

(2011) 02 PAT CK 0034

In the Patna High Court

Case No : Criminal Appeal No. 190 of 1989

Dil Ram Singh, Megh Raj Singh and Ramashis Singh @
Keshwar Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 04-02-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 300, 302, 324, 34

Citation : (2011) 59 BLJR 1045 : (2011) 3 Crimes 470

Hon'ble Judges : Shyam Kishore Sharma, J;Akhilesh Chandra, J

Bench : Division Bench

Advocate : Sumant Singh and Aaruni Singh, for the Appellant; Shashi Bala Verma, APP for State, for the Respondent

Final Decision : Allowed

Judgement

Shyam Kishore Sharma and Akhilesh Chandra, JJ.—Appellants Dil Ram Singh, Megh Raj Singh and Ramashis Singh @ Keshwar Singh- all sons of late Sheojogi Singh have preferred this appeal. They were charged along with Sheojogi Singh but in view of death of Sheojogi Singh his trial abated and trial proceeded against the above named three Appellants. Appellant No. 1 has been convicted u/s 302 of the Indian Penal Code whereas Appellant Nos. 2 and 3 were convicted under Sections 302/34 of the Indian Penal Code and all three have been sentenced to undergo rigorous imprisonment for life vide judgment dated 18.3.2010 in Sessions Trial No. 202 of 1983.

2. Prosecution case relates to an occurrence dated 15.3.1988 at 8 A.M. as disclosed in the fard-beyan of informant Maharaj Singh (PW 5). His father Rajbanshi Singh (deceased), his Mause Gurphekan Singh (PW 3), and brother Sheoraj Singh (PW 4) were in the process of putting a wall. At that very time Appellant No. 1 Dil Ram Singh with Baishaki, Ramashish Singh having a lathi and Sheojogi Singh (now dead) having a lathi came there and asked the informant

against putting the wall which was protested by the informant who claimed its ownership. Allegation is that Dil Ram Singh, thereafter, struck a lathi blow on the head of Rajbanshi Singh whereas Megh Raj Singh gave a lathi blow on his right hand. When the informant tried to ward off then he was assaulted by lathi portion of Baishakhi, which caused injury in his finger. Sheojogi Singh hurled a lathi but it caused no injury to the informant. Sheojogi Singh has allegedly assaulted the deceased. On hue and cry Duryodhan Singh (not examined), Jagarnath Singh (PW 1) and Ramnath Dusadh (PW 2) arrived but the accused retreated. Fard-beyan of Maharaj Singh resulted into Sanha Entry No. 243 dated 15.3.1983. The informant and his father Rajbanshi Singh were taken to Buxar Sadar Hospital and as per the advice of the doctor, Rajbanshi Singh was taken to Patna Medical College and Hospital where he died. His post mortem was done there. Informant returned to his village on 19.3.1983 and the information given by the informant resulted into registration of Buxar Muffasil P.S. Case No. 90 of 1983 dated 19.3.1983 against the accused persons/Appellants u/s 304 of the Indian Penal Code. After investigation by one Ram Bichar Singh (PW 6), chargesheet was submitted u/s 304 of the Indian Penal Code. Accordingly, cognizance was taken and the case was committed to the Court of Sessions where charges under Sections 302/34 IPC were explained to the accused persons. They pleaded their innocence and trial proceeded.

3. Their defence was of false implication on account of dispute which has been mentioned in the initial version of the informant itself. The accused persons claimed the possession of the land. Their further defence was that the accused persons were aggressors and they have caused injuries for which proper treatment was given to them in the same very hospital where the injured and deceased of the present case were examined. Their specific defence was that the accused persons were assaulted on 15.3.1983 at 12.30 P.M. Sheojogi Singh who died during the pendency of the trial lodged the case which was recorded by A.S.I. Chandra Kant Pandey in which he has stated that while he was putting Khuta in Sahan then he was attacked by Maharaj Singh, the informant, with a Farsa whereas Rajbanshi Singh assaulted on his arm and head and on the statement of Sheojogi Singh Buxar Muffasil P.S. Case No. 85 of 1983 dated 15.3.1983 was instituted under Sections 323 and 324 of the Indian Penal Code. In that occurrence Sheojogi Singh has received five injuries.

4. The trial court after considering the entire facts and circumstances of the case, came to the opinion that that the prosecution was able to prove the charge and passed the order of conviction.

5. Now this Court is required to see as to whether the prosecution has been able to prove its case against the Appellants beyond the shadow of all reasonable doubts or not.

