

(2008) 05 PAT CK 0044
In the Patna High Court
Case No : Criminal Appeal No. 484 of 2004

Budhan Mian and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 21-05-2008

Acts Referred:

Arms Act, 1959 — Section 27(2)

Penal Code, 1860 (IPC) — Section 120B, 302, 364, 387

Citation : (2008) 4 PLJR 15

Hon'ble Judges : S.C. Jha, J

Bench : Single Bench

Advocate : Ganesh Pd. Singh and S. Parasmani, for the Appellant; Satya Narayan Prasad, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Jha, J.—Appellants Budhan Mian son of late Akbar Mian, Ekram Mian son of late Gaffar Mian, Haquique Mian (Hajam) son of late Latiff Mian (Hajam), all residents of village Sauwa Tand, P.S. Lauriya, Dt. West Champaran, have been held guilty and convicted in Sessions Trial No. 440/1994, Tr. No. 116/2004 by Sri B.K. Singh, Additional Sessions Judge-FTC-V, West Champaran at Bettiah, for the offence punishable u/s 364 IPC and as such two of them, namely, Ekram Mian and Haquique Mian (Hajam) have been sentenced to undergo R.I. for ten years. Appellant Budhan Mian for the same offence u/s 364 IPC has been awarded ten years SI. All of them have also been imposed fine of Rs. 1000/-, in default of payment of which to undergo SI for one month.

2. It has also been directed that realised amount of Rs. 500/- from each should go to the bereaved family of the deceased, and remaining half amount of the fine should be deposited with the Government Treasury.

3. In this case, all the appellants stood charged in the trial court and as such they faced trial for the offences punishable under Sections 364, 387, 302 IPC as also u/s 27(2) of Indian Arms Act. But on conclusion of trial, the learned trial

court held that the prosecution did not succeed in establishing charges framed against them under Sections 387, 302 IPC and 27(2) of Indian Arms Act beyond all reasonable shadow of doubts and as such the accused persons-appellants were exonerated from the aforesaid charges under Sections 387, 302 of the IPC and Section 27(2) of the Indian Arms Act.

4. The prosecution case, in brief, is that Nazir (deceased), son of the informant and driver of the informant, Tabarak Hussain (P.W. 5) had left his house on 6.11.1993 at about one in the noon, with his tractor for ploughing the land situated in the Northern direction (towards South of Ramrekha river) in the village. At about 20, 45 hours (8.45 P.M.) the informant heard sound of return of the tractor, but in the meanwhile he heard hulla of Harun Mian (P.W. 2) to this effect that Nazir has been caught and taken towards Northern direction by the miscreants. The informant also heard such hulla (alarm) raised from the Northern direction of his house from a distance of about 300 yards. On such hulla other villagers also went in search of the victim but did not find any trace of his missing son, rather found his tractor parked in the field of one Hari Shankar Singh. Villagers came back.

5. At about 11.00 P.M. in the said night, tractor driver Mokhtar Mian (D.W.1) came and handed over a letter to the informant, purported to have been written by the son of the informant, mentioning regarding demand of Rupees Fifty thousand for his release. The informant immediately managed Rs. 2,000/- and sent one Jang Bahadur Sah (another deceased) with this instruction that the remaining amount would be paid after arranging the same on the next day. At about six in the following morning, as per further prosecution case," the informant heard hulla from North Eastern Sareh field (a kind of chunk of vast open land) that Jang Bahadur Sah had been killed and as such the informant alongwith his family members rushed there to see the dead body of Jang Bahadur Sah lying in his field. He also noticed dead body of his son Nazir Sah, lying in the field of Jang Bahadur Sah situated at about 50 yards in the Eastern direction of his field. He did not notice any trace of blood, nor sign of any scuffle near the place, where such dead bodies were found and as such he could gather that murder had been committed somewhere else and the dead bodies had been brought and thrown in the aforesaid field near the village.

6. The informant had strongly suspected that his villagers, namely, Ekram Mian, Budhan Mian who happens to be the father-in-law of Ekram Mian and Haquique Mian (Hajam) (all the three appellants) with whom he had land dispute from before, had been instrumental in committing the crime in a pre-planned way by hatching up a conspiracy with the aid of some other criminals. These suspected persons had also extended threat earlier so as to put pressure on the informant for entering into a compromise.

