

(1987) 01 PAT CK 0003

In the Patna High Court

Case No : Criminal Appeal No. 47 of 1984

Devendra Choudhary, Sanjiwan Choudhary, and Navin Choudhary

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 12-01-1987

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302, 34

Citation : (1987) PLJR 734

Hon'ble Judges : R.N. Thakur, J;A. Singh, J

Bench : Division Bench

Advocate : P.N. Pandey, with Mr. Ganga Pd. Roy, for the Appellant; Braj Kishore, for the Respondent

Final Decision : Allowed

Judgement

Ram Naresh Thakur & Abhiram Singh, JJ.—All these three appellants have been convicted u/s 302/34 of the Indian Penal Code for causing the death of one Rampati Choudhary and each of them has been sentenced to undergo rigorous imprisonment for life. They have been further convicted u/s 201 of the Indian Penal Code and have been sentenced (o undergo rigorous imprisonment for five years each with a direction that both the sentences would run concurrently. The prosecution case, in short, is that on 25th September, 1979, at about 7 A.M. the informant Ramnandan Choudhary (P.W. 12) had gone to the house of Ramji Yadav (P.W. 4) to purchase and collect milk to perform the shradh ceremony of the uncle of Shri Ram Choudhary. He sat at the darwaja of Ramji Yadav (P.W. 4) along with Rampati Choudhary (the deceased), Bhadri Choudhary (P.W. 11) and Sriram Choudhary (P.W. 10). In the meantime, these three appellants came there from north and surrounded the informant and his colleagues. Rampati Choudhary ran towards north but he was chased by these appellants, who were armed with pistols. Appellant Devendra Choudhary fired his pistol which could hit on the arm of Rampati Choudhary and appellant Sanjiwan Choudhary fired his

pistol which could hit on the right thigh of Rampati Choudhary. Rampati fell down near the road and thereafter appellant Devendra said-"Sala Jeeta hai". Thereafter appellant Navin Choudhary fired his pistol on his chest. After the assault, the appellants tried to take away the deceased but, in the meantime, villagers came and then the appellants fled away. After the occurrence. Ram Chariter Dafadar (P.W. 13), Siyaram chowkidar (P.W. 9) and Moti Paswan chowkidar came. They learnt about the occurrence, including the names of these appellants to be the assailants of the deceased, from the informant. Chowkidar Siyaram (P.W. 9) was sent to the police station and the Dafadar (P.W. 13) and the informant remained near the dead body. On the same day at about 2 P.M. these three appellants along with three other accused persons, namely, Diwakar Choudhary, Ramanand Choudhary and Arbind Choudhary, who have already been acquitted by the court below, came on horse-back with arms and took away the dead body of Rampati Choudhary in spite of protest. The dead body of Rampati could not be discovered thereafter.

2. The investigating officer Bijoy Kumar Gupta (P.W. 14) came to the place of occurrence on the same day at about 6 P.M. and recorded the statement of the informant Ramnandan Choudhary (P.W. 12) on the basis of which a regular case was instituted. He took up the investigation and after completing the same, submitted charge-sheet against six accused persons including these three appellants. They were all put on trial in course of which as many as 15 witnesses were examined on behalf of the prosecution. The appellants denied the allegation and pleaded their innocence. No witness was, however, examined on their behalf.

3. Learned Counsel appearing for the appellants has submitted that the prosecution, in the present case, has utterly failed to prove the occurrence and the manner of the occurrence. It has been further argued that the true picture has not been brought before the court. In course of argument, even the factum of death has been questioned. It has also been submitted that the fardbeyan was not recorded at the time and at the place as alleged by the prosecution.

4. Out of the 15 witnesses examined on behalf of the prosecution, P.W. 1 has said about both the occurrences, namely, the out that took place at about 7 A.M. with respect to assault on Rampati Choudhary and the other, with regard to taking away of the dead body at about 2 P.M. of the same day i.e. 25th September, 1979. P.Ws. 4, 6 and 12 are also eye witnesses of the occurrences. P.Ws. 2 and 7 are, however, witnesses of the second part of the occurrence, i.e. taking away of the dead body, whereas P.W. 10 has stated about the first part of the occurrence. P.Ws. 3, 5, and 15 are formal witnesses; P.W. 9 is the Chowkidar and P.W. 13 is the Dafadar, both of whom had come to the place of occurrence after the occurrence. P.Ws. 8 and 11 were tendered. P.W. 14, as stated earlier, is the investigating officer.

