

(2019) 05 PAT CK 0020

In the Patna High Court

Case No : Criminal Appeal (DB) No. 487, 488, 539 Of 2013

Diwali Paswan And Ors

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 01-05-2019

Acts Referred:

Indian Penal Code, 1860 — Section 147, 148, 149, 302, 307, 452

Arms Act, 1959 — Section 27

Code Of Criminal Procedure, 1973 — Section 144, 313

Citation : (2019) 05 PAT CK 0020

Hon'ble Judges : Arvind Srivastava, J;Rakesh Kumar, J

Bench : Division Bench

Advocate : Ajay Kumar Thakur, Sanjay Kumar @ Manu, Ajay Mishra, Radhe Shyam, S.N. Prasad, S.C. Mishra

Final Decision : Allowed

Judgement

1. Heard Mr. Ajay Kumar Thakur, learned senior counsel appearing for the appellants and learned Addl. Public Prosecutor appearing on behalf of the State.

2. These appeals are directed against the judgment dated 17.04.2013 and the order of sentence dated 26.04.2013, passed by the Additional District & Sessions Judge, VI, Patna City in Sessions Trial No. 1080 of 1996, whereby and whereunder the appellants, namely, Arun Paswan and Diwali Paswan, have been convicted under sections 302 of the Indian Penal Code and Section 27 of the Arms Act. They have been sentenced to undergo rigorous imprisonment for life under Section 302 of the Indian Penal Code with a fine of Rs. 10,000/- each and in default of payment of fine they had further been directed to undergo rigorous imprisonment for six months. Both of them have also been directed to undergo three years of rigorous imprisonment under Section 27 of the Arms Act with a fine of Rs. 3000/- and in default of payment of fine, they have been directed to undergo rigorous imprisonment for three months. All the sentences have been directed to run concurrently. The appellant, namely, Lalkishun Paswan, has been

convicted under Section 302/149 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for life under Section 302/149 of the Indian Penal Code with a fine of Rs. 10,000/- and in default of payment of fine he had further been directed to undergo rigorous imprisonment for six months.

3. The prosecution case, in brief, is that while the informant along with this father (deceased) was sleeping in the night of 07.03.1996 at 4.00 A.M. at the Dalan, he heard the unusual sound of "Habgag" and awoke and saw the accused persons namely, Arun Paswan, Diwali Paswan carrying country made rifle and accused Lal Kishun Paswan, Laldhari Paswan, Mochhu Paswan, Parmanand Paswan, Sachidanand Paswan, Kamal Ravidas, Naresh @ Sheru Ravidas and Biru Ravidas carrying pistol in their respective hands arrived at his Dalan and the accused persons dragging his father, namely, Kameshwar Ram from Dalan taken him to the Gali. On alarm being raised by the informant and his father, the witnesses, namely, Suranga Ram, Deo Kumar Ram, Deoashray Ram and Kamlesh Ram arrived there and witnessed the occurrence. It is the case of the prosecution that the accused persons by dragging the father of the informant brought him to the Gali which is opposite to the house of Devashray Ram where accused Lal Kishun Paswan gave the order to shoot him thereon Arun Paswan fired upon the deceased with rifle on the chest and accused Diwali Paswan also fired with rifle upon the right hand of the deceased as a result he died at the spot. The informant further alleged that while the people of village were singing the song of Holi near Gouraiya Asthan where the informant's brother, Ranjet poured color on Kanchan Kumari, daughter of Rajendra Paswan due to which some altercation took place between them but the same was pacified at the instance of the villagers. The informant apprehended that on account of altercation which took place in light of pouring colour to Kanchan Kumari, the father of the informant was killed by the accused persons.

4. On the basis of the aforesaid written statement, Fatuha (Gourichak) P.S. Case No. 44 of 1996 dated 07.03.1996 was registered under section 147, 148, 149, 452 and 302 of the Indian Penal Code and Section 27 of the Arms Act against the appellants and others.

5. The police took up the investigation of the case and after investigation submitted charge sheet on 31.05.1996 against all the accused persons. In this case cognizance was taken on 05.06.1996 and thereafter the case was committed to the Court of Sessions on 30.09.1996.