7. On the basis of the aforesaid written information lodged with the Police, the Officer-in-charge of the concerned Police Station registered an F.I.R. against the aforesaid three appellants for the offence punishable under Sections 364, 387,

302/120B of Indian Penal Code as also u/s 27(2) of the Indian Arms Act vide Lauriya P.S. Case No. 208/1993 and on conclusion of investigation, submitted charge-sheet against the accused-appellants for the aforesaid offences. Accordingly, cognizance was taken in the case and the case was committed to the Court of Sessions, where as stated above, respective charges were framed against them and the accused persons faced trial.

8. In this case, in the trial court altogether eight witnesses were examined on behalf of the prosecution, who supported the prosecution case. One of the cited prosecution witness, namely, Mokhtar Mian, who happens to be the driver of the concerned tractor, was not produced on behalf of the prosecution. Rather, said Mokhtar Mian seems to have been examined as defence witness in course of trial, on behalf of the accused persons/appellants.

9. P.W. 1 Safi Ahmad happens to be the son of the informant Tabarak Hussain, P.W. 2 is Harun Mian who is said to be an eye witness having raised alarm at the time of kidnapping of the informant's son and driver of the tractor, namely, Mokhtar Mian.

10. P.W. 3 is Bigan Sah, who is son of Jang Bahadur Sah. This Jang Bahadur Sah is said to have been sent by the informant for negotiating deal with the abductors, after the informant received the letter purported to be written by his son from Mokhtar Mian. But Jang Bahadur Sah has also been murdered whose dead body was thrown and the same was lying in the field of the informant.

11. P.W. 4 is Girgit Mian @ Malang Mian @ Amrul Haque Mian, who also claims to have accompanied Jang Bahadur Sah and seen the miscreants and identified all the accused-appellants. He managed his escape and informed the happenings.

12. P.W. 5 is the informant Tabarak Hussain. P.W. 6 is Jamilur Rahman, who happens to be the son-in-law of the informant but claims his presence in his Sasural on the relevant night, where such kidnapping of his brother-in-law of Nazir Ahmad and Mokhtar Mian had taken place.

13. P.W. 7 is Dr. S.P. Verma who has held post mortem examination on the dead bodies of Jang Bahadur Sah and Nazir Ahmad, son of the informant.

14. P.W. 8 is Suresh Verma, Police Sub-Inspector, who was, at the relevant time, posted as Officer-in-charge of Lauriya Police Station and has also investigated the case.

15. Accused-appellants have also examined Mokhtar Ahmad, driver of the tractor, who is also a victim of the kidnapping, in their defence as defence witness, in support of their case. Besides, Ext. A (True copy of the charge-sheet submitted in Lauriya P.S. Case No. 121/1990), Ext. A/1 (True copy of charge-sheet submitted in Shikarpur P.S. Case No. 6/1996), Ext. B (Format of charge framed against Nazir Mian and others in Tr. No. 1215/1992 (true copy), Ext. C (True copy of order dated 15.7.2002 passed in Sessions Trial No. 174/1997), Ext. D (True copy of deposition of Ekram Hassan recorded in Case No. 62C/1979), Ext. D/1 (True

copy of evidence of Budhan Mian recorded in Case No. 1471/1979 and Ext. E (True copy of FIR of Lauriya P.S. Case No. 95/2004) have been exhibited on behalf of the accused-appellants. Aforesaid papers have been filed in defence of the accused-appellants in the trial court so as to show that the victim Nazir Ahmad, who happens to be the son of the informant, was himself involved in an earlier case of kidnapping, for which he might have been murdered somewhere else, whose dead body might have been thrown by the miscreants in the field as stated above, but the accused-appellants have been falsely implicated in connivance with the prosecution witnesses examined in this case by father of the victim (informant) as the appellants Ekram and Budhan Mian deposed against them in earlier proceedings (Vide Exts. D and D/1). It has been further submitted in defence of the accused-appellants that there was enmity between the parties and as such they have been falsely implicated. One of the kidnapped person, namely, Mokhtar Mian, tractor driver of the informant who has not been examined as a witness on behalf of the prosecution, but has been examined in defence of the accused-persons, has not stated regarding involvement of the accused-appellants.

16. Besides, argument has been advanced on behalf of the accused-appellants that the witnesses on behalf of the prosecution have been tutored by the informant and as such they deposed themselves as direct witnesses and, thus, they have subsequently developed their statements so as to show that they have seen the occurrence.

