

(2001) 05 PAT CK 0037

In the Patna High Court

Case No : Criminal Appeal (DB) No. 245 of 1994

Dina Nath Yadav and Prabhu Yadav

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 18-05-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144, 188
Penal Code, 1860 (IPC) — Section 302, 307, 323, 324, 34

Citation : (2001) 3 PLJR 334

Hon'ble Judges : R.N. Prasad, J;A.K. Sinha, J

Bench : Division Bench

Advocate : Sanjay Singh and Ajay Kumar Singh, for the Appellant; Ganesh Prasad Jayaswal, Jagdish Prasad Singh and Ranjan Kumar for Informant, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Prasad, J.—The Appellants have preferred this appeal against the judgment and order dated 22.3.1994 25.3.1994 passed by the

Sessions Judge, West Champaran at Bettiah in S.T. No. 174/90 whereby the Appellants have been convicted for the offence u/s 302/34 of the

Indian Penal Code and sentenced to undergo imprisonment for life.

2. Puran Sao the injured himself gave his fardbeyan on 15.5.1988 at about 11.45 A.M. in Bagaha hospital that at about 9.45 A.M. he was fixing

"Tanti adjacent south of his house. Appellant Nath Yadav with Garasi and Prabhu Yadav with lathi came. Dina Nath Yadav gave a Garasi blow

on his head and Prabhu Yadav gave 3-4 lathi blows on his person. He fell down and raised alarm which his son Jai Prakash Sao, his wife Santosh

Devi and villagers Raghunath Yadav, Paras Yadav and many others came and saw the occurrence. The Appellants after committing assault ran

away. His family members took him to Bagaha hospital for treatment. The motive of the occurrence, was previous enmity and litigation in the court.

3. On the aforesaid fardbeyan, a formal First Information Report was drawn u/s 307 of the Indian Penal Code, investigation was taken up.

However, during investigation the informant Puran Sao died on 22.5.1988 and as such the case was converted u/s 302 of the Indian Penal Code.

On completion of investigation, charge-sheet was submitted in the court. The court took, cognizance and committed the case to the court of

Sessions for trial. The trial Court convicted the Appellants as indicated above.

4. The defence of the Appellants was that they were innocent and were falsely implicated in the case out of previous enmity. They had not

committed any of fence.

5. The prosecution in support of its case examined 13 witnesses, out of whom P.Ws. 3 & 4 claimed to be eye witnesses to the occurrence. P.W.

2 claimed to, have seen the Appellants running away with weapons. P.W. 1 is hearsay, witness. P.WJ 7 is Doctor who. examined informant Puran

Sao. P.W. 5 is also a Doctor who held postmortem over the dead body. P.W. 6 is the Investigating Officer. P.W. 8 has proved Station diary

entry, Ext. 8. P.W. 9 proved complaint, Ext. 9. P.W. 10 proved Station diary entries, Exts. 10 & 10/1. P.W. 11 proved petitions, Exts. 11 &

11/1. P.W. 12 proved complaint, Ext. 12. P.W. 13 proved formal first Information Report, Ext. 13.

6. Initially the First Information Report was drawn on the fardbeyan of Puran Sao for the offence u/s 307 of the Indian Penal Code. However,

during pendency of the investigation he died on 25.5.1988 and as such the case was converted u/s 302 of the Indian Penal Code. The fardbeyan in

the circumstances may be treated as dying declaration of the deceased. In the fardbeyan motive of the occurrence has been mentioned previous

enmity and litigation in the court. P.W. 1 is son of the deceased. He is hear-say witness. However, the witness stated in his evidence that there was

land dispute between the parties. A proceeding u/s 144 of the Code of Criminal Procedure was also initiated which was decided in favour of the

prosecution... party....A proceeding u/s 188 of the Code of Criminal Procedure is pending in the court Prabhu Yadav had also assaulted his father

for which a criminal case under Sections 323 & 324 of the Indian Penal Code was

going on. P.W. 2 is, cousin, of the deceased. The witness stated in his cross-examination that there was land dispute with the deceased. P.W. 3 is son of the deceased. The witness also stated that there was land dispute between the parties. The litigation for land is going on. The proceeding u/s 144 of the Code of Criminal Procedure was also decided in favour of the prosecution party. P.W. 4, wife of the deceased also stated that there were enmity, land dispute and litigation between the parties. Thus it appears from the evidence as discussed above that the prosecution has succeeded in establishing motive of the occurrence.

7. The place of occurrence as has been stated in the fardbeyan was adjacent south to the house of the informant where he was fixing Tanti. The Investigating Officer, P.W. 6, inspected the place of occurrence. He has given details of the place of occurrence. He found "Tanti" fixed in the south of the house of the deceased. The portion of "Tanti" on the southern side was also found damaged. He found blood in the southeast corner of the court-yard of the house of the deceased and also on the door of the house. He also found hand-pump fixed in the court-yard. P.W. 3 stated in his evidence that while the deceased was fixing "Tanti" in the south-east corner of the house, he was assaulted by the Appellants. Blood had fallen on the ground. P.W. 4 also stated in her evidence that while the deceased was fixing "Tanti" the Appellants assaulted him. Blood had fallen on the ground. Thus from the evidence, as discussed above, it is manifest that the prosecution has succeeded in establishing the place of occurrence.

8. In the First Information Report it has been stated that while the deceased was fixing "Tanti" in the south of his house he was assaulted by Appellant Dina Nath Yadav with Garasi on his head and by Prabhu Yadav with lathi. P.W. 3 has stated in his evidence that he was in his house. His father was fixing "Tanti" in the south-east corner of the court-yard. His mother, P.W. 4, was fetching water from the hand-pump. Appellant Dina Nath Yadav and Prabhu Yadav came in the court-yard and damaged the "Tanti". Dina Nath Yadav gave Garasi blow on the head of his father and Prabhu Yadav assaulted him with lathi and thereafter they ran away. His injured father also disclosed names of the Appellants as assailants. He was taken to the Bagaha hospital for treatment where he died.

