

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.259 of 1995

1. Parsuram Roy, son of Bhagwat Roy and
2. Umesh Roy, son of Jamuna Roy, both residents of village – Chak Pariyag,
Police Station : Parbatta, District – Khagaria.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Anukriti Jaipuridar, Advocate

For the Respondent/s : Ms. Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE A. M. BADAR

and

HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR)

Date : 02-03-2022

In the instant appeal, the appellants Parsuram Roy and Umesh Roy have challenged the judgment of conviction and order of sentence dated 22.08.1995 and 24.08.1995 respectively passed by Shri Diwakar Jha, 2nd Additional Sessions Judge, Khagaria in Sessions Trial No. 564 of 1989 arising out of Parbatta P.S. Case No. 26 of 1989.

2. By the aforesaid judgment, appellant no.1 Parsuram Roy had been convicted for the offence punishable under Section 302 of the Indian Penal Code and appellant no.2 Umesh Roy had been convicted for the offence punishable under Sections 302/114 of the Indian Penal Code. After hearing on the point of sentence vide consequential order, the trial Court sentenced the appellants to undergo rigorous imprisonment for life.



3. It would be proper to mention here that in this case appellant/accused Parsuram Roy stands charged of the offence under Section 302 of the Indian Penal Code. Appellant no.2 Umesh Roy stands separately charged for the offence under Sections 302/114 of the Indian Penal Code. Other accused Wakil Roy, Bhola Rai, Borhan Roy, Bhumi Roy and Sanjay Roy stand separately charged for the offence under Sections 302/149 of the Indian Penal Code. After hearing the parties, the learned trial Court was pleased to convict appellants by holding that they are guilty of the offence of commission of murder of the deceased, namely, Buchi Chaudhary. Rest of the accused persons, namely, Wakil Roy, Borhan Roy, Bhumi Roy, Bhola Roy and Sanjay Roy came to be acquitted, hence, this appeal by the appellants.

4. The prosecution case recapitulated as here under is based on the fardbayan of one Rambaran Chaudhary (PW-8) dated 03.03.1989 disclosing the fact that at about 1.00 P.M., the informant had been in his field in Mauja Chakprayag to watch his Khar stored in the field, 15 days ago the day of report and found Parsuram Roy, Wakil Roy son of Bhagwat Roy, Umesh Roy, Yamuna Roy, Pappu Roy son of Umesh Roy, Bhagwat Roy son of Shiv Charan Roy, Sanjay Roy son of Bhagwat Roy, lifting bundles of Khar belonging to the informant. It further



transpires that the informant made protest against lifting of Khar whereupon accused above named started abusing the informant. It further reveals that the informant, but of fear, made as retreat to his house and disclosed what happened in the field to the family members. It further transpires that at about 2.30 P.M. the aforesaid accused reached on the unmetalled road in front of the house of Ramanand Chaudhary to the west of the Ring Bandh with Khar laden on two bullock carts. It further reveals that the informant asked Buchi Chaudhary to stop bullock carts and in the meantime Parsuram Roy, Pappu Roy and Sanjay Roy jumped down from bullock carts and ran to their houses and Parsuram Roy armed with country made gun, Pappu Roy armed with DBBL gun and Sanjay Roy armed with country made pistol returned to the place of occurrence. It further transpires that Bhumi Roy, Bhola Roy, Mantlal Roy armed with lathi followed the aforesaid three accused persons. It further transpires that Umesh Roy ordered Parsuram Roy to shoot at and Parsuram Roy opened fire from his country made gun at Buchi Chaudhary. It further reveals that Buchi Chaudhary received injury on his chest at the right side and fell down on the ground. It further transpires that the informant ran to Buchi Chaudhary and tried to lift him up but Pappu Roy with the



intention to cause murder of the informant, opened fire from DBBL gun but the informant did not sustain any injury. It further transpires that villagers Yogeshwar Chaudhary (PW-7), Sajjan, Ramanand Chaudhary (PW-3), Surendra Chaudhary (PW-2), Damodar Chaudhary and others assembled at the place of occurrence on the sound of gun fire. It further reveals that Buchi Chaudhary succumbed to the injury.

5. The Investigating Officer, Navin Prasad (PW-9) registered Parvatta P.S. Case No. 26 of 1989 on 03.03.1989 under Sections 147, 148, 149, 379, 307 and 302 of the Indian Penal Code and Section 27 of the Arms Act against the accused persons and took up the investigation. After completing the investigation, chargesheet has been submitted against all the accused persons after finding the case true against them. Thereafter, the case was committed to the Court of Sessions for trial and disposal. The charges were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried. Their defence is that they have been falsely been implicated in this case due to enmity.

