
(2010) 07 PAT CK 0099

In the Patna High Court

Abhimanyu Singh @ Munnu Singh @ Abhimanu Singh and
Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 09-07-2010

Acts Referred:

Arms Act, 1959 — Section 27
Criminal Procedure Code, 1973 (CrPC) — Section 154, 161
Penal Code, 1860 (IPC) — Section 141, 147, 148, 149, 302

Citation : (2010) 07 PAT CK 0099

Hon'ble Judges : Shyam Kishore Sharma, J;Gopal Prasad, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Shyam Kishore Sharma, J.—The appellants named above have preferred this appeal against the judgment of conviction and order of sentence dated 22nd and 24th December, 2003 respectively passed in Sessions Trial No. 266 of 1999 by the learned Additional Sessions Judge, F.T.C. No. II, East Champaran, Motihari whereby appellant Abhimanyu Singh @ Munu Singh was found guilty u/s 302 of the Indian Penal Code and Section 27 of the Arms Act and rest eight appellants were convicted under Sections 302/149 of the Indian Penal Code. Appellants Sajjan Singh, Ranjan Singh, Mani Singh and Bachcha Singh were found guilty u/s 147 of the Indian Penal Code. Appellants Arbind Singh, Ramu Singh, Sanjeev Singh, Raghvendra Singh and Abhimanyu Singh were found guilty u/s 148 of the Indian Penal Code and all the appellants were found guilty under Sections 447, 341 and 504 of the Indian Penal Code. Abhimanyu Singh @ Munu Singh was sentenced to undergo rigorous imprisonment for life u/s 302 of the Indian Penal Code and rigorous imprisonment for three years u/s 27 of the Arms Act. Appellants Arbind Singh @ Lalbabu Singh, Ramu Singh, Sanjeev Singh, Sanjan Singh, Ranjan Singh, Bachcha Singh, Raghvendra Pd. Singh and Mani Singh were sentenced to undergo imprisonment for life under Sections 302/149 of the Indian Penal Code. Appellants Sanjan Singh, Ranjan Singh, Mani Singh and Bachcha

Singh were sentenced to undergo rigorous imprisonment for two years u/s 147 of the Indian Penal Code. Appellants Arbind Singh, Ramu Singh, Sanjeev Singh, Raghvendra Singh and Abhimanyu Singh were further sentenced to undergo rigorous imprisonment for three years u/s 148 of the Indian Penal Code. All the appellants were sentenced to undergo simple imprisonment for three months each u/s 447 of the Indian Penal Code and simple imprisonment one month each u/s 341 of the Indian Penal Code and rigorous imprisonment for one year each u/s 504 of the Indian Penal Code. It was ordered that all the sentences will run concurrently.

2. Fard-beyan for the occurrence of 12.8.1998 at 5 P.M. was recorded by J. Paswan Sub-Inspector of Motihari Police Station at 10.00 AM on 13.8.1998 at Sadar Hospital, Motihari. Informant Madan Kumar Singh has given his fard beyan in presence of his father, uncle and brother Ratneshwar @ Raja Singh that in the preceding day at 5.00 P.M. he was sitting at his Darwaja and was taking breakfast with his brother Tripurari Singh. Suddenly Arbind @ Lalbabu Singh, Ramu Singh, Sanjiva Singh @ chunu Singh, Sanjan Singh, Ranjan Singh, Bachha Singh, Raghvendra Singh @ Chotan Singh, Abhibanyu Singh @ Manu Singh and Mani Singh having lathi, Bhala and Nalkati (a country made pistol) came. At that time Arbind @ Lalbabu Singh, Raghvendra @ Chotan Singh were armed with Farsa whereas Ramu Singh, Sanjiva Singh @ Chunu Singh were armed with Bhala. Sanjan Singh, Ranjan Singh, Bachha Singh, Mani Singh were armed with lathi and Abhinayu Singh @ Munu Singh was armed with country made pistol. Suddenly the accused persons started uprooting the Berhi (grain Storage) of the informant. The informant and his younger brother Tripurari agitated and asked them not to uproot the Berhi. Allegation is that Ragwendra Singh ordered the accused persons to kill the informant and his brother. Thereafter, Tripurari fled towards Dalan but he was caught by Arbind @ Lalbabu Singh and Ramu Singh and was pulled and brought near Berhi where he was assaulted. The informant and his younger brother cried and put some resistance on which Ratneshwar Singh, Chandeshwar Singh, Bachhu Singh, Jotik Ram and others came. In the mean while at the behest of Raghwendra @ Chotan Singh for killing Tirpurari Singh accused Abhimanyu @ Manu Singh fired from his country made pistol from short range hitting Tirpurari Singh who fell down and became unconscious. The blood started oozing from his head. Accused persons thereafter, escaped from the place of occurrence. The injured was brought on a cot to village Padumker where a jeep was hired and Tripurari Singh was taken for treatment to Sadar Hospital, Motihari but he died in course of treatment at 3.00 A.M. The motive of alleged occurrence was that the accused persons were claiming the land near the Darwaja of the informant but the informant wanted to settle it through a Panchayati after measurement. The accused persons could not agree and formed an unlawful assembly which resulted into killing of informant's brother Tirpurari Singh. The fardbeyan resulted in registration of a case vide Patahi P.S. Case No. 61 of 1998 on 13.8.1998 under Sections 147, 148, 149, 323, 341, 447, 427, 307, 302 of the Indian Penal Code and Section 27 of the Arms Act. After