17. According to the Learned Counsel deposition of P.Ws.1, 2, 3, 4, 5 and 6 should be discarded for the reason that P.W. 2 has not stated the names of these appellants at the time when he claimed to have seen the occurrence. Similarly, deposition of Girgit Mian should also be discarded as his departure with Jang Bahadur Sah (deceased) has not been stated by the informant. Son-in-law of the informant (P.W. 6) has also been examined so as to support the case of the prosecution, which is a subsequent development in the prosecution case. The place of occurrence, manner of occurrence is full of contradiction and so no reliance could be placed on the testimony of the witnesses examined on behalf of the prosecution. The trial court while assessing and evaluating the evidence, circumstances and probabilities of the case, has not considered the aforesaid things properly and in right perspective and has, thus, arrived at a wrong conclusion.

18. In reply, the learned Additional Public Prosecutor appearing on behalf of the State has submitted that in this case two murders are admittedly committed by the miscreants. The informant, who is a victim of kidnapping of his son, in the morning was confronted with the dead body of his son lying by the side of his field as also the dead body of Jang Bahadur Sah, the messenger, who was sent by him with Rs. 2,000/- as part payment of the ransom demanded by the abductors for release of his kidnapped son, could not be presumed to have full control of his mind and thought at the time, when his fardbayan was recorded by

the Police Officer. It is but natural that there cannot be 100 per cent reproduction of the events in chronological order, which he was supposed to have gathered in the previous night from several sources including the witnesses examined in course of trial. The informant could not be said to have composed his mind and thought so as to give a graphic account of the entire happenings as expected from a literate, conscious and composed educated person.

19. The learned Additional Public Prosecutor has, thus, submitted that the FIR cannot be said to have given the entire account of the whole occurrence.

20. In the background of the aforesaid circumstance, the learned Additional Public Prosecutor has further submitted that evidence of all the witnesses examined on behalf of the prosecution, instead of contradicting each other, has corroborated the factum of kidnapping of the son of the informant and driver of his tractor and, thereafter, return of the driver with a letter in the writing of his kidnapped son disclosing demand for payment of ransom of Rs. 50,000/- for his release. This fact of kidnapping of the informant's son alongwith the driver of his tractor and return of the driver with a letter in the writing of the informant's son for payment of Rs. 50,000/- for his release (informant's son), has also been well proved from the deposition of the defence witness Mokhtar Mian himself.

21. Analysing the deposition of D.W.1 Mokhtar Mian, it is manifest that he is one of the victims of the kidnapping who alongwith the son of the informant, namely, Nazir, were kidnapped by several armed criminals. He has supported the entire occurrence so far the manner and place of kidnapping is concerned. He has stated that at about 8-9 in the relevant night, he was returning on the tractor, but was intercepted near the Batai land of one Hari Shankar Singh by armed miscreants. The miscreants assaulted him and Nazir, and took them toward Northern direction. Thereafter, the miscreants got a letter written by Nazir and he brought that letter in which demand of Rs. 50,000/- was made by way of ransom for the release of Nazir, which was addressed to the informant Tabarak Hussain. He came and handed over that letter to the informant Tabarak Chacha (informant) and stated the event. He did not recognise any miscreants. He has not stated the names of the persons as disclosed by other witnesses of the prosecution. He seems to have been brought by the accused persons in support of their defence. His cross-examination reveals that he has tried to conceal even the name of his mother as also his Mama Gafur Mian by showing ignorance. A suggestion was given that accused Ekram is son of Gafur Mian and as such he has come to depose in favour of Ekram facing trial.

22. From the aforesaid evidence of this defence witness, at least it is established that both the son of the informant and this Mokhtar Mian were kidnapped while they were returning, from the Batai field of one Hari Shankar Singh at the relevant night and D.W.1 Mokhtar Mian had brought a letter written by son of the informant in respect of demand of ransom for the release of son of the informant.

23. So, there leaves no scope to consider such submission in defence of the

accused-appellants that the son of the informant Nazir Ahmad might have been killed somewhere else, whose dead body was thrown near the field of his father. No plausible explanation has been offered regarding murder of Jang Bahadur Sah in their defence on behalf of the accused appellants.

24. The evidence of P.W. 7 Dr. S.P. Verma, goes to show that he held post mortem examination on the dead bodies of Jang Bahadur Sah and Nazir Ahmad on 7.11.1993 at about 4.30 P.M. and 4 P.M. respectively. He found the following injuries on the dead body of Jang Bahadur Sah. (a) Externally-lacerated injury near left elbow 2" x 2", (b) one lacerated wound inverted-1" in diameter (wound of entry) on front of right side chest, (c) one lacerated wound inverted about 1" in diameter, wound of entry on lower right side of chest, which were caused by firearm within 24 hours from the time when such autopsy was held.