6. To substantiate the charges levelled against the accused persons, altogether nine witnesses have been examined on behalf of the prosecution.



7. PW-1 Barun Chaudhary stated in Court that on 03.03.1989 at about 2 and 2.30 P.M, while he was on the way from Bahiyar after watching the field, he heard hulla and sound of gun firing and when he arrived at Ring Bandh, he ran to the road in front of the Darwaja of Ramanand Chaudhary and saw Umesh Roy (appellant), Parsuram Roy (appellant), Wakil Roy, Pappu Roy, Mantlal Roy, Borhi Roy, Bhumi Roy and Bholi Roy standing there. Parsuram Roy was armed with country made gun, Pappu Roy was armed with DBBL gun, Sanjay Roy was armed with 303. and others were armed with lathi. The accused fled away towards south on his arrival at the place of occurrence. He saw gun shot injury on the right side of the chest of the deceased Buchi Chaudhary. The blood was oozing out and he saw blood stains on the grass.

8. PW-2 Surendra Chaudhary has deposed about the alleged occurrence as stated by the informant, namely, Ram Baran Chaudhary because of he does not claim to be an eye witness of the alleged occurrence.

9. PW-3 Ramanand Chaudhary is claimed to be an eye witness and stated that the alleged occurrence took place thirteen (13) months ago from the date of deposition in the Court on Friday at 2.00 and 2.30 P.M. in the day. He also stated



that on Hulla, he went out of his Darwaja and went to the place of occurrence. He also stated that Parsuram Chaudhary fired at the chest of deceased Buchi Chaudhary on the order of Umesh Roy.

10. PW-4 Ramdeo Chaudhary also claims to be an eye witness to the alleged occurrence and asserted about the place of occurrence and manner of occurrence in his evidence before the court.

11. PW-5 Ramawtar Chaudhary stated that the alleged occurrence took place on 03.03.1989 and he was at the place of occurrence when the police came and seized the blood stained straw and prepared seizure list which was identified and marked as Ext-3/1.

12. PW-6 Dr. Awadhesh Kumar Yadav proved the postmortem report which prepared by him and he found one circular lacerated wound of 1” diameter with inverted margin over right second inter coastal space in the right mid clavicular wound of entrance. Blood was oozing out of the wound surrounding skin over 2” diameter from the centre of the wound. He multiple black pin points charred dot. There was no wound of exit. On dissection, there was extra vasation of blood and blood clots in the subcutaneous tissues in association with the



injury mentioned above. The third right rib in mid clavicular was found fractured. The pleura under line the wound was ruptured. The right lobe of the lung was ruptured. Cylindrical wad right structure (card board) was found lodged inside the right lobe of the lung. This was taken out and preserved in a sealed bottle, and handed over to the constable. The right side of the thoracic cavity was full of blood. The heart was empty. The left lung spleen, kidney, liver were pale. The bladder was empty. The above mentioned injury were antemortem in a nature caused by firearm may be a country made firearm such a gun. Cause of death in his opinion was due to haemorrhage and shock due to the aforesaid injury. Time elapsed since death was within 12 to 24 hours of the postmortem examination. This postmortem report (carbon copy) was identified in my pen and signature. It has been marked Ext-4.

13. PW-7 Yugesh Chaudhary also stated about the fact as asserted by the informant to him in respect of the alleged time of occurrence. He does not claim to be an eye witness.

14. PW-8 Ram Baran Chaudhary, the informant and star witness of this case, has stated about the place of occurrence, manner of occurrence and time of occurrence. He deposed that the alleged occurrence took place about two and half years from



the date of deposition in the Court at 2.30 P.M. while this witness had been to watch his field in Mauja Chakprayag at about 1.00 P.M. The witness stated that he had stored the bundles of khar in the field and the khar bundles were being loaded on the bullock carts by Parsuram and Wakil. The witness stated that Umesh, Pappu, Sanjay, Borhan, Bhumi were loading bundles of khar on two bullock carts. He made protest whereupon the accused got irritated and abused the witness. He came to his house and told his uncle and Buchi Chaudhary (deceased), his cousin about the occurrence. Thereafter he accompanied by Buchi Chaudhary (deceased) came to the place and saw bullock carts in front of the house of the Ramanand Chaudhary. He asked for khar bundles. Pappu, Parsuram, Sanjay were on the bullock cart. Borhi, Umesh, Wakil were with the bullock carts. Parsuram, Pappu and Sanjay jumped down from the bullock cart and Pappu and Parsuram armed with gun and Sanjay armed with 303., Bhola, Bhumi and Mantlal armed with lathi came and Umesh ordered Parsuram to fire whereupon Parsuram fired and caused gun shot injury at the side of the chest of the deceased Buchi Chaudhary fell down. The witness stated that Pappu fired at the informant as soon as the informant tried to lift Buchi Chaudhary. Ramanand and Ramdeo were



also there. Surendra, Yugeshwar came there on hulla. The accused drove bullock carts seeing the witnesses arrive. Bullock carts reached at the house of Umesh and the alleged occurrence of gun shot fire took place at 4.00 P.M. The witness stated that accused Pappu and Mantlal have been held guilty by the court of Juvenile Justice Court. He made his beyan before the Daroga Jee.