investigation charge sheet was submitted and cognizance was taken and the case was committed to the Court of Sessions where the charges were framed and explained to the appellants to which they pleaded not guilty and claimed to be tried.

3. The prosecution has examined altogether ten witnesses in support of its charges. They were Bathu Singh (PW1)(FIR named witness), Ratneshwar Kumar Singh (PW 2)(FI.R named witness), Premshankar Singh (PW 3), Rajkumari Devi (PW 4), Rubi Devi (PW 5), Madan Kumar Singh (PW 6), Dr. Sachchida Nand Singh the Medical Officer who conducted post mortem on the deceased (PW 7), Indradeo Singh, Sub Inspector of police who partly investigated the case (PW 8), Jagdanand Thakurthe Sub-Inspector of Police who also partly investigated the case (PW 9), and Anand Kumar Jha (PW 10) a formal witness.

4. The prosecution has exhibited signature on fard-beyan (Ext.1), Fard-beyan (Ext.2), Post Mortem Report (Ext. 3), First Information Report (Ext. 4), Inquest Report (Ext 5), and informatory petition (Ext. 6).

5. The defence of the appellants was of false implication on account of enmity which has been mentioned in the fard-beyan itself. The defence has also exhibited certified copy of Sessions register as Ext.A.

6. After considering the evidence and after hearing the arguments of the parties the learned trial court came to the conclusion that the prosecution has been able to proved its charges against the appellants beyond all reasonable doubts and hence the order of conviction and sentence has been passed as stated above.

7. I have to see whether the prosecution was able to prove the charges against the appellants beyond the shadow of all reasonable doubts or not.

8. I have the evidence of doctor who has conducted post mortem is being discussed. The doctor PW 7 has conducted autopsy of the deceased on 13.8.1998 at 11.10 AM. The deceased Tripurari Singh aged 22-23 years was brought to Hospital by Constable 704 Awadhesh Prasad Singh and Madan Kumar Singh. The doctor has found firearm wound over the head on right side anteriorly one whole 1?" x one whole 1?" x cavity deep with fracture of underline bone through which brain substance was protruding out. Two pieces of metallic shot was taken out from the wound and were handed over to constable Awadhesh Prasad Singh. The death was on account of use of firearm injury which the deceased was having on his head. The defence has given various suggestions but the doctor remained intact in his evidence that the death of Tirpurari Singh was on account of use of firearm.

