

(2003) 09 PAT CK 0048

In the Patna High Court

Case No : Criminal Appeal No. 98 of 1997 (D.B.)

Ganga Bind, Ram Ratan Bind, Ramanand Bind and
Vishwanath Bind

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 12-09-2003

Acts Referred:

Arms Act, 1959 — Section 27
Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2003) 4 PLJR 826

Hon'ble Judges : B.K. Jha, J;A.K. Sinha, J

Bench : Division Bench

Advocate : Anjana Prakash and Rakesh Kumar Sinha, for the Appellant; Bhagya Narain Gupta, for State, Vikramdeo Singh and Narendra Kumar for Informant, for the Respondent

Final Decision : Allowed

Judgement

B.K. Jha, J.—All the four Appellants were tried for committing murder of Jitendra Nut of village Magajpura, P.S. Chenari, District-Rohtas and were ultimately convicted u/s 302/34 of the Indian Penal Code and sentenced to imprisonment for life.

2. The case of the prosecution is that on 6.4.1995 at 7.30 P.M. the informant, Jain Nut, alongwith his son, Jitendra Nut, was harvesting the riped wheat crops in " the north-east of his village field. At that time the accused, Appellant, Ganga Bind, Ram Ratan Bind, Ramanand Bind and Vishwanath Bind, armed with guns and pistols came there, caught hold of Jitendra Nut and abused him that he posed himself as Rangdar. They threatened to finish him whereupon the informant requested to spare his life but of no effect. They fired indiscriminately at Jitendra Nut as a result of which he fell down and died. On hearing the sound of firing the informant's brother, Kameshwar Nut, who was going to ease himself, rushed at the place of occurrence and saw the accused persons firing the shots.

On the sound of firing the other villagers, Badan Bind, Sanjay Bind and Ram Suresh Nut also came and saw the fleeing accused persons. The motive behind the occurrence was that ten days before Jitendra Nut had objected accused Appellant Ganga Bind from damaging his onion crops by his she buffalo for which he had threatened to kill him and, hence, the present occurrence.

3. On 7.4.1995 at 4.30 A.M. Sheo Shankar Prasad, S.I. of Chenari Police Station recorded the fardbeyan (Ext. No. 3) of the informant in P.O. village Magajpura, P.S. Chenari, District-Rohtas, Sasaram. On the basis of his fardbeyan a formal F.I.R. (Ext. No. 5) was drawn up and a case was registered against all the four accused-Appellants under Sections 302/34 of the I.P.C. and Section 27 of the Arms Act. On completion of the investigation Police submitted charge sheet and after cognizance and commitment they faced the trial.

4. The defence of the Appellants is plea of innocence and false implications. The specific defence of the Appellant, Ram Ratan Bind is that he resides in Chenari Market for the last 25 years and not in the P.O. Village-Magajpura. The defence has examined two witnesses, Badan Bind, D.W. 1 and Sanjay Bind, D.W. 2.

5. The prosecution produced seven witnesses in support of its case. Out of them P.W. 1, Ram Suresh Nut, the brother of the deceased, Jitendra Nut, is not an eye witness to the occurrence. His evidence is that at the relevant hour of occurrence while he was returning to his village from Alampur Market, he heard the sound of firing and noticed all the four accused-Appellants fleeing away with guns and pistols in their hands. He went in the field and found his brother, Jitendra Nut lying dead. His father and Kameshwar Nut, P.W. 3, were also present there. He learnt from his father about the commission of murder of his brother by all the accused-Appellants. His further evidence is that the S.I. of Police seized the blood stained earth, a sickle and a cartridge from the place of the dead body and prepared a seizure list (Ext. No. 1). He put his signature and the witness, Ramayan Bind, P.W. 2, put his L.T.I. on the seizure list. In cross examination he has stated that he had heard 4/5 firing shots. His further evidence is that the family of the accused-Appellant, Ram Ratan Bind, resides in Chenari Market and he himself resides at both the places, Chenari Market and village Magajpura. P.W. 2, Ramayan Bind, is a witness of the, seizure of the seized articles. In cross examination he has stated that on the sound of firing 30/40 villagers including Jain Nut, P.W. 5, the informant, Ram Suresh Nut, P.W. 1, Kameshwar Nut, P.W. 3, assembled and proceeded in the direction of the firing. All of them arrived in the P.O. village and found the dead body of Jitendra Nut, lying there but none had disclosed the name of his assailants. He was declared hostile but nothing material could be elicited in his cross examination. P.W. 7, Shanku Tuddu has come forward to state that he alongwith S.I., Shiv Shankar Prasad, he I.O. of this case, P.W. 6 and police part went to the P.O. village-Magajpura. On the direction of Shiv Shankar Prasad, P.W. 6, he recorded the fardbeyan of the informant (Ext. No. 3), prepared inquest report (Ext. No. 4) and on the basis of his fardbeyan a formal F.I.R. was drawn up (Ext. No. 5). P.W. 3, Kameshwar Nut and P.W. 5, Jain