15. PW-9 Navin Prasad is the Investigating Officer of this case. He recorded the Beyan of Rambaran Chaudhary (Ext-6) at 4 P.M. He recorded the statement of Rambaran Chaudhary and other witnesses. He also stated about the place of occurrence and its boundary. He found blood stains on the grass and straw in little quantity in the eastern portion of bathan of Ramanand Chaudhary. He did not find any bullock cart near the place of occurrence and did not find any sign of bullock cart because of dust on the road. There is ditch at a distance of 20 cubits at the place of occurrence where he found blood stained. The house of deceased Buchi Chaudhary is situated at north-west of the place of occurrence. Ring Bandh is situated at a distance of 250 yards from the place of occurrence.

16. Accused on trial has been examined under Section 313 of the Cr.P.C. and the accused pleaded not guilty and denied



to have committed any offence. The accused entered into defence and examined Chaukidar Keso Paswan as Defence Witness. He saw the dead body of Buchi Chaudhary on a cot on the date of occurrence and saw a number of female and children who were weeping and shouting “Ke Dusmanma Mar Dia”. Ram Baran Chaudhary to go to the police station and he himself remained there to keep watch on the dead body. He further stated that Darogajee came and sent the dead body to the police station along with him and two constables. Ram Baran Chaudhary did not tell the names of assassin to this witness while he was with him.

17. The learned Amicus Curiae, Mrs. Anukirti Jaipurian for the appellants submitted that the trial Court should have discarded the statement of PWs, 3, 4 and 8 on the ground that they have either made contradictory statements or they are the partisan, interested and inimical witnesses.

18. Learned counsel on behalf of the State submits that Pws. 3, 4 and 8 who claim to be an eye witnesses of the alleged occurrence supported the prosecution by their consistence evidence. The doctor also proved the postmortem report and also supported the prosecution case and the prosecution evidence is in consonance with the medical evidence. He further



submits that there is no force in the contention raised on behalf of the appellants. The deceased succumbed to injury which shot fire by the appellant no.1 Parsuram Roy on the order of appellant no.2 Umesh Roy resultantly the deceased fell down on the ground after receiving gun shot injury.

19. We have gone through the entire prosecution evidence, from which it transpires that all prosecution witnesses, i.e., 1, 2, 3, 4, 7 and 8 have deposed about the prosecution version. PWs. 3, 4 and 8 claimed to be an eye witnesses of the occurrence. The evidence of Dr. Awadhesh Kumar Yadav (PW-6) supported and corroborated the prosecution case and the doctor found gun shot injury on the person of deceased Buchi Choudhary and he stated that the injury on the person of the deceased was sufficient to cause of death. According to the prosecution evidence, it has been established that the appellant no.1 shot fire upon the deceased due to which he succumbed. The time of death given by the doctor also corroborates with the time of the alleged occurrence. We find, no force on the submission raised on behalf of the appellants that the ocular evidence has not corroborated with the medical evidence. The submission is devoid of merit.

20. In this case, PW-8 is the informant, who is the



family members of the deceased. It is well settled principle of law that the evidence of related witnesses should be scrutinized with care and caution but that itself will not suffer from any infirmity. Once that approach is made, the Court is satisfied that evidence of such witness can be relied upon. In this respect, on scrutiny of the eye witnesses, it is established that there is consistency in the evidence of the witnesses with respect to the place of occurrence, time and manner of occurrence and except minor contradictions, nothing major surfaced to discard their evidences. Minor contradictions are natural upon the situation from where occurrence could be seen by them. Parrot like version would have made their evidence doubtful.

21. We are of the view that in the light of the discussions as above, it could be safely be concluded that deceased Buchi Choudhary succumbed to his injury caused by firearm which is likely to be possible as the injury has been caused by the firearm weapon of appellant/convict Parsuram Roy.

