
(2012) 03 PAT CK 0058

In the Patna High Court

Case No : Criminal Appeal (DB) No. 544 of 1989

Dudhnath Chaudhary and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 15-03-2012

Acts Referred:

Arms Act, 1959 — Section 27

Penal Code, 1860 (IPC) — Section 147, 148, 149, 302

Citation : (2012) 03 PAT CK 0058

Hon'ble Judges : Shyam Kishore Sharma, J; Amaresh Kumar Lal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Honourable Mr. Justice Shyam Kishore Sharma

1. This appeal has been filed by the above named six appellants against the judgment dated 02.12.1989 passed by Sessions Judge, Gopalganj in Sessions Trial No. 143 of 1986 by which they have been convicted u/s 302/149 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for life. Appellant Dudhnath Chaudhary, Seo Nath Chaudhary and Ramayan Chaudhary have further been convicted under Sections 324 of the Indian Penal Code and 27 of the Arms Act and each of them have been sentenced to undergo rigorous imprisonment for one year under each count. All the sentences were ordered to run concurrently.

2. One Sukhdeo Chaudhary (since dead) had sold one katha of land to P.W.9 Ram Bachan Chaudhary over which Shambhu Chaudhary (deceased) had erected a palani (thatched house). This construction led to a quarrel between Ram Bachan Chaudhary (P.W.9) on one side and accused Sukhdeo Chaudhary (since dead) on another. In that background, on 07.06.1986 at 5.00 A.M. the informant Kamal Chaudhary (P.W.8) and Shambhu Chaudhary (deceased) were sleeping in the sahan in front of their hut. Other family members Meera Kumari (P.W.6), Jitendra Yadav (P.W.7) and Kamleshwari Devi (P.W.5) were sleeping east of their

residential house. At that very time, Sukhdeo Yadav (since dead) came shouting and instigating for assault. Sukhdeo Chaudhary, Dudhnath Chaudhary, Seo Nath Chaudhary, Bishwanath Chaudhary and Ramayan Chaudhary were having country made gun whereas Seshnath Chaudhary and Gorakh Chaudhary were possessing lathi. At the behest of Gorakh Chaudhary firings were resorted to by Sukhdeo Chaudhary which caused injury to the informant Kamal Chaudhary, Ram Babu Chaudhary and Shambhu Chaudhary. On hearing gun shot firings, Kauleshwari Devi, Jitendra Chaudhary and Meera Devi came there whereupon Dudhnath Chaudhary fired causing injury to Meera Kumari (P.W.6). The firing of Sheo Nath Chaudhary caused injury to Kauleshwari Devi (P.W.5) and firing of Ramayan Chaudhary caused injury to Jitendra Chaudhary (P.W.7). Thereafter the accused persons entered into newly constructed hut and tried to uproot it and to some extent destroyed it. On cry and noise, Rambachan Chaudhary (P.W.9), Rambali Chaudhary (not examined), Ramjee Chaudhary (P.W.2), Mohan Bin (P.W.10) and other villagers came and witnessed the occurrence. The injured were taken to hospital but injured Shambhu Chaudhary died in the way. The fardbeyan (Ext.5) resulted into a formal F.I.R. (Ext.3) of Gopalganj P.S. Case No. 175 dated 07.08.1986 under Sections 147, 148, 149, 307, 324, 302 and 447 of the Indian Penal Code and 27 of the Arms Act. Inquest report (Ext.7) of the dead body was prepared. The post mortem report (Ext.1) was obtained and statements of the witnesses were taken. After completion of investigation, charge sheet was submitted. The cognizance was taken and as the case was being triable by court of sessions, it was committed where charge under Sections 302/149 of the Indian Penal Code against all the accused was framed. Charges under Sections 324 of the Indian Penal Code and 27 of the Arms Act were framed against accused Dudh Nath Chaudhary, Seo Nath Chaudhary and Ramayan Chaudhary only. Charges were explained to the accused persons to which they pleaded innocence. As the main accused Sukhdeo Chaudhary died during investigation, only the appellants faced trial.