6. Charges were framed in this case on 28.07.1998 against all the accused persons including the appellants under Sections 302, 149 and 27 of the Arms Act to which the appellants pleaded not guilty and claimed to be tried.

7. During trial, the prosecution has examined altogether 9 witnesses. P.W. 1/ Deo Kumar Ram, P.W.2/ Devashray Ram, P.W. 3/ Kamlesh Ram, P.W. 4/ Birendra Ram, P.W. 5/ Suranga Ram, P.W. 6/ Urmila Devi, P.W. 7/ Arvind Ram (informant

of this case), P.W.8/ Dr. N.K. Singh and P.W.-9/Bisheshwar Prasad (Investigation Officer of this case).

8. In order to establish the charge, the prosecution has proved the following documents as exhibits :-

Exhibit -1 : Signature on written report.

Exhibit -1/A : Signature of Devasharay Ram on the written report/ Fardbeyan.

Exhibit -2 : Signature Deo Kumar Ram on the seizure list.

Exhibit-2/1: Signature of Kameshwar Ram on seizure list.

Exhibit2/2: Signature of the informant on the Fardbeyan.

Exhibit -3 : Signature of Devashray Ram on Inquest Report.

Exhibit -4 : Post Mortem Report.

Exhibit -5 : Written Report.

Exhibit -6 : Inquest Report.

Exhibit -7 : Seizure List.

9. All the appellants in their statement under section 313 of the Code of Criminal Procedure have denied the evidence and said that they are innocent.

10. The defence did not produce any witness for examination.

11. Before reaching to any conclusion, it would be necessary to firstly examine the evidence of prosecution witnesses.

12. P.W. 1/ Deo Kumar Ram has stated in his evidence that the occurrence took place on 03.07.1996 at 4 O'clock in the early morning and one day prior to the occurrence while the villagers were singing Fagua at Gouraiya Asthan, one Ranjit, son of the deceased, put colors to one Kanchan Kumari, who is daughter of Rajendra, and on account of that altercation took place but the matter had been pacified at the instance of the villagers. He further stated that on the same night at 4 o'clock all the accused persons namely, Arun, Diwali, Lalkishun, Laldhari, Parmanand, Sachit Paswan, Biru Ravidas, Kaml Ravidas, Naresh Ravidas @ Sheru came to the house of the informant. The appellants, namely, Arun Paswan and Diwali Paswan were carrying rifle in their hands and rest of the accused persons were armed with country made pistol. Thereafter, the accused persons by dragging the father of the informant taken him towards southern side by crossing his door and as soon as they taken the deceased away for 8-10 feet, on the direction of one Lalkishun, Arun fired the first bullet which hit on the chest of the deceased and consequently Diwali fired on the deceased which hit his left hand resultantly the deceased succumbed before the bullet injuries and fell down and found dead on the spot.

He has also identified his signature on the Fardbeyan and seizure list pertaining to seizure of blood stained soil which is marked as Exhibit-1 and Exhibit- 2. According to P.W.-1, the deceased happened to be his cousin nephew, P.W.-5, Suranga Ram, happens to be cousin, P.W.-2, Devashray Ram happens to be nephew and the P.W.-3 happens to be grand son of P.W.-1, Deo Kumar Ram. He further stated that he along with two others were present on the place of occurrence. He has also stated that the accused persons have no concern with Kanchan and there was little darkness when the occurrence took place.

