter Anita Devi after taking dinner got up for giving water to Anita and was washing her hand and her younger daughter Kalpana Kumari (P.W.-8) was studying at some distance. She has further deposed that while she was standing for washing her hand near the door, meanwhile, Babloo @ Parapu entered into the room with a pistol and shot fire touching the ear of Anita Devi. She attempted to catch hold of the accused, but he pushed her and in that course pistol fell down and accused fled away. She chased the accused towards the stair, where Dinesh Gupta was present and both fled away.

In her cross-examination, she admits that accused Babloo is close door neighbour and partition wall of both is same. She also admits that at the time of incident electricity light went off and lamp was lighting in the room. She has not stated in a single word about any love affair between the appellant and the deceased prior to her marriage with one Sanjal Prasad. She has also not expressed anything that there was frequent visiting term between deceased and accused prior to the occurrence. She has expressed her ignorance that the accused was frequently coming to her house.

30. P.W.-8 – Kalpana Keshri has also stated that at the time of occurrence, she was studying in her room in lamp light, meanwhile Babloo suddenly entered into her room where her sister and mother were present. He shot firearm on Anita Devi and ran fast. She along with her mother raised hulla, but cannot chase the accused.

In her cross-examination, she admits that she was studying at the time of occurrence and after hearing the sound of firearm, she became conscious about the incident. She could not say how much time was consumed from coming of the accused into the room and firing upon the deceased and fleeing away. The pistol of the accused was left in room in the scuffle and his slipper was also there.

31. From the trend of evidence of P.W.-1 & P.W.-8, it also appears that the matter was not reported to the police station immediately, rather the deceased was brought to Hospital at first and they have not entered into in the house of the accused with any member of his family, although they are close door residents.

32. The very genesis and motive for the crime has not been proved by any of the prosecution witness including P.W.-1 and P.W.-8 regarding love affairs between deceased and the appellant prior to her

marriage and appellant was annoyed due to solemnization of the marriage with another person. There is no iota of evidence that after solemnization of marriage of deceased; any threatening was extended by the appellant to the deceased or her family members.

33. From the evidence of Investigating Officer (P.W.-7) and P.W.-10 Sergeant Major, it is crystal clear that the material exhibits firearm was produced before the Sergeant Major (P.W.-10) in open condition and without properly sealed and in the same condition, it was returned to the Investigating Officer. The Investigating Officer has also not got the ballistic report of cartridge and firearm inspite of the fact that both firearm as well as empty cartridge were of different bore. The finger print over the firearm was also not examined. Foot print over the seized slipper was also not examined to connect the above material exhibits with the appellant.

34. The Investigating Officer has also categorically stated that he did not find any lamp at the place of occurrence nor the same was produced by the witnesses. Therefore, the whole story projected against the appellant not only suffers from material concealment by the witnesses, but also lack of

connecting evidence to conclusively prove that appellant was the author of the said crime.

35. Upon careful consideration of oral as well as documentary evidence relied upon by the prosecution and believed to be true by the learned trial court does not satisfy our conscience in view of the above glaring defects in the prosecution evidence. More particularly, the concealment of facts by the material prosecution witnesses, projection of other witnesses as eye-witnesses claiming to have saw the accused while fleeing for the first time at the time of trial, creates a reasonable doubt, so far involvement of present appellant in the alleged offence is concerned.

36. It is cardinal principle of criminal jurisprudence that a person cannot be convicted for commission of an offence unless and until, it is proved beyond shadow of all reasonable doubts and if any reasonable doubt appears in the prosecution evidence leading towards innocence of accused, the benefit of which must be given to the accused.

37. From the aforesaid discussion and reasons, we are of the firm view that the learned trial court has miserably failed to properly appreciate the oral as well as documentary evidence available on record and ignored the glaring infirmities appearing in the

prosecution evidence as discussed above and arrived at wrong conclusion about guilt of the appellant. Hence, we are constrained to set aside the impugned judgment of conviction and order of sentence passed against the appellant and acquit him from the charges leveled against him.

38. Accordingly, the impugned judgment of conviction and order of sentence dated 08.08.1995 / 11.08.1995 passed by the learned Sessions Judge, Deoghar in Sessions Case No. 60 of 1994 is hereby set aside. The appellant is acquitted from the charges leveled against him.

39. The appellant is on bail, as such, he is discharged from liability of bail bond and sureties shall also be discharged.

40. Accordingly, this appeal is allowed.

41. Let a copy of this judgment along with trial court record be sent back to the court concerned for information and needful.

(Rongon Mukhopadhyay, J.)

(Pradeep Kumar Srivastava, J.)

Jharkhand High Court, Ranchi

Dated, the 11th December, 2024.

Sunil / **N.A.F.R.**