3. In order to prove its case, the prosecution examined 13 witnesses. They are: P.W.1 Dr. Bijay Kumar Bhatt, P.W.2 Ramjee Choudhary, P.W.3 Sipahi Bind, P.W.4 Kailash Prasad, P.W.5 Kamleshwari Devi, P.W.6 Meera Kumari, P.W.7 Jitendra Yadav, P.W.8 Kamal Choudhary, the informant of the case, P.W.9 Rambachan Chaudhary, P.W.10 Mohan Bin, P.W.11 Ramjee Prasad, P.W.12 Ram Babu and P.W.13 Shivjee Singh, the Investigating Officer of the case.

4. P.Ws. 2, 3, 5, 6, 7, 8 and 9 are the witnesses of the occurrence. P.Ws. 4 and 11 are the formal witnesses and P.W.10 has been tendered. P.W.13 is the Investigating Officer of the Case. P.W.1 is the doctor who held post mortem over the dead body of the deceased.

5. The documentary evidences of the prosecution are: Ext.1 post mortem report, Ext.2 signature of Ramjee Chaudhary on the inquest report, Ext.3 formal F.I.R., Ext.4 sale deed executed on 17.05.1984 in favour of Rambachan Chaudhary, Ext.5 Fardbeyan, Exts. 6/1 to 6/4 injury reports and Ext.7 Inquest report.

6. The defence has examined three witnesses, namely, Mankeshwar Prasad, Siyaram Sharma and Manojee Choudhary and has exhibited some documents as Exts. A to D.

7. The defence of the accused persons was of false implication on account of enmity, no such occurrence has taken place at the place of occurrence and the manner of occurrence has also been doubted. Their further defence was that the accused persons belonging to three different family and there was no reason for them to unite for commission of crime for gain of a land in favour of a particular group of person.

8. The trial court after hearing learned counsel for the parties and after considering the evidences on record came to the conclusion that the prosecution has been able to prove the charges against the accused persons beyond the shadow of all reasonable doubts and hence convicted and sentenced, as stated above.

9. This Court is required to reappraise the evidences on record and to see as to whether the prosecution was able to prove the charges beyond the shadow of all reasonable doubts against the appellants.

10. First of all, we discuss the evidence of the doctor P.W.1 who held autopsy over the dead body of the deceased Shambhu Choudhary son of Rambachan Choudhary on 07.06.1986 at 12 noon while he was posted as Civil Assistant Surgeon in Sadar Hospital, Goaplganj. Rigour mortis was present in all the limbs. He found following ante mortem injury on the person of the deceased:

(i) Four small circular lacerated wounds with blackened margin, two on the front of the chest and two over the anterior abdominal wall and one similar injury on right arm and sixth on the anterior front of scalp.

On dissection the peritoneum and the small and large intestine were found perforated at four points. The abdominal cavity contained about half peat of blood. The lower pole of the heart was found perforated and below and blood and blood clots were found present in pericardial cavity. The death was due to shock and haemorrhage as a result of above fire arm injuries which were caused within 12 hours from the time of post mortem examination.

11. In support of occurrence and the role of the accused persons the informant has been examined and he in his evidence has stated that on Saturday morning at 5.00 A.M. he was sleeping along with Ram Babu (P.W.12) and Shambhu Chaudhary (deceased). On noise, the informant's sleeping was disturbed and he saw Sukhdeo Choudhary, Dudhnath Chaudhary, Shiv Nath Chaudhary, Bishwanath Chaudhary and Ramayan Chaudhary armed with country made gun and other accused persons namely, Shesh Nath Choudhary and Gorakh Chaudhary were possessing lathi. Accused Gorakh Chaudhary instigated for assault upon which Sukhdeo Chaudhary (dead) fired which caused injury to the informant Kamal Chaudhary, his son Ram Babu Chaudhary and nephew Shambhu

Chaudhary. Meanwhile, informant's niece Meera Kumari (P.W.6), nephew Jitendra Yadav (P.W.7) and sister Kauleshwari Devi (P.W.5) came and they tried to save the informant and others but they were fired upon by Dudh Nath Chaudhary, Sheo Nath Chaudhary and Ramayan Chaudhary which caused injuries to them. On noise being raised, the villagers came and the injured were taken to hospital for treatment but injured Shambhu Chaudhary died in the way. This witness has stated that the occurrence took place on account of the fact that Sukhdeo Chaudhary was having some land dispute as one katha of land was executed by Sukhdeo Chaudhary in favour of informant's brother Ram Bachan Chaudhary over which informant's brother had constructed a hut. That was the bone of issue.