6. To substantiate its case, the prosecution has examined 7 witnesses. Jagarnath Singh (PW 1), Ramnath Dusadh (PW 2), Ghurphekhan Singh (PW 3) and the informant Maharaj Singh (PW 5) have been examined as witness of the

occurrence. PW 6 Ram Bichar Singh is the Investigating Officer of the case. PW 7 is the formal witness. PW 7 has proved some formal papers. One Chandrasekhar Singh, Tayeed, has been examined as court witness. Inquest report of the deceased is Ext. 1. The written report is Ext. 2. Protest petition of the informant has been marked as Ext. 3. Sanha entry No. 243 which was the initial version of the occurrence has been marked as Ext. 5 and the Ext. 4 is the seizure list. Ext. 6 is the signature of Dr. Upendra Prasad Verma and Ext. 7 is the letter of Dr. Upendra Prasad Verma. Ext. 8 is the post mortem report and Ext. 9 and 9/1 are writings of the injury report whereas Ext. 10 and 10/1 are injury reports. Court witness has proved the death of Sheojogi Singh. DW 1 has proved the writing of Chandrakanth Pandey the A.S.I. and writing of Dr. S. Dubey on the injury reports.

7. PW 7 is not a witness of the occurrence. He is a formal witness, therefore, his evidence is of formal in nature.

8. The case of the prosecution is that Guruphekan Singh, the Mause of PW 5, was issueless and he was living with him. He has acquired disputed land under the gift deed executed by Guruphekan Singh. There was a Khand measuring 4 decimal in the village, 2 decimal on the southern side was being possessed by the informant and remaining 2 decimals in the east north was being possessed by the accused persons. The mud wall was separating two khands. There was a common chak bearing plot No. 3 and khesra No. 554 measuring 4 decimals in which half share was shown in the name of Guruphekan Singh and another half in the name of Sheojogi Singh. Evidence of witnesses has to be dealt with separately so that the conclusion can be arrived at.

9. PW 1 Jaggarnath Singh has stated that in the morning of 15.3.1988 he was going to the house of Blacksmith for preparing a Garansi. When he reached near Khand of PW 5, Maharaj Singh, then he heard cry and when he went then he saw the accused Sheojogi Singh assaulting Rajbanshi Singh. Appellants Dil Ram Singh, Megh Raj Singh and Ramashish Singh were having lathi and they were using lathi in committing assault whereas Meghraj Singh was assaulting by Baishakhi. Due to assault Rajbanshi Singh fell down and when PW 5 Maharaj Singh went to save him then he was assaulted by Baishaki by Megh Raj Singh which caused injury on his finger. He further stated that Guruphekan Singh (PW 3) and Ramnath Dushadh (PW 2), Shivraj Singh, Jodhan Singh (not examined) have also seen the occurrence. The occurrence was on account of digging of plinth. In paragraph 11 of his cross-examination, he stated that the Officer Incharge has made query from him and he has stated that he has not seen the occurrence. Pw 6 is the Investigating Officer and his attention was drawn towards the evidence of PW 1 and he has stated in paragraph 9 of his evidence that PW 1 Jaggarnath Singh has stated that he has not seen as to who is the person who has assaulted. Therefore, this witness who happens to be a chance witness has not seen the occurrence as stated by himself as well as by the Investigating Officer. Therefore, the evidence of this witness does not support the charge against the accused persons/Appellants.

10. PW 2 Ramanth Dushadh is another chance witness. He had gone to a flour mill but that flour mill was locked. While he was returning then he has seen the occurrence in which Rajbanshi Singh was being assaulted by Dil Ram Singh. At that time Rajbanshi Singh was digging his plinth and at that very time assault was made. In paragraph 5 of his evidence he has stated that when police had questioned him as to who is the person who has assaulted Sheojogi Singh then he has stated that he was not knowing. Therefore, he was not in a position to explain about the occurrence. Attention of Investigating Officer was drawn towards statement of PW 2 given u/s 161 of the Code of Criminal Procedure then he has stated that PW 2 has stated that he has not seen as to who assaulted where. Therefore, it appears that this chance witness has also not seen the occurrence because he has given two versions of the occurrence at two times.

11. PW 3 has initially stated that the occurrence was of 8 P.M. but after some times he has stated that the occurrence was of 8 A.M. He has described the occurrence and has specifically stated that the accused persons escaped before the arrival of witnesses Ram Nath Dusadh and Jaggarath Singh (PW 2 and 1).

12. PW 5, the informant, has stated that his father was brought to Buxar Hospital for treatment and later on he was taken to Patna Medical College Hospital but on the next day his father died. About the nature of assault this witness has explained in paragraph 10 that all the four persons have assaulted twice meaning thereby the informant's father had received injuries.