The Appellants were threatening to kill. The witness was cross-examined in details but nothing cogent could be elicited to doubt the testimony of the witness. P.W. 4 who was fetching water from the hand-pump

In the court-yard, also supported the case of the prosecution and stated that the Appellants came in the court-yard and damaged the "Tanti".

Appellant Dina Nath Yadav gave Garasi blow on the head of her husband and Prabhu Yadav gave three-four lathi blows on his person, Shambhu

Sao, P.W. 2, also came hearing alarm. Her husband was in sense-for three-four days; The witness was cross-examined at length but nothing cogent could be elicited to doubt her testimony. P.W. 2 came at the place of occurrence on hearing alarm. His evidence is that he found Puran Sao lying in injured condition in the court-yard. The assault did not take place in his presence. P.Ws. 3 & 4 were also there. However, he saw

Appellant Dina Nath Yadav with Garasi in his hand and Prabhu Yadav with lathi in his hand running away. Puran Sao, the deceased, also disclosed that he was assaulted by Dina Nath Yadav with Garasi and by Prabhu Yadav with lathi The witness was cross-examined but nothing cogent could be elicited to reject his testimony. The oral evidence, as discussed above, appears to be consistent on the point of place of occurrence, time of occurrence and manner of assault. P.W. 3, no doubt, is not witness to the actual assault but he had seen the Appellants running away with weapon in the hands.

9. The oral evidence of the witnesses is also supported by the medical evidence. P.W. 7 who examined the injured on 15.5.1988, the date of occurrence, himself and he found lacerated and incised wounds on the person of the injured. He opined that injuries were grievous in nature and dangerous to life. The deceased died in the hospital during treatment on 22.5.1988. After death postmortem was held by Doctor, P.W. 5. He found stitched wounds on the frontal region of scalp. On dissection he found depressed fracture of frontal bone. Through the depressed fracture fluid, clotted blood and brain tissues features of infection were coming out of right frontal lobe of the brain. He opined that time elapsed since death was 24 hours. Death was due to the head injury, damage of frontal lobe of brain and sepsis (infection). Death was mainly due to injury No. 2.

The injuries found on the person of the deceased were sufficient in ordinary

course of nature to cause death. Thus from the discussion it appears that the medical evidence corroborates the prosecution case with regard to manner of occurrence.

10. The investigating officer, P.W. 6, categorically stated that he arrived at hospital on receipt of O.D. slip. He entered Station diary entry and proceeded to the hospital and reached there at 11.45 A.M. and recorded the fardbeyan of injured Puran Sao who died subsequently. He prepared inquest report, visited the place of occurrence, found "Tanti" fixed in the south of the house of the injured and also found "Tanti" on the south-east portion of the house damaged. He found blood at the place of occurrence and also hand-pump in the court-yard. The injured died on 22.5.1988. In cross-examination the witness stated that Sanha entry was made at 11.30 A.M. He recorded the statement of the witnesses.

Therefore, it is evident that findings of the Investigating officer at the place of occurrence corroborate the prosecution case.

11. learned Counsel for the Appellants contended that deceased was inimical to the Appellants and the witnesses examined are relation of the

deceased and as such their evidence is fit to be rejected. In this regard it would not be out of place to mention that evidence of such witnesses is

not required to be thrown outright, rather it is well established rule of law that evidence of such witnesses be scrutinised with care and caution. I

have considered the evidence of witnesses with great care and caution and do not find any infirmity in the evidence of witnesses. Thus the

contention of learned Counsel for the Appellants, in my view, has no substance at all.

12. learned Counsel for the Appellants further pointed out that occurrence took place on 15.5.1988. Puran Sao, injured died on 22.5.1988 i.e.

after about a week. The Doctor, P.W. 5, found infection and has stated that death was due to head injury and infection and as such conviction of

the Appellants u/s 302 of the Indian Penal Code is not justified. In this regard it would be pertinent to mention herein that the Doctor has

categorically stated that death was mainly due to injury No. 2 and the injuries found on the person of the deceased were sufficient in ordinary

course of nature to cause death. More-over, there is nothing on the record to show that occurrence of assault took place due to sudden fight and

upon heat of passion, rather it is evident from the discussion of evidence that while Puran Sao was fixing "Tanti" the Appellants came and assaulted

him with Garasi and lathi. It further appears from the evidence of the Doctor that septicaemia was not primary cause of death rather death was

mainly due to the injuries found on the person of the deceased which were sufficient to cause death in ordinary course of nature. In the case of

State of Haryana v. Pala and Ors. 1996 S.C.C. (Cri) 526, the Apex Court has held that intention is to be inferred from the acts and attending

circumstances. Head injury was caused with deadly weapon and as such intention to cause death must be interred. Medical evidence does ; not

establish that septicaemia was primary cause of death rather it has been stated that injuries found on the person of the deceased were sufficient to

cause death in ordinary course of nature and as such septicemia would not be taken into account and the persons involved are liable to be

convicted u/s 302/34 of the Indian Penal Code. The judgment of the Apex Court" is fully applicable in the facts and circumstances of tne case in

hand and as such I find no merit in the contention of learned Counsel for the Appellants.

13. Thus on consideration of the evidence, as discussed above, I find no merit in this appeal. Accordingly, it is dismissed. The bail bonds of Prabhu

Yadav, Appellant No. 2, are cancelled and he is directed to surrender before the trial court to serve out the remaining period of sentence.

A.K. Sinha, J.

14. I agree.