

(2012) 10 PAT CK 0039

In the Patna High Court

Case No : Criminal Appeal (DB) No. 635 of 2005

Bhagwat Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 01-10-2012

Acts Referred:

Arms Act, 1959 — Section 27

Penal Code, 1860 (IPC) — Section 148, 149, 302, 324, 34

Citation : (2013) 1 PLJR 566

Hon'ble Judges : Shyam Kishore Sharma, J; Amaresh Kumar Lal, J

Bench : Division Bench

Advocate : Sharda Nand Mishra, Mr. Dhananjay Kumar Gupta and Mr. Deepak Kumar, for the Appellant; Ashwini Kumar Sinha, APP, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice Shyam Kishore Sharma

1. Criminal Appeal (DB) No. 635 of 2005 on behalf of Bhagwat Singh and Criminal Appeal (DB) No. 540 of 2005 on behalf of Prakash Singh, Ajab Lal Singh, Bijay Singh and Shambhu Mandal have arisen out of judgment dated 23.08.2005 and order of sentence dated 24.08.2005, passed by the learned Additional Sessions Judge, Fast Track Court No. II, Bhagalpur in Sessions Trial No. 52 of 1991 / Trial No. 9 of 2004 relating to G.R. No. 545 of 1987, holding the appellants Prakash Singh, Ajab Lal Singh, Bijay Singh and Shambhu Mandal guilty u/s 302/ 149 of the IPC and Bhagwat Singh u/s 302 of the IPC. Bhagwat Singh was not found guilty u/s 27 of the Arms Act and others Prakash Singh, Ajab Lal Singh, Bijay Singh and Shambhu Mandal were not found guilty u/s 148 of the IPC. One Samar Lal Singh who had also faced trial along with the accused persons/appellants was acquitted from the charge. In the present case neither FIR nor fard beyan has been exhibited. So the prosecution case had to be constructed on the basis of other materials which are available on the record. Etwari Mandal P.W. 4 at 11.30 a.m. on 31.03.1987, at his house told the Sub-

Inspector of Police Upendra Kumar of Sanhaulla Police Station that his brother Shyam Lal Mandal was working as a doctor and in that connection he used to visit nearby area. In the preceding evening on 30.03.1987, the informant returned to his house and till 08.00 - 09.00 p.m. he did not find his brother then on query his nephew Sahendra Mandal (not examined) told that about 03.00-04.00 p.m. that Shyam Lal Mandal has gone to village Gathor to see a patient. When Shyam Lal Mandal did not return till 09.00 p.m., then the informant proceeded to trace him and at 10.00 p.m. he flashed his torch and saw Ramchandra Singh (subsequently killed), Bhagwat Singh (appellant), Ajab Lal Singh (appellant), Shambhu Mandal (appellant), Bijay Singh (appellant), Prakash Singh (appellant), Jugal Yadav (since dead) catching his brother. The informant saw in the light of the torch that Ramchandra Singh exhorted Bhagwat Singh to kill Shyam Lal Mandal and thereafter Bhagwat Singh fired from his pistol. Jugal Yadav had also fired from his pistol causing injury upon the head. The informant rushed towards village and after some villagers came then he saw the injuries upon temporal region and chest. The corpse was carried to the house. The informant did not venture to go out as he was in panicky. Motive of the killing was that there was enmity with Ramchandra Singh for a piece of land measuring One Bigha and two and half Katthas and this dispute was coming for 6 - 7 years, in that connection litigations were going on. Mani Shankar Singh Son of Ramchandra Singh has tried to kill the informant's nephew Ranjit Raj Mandal P.W. 5, but the pistol was snatched and a case was lodged before police. The fard beyan resulted into formal FIR of Sanhaulla P.S. Case No. 33, dated 31.03.1987 u/s 324/ 34 of the IPC and Section 27 of the Arms Act.

2. After investigation charge sheet was submitted, cognizance was taken and the case was committed to the court of Sessions where charge against Bhagwat Singh was explained u/s 302 of the IPC, charge against Bhagwat Singh and Jugal Yadav was explained u/s 27 of the Arms Act and charge against Ramchandra Singh, Samarlal Singh, Shambhu Mandal, Bijay Singh, Prakash Singh, Jugal Yadav and Ajab Lal Singh was explained u/s 302/ 149 of the IPC and u/s 148 of the IPC. The accused persons pleaded innocence so the trial proceeded. The defence of the accused was of false implication on account of grave hostility between the two sides. Further defence is that the deceased himself and the prosecution party were notorious criminals of the locality and they were involved in making serious cases and there was all possibility that in the night the victim was killed in a nefarious activity and after death the accused persons were framed in.

3. In support of its case the prosecution examined Arbind Kumar Mandal P.W. 1, Sarjug Mandal P.W. 2, Jharu Mandal P.W. 3, Etwari Mandal P.W. 4, Ranjeet Raj Mandal P.W. 5, Dr. Nagendra Narayan Bhagat P.W. 6, Mahendra Mandal P.W. 7 and Murlidhar Paswan P.W. 8. Besides oral evidence the prosecution proved the signature of Etwari Mandal, the informant on fard beyan as (Ext. 1), Post-mortem report (Ext. 2), signature of Mahendra Mandal P.W. 7 on inquest report as (Ext. 1/A), signature of Officer-in-Charge of Sanhaulla police station on formal

FIR as (Ext. 3) and the case diary as (Ext. 4).

4. The defence examined Mani Shankar Singh, a teacher as D.W. 1 and Gobardhan Singh as D.W. 2. The defence exhibited certified copy of the charge sheet of G.R. Case No. 509 of 1985 as (Ext. A), certified copy of certificate granted by NTPC as (Ext. B), certified copy of judgment in Title Suit No. 261 of 1981 as (Ext. C) and Para- 52 of the Case Diary as (Ext. D). One court witness - a formal witness Md. Sakur was examined as C.W. 1.