12. The informant has been supported by other material witnesses who have been examined on behalf of the prosecution. P.W.7 in paragraph 5 has stated that he and others reached Hospital about 8.00 A.M. and the distance between the place of occurrence and Hospital is about 10 miles. P.W.9 has stated that after occurrence he went to village Rampur Tengrahi where police is posted. The matter was informed by him to police and thereafter he returned along with the police (paragraph 1 of P.W.9) and thereafter he and others left for Hospital along with injured. P.W.13 is the Investigating Officer and he has stated that he received information at 6.30 A.M. about some occurrence and thereafter he had gone to Sadar Hospital Gopalganj where he recorded statement of Kamal Chaudhary at 7.30 A.M. There are contradiction between the two version. The first version of the occurrence has remained unexplained. According to prosecution witnesses, Shambhu Chaudhary (deceased) and informant P.W.8 were not sleeping in front of Palani or have received any injury at that place. P.W.5 Kamleshwari Devi is another injured witness and has stated that she received injury in staircase of verandah where P.W.6 Meera Kumari was also hit by gun shot and injury to P.W.7 Jitendra Yadav was caused at Sahan. P.W.9 has stated that all the injured have sustained injuries while they were sitting on a Chawki in the Palani. P.W.13 had gone to the place of occurrence and he has found blood beneath the chawki kept in the Baithka of P.W.9 Rambachan Chaudhary. The blood was found only at one place and that was the Baithka of Ram Bachan Chaudhary. That is not the place of occurrence and the Investigating Officer has not delayed in reaching the place of occurrence because he has proceeded for the place of occurrence soon after recording the statement of informant and the F.I.R. and he has not found blood which has been indicated by the witnesses rather he has found blood at solitary place which was beneath the Chauki kept in the Baithka of P.W.9.

13. The solitary evidence of killing was against Sukhdeo Chaudhary and no other person is alleged to have done any overt act which could have caused death to Shambhu Chaudhary. It has come in evidence that accused Sukhdeo Chaudhary was killed when the case was at the stage of investigation. It appears from the evidence that the act of killing was solitary work of Sukhdeo Chaudhary and he is not the appellant here.

14. Regarding assault to other witnesses including the informant, the role of the appellants is there but unfortunately the doctor who treated the injured has not been examined. The specific case of the prosecution is that the injured were taken to hospital and there they were given treatment but there is no explanation as to why treatment report or injury report has not been brought on record. If the prosecution relied upon a particular piece of evidence, then the onus is upon it to establish that. In the present case, the definite case of the prosecution is with regard to treatment of injured P.Ws. 5,6,7 and 8 but unfortunately not even chit of paper has been filed to show as to whether these persons were treated or as to whether any of the injured has received any fire arm injury. If such evidence which was the material evidence, is withheld, then withholding of such evidence has caused great prejudice to the defence. Even according to the allegation, none of the appellants has even touched the body of the deceased rather some of the appellants have caused injury to others for which they have been convicted under Sections 324 of the Indian Penal Code and 27 of the Arms Act but non-production of the injury report and non-examination of the doctor are the circumstances which have to be taken into account for consideration of illegality or irregularity in upholding the order of conviction. In absence of any proof of treatment of any of the injured or non-examination of the doctor it cannot be said that the prosecution has come with clean version and has withheld the important evidence upon which the order of conviction could have been sustained.

15. In view of the discussions made above, we are of the view that the prosecution has not been able to prove the charges against the appellants beyond the shadow of all reasonable doubts. Accordingly, they deserve to be acquitted.

16. In the result, the judgment of conviction and order of sentence is set aside. The appeal is allowed. The appellants are acquitted of the charges and are discharged from the liabilities of their respective bail bonds.