9. The informant PW 6 has deposed that on 12.8.1998 at 5 P.M. he was present along with his own, brother Tripurari Singh at his Darwaja. He was taking breakfast where his younger brother was feeding cattle and suddenly Ramu Singh having Bhala, Sanjiv Singh having Bhala, Lalbabu Singh having Farsa, Chotan Singh having Farsa, Munnu Singh country made pistol, Ranjan Singh and

Sanjan Singh having lathies, Bachha Singh and Mani Singh having lathi came and they started uprooting the Berhi. The informant and his brother Tripurari Singh protested the uprooting and his younger brother Tripurari Singh told that why the Berhi was being uprooted on which Chhotan Singh instigated for killing. Thereafter the accused Ramu Singh and Lalbabu Singh dragged the informant's brother and all started assaulting. Tripurari Singh was taken near Berhi where Raja Singh, Bathu Singh and Chandrashekhar Singh came. At the behest of Chotan Singh, Munnu Singh fired from his country made pistol on Tripurari Singh on the head upon which he fell down and blood started coming out. Thereafter, the accused persons escaped. Injured Tripurari Singh was brought to his village Padmekar on a cot where a jeep was hired and from there he was brought to Sadar Hospital, Motihari but in course of treatment he succumbed to the injuries at about 3.00 A.M. The motive of the occurrence was that there was negotiation between the parties regarding the land situated near Darwaja of the parties and it was decided that all concerned will obey the mandate of the panchayat. On 13.10.1998 at 10 AM the Officer in Charge came and recorded the fardbeyan. The informant has identified the signature on the fardbeyan which was written by the Officer Incharge. The informant has stated that his father has three brothers Qandpall were separated and land was partitioned 15-20 years prior to the occurrence. The informant has denied the suggestion that he has forcibly got possession of the land of the accused persons and his house was standing upon that land. The informant has vehemently claimed that the house is upon his land. He has stated that the accused persons were claiming the land over which Berhi was constructed. According to the informant, the land was exclusively in his possession and it was not of his uncle Raja Singh. The paddy kept in Berhi was his own. The defence has given various suggestions and this witness has stated that all the accused persons came and one of them fired which caused injury to Tripurari Singh who was taken to hospital and in course of treatment he died.

10. PW 1 is named witness of the occurrence. He is not the family members of the informant. He has supported the evidence which has come through the version of the informant but it was suggested to him that he was already a convict and so it has been argued that due to enmity he was having motive to falsely implicate the accused persons. It appears that PW 1 who is a co-villager is a natural witness because according to his evidence, he was going to his house and

11. Prosecution witness No. 2 Ratneshwar Kumar is a family member of the informant and he has given detail about the occurrence. His evidence is almost in the same tune as given by the informant. According to him, the house of the accused persons and the informant are facing to each other and distance between the house is about 15-16 feet but according to him, Berhi was nearer to the house of the informant. His evidence is intact in so far as manner and time of the occurrence and role attributed to the accused persons.

12. PW 3 Prem Shankar Singh is another eye witness of the occurrence and he

has also supported the version of the informant.

13. PWs 4 and 5 are lady family members of the informant and they have supported the prosecution case but it has been argued by the learned Counsel for the appellants that their evidences cannot be relied upon because it has been stated by one of the witnesses that at the time of occurrence his wife PW 4 has seen the occurrence from window (PW 2 paragraph-8) but she has stated (PW 4 paragraph 1) that she has seen the occurrence from the gate of her house. She has also described the manner of occurrence and her evidence so far as manner of assault is concerned; it has remained intact. She has fully supported the prosecution version. Her evidence is reliable.

14. PW 5 is Rubi Singh. Her evidence is identical to the evidence of the informant and other witnesses and she has consistently supported that the accused persons have come and one of the accused has fired which proved fatal.

15. PW 8 and PW 9 are Investigating Officers. They stated about the preparation of inquest report (Ext.5). PW 9 had gone to the place of occurrence and has described it in his evidence. According to PW 8, appellants Ramu Singh and Arbind Singh were not present at the time of occurrence because at the relevant time they were at Sitamarhi but the plea of alibi noted by PW 8 was not proved at all and no evidence was given that at the relevant time the aforesaid appellants Ramu Singh and Arbind Singh were at Sitamarhi because the employer has not come and nothing was brought on the record to show that the appellants namely, Ramu Singh and Arbind Singh were at Sitamarhi and has remained unexplained. Their presence at the place of occurrence has been consistently stated by the prosecution witnesses. Their presence at the place of occurrence at the time of assault is established.