Nut are the eye witnesses to the occurrence. P.W. 4 is Dr. Shankar Kumar Jha who conducted autopsy on the dead body of the deceased, Jitendra Nut and P.W. 6, Shiv Shankar Prasad, is the I.O. of this case.

6. P.W. 4, Shankar Kumar Jha, has stated that on 7.4.1995 at 10.45 A.M. he conducted post mortem examination on the dead body of the deceased Jitendra Nut and found the following ante-mortem injuries:

(i) Lacerated wound over right maxilla with inverted margin and blackening over right side of face of size 1/3" x 1/3" x 1/2".

(ii) Lacerated wound over epigastric region with black and inverted margin of size 1/2" x 1" x cavity deep.

(iii) Lacerated wound on left second intercostal space 1" below mid clavicle region with black and inverted margin of size 2 1/2" x 2" x cavity deep.

(iv) Lacerated wound with black and inverted margin 2" above and left to umbilicus of size 1 1/2" x 1/2" x cavity deep.

(v) Lacerated wound with black and inverted margin over front of chest over sternum in fourth space of size 1/2" x 1/3" x 1". On dissection he found one bullet lodged in muscle of second intercostal space in left side.

According to him all the injuries, (i) to (v), were caused by fire arm. The death was caused due to shock and haemorrhage as a result of injury to heart caused by injury No. (iii). The time elapsed since death and post mortem examination held was found within 12 to 24 hours. Rigor mortis was present on all the four limbs. His further evidence is that 110 pellets, one bullet, five metallic pieces and four pieces of wads recovered from his body was sealed and handed over to the accompanying constable. He proved the post mortem report (Ext. No. 2).

7. P.W. 5, Jain Nut, is the informant of this case. His evidence is that on the alleged date the occurrence had taken place at 7.30 P.M. and there was moon lit night. At that time he alongwith his son, Jitendra Nut, was harvesting wheat crops in his field situated in the north-east of his village. In the mean time the accused-Appellants, Ganga Bind, Ram Ratan Bind, Ramanand Bind and Vishwanath Bind, armed with pistols and guns came there, caught hold of his son and uttered to kill him as he posed himself as Rangdar. In the mean time his brother, Kameshwar Nut, P.W. 3 also arrived there. All the four accused-Appellants fired indiscriminately at his son, Jitendra Nut, he fell down injured and then the accused-Appellants made good escape from there. Thereafter his another son, Ram Suresh Nut, P.W. 1, also came and learnt about the occurrence from him. He has further stated that the villagers Ramayan Bind, P.W. 2, Sanjay Bind, D.W. 2 and Badan Bind, D.W. 1 came and he narrated to them about the occurrence but they went in the camp of the accused. Police came, recorded his fardbeyan and he put his L.T.I. and his brother, Kameshwar Nut, P.W. 3 put his signature. He has stated about the motive behind the occurrence as outlined in his fardbeyan. In cross examination he has stated that he had already harvested

wheat crops of 1/2 Katha area but had not bundled up the said crops. His further evidence is that he spotted the accused-Appellants in the field for the first time when they caught hold of his son. He has denied to have stated before the police that Kameshwar Nut, P.W. 3 arrived the place of occurrence on hearing the sound of firing. He has admitted to have stated before the police that he had narrated about the occurrence to his son, Ram Suresh Nut, P.W. 1. He has admitted to have stated before the police that the relevant night was the moon lit night. His further evidence is that the accused-Appellant, Ram Ratan Bind, has also got house in Chenari Market. He alongwith his family resides at both the places in Chenari Market as well as in the P.O. Village-Magajpura.