13. P.W. 2/ Devashray Ram has stated in his evidence that on 06.03.1996 when the villagers were singing on the eve of Holi, Kanchan Kumari was throwing colours and Ranjit Kumar had also thrown the colors on Kanchan Kumari. On being so, the grand father of Kanchan Kumari started abusing and he along with family members went to the house of Kameshwar Ram but at the instance of the villagers the matter had been pacified. Thereafter on 07.03.1996 in the early morning at 4 o'clock, Arun Paswan and Diwali Paswan carrying rifle and accused Lalkishun Paswan, Laldhari Paswan, Machhu Paswan, Parmanand Paswan, Sachida Paswan, Kamal Ravidas, Naresh Ravidas and Biru Ravidas were also carrying pistol in their respective hands arrived at the Darwaja of the deceased Kameshwar Ram and while he was sleeping all the accused persons by dragging him brought in the Gali which was opposite the house of this witness and on the order of accused Lalkishun Paswan, Arun Paswan fired at the chest of the deceased and accused Diwali Paswan fired on the hand of Kameshwar Paswan resultantly he died at the spot. He further stated that he had also put signature on the Fardbeyan and the same had been identified by him, which is Exhibited as Exhibit-1/A. He further stated that the day on which the occurrence took place was a full moon light day and there were 8 to 10 persons present in the house and all of them had seen the occurrence. According to him, altogether 10-12 persons were present at the place of occurrence. He also stated that there was no light in the Gali in which the occurrence took place. He has also stated that although he along with other were present at the place of occurrence but neither they taken the deceased to the hospital nor they informed this occurrence to the police.

14. P.W. 3/ Kamlesh Ram, has stated in his evidence that the occurrence took place on 06.03.1996 at 5 P.M. in the evening when he was present at the darwaja of the deceased, Kameshwar Ram. According to him, accused Arun Paswan, Diwali Paswan, Laldhari Paswan, Machhu Paswan, Parmanand Paswan, Schidanand Paswan, Kamal Ravidas, Sheru Ravidas, Biru Ravidas by dragging the deceased taken him to the door of Devashray Ram where on the direction of Lalkishun Paswan, Arun Paswan fired on his chest and Diwali Paswan fired on arm and the accused persons fled away. He stated that the reason behind the occurrence is of pouring colors on the eve of Holi. He further stated that the police has taken blood stained soil and prepared a seizure list on which he had put signature which is exhibited as Exhibit-2/1. According to him, his grand father was brother of the father of deceased and the deceased was his uncle and

he stated that all the witnesses are his relatives. He further stated that there was a land dispute between Ramjanam Ram and Kamal Ravidas, Naresh @ Sheru Ravidas and Biru Ravidas in which he was also a party and Ramjanam Ram was brother of Kameshwar Ram, the deceased. According to him, there is no accused in this case who belongs to Rajendra Paswan, who is the father of Kanchan Kumari, on whom colors were poured by Ranjit, who is son of the deceased, Kameshwar Ram. According to him Arun and Diwali are sons of Lalkishun Paswan who happens to be Chaukidar.

15. P.W. 4/ Birendra Ram, has stated in his evidence that the occurrence took place on 06.03.1996 at 5-6 o'clock in the evening. According to him, when he heard the sound of bachao bacaho, he went to the house of Kameshwar Ram and saw that Lalkishun, Diwali Paswan, Machhu Paswan, Parmanand Paswan, Sachidanand Paswan, Kamal Ravidas, Ramnaresh Ravidas, Biru Ravidas were dragging the deceased Kameshwar Ram and brought him to the Darwaja of Devashray Ram and on the order of accused Lal Kishun Paswan accused Arun Paswan and Diwali Paswan fired on the deceased, Kameshwar Ram who died on the spot and thereafter accused persons fled away. He also stated that the occurrence took place on account of the dispute arisen due to pouring color on the eve of Holi. He further stated that Gopal Ram, Baldev Ram and Balkishun Ram are full brother. Balkishun Ram has two sons namely, Saryug Ram and Suranga Ram and he is son of Saryug Ram. Suranga Ram is also one of the witness in this case. Baldev Ram has two sons namely, Raghunandan and Dev Kumar who is also a witness in this case. Raghunandan has also two sons namely, Devashray Ram and Dev Narain Ram and Devashray is the witness in this case. Gopal Ram has two sons namely, Devnandan Ram and Shri Krishna Ram who is father of Kameshwar Ram, who is the deceased in this case. According to him, when the accused persons fled away from the place of occurrence, Devashray, Dev Kumar, Suranga, Kamlesh, Arvind Ram along with his mother came at the place of occurrence. The wife and son of the deceased Kameshwar Ram were weeping by cuddling the deceased but no blood was found on their cloths. He further stated that he has no knowledge as to who had informed the police about the occurrence. He also stated about the occurrence of killing a boy took place in Sataisa Sangat village for which a case had also been registered. He further disclosed that one Mukesh has been killed for that case had been registered. According to him, he knows about Munni Ram son of Prabhu Ram, who had instituted a case under Section 307 of the Indian Penal Code against Rameshwar Ram and others. Further, he stated that a proceeding under Section 144 Cr. P.C. has been initiated between him and the accused persons. The father of Kanchan Kumari is not the accused in this case. He further stated that he neither talked with the informant and his brother on the date of occurrence.