16. The learned Counsel for the appellants has assailed the judgment and submitted that the prosecution has not been able to prove its charges beyond all reasonable doubts against any of the appellants. It has ignored the defence version which was produced by it though Ext-A (Session's register). The alleged occurrence is of 12.8.1998 at 5. P.M. but the prosecution case was lodged at 10 A.M. on 13.8.1998. The case of the prosecution is that the injured was taken for treatment to Sadar Hospital, Motihari but it has not been proved because the doctor who has treated the injured has not been examined. There is huge delay between the occurrence and report to police and it has remained unexplained. The prosecution witnesses are family members and they are interested witnesses. The prosecution has failed to examine the independent witnesses. The prosecution has also failed to prove that all the appellants were having common intention of killing. The witnesses have stated about existence of houses of others near the place of occurrence but none of the inmates of those houses was examined and this was done only with a view to ensure that version of independent witnesses is not brought on the record.

17. Learned Counsel for the appellants further stated that due to non-

examination of the independent witnesses the prosecution case becomes doubtful and once doubt is created then the accused persons are entitled to get the benefit of doubt.

18. In the present case the majority of the witnesses except one are family members because the occurrence took place near the house of the informant. As a rule of prudence the independent witness also must be examined but examination of independent witness is not a rule of law. It depends on facts of the cases. If the independent witness is present and has seen the occurrence then his evidence must be brought on the record. The occurrence in the present case has taken place just in front of Darwaja of the informant as well as accused persons. No doubt inmates of the house are undoubtedly interested witnesses but their interest cannot be said to be of false implication to the innocent persons. If an occurrence was committed in their presence then they become natural witness and it cannot be stated that they are interested witnesses and so their evidence should be discarded. The testimony of witnesses has to pass the test of probabilities and trustworthiness. Where the witness gives cogent and clear version then the version given by such witness had to be accepted to be true. When the evidence of eye witnesses is creditworthy then non-examination of the independent persons does not effect the prosecution case. So non-examination of independent witnesses is not fatal in the facts and circumstances of the present case.

19. Learned Counsel for the appellants has further submitted that the FIR of the present case is fabricated document and it cannot be treated as FIR u/s 154 Cr.P.C. rather at best it can be treated as the statement u/s 161 Cr.P.C. It cannot be a statement u/s 161 Cr.P.C. because it is a written piece and hence the fard-beyan is of no value in the case. Further argument of the learned Counsel for the appellants is that the deceased Tripurari Singh was already died and there was no question to carry him to hospital for treatment. This period was utilized by the prosecution to fabricate a forged document which was used as fard-beyan. Nothing has been brought on record to show that the victim was given any medical treatment. The doctor who, according to informant, examined the injured has not been examined. There is no evidence as to when Tripurari Singh was brought to hospital and when he died. The person who recorded the fard-beyan has not been-examined, so prejudice was caused to appellants. The SD entry has not been brought on record. The statements of the witnesses are just parrot like statement. The driver of the jeep who carried the injured to Sadar Hospital has not been examined. The version given by one of the witnesses that the fire arm used by accused was of white colour whereas other witnesses have stated that the used firearm was of black colour. No paddy was found in course of inspection of place of occurrence by the Investigating Officer. Relying upon the judgment reported in 1997 BBCJ, 401 it has been argued that the prosecution has utterly failed to prove his case.

20. The case of the prosecution is that immediately after the occurrence the

injured was taken to sadar Hospital, Motihari. The FIR was lodged after 18-19 hours. The distance between the place of occurrence and Sadar Hospital, Motihari is 40 kilometer (PW 9 Paragraph 12).

21. If a young member of a house is fired upon and injured then first duty of the inmates is to give him the best possible medical help. Nobody will like to rush to the police for giving information and keep the injured waiting and in the present case the injury was of such nature which according to the doctor was sufficient to cause instantaneous death. The injured was taken to hospital. No doubt the injury was of such nature which might have caused instant death but it was the responsibility of the other family members to try their best to bring him to the nearest medical centre so that he could be saved by providing medical help. In the state of shock, when the family members carried the injured to the hospital then it cannot be said that they avoided the police in the way and their versions had become doubtful. The distance between the place of occurrence and Sadar Hospital, Motihari is 40 kilometer (PW 9 Paragraph 12). The delay in giving the information to the police is thus explained. Regarding non-finding of paddy on the place of occurrence, learned Counsel for the appellants has argued that the specific case of the prosecution was that the paddy was thrown by the accused persons but the Investigating Officer in course of inspection has not found any sign of throwing of paddy.