5. On 01.04.1987, P.W. 6 Dr. Nagendra Narayan Bhagat was posted in Forensic Science department in Jawahar Lal Nehru Medical College, Bhagalpur and on that date at 10.30 A.M. he held autopsy on the dead body of Shyam Lal Mandal and found the following anti-mortem injuries :

(I). Abrasion 11/2" x 1" on posterior aspect right elbow.

(II). Abrasion 2" x 11/2" on right knee.

(III). Lacerated wound 11/2" x 1" into bone deep on right temporal region 2" above right ear. Bone underneath fractured and depressed. Brain coming out of it, brain decomposed on liquefying.

(IV). Firearm wound of entry 11/4" x 1/2", inverted, transversely placed on right side chest 2" medial too right nipple. Blackening around the wound, tattooing mark on the chest in an area of 4" diameter.

The wound of entry fracturing 6th and 7th sterno costal ribs. Injury was anti-mortem in nature. Injury nos. (i) to (iii) were caused by hard and blunt substance where injury no. (iv) was caused by firearm.

6. Opinion of the doctor is that the death was on account of injuries which the deceased had received prior to death and one injury was firearm injury. The death was on account of firearm injury and on account of hard and blunt substance has been established.

7. Once the killing has been established then the evidence has to be scanned through and it has to be seen as to whether the prosecution has been able to prove the charge against the accused beyond shadow of all reasonable doubts or not.

8. P.W. 4 being the informant deserves to be discussed firstly. P.W. 4 has deposed that his brother Shyam Lal Mandal was killed in the night of 30th March, 1987, it was night and when the informant's brother did not return then the informant got his torch of two cells and in the way he saw his brother caught by the accused persons and thereafter he was fired upon by Bhagwat Singh at the behest of Ramchandra Singh on his chest. Second firing was by Jugal Yadav. According to this evidence, the deceased was fired twice. The first firing upon the chest whereas second firing was also resorted to. The animosity of P.W. 4 with the accused has been admitted by the informant who has stated that he has been convicted for 20 years by the court. Sukhari and Kailash were killed in that

case in which he has been convicted. In a case of dacoity also he was involved. This witness has deposed on 18th August, 1995 and has stated that he was in jail since 11th February, 1994. The informant has denied his suggestion that except the aforesaid cases he is also accused in a case u/s 395/ 396 of the IPC. He has admitted that he has been convicted in a case of killing of Ramchandra Singh - one of the accused of the present case. He has stated that he has given the torch to Officer-in-Charge though it came later on, that it was a torch of two cells but sometime it has come that at that time the informant was carrying torch of two cells. P.W. 1 claims that he has come with a torch having three cells. P.W. 1 is a convict of Sessions Trial No. 229 of 1990 and this witness is not a witness of the occurrence but sometime after the occurrence he had gone and knew about the occurrence. P.W. 2 has been tendered by the prosecution. P.W. 3 has been convicted in Sessions Trial No. 229 of 1990, he is also not a witness of the occurrence and he has seen the accused escaping. He in para-11 has stated that he was told by P.W. 4 about the occurrence therefore, this witness is not a witness of the occurrence. P.W. 5 is son of the deceased he has not seen the killing but has seen the accused escaping, this witness in Para - 3 has stated that he has been sentenced to undergo R.I. for life in Sessions Trial No. 229 of 1990. He has stated that the Officer-in-Charge has taken torches two cells and three cells. P.W. 7 is an inquest witness. P.W. 8 is a formal witness.

9. The prosecution case is only relying upon the testimony of sole eye witness P.W. 4 but he has been supported by other witnesses who stated that they have seen the accused later on going from the place of occurrence. The occurrence is of the night. The identification is by means of torch. Either two or three cells. It has come that the Officer-in-Charge has seized the torch but neither seizure list of the torch has been produced nor the torch has been produced. When identification is claimed in the torch light then evidence must come that the identification was in the manner as claimed. The case is basing upon the testimony of sole witness. The order of conviction can be recorded on the testimony of sole witness but such testimony must remain constant. The prosecution case is not suffering only on the basis of non-production or non-seizure of torch but there are other lacunas also. The prosecution case is that the deceased was fired twice and both firing have caused injury and this has not been supported by the doctor who held the autopsy. The doctor stated that there was only anti-mortem injury and so the prosecution's consistent case that the deceased had two anti-mortem injuries has been contradicted vertically by the post-mortem.

10. In post-mortem the doctor has found only one firearm injury. When there is stark difference between ocular and medical evidence then it cannot be said that the prosecution has come clean to narrate the occurrence in its true perspective rather a doubt is created as to whether the prosecution was willing at any cost to make out a case for implicating the accused. It appears to be a situation in the present case, wherein the medical evidence has not been supported by the sole witness who himself is an accused of a case of killing. The source of light has not

at all been established even seizure of torch has not been brought on record. Non-examination of the I.O. has left the place of occurrence vague. These were the vital facts which have not been taken into account.

11. After considering the evidence on record we are of the view that the prosecution has not been able to prove the charge beyond shadow of all reasonable doubts.

12. In the result, the judgment of conviction and order of sentence is set aside. The appeals are allowed. The appellants of both the appeals are acquitted from the charges.

13. The appellants Prakash Singh, Ajab Lal Singh, Bijay Singh and Shambhu Mandal (in Criminal Appeal (DB) No. 540 of 2005), who are on bail, are discharged from the liabilities of their respective bail bonds. The appellant Bhagwat Singh of Criminal Appeal (DB) No. 635 of 2005 is reported to be in custody, he is directed to be released forthwith, if not required in any other case.