13. The post mortem report has not been exhibited by the doctor and it has been merely exhibited by one advocate clerk but inquest report is on the record. The inquest report mentions only two injuries which the deceased was having. One was on his head and second injury was on the right hand. Therefore, the evidence of PW 5, the informant, is not in conformity with the findings of the Investigating Officer which has been noted in exhibit one. These contradictions are not of minor nature rather these are of vital nature. Defence case was that on the same day Sheojogi Singh has also received injury. This fact has been stated by the Investigating Officer (PW 6) in paragraph 6 who has found Sheojogi Singh admitted in Buxar Hospital. Therefore, this witness does not appear to be reliable and according to his evidence, the deceased must have received at least 8 injuries.

14. Now the most important witness of the case is informant. He has stated that in the year 1981 a registered Baxisnama was got executed in favour of this witness. This was not being liked by the accused persons who were putting obstruction. On 15.3.1983 at 8 A.M. while the earth was being dug for erection of the wall then accused persons came and assaulted. His father was assaulted by Dil Ram Singh, Ramashish Singh by lathi, Meghraj Singh by Baishakhi. The informant was assaulted by Meghraj Singh which caused injury on his finger and blood also came out. The occurrence was of the house but the informant has stated that no woman has come to see the occurrence, which creates doubt. The informant stated that he has also received information later on that Sheojogi

Singh was admitted in Buxar hospital but the Investigating Officer is specific that Sheojogi Singh has received injury on the same day and he was hospitalized in that very hospital.

15. All the witnesses have denied about any assault to Sheojogi Singh but the Investigating Officer is emphatic about presence of Sheojogi Singh in the hospital on the date when the informant has checked in that hospital. The case of the informant was that he was initially treated at Buxar. At that very time Rajbanshi Singh was also treated. He was later on referred to Patna Medical College Hospital and there he died. His inquest report was prepared at PMCH. The evidence regarding the treatment provided to the informant and Rajbanshi Singh at Buxar Hospital has not been brought on record. No doctor has come to say as to what was the injury of Rajbanshi Singh which compelled the doctors to refer him to PMCH. The post mortem report has been formally proved and the order of conviction has been passed u/s 302 of the Indian Penal Code.

16. For proving charge u/s 302 of the Indian Penal Code the prosecution is required to prove the ingredients of Section 300 IPC which mentions that "a culpable homicide is murder, if the act by which the death is caused, is done with the intention of causing death. If it is so with intention of causing such bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. This is the third clause of Section 300 of the Indian Penal Code.

17. Therefore, examination of the doctor becomes essential to prove the extent of injury. Non-examination of the doctor thus caused grave prejudice to the accused persons because due to non-examination of the doctor they could not draw attention as to whether the injury was sufficient to cause death. If that was not done then it appears that the prosecution has failed in its duty to prove the charge.

18. Here the only evidence is the post mortem report which has been formally proved. The formal proof will only show that the person was dead. For proving charge u/s 302 Indian Penal Code this is not enough. It has to be proved by the prosecution that the death was in the manner as alleged by the prosecution. If that very aspect remains clouded then the fastening liability gets more difficult. Surprisingly, in the present case all the three accused persons were charged under Sections 302/34 Indian Penal Code but one person has been convicted u/s 302 Indian Penal Code without any proper finding that the injury caused by the accused persons was sufficient to cause death or not. In absence of examination of the doctor, the entire prosecution case becomes doubtful. Not only that the specific case of the informant was that he was also treated but his injury has also not been brought on record.

19. Considering all the aspects, it is apparent that R.B. Singh, who has recorded the Sanha (Ext.5), has not been examined. Exhibit-2, which became fard-beyan does not give specific role to any of the accused but prescribes that the

occurrence was seen by P Ws 3, 4 and 5 only but presence of those witnesses at the time of occurrence were ruled out by PW 3. In the present case, the injury on other side has remained unexplained. PW 4 stated that all the accused persons assaulted indiscriminately but inquest report mentions only two injuries. If the evidence of Investigating Officer is scanned then it appears that P Ws 2, 3 and 4 have described about the occurrence first time before the Court. Non-examination of the doctor who has conducted the post mortem examination and non-examination of the doctors who have initially treated the informant and his father Rajbanshi Singh (deceased), has left big hole in the prosecution version of assault. The version of the prosecution is that Rajbanshi Singh was taken to Patna Medical College and Hospital where he was provided treatment and that has also not been brought on the record. These are the vital lacunae which has affected the prosecution case. The prosecution has not been able to substantiate its charge in absence of examination of the vital witnesses and the witnesses examined have given different versions of the occurrence.

20. Considering these infirmities in the prosecution case, we are not inclined to uphold the order of conviction. Accordingly, the order of conviction and sentence is set aside and the Appellants are acquitted of the charges.

21. In the result, this appeal is allowed. The Appellants are discharged from the liabilities of their bail bonds.