22. The witnesses have stated that the paddy was thrown but non-finding of the paddy and blood at the place of occurrence has been explained by the Investigating officer (PW 9 in paragraph 15) wherein he has stated that there was heavy rain, so in that circumstances when there was heavy rain then it was not possible that the scattered paddy and blood will remain idle.

23. One witness has stated that white colour weapon was used but other witnesses have stated that it was of black colour. In course of evidence the witnesses have stated that the death was on account of use of firearm and there is consistent evidence with regard to that and merely a witness has described that the weapon used was of a different colour from that it cannot be said that he is not the witness of the occurrence. At the time of assault all the witnesses may not be in one position and they may give slight different version, so the basis of the evidence has to be looked into. The basis of the evidence is that the death was on account of use of firearm by Abhimanyu Singh.

24. The doctor who has treated the injured has not been examined but this itself is not a ground to disbelieve the ocular version that the death was on account of fire arm injury.

25. After taking into consideration the entire evidences it appears that the prosecution has been able to prove that accused persons had formed unlawful assembly on the date of occurrence and they had gone to the house of the informant and they tried to uproot the Berhi. Tripurari Singh was shot at by use of firearm by Abhimanyu Singh. There is also consistent evidence of the

prosecution that Sanjan Singh, Ranjan Singh, Mani Singh and Bachha Singh have committed the act of fighting with deadly weapon. The prosecution has also established that the accused persons have trespassed from the Darwaja of the informant with intention to commit the offence.

26. Appellants Arbind Singh @ Lalbabu Singh, Ramu Singh, Sanjeev Singh, Sanjan Singh, Ranjan Singh, Bachcha Singh, Raghvendra Pd. Singh and Mani Singh have been convicted for life u/s 302/149 of the Indian Penal Code. Section 149 of the Indian Penal Code means every member of an unlawful assembly at the time of committing the offence guilty of that offence. This section creates a specific and distinct offences by creating constructive or obligatory liability of the members of unlawful assembly for the unlawful acts committed in pursuant to the common object. For proving common object the prosecution has to establish that the accused persons were having common objects as laid down u/s 141 of the Indian Penal Code. The prosecution must show that the illegal act was committed by a member of assembly which had common object. The common object in this offence for which they have been convicted is of murdering Tripurari Singh. One of the ingredient of proving common object is that the persons of the assembly must have intentionally joined and continued in an unlawful assembly.

27. From the entire facts of the case, it appears that the common object of the appellants except Abhimanyu Singh alias Munnu Singh was for uprooting the Berhi and no evidence has come that they were having common object of killing Tripurari Singh. The prosecution has not been able to prove the charge that the appellants except Abhimanyu @ Mannu Singh have common object to kill Tripurari Singh. Learned Counsel representing the State fairly conceded that no evidence has been brought to that extent. Considering the every aspects of the matter, it is apparent that the prosecution has been able to prove that accused Abhimanyu @ Manu Singh has murdered Tripurari Singh by using firearm and so his conviction u/s 302 of the Indian Penal Code and Section 27 of the Arms Act is proper and it is upheld.

28. The charge under Sections 302/149 of the Indian Penal Code against appellants Arbind Singh @ Lalbabu Singh, Ramu Singh, Sanjeev Singh, Sanjan Singh, Ranjan Singh, Bachcha Singh, Raghvendra Pd. Singh and Mani Singh is not proved so they are hereby acquitted and their conviction and sentence under this section is set aside.

29. However, the prosecution has been able to prove the charge u/s 147 of the Indian Penal Code against Sanjan Singh, Ranjan Singh, Mani Singh and Bachha Singh and also able to prove charge u/s 148 of the Indian Penal Code against the appellants Arbind Singh, Ramu Singh, Sanjeev Singh, Raghvendra Singh and Abhimanyu Singh. The prosecution has also been able to prove the charges under Sections 447, 341 and 504 of the Indian Penal Code against all the appellants. So their conviction and sentences under the aforesaid sections are upheld.

30. In this result, this appeal is dismissed with modification, as stated above.

31. Appellant Abhimanyu Singh is in custody. He will remain there and will undergo sentences awarded to him. Bail bonds of other appellants are cancelled. The trial Court is directed to issue process to ensure that the sentences awarded is executed to the other appellants.

I agree.