16. P.W. 5/ Suranga Ram in his statement stated that the occurrence took place on 07.03.1996 at 4 o'clock in the early morning while he was at his home and when he heard hulla he went near the house of Devashray Ram and saw that accused Parmanand Paswan, Laldhari, Lalkishun Paswan, Diwali Paswan, Arun

Paswan Kamal Ravidas, Biru Ravidas, Sheru Ravidas, Machhu Paswan and Sachida Paswan were dragging the deceased Kameshwar Ram and taken him to the door of Devashray Ram and on direction of Lalkishun, Arun Paswan fired bullet on the chest of the deceased with rifle and accused Diwali Paswan also fired bullet on the hand of the deceased Kameshwar Ram who died on the spot. The other accused were armed with pistols in their hands. According to him, the occurrence took place on account of pouring colour on Kanchan Kumari on the occasion of Holi.

He in his cross examination has stated that Saryug Ram is his brother who has also deposed in this case. Rajendra Ram is father of Kanchan Kumari but neither Rajendra Ram nor his son had been made accused in this case. He also stated that when the accused persons fled away from the place of occurrence, the wife of the deceased along with her family members came at place of occurrence but he did not disclose their names. He further stated that Dev Kumar, Devashray and Kamlesh came after the wife of the deceased. The police came at the place of occurrence after two hours till then no one has even touched the deadbody of the deceased. Dev Kumar was interrogated and his fardbeyan was taken by the police and at the fardbeyan of Dev Kumar, the F.I.R. was lodged. He stated that he knows about Munna Ram who had instituted a case under Section 307 of the I.P.C. against the deceased Kameshwar Ram along with him and his son. He has also admitted the proceeding initiated under Section 144 Cr.P.C. against him along with the deceased by the accused persons. He has stated that the police came at the place of occurrence after lapse of one and one and half hours.

17. P.W.6/ Urmila Devi, wife of the deceased, has stated that the occurrence took place on 07.03.1996 at 4 o'clock in the morning when she was sleeping at her Dalan along with the deceased. On hearing the sound she awoke and saw that Lalkishun, Arun, Diwali, Laldhari, Machhu Paswan, Param Paswan, Kamal Das, Naresh Das and Biru Das were dragging her husband thereafter she raised hulla on which her son Arvind Ram, who is informant, along with others came there. She further stated that on the order of Lalkishun, Arun Paswan fired on the chest of her husband and Diwali Paswan also fired which hit the pakhura of her husband and he died on the spot thereafter accused persons fled away. She also stated that the occurrence took place on the background of the fact of pouring color on daughter of Rajendra Paswan on the eve of Holi. She clearly stated that there was no light at the place of occurrence. She further stated that when the accused persons fled away she started crying by cuddling her husband resultly blood get stained on her cloths. She further stated that Devashray Ram, Kamlesh Ram Dev Kumar, Birendra Ram, Suranga Ram and her son were present at the place of occurrence. She also stated that her daughter and son-in-law came after the occurrence and her two other sons were not present at the house on the date of occurrence.