25. Similarly, the Doctor also held post mortem examination on the dead body of Nazir Ahmad and found the following injuries:- Externally-(a) lacerated wound on lower forearm 1/2" in diameter, (b) lacerated inverted wound about 1" in diameter on front of chest middle aspect-wound of entry, (c) lacerated inverted wound on right side of the chest about one and half inch in diameter-wound of entry. The cause of death was due to firearm injury, injuries sustained by the victims and the post mortem reports have also been exhibited.

26. From the evidence of the Doctor, it would reveal that the victims sustained firearm injuries in the midnight of 6/7.11.1993 as stated by the witnesses for the prosecution in the trial court.

27. P.W. 8 Suresh Kumar, who happens to be Officer-in-charge of the concerned Police Station has investigated the case. He did not seem to have investigated the case as was expected from him in a case of double murder in the background of the fact that dead bodies were lying in the field of the informant as also by the side of the field of the informant in proximity of the village of the informant. The Investigating Officer did not take pains to locate the place where such shooting could be said to have taken place. Had he taken pains to have gone deep into the matter, he could have detected the crime and also brought unknown criminals on surface. He has not gone to the place where abductors had brought the victims after occurrence. But from the facts emerging on the record, it is manifest that it would not have been beyond the local limits of five kilometers in radius.

28. The kidnapping, as alleged has taken place at about 8-9 in the night and the victims were brought in the Northern direction across of river, and thereafter, a letter was written by the son of the informant addressed to his father and the same was brought by another victim, namely, Mokhtar Mian, the Tractor driver who approached the informant at about 11 in the night. So, in this span of two hours, a normal to and fro journey, which could have been covered on foot by a person alongwith the captives, could not be more than 212 i.e. 4 Kilometers.

29. In the background of the aforesaid discussion of facts, circumstances and probabilities the evidence of P.W. 4 Girgit Mian @ Malang Mian @ Amrul Haque

Mian who claims have accompanied Jang Bahadur Sah (deceased) and seen the miscreants and claimed to have identified all the appellants but managed his escape and inform the happenings, has to be believed. Similarly the evidence of P.W 6 Jamilur Rahman, the son-in-law of the informant cannot be discarded in the background of the connected evidence and available circumstances on the record.

30. For the reasons stated above and taking into consideration of the evidence, circumstances, probabilities in its entirety, I am led to draw this conclusion that the informant and witnesses for the prosecution have stated the truth and there was no reason for them to have implicated these appellants falsely. Even from the evidence of D.W. 1 who, perhaps, for the reason being gained over by the accused persons and presented himself for recording of his deposition as defence witness, it would be revealed that son of the informant alongwith this defence witness were kidnapped by armed miscreants and, thereafter, son of the informant and Jang Bahadur Sah were found lying dead in and around the field of the informant. From the evidence of this defence witness it is established that the kidnappers had sent in a letter through this witness for demand of ransom. It is but natural that this witness either for having been gained over or due to proximity with one of the accused, as would be revealed from his cross-examination, has opted not to support the prosecution case so as to shield the accused facing trial.

31. In the facts and circumstances, it is established that the son of informant and Jang Bahadur Sah were murdered in the same sequence whose dead bodies were brought and thrown in the field of the informant and Jang Bahadur Sah so as to display their might and boldness.

32. In the aforesaid context of circumstance, if there is something left in depicting the entire sequence of events by the informant before the police, when he was shown two dead bodies and having spent restless previous night, such omission on his part regarding implication and involvement of these appellants, so gathered from the witnesses as stated above is but natural and for that evidence of P.Ws. with respect to participation of these appellants in committing crime cannot be disbelieved.

33. In the facts and circumstances, I do not find any merit in the submission of the Learned Counsel for the appellants to allow this appeal by rejecting the evidence of some of the witnesses claiming to be the eye witnesses of the occurrence which was not stated by the informant in his earlier version.

34. For the reasons stated above, I do not find any merit in this appeal for interference in the impugned order of conviction and imposition of sentence awarded to these appellants.

35. In the result, the appeal stands dismissed and conviction and sentence awarded to the accused-appellants by the court below stands confirmed. The court below is directed to take necessary follow up action.