P.W. 3, Kameshwar Nut, is the brother of the informant, Jain Nut, P.W. 5. His evidence is that on the alleged date the occurrence took place at 7.30 P.M. and there was moon lit night. While he was going to ease himself, he heard some persons talking together. At this he went in the field in which wheat crops were being harvested. As soon as he reached there all the four accused-Appellants, Ganga Bind, Ram Ratan Bind, Rama Nand Bind and Vishwanath Bind, fired shots at his nephew Jitendra Nut and he fell down injured on the ground. Thereafter the accused-Appellants fled away. His further evidence is that his brother, the informant, Jain Nut, was present at the P.O. from before and his nephew, Suresh arrived there after the occurrence. In cross examination he has stated that the S.I. of Police recorded his statement in the Village at 9 P.M. in the night of the following day. He has admitted to have stated before the police that he had not heard the sound of firing before reaching at the place of occurrence. He has denied to have stated before the police that on hearing the sound of firing he rushed at the place of occurrence. He has also denied to have stated before the police that only the accused-Appellant, Rama Nand Bind, had shot dead Jitendra Nut rather he had stated that all the four accused persons fired and injured Jitendra Nut. He has also admitted to have stated before the police that the night or occurrence was moon lit night.

8. P.W. 6, Shiv Shankar Prasad is the I.O. of this case. His evidence is that on 7.4.1995 at about 3 A.M. while he alongwith Shanku Tuddu, A.S.I., P.W. 7 and police party were on patrolling duty in village-Khudhnu, he heard about the occurrence of murder in village-Magajpura. Then he proceeded for the P.O. village and reached in the alleged wheat field at about 4.30 A.M. On his direction the A.S.I. Shanku Tuddu, recorded the fardbeyan of the informant, Jain Nut, P.W. 5 (Ext. No. 3) on which he put his L.T.I. and the witness, Kameshwar Nut, P.W. 3, put his signature. He prepared the inquest report of the dead body of the deceased, Jitendra Nut (Ext. No. 4) in presence of the witnesses, Chhotey Lal Dusadh and Vijay Kumar Prasad. Then A.S.I. Shanku Tuddu, P.W. 7, was sent to the Police Station with the fardbeyan of the informant for the institution of a case. He re-examined the informant, Jain Nut and visited the P.O. The dead body of the deceased, Jitendra Nut, was found lying in the south-east corner of the field: He seized the blood stained earth, a sickle and a cartridge. A seizure list was prepared in presence of the witnesses. The witness, Ram Suresh Nut, P.W. 1

signed and the witness, Ramayan Bind, P.W. 2 put his L.T.I. on the seizure list (Ext. No. 1). Thereafter he recorded the statements of Ram Suresh Nut, P.W. 1, Sanjay Bind, D.W. 2, Sudama Nut, Rajeshwar Bind, Chhotey Lal Prasad and Kameshwar Nut, P.W. 3 and after completing the investigation submitted the chargesheet. In cross examination his evidence is that he did not find harvested wheat crops nor seized its any bundle. The attention of this witness was drawn to the statements of the witnesses recorded by him during investigation. The witness, Kameshwar Nut, P.W. 3, had stated before him that the Appellant, Rama Nand Bind, had only fired shots at Jitendra Nut as a result of which he died. He had not stated before him that all the four accused-Appellants had fired shots at Jitendra Nut. The witness, Kameshwar Nut, P.W..3 and the informant, Jain Nut, P.W. 5, had not stated before him that the night of occurrence was moon lit night.

9. On the other hand, the defence has also examined two witnesses. The evidence of D.W. 1 Badan Bind is that on the alleged date the occurrence had taken place at 7.30 P.M. and the* night had already started. At that time he was at his Baithka and Sanjay Bind, D.W. 2, the Appellant, Ganga Bind, Ramayan Bind, P.W. 2, Kameshwar Nut, P.W. 3, Jain Nut, P.W. 5, the informant and Suresh Nut were washing their hands and mouths there. In the mean time the sound of firing was heard from the northern-eastern direction whereupon they proceeded and went in the alleged field. They located the dead body of Jitendra Nut lying in the field. They did not spot any person there. He has further stated that neither they had seen any person fleeing away from there nor any one of them disclosed the names of the accused. In cross examination he has stated that the police had examined him in which he had stated that he had not seen any person fleeing away from the place of occurrence. He had denied to have stated before the police that he had seen all the F.I.R. named accused fleeing away from the place of occurrence with fire arms in their hands. D.W. 2, Sanjay Bind has also corroborated the evidence of D.W. 1, Badan Bind. His evidence is also that on hearing the sound of firing he alongwith Ganga Bind, Ramayan Bind, Jain Nut, Kameshwar Nut, Suresh Nut and 10/20 villagers went in the P.O. field and found Jitendra Nut lying dead. He had not seen the assailant of the deceased, Jitendra Nut.