18. P.W. 7/ Arvind Ram, who happens to be the son of the deceased and informant, has stated in his evidence that the occurrence took place on

07.03.1996 at 4 o'clock in the early morning while he was sleeping at his Dalan. He further stated that on hearing the sound of his mother and father, he awoke and saw that his father was being dragged and taken to the door of Devashray and on the order of Lalkishun, accused, Arun Paswan fired shot on the chest of his father by rifle and thereafter Diwali also fired on the arm of his father and the accused persons fled away and his father died on the spot. He further stated that on 06.03.1996 at 5 o'clock when the villagers were singing Holi song at the Gauraiya Asthan the boys were pouring colors to each other and Kanchan Kumari put colors to his brother and his brother also poured colors to Kanchan Kumari, who is daughter of Rajendra Paswan. He further stated that he has put signature on the Fardbeyan which is exhibited as Exhibit-2/2. He further stated that he along with his uncle namely, Birendra Ram and Kamlesh Ram went to the police station which is three kilometers away from the village. The police has come to the place of occurrence after three hours of the occurrence. He also admitted that there was no light at the place of occurrence. He also stated that when he along with his mother by cuddling the deceased were crying, the blood stained to their cloths which were given to the police along with the cloths of his father, the deceased. He has further stated that when the accused persons fled away from the place of occurrence, Dev Kumar, Devashary, Suranga, Birendra Ram, Kamlesh Ram and Urmila along with him came at the place of occurrence.

19. P.W. 8/ Dr. N.K. Singh, has stated in his evidence that on 07.03.1996, he was posted as Assistant Professor, Forensic Medicine, N.M.C.H., Patna and on that day at 2:30 P.M. he performed the post-mortem on the deadbody of deceased Kameshwar Ram and found the following injuries :-

"(I) Firearm wound of entry 1"X1" on right side of front of chest near six intercostal space with margin black.

(ii) Wound of exit 4"X4 1/2" on lateral side of right chest with margin lacerated.

(iii) Wound of entry- 1 1/2"X 1" on medial side of right arm above elbow in the margin lacerated and fracture lower end of humerus.

(iv) Wound of exist_ On lateral side of lower right arm 2"X2" margin lacerated.

In the opinion of the Doctor the death has been caused within 48 hours and more than six hours and cause of death is shock and hemorrhage due to above mentioned injuries caused by firearm. This witness has proved the Post-mortem Report (Exhibit- 4).

In his cross examination this witness has stated that if the death is caused within 24 hours, we write it as death within 24 hours. If the time of 24 hours is elapsed, we write as the death caused within 48 hours.

20. P.W. 7/ Bishwanath Prasad, who is Investigating Officer, in his statement has stated that on 07.03.1996 he was posted at Gourichak Police Station and on the said date he recorded the Fardbeyan of informant, Arvind Ram, in his hand writing and put signature on the fardbeyan, which is marked as Exhibit-5. The

informant has also put his signature in his presence on the Fardbeyan. According to the Fardbeyan, a formal F.I.R. had been drawn which is marked as Ext.-6. He further stated that on his instruction, inquest report had been prepared which is marked as Exhibit-6. He has stated that he prepared the seizure list relating to blood stained soil, which is marked as Exhibit-7. He further stated that he had recorded the Fardbeyan of Fathua (Gaurichak) P.S. Case No. 263 of 1996 and during course of investigation of Case No. 263 of 1996, he came to the notice that Kameshwar Ram has been killed. He stated that during course of investigation of this case no empty cartridges were found on the place of occurrence. He also stated that he has taken the statement of wife and son of the deceased but their cloths have not been seized. There is no disclosure of blood stained cloths in the case diary. He further stated that no blood was found on the dalan of deceased. He also stated that there is no disclosure of presence of any light or any match box in the diary. He has not found any dragging mark on the place where the dead body was kept. He has stated that he has not gone to Gauriya Asthan in respect to investigation and the family members of Kanchan Kumari had also not been examined. He has stated that he had not registered the Fardbeyan on the statement of Dev Kumar. No blood stained cloths had been given by the wife of the deceased Kameshwar Ram.

19. Mr. Ajay Kumar Thakur, learned Senior counsel appearing on behalf of the appellants has submitted that all the prosecution witnesses are totally false and fabricated. They have actually made a concocted story in order to hide the truth.

In support of his submission, he drawn the attention of this Court to the following fact;

(a) According to prosecution witnesses, the reason behind the occurrence is pouring colour on daughter of Rajendra Paswan by the brother of the informant namely, Ranjit and in retaliation the father of the informant has been killed but surprisingly not a single relative of Rajendra Paswan has been made accused in this case rather the persons who have been made accused in this case have no concern either with Kanchan Kumari or her father.