22. After scrutinizing the entire evidence adduced by the prosecution, we affirmed that credibility of testimony of prosecution witnesses create and inspire confidence in our mind. These evidences are free from major contradictions and discrepancies in respect of appellant no.1 Parsuram Roy. It is



also candid that the prosecution witnesses PWs. 3, 4 and 8 had personal knowledge and they were present at the place of occurrence and their evidences are trustworthy.

23. In view of the evidence as discussed above, we see no merit in the said appeal in respect of appellant no.1 Parsuram Roy. Hence, we are able to endorse the conviction of the appellant no.1 Parsuram Roy for the offence punishable under Section 302 of the Indian Penal Code as recorded by the learned trial Court and, therefore, the appeal with respect to appellant no.1 Parsuram Roy, deserves to be dismissed.

24. So far as appellant no.2 Umesh Roy is concerned, according to prosecution evidence, he is alleged to be an order giver to the appellant no.1 Parsuram Roy for shot fire upon the deceased. We have scrutinized the entire evidence in respect of complicity of this appellant. This appellant convicted under Section 302/114 of the Indian Penal Code by the learned trial Court for abatement of commission of murder of deceased Buchi Choudhary. For application of Section 114 of the Indian Penal Code, the following things must exist:-

- (a) The nature of the act done must constitute an offence,
- (b) The act or offence in consequence of abatement is committed.



25. For the application of Section 114 of Indian Penal Code, it is necessary that the person must abate the commission of the offence some times before at different place and then also is present when the offence is committed. Thus, it is necessary first to show the circumstances which constitute abatement. This section is not applicable to a case where the abatement is committed at the time when the offence takes place and the abettor helps in the commission of the offence. The prosecution case is that on the order of the appellant no.2 Umesh Roy, the appellant no.1 opened fire upon the deceased Buchi Choudhary. In this juncture, the evidence of PW-8 who is the informant is necessitated to come to the complicity of the offence in respect of appellant no.2. This witness stated that appellant no.1 Parsuram Roy, Pappu and Sanjay jumped from the bullock cart and Pappu and Parsuram Roy armed with gun and Sanjay armed with 303., Bhola, Bhumi and Mantlal armed with lathi came and Umesh Roy ordered to Parsuram to fire whereupon Parsuram Roy fired and caused gun shot injury at the right side of the chest of deceased Buchi Choudhary and deceased fell down. This evidence shows that appellant no.2 Umesh Roy had no knowledge about the gun which carried by the appellant no.1 Parsuram Roy. There is no prosecution evidence that the



appellant no.1 was committed the offence upon the instigation made by the appellant no.2.

26. PWs.3 and 4 who happened to be eye witnesses deposed in their evidence that Parsuram, Pappu Roy and Sanjay ran to the house and they returned armed with gun. So it is apparent that prior meeting for commission of this murder is not conducted between appellant no.1 Parsuram Roy and appellant no.2 Umesh Roy, hence it can be inferred that the commission of murder by shot fire by appellant no.1 is not followed by the command made by the appellant no.2 Umesh Roy. Appellant no.1 Parsuram Roy brought fire arm himself from his house and appellant no.2 Umesh Roy has no knowledge about this fact. He is not aware at the time of occurrence about this fact that appellant no.1 Parsuram Roy kept the firearm for commission of murder of deceased Buchi Choudhary, so it could not be made inference that appellant no.2 uttered to Parsuram Roy with an intention to kill the deceased.

27. We have taken note of this fact that at the time of commission of murder, the appellant no.2 was not armed with any deadly weapon in his hand and mere an advice or simple suggestion does not come within the purview of abatement in any manner. A word uttered in anger or emotion without intending the consequences to actually follow cannot be said to be instigation.

28. The impugned judgment of conviction and order of sentence imposed on the appellant no.1 Parsuram Roy, for the



offence punishable under Section 302 of the Indian Penal Code by the learned trial Court is, hereby, confirmed.

29. The impugned judgment of conviction and order of sentence imposed on the appellant no.2 Umesh Roy for the offence punishable under Sections 302/114 of the IPC is, hereby, quashed and set aside and, accordingly, he is acquitted from the charges levelled against him.

30. Accordingly, the instant appeal is partly allowed.

31. We record our appreciation for extraneous efforts made by Mrs. Anukriti Jaipuriyar, the learned Advocate appointed as Amicus Curiae to represent the appellants at the cost of State in order to assist this Court for arriving at the correct conclusion in the instant appeal. We also quantify the fees to be payable to her as Rs.5,000/- (Five thousand) from the Patna High Court Legal Services Committee.

(Sunil Kumar Panwar, J)

(A.M. Badar, J)

(A.M. Badar, J)

Brajesh Kumar/-

AFR/NAFR	
CAV DATE	22.02.2022
Uploading Date	03.03.2022
Transmission Date	