10. The learned Counsel for the Appellants contended that the evidence of the eye witnesses suffers from serious infirmities and do not carry conviction. The criticism against the statement of P.W. 3, Kameshwar Nut was that his statement u/s 161 Code of Criminal Procedure was that on the sound of firing he rushed to the place of occurrence. In court his statement was that as soon as he arrived in the P.O. field all the four Appellants fired shots indiscriminately at Jitendra Nut and he died. The criticism against the evidence of P.W. 5, Jain Nut was that he did not disclose the source of identification in his fardbeyan but at the stage of trial his statement was that the night of occurrence was moon lit night. Further, criticism against his evidence is that he alongwith his deceased son, Jitendra Nut had harvested the wheat crops of an area of 1/2 Katha of land before the occurrence but the I.O., did not find any wheat crops. It was further contended

for the Appellants that the prosecution has not examined the independent witnesses though available, so an adverse inference should be drawn and the trial court wrongly accepted the contradictory partisan evidence for the conviction of the Appellants.

11. The positive case of the prosecution is that on 6.4.1995 at 7.30 P.M. while the informant, Jain Nut alongwith his son, Jitendra Nut was harvesting riped wheat crops in his field, all the four Appellants with guns and pistols came, caught hold of Jitendra Nut and fired indiscriminately at him as a result of which he fell down and died. On hearing the sound of firing Kameshwar Nut, P.W. 3, the brother of the informant, rushed to the place of occurrence and witnessed the Appellants firing the shots. On the sound of firing other villagers, Badan Bind, D.W. 1, Sanjay Bind, D.W. 2 and Ram Suresh Nut, P.W. 1, also came and also saw the fleeing accused persons. It is clear from the averments made in the F.I.R. that Kameshwar Nut, P.W. 3 arrived at the place of occurrence after Jitendra Nut shot dead. His statement u/s 161 Code of Criminal Procedure was similar but in court his statement was that as soon as he reached in the P.O. field all the four Appellants shot dead Jitendra Nut. Further, at trial he claimed to be an eye witness to the entire occurrence. P.W. 5, Jain Nut, the informant, has also come forward at trial to support the evidence of P.W. 3, Kameshwar Nut. Further, P.W. 5, Jain Nut, the informant, lodged very exhaustive fardbeyan in which he failed to disclose the source of identification and it was also not disclosed in his statement u/s 161 Code of Criminal Procedure P.W. 3, Kameshwar Nut, has also not disclosed the source of identification in his statement u/s 161 Code of Criminal Procedure All of sudden at trial both P.W. 3, Kameshwar Nut and P.W. 5, Jain Nut, the informant, introduced the source of identification by stating that the night of occurrence was moon lit night. The evidence of the informant, Jain Nut, P.W. 5, further indicates that he alongwith his deceased son had already harvested wheat crops of an area of 1/2 katha before the occurrence but had not bundled up them. On inspection of the P.O., the I.O., Shiv Shankar Prasad, P.W. 6, did not find any harvested wheat crops in the P.O. field.

12. Admittedly, both the alleged eye witnesses are closely related and deeply interested in the prosecution but that cannot be a ground to discard their evidence. Their evidence require strict scrutiny and on scrutiny of their evidence as noticed above it seems that none of them had actually seen the occurrence and they are the got up witnesses. In other words, they were introduced as eye witnesses after due deliberation. The independent witnesses though available but withheld by the prosecution. No plausible explanation was furnished for their non examination. The learned trial Judge failed to consider and appreciate the glaring defects in that case pointed out above and wrongly rejected the defence case. The defence witnesses deserve equal treatment with those of the prosecution witnesses. D.W. 1, Badan Bind and D.W. 2, Sanjay Bind are the F.I.R. named witnesses and they were examined by the police in which they presented the different pictures of the prosecution case. The infirmities noticed above lends assurance to the defence case that on hearing the sound of firing the alleged eye

witnesses alongwith others rushed in that direction and located the dead body of Jitendera Nut lying in the wheat field.

13. On the analysis of the evidence on record coupled with the above infirmities, I find that the prosecution has not been able to bring home the guilt against the Appellants beyond all reasonable doubts and give them the benefit of doubt.

14. In the result, this appeal is allowed. The order of conviction and sentence passed against the Appellants is set aside and they are acquitted of the charge framed against them. All the four Appellants, Ganga Bind, Rani Ratan Bind, Ramanand Bind and Vishwanath Bind, are in custody, so they are ordered to be released forthwith in this case if not wanted in any other case.