It is also quite strange that if the accused persons had to take revenge, they might have killed Ranjit in place of his father. Neither Ranjit nor Kanchan has been examined as prosecution witness.

(b) Although the occurrence took place in early morning at 4 A.M. in the narrow passage of the village which had also no means of light but strangely the prosecution witnesses have clearly seen the accused and their respective arms, which they alleged to have taken at the relevant time and categorically stated that as to who had caused injuries on the chest and the hand.

(c) The Investigation Officer in his deposition has stated that during course of investigation of Case No. 263 of 1996, he came to know that the deceased Kameshwar Ram has been killed but the I.O. has not whispered anything about the common fact of both the cases. Further, the informant has admitted that

Mukesh Ram died on 06.03.1996 at 7-8 P.M. in the night at Sataisa Sangat village, but he has denied the fact that his father Kameshwar Ram was involved in killing Mukesh Ram and in retaliation the members of village Sataisa Sangat have killed Kameshwar Ram. Hence, the prosecution witnesses have denied the fact that the members of village Sataisa Sangat have killed Kameshwar Ram but the fact that Mukesh Ram has been killed on 06.03.1996 in the evening at the village Sataisa Sangat has been admitted.

(d) The Post Mortem Report is said to have been prepared on 07.03.1996 at 2.30 P.M. and according to the Doctor the deceased died 48 hours before the post-mortem whereas according to the prosecution witnesses, the deceased died in the early morning at 4.00 A.M. and the post mortem was done within 10 to 12 hours of the death of the deceased.

(e) The inquest report appears to be tempered as the date on the report is written in Hindi while the time has been written in English.

(f) The statements of P.W.-3 and P.W.-4 is that the occurrence took place on 06.03.1996 in evening at 5:00-6:00 P.M. whereas the other prosecution witnesses have stated that the occurrence took place on 07.03.1996 in the early morning at 4:00 A.M.

(g) All the prosecution witnesses are relative of the informant and no independent witness has turned up in the entire case.

(h) The prosecution witnesses have admitted the fact that the parties were in inimical terms since long.

(i) According to the witnesses, some of them were present at the place of occurrence and some of them who stated themselves present at the place of occurrence had come after sometime.

(j) According to wife of the deceased, the occurrence took place at the outward of the house whereas the other witnesses stated that the occurrence took place in front of the house of Ramashray Ram.

(k) The informant has stated that he went to the police station along with two others but the I.O. has said to have registered the Fardbeyan at the place of occurrence. But what had been informed in the police station has not been disclosed in any of the statement of witnesses. One witness, namely, Kamlesh Ram in his statement has stated that he along with five others were gone to the police station and disclosed about the occurrence and the same had been noted by the then Sub-Inspector but strangely the same has not been whispered any where. As per the witness, namely, Suranga Ram, on the fardbeyan of Deo Kumar Ram, the case had been registered by the police.

(l) According to the witnesses, who seen the occurrence, Kameshwar Ram was killed by the firearm and thereafter the accused persons fled away from the place of occurrence, but no one even tried to take the deceased to the hospital for his

treatment, which is quite unnatural.

(m) All the prosecution witnesses in their examination in chief have stated the same version word by word and there is no difference at all.

20. Shri Ajay Mishra, learned A.P.P. has vehemently opposed the submission of the learned counsel for the appellants and submitted that all the prosecution witnesses are eye witness and their statements have also been supported by the medical evidences.

21. Considering the facts and circumstances of the case, the materials available on record and the submissions advanced on behalf of the parties, this Court finds that the submissions advanced by the learned counsel for the appellants has force and agrees with the same.

22. Accordingly, these appeals are allowed and the judgment of conviction dated 17.04.2013 and the order of sentence dated 26.04.2013, passed by the Additional District & Sessions Judge, VI, Patna City in Sessions Trial No. 1080 of 1996 is, hereby, set aside.

23. Since the judgment of conviction and order of sentence of the appellants has been set aside, the appellant, Diwali Paswan, who is in custody, is directed to be released forthwith, if not wanted in any other case, and the remaining appellants, who are on bail, are discharged from the liability of their respective bail bonds.