5. The first argument of Learned Counsel for the appellants was that the fardbeyan was not recorded on 25th September, 1979, at 6 P.M., rather it was subsequently written to suit the prosecution case. In support of this contention,

he has invited our attention to the fact that though the fardbeyan, (Exhibit 2) is alleged to have been recorded on 25th September, 1979, at 6 P.M., it reached the police station on 26th September, 1979, at 7 P.M. when the formal first information report was drawn up. Therefore, according to him, it took more than 24 hours to travel from the place of occurrence to the police station. An explanation has been offered by P.W. 14, the investigating officer, for this delay. He has stated in paragraph 3 of his evidence that he did not send the fardbeyan to the police station on the same day for registering a case as the police station is at a great distance. He has further said that the police station situates on the other side of the Ganges and there was no means to cross the said river and, therefore, the fardbeyan was received at the police station after such long delay. But this explanation is not at all reasonable. In the formal first information report, under the rules, the distance of the police station has to be mentioned; but in the present case the distance has been mentioned. In the relevant column, it is mentioned--"Bahadur Nagar Kachahri Tola Thana se Ki. Mi. (kilometer) Pachhim" leaving the space in between "se" and "Ki. Mi." quite blank. The investigating officer (P.W. 14) himself has said that he received an information about this occurrence at about 2 P.M. on the day of occurrence at the police station and he reached the place of occurrence along with constables at 6 P.M. Thus, when he could reach the place of occurrence from the police station within four hours, we fail to understand why the fardbeyan could take more than twenty four hours to reach the police station. While coming to the place of occurrence P.W. 14 must have crossed the Ganges. The chowkidar (P.W. 9) was admittedly sent to the police station and he (P.W. 9) has said in paragraph 7 that he returned from Munger at about 3 P.M. It has to be remembered that the place of occurrence situates within the jurisdiction of Munger Mofassil police station. P.W. 13, who is the Dafadar, has also said that he went to place of occurrence after the second occurrence; he stayed in the night at Munger, and on the next morning he again came" back to the place of occurrence. P.W. 1, in his cross-examination, has said that he came to Munger to give evidence at 10.30 A.M. and he had left his house for Munger at 8 A.M. on the same day. He had crossed the Ganges by boat. Therefore, taking into consideration all these evidence, the explanation offered by P.W.14 for the long delay in sending the fardbeyan to the police station does not appear to be convincing.

6. According to the fardbeyan (Exhibit 2) it was recorded at the house of the informant but in court the informant (P.W. 12) in paragraph 23 of his deposition has said that he gave his statement before the police at the darwaja of Ramji Yadav. P.W. 4 Ramji Yadav has said that Sub-Inspector of Police came to his darwaja at 6 P.M. and he stayed at his darwaja for about ten minutes. He saw the place of occurrence and then came back and thereafter he started writing. Therefore there is no consistent evidence on behalf of the prosecution on the point as to where exhibit 2 was actually recorded.

7. Apart from this the blood found at the place of occurrence was never sent to the Chemical Examiner. It is true that this in itself is not ordinarily sufficient to

create a cloud against the prosecution case in a criminal trial but, in a case where the dead body is not found, this becomes very important. If the blood would have been sent to the Chemical Examiner and it would have been found to be human blood, it would have corroborated the prosecution case to a great extent. But, unfortunately, that was done in this case for reasons best known to the investigating officer (P.W. 14).

8. According to P.W. 14 himself, the police station is at a great distance. He does not say as to how and from whom he could get information on the basis of which he went to the place of occurrence. Here it is essential to mention that both the Dafadar and the chowkidar say that they reached the police station after the departure of P.W. 14. Therefore, according to them, they were not the informers of P.W. 14. In that situation, it remains under cloud as to who gave the information to the investigating officer (P.W. 14). If the place of occurrence would have been in close vicinity, the matter would have been something else. But, as stated above, according to P.W. 14 himself, the police station is at a great distance from the place of occurrence, intervened by river Ganges. Therefore, this also creates some suspicion. Moreover, when the chowkidar and the Dafadar went from the place of occurrence to the police station to inform about the heinous crime like murder, some entry should have been made in the station diary at the police station but nothing has been brought on the record to show that any entry was made at the police station about their arrival.

9. According to the prosecution case itself at 2 P.M. six persons came and took away the dead body in presence of witnesses. Out of those six persons, three have already been acquitted. There were witnesses at the place of occurrence at 2 P.M. and they have seen this part of the occurrence, but there was no resistance. Even at the time of the first occurrence at 7 A.M. there was no resistance and the appellants could have taken away the dead body. Therefore, it is also not free from doubt that the dead body was taken away at 2 P.M. and thrown away somewhere else not to be detected for ever.

10. These are the natural circumstances which do not corroborate the prosecution case. In this background, one will seek for the evidence of independent witnesses to maintain the conviction. We are conscious of the fact that the evidence of interested witnesses cannot be thrown out in every case but where the circumstances do not support the prosecution case, the evidence of interested witnesses cannot form the basis of conviction until and unless it is corroborated by independent witnesses. Unfortunately, in this case it is lacking. Therefore, after giving our anxious consideration over the entire aspect of the case, we are compelled to hold that the prosecution has succeeded in proving its case beyond all reasonable doubts. Accordingly, the appeal is allowed, the order of conviction and sentences passed against the appellants is set aside and they are directed to be released forthwith from jail custody, if not wanted in some other case.