

(2009) 08 PAT CK 0020

In the Patna High Court

Case No : Cr. Appeal (SJ) No. 252 of 2001 and Criminal Revision No. 794 of 2001

Guja Paswan, Ram Chandra Paswan, Upendra Paswan and
Ranjeet Paswan

APPELLANT

Vs

State of Bihar
 Laxmi Prasad Sahu Vs The State of
Bihar, Gujo Paswan and Ramchandra Paswan

RESPONDENT

Date of Decision : 25-08-2009

Acts Referred:

Citation : (2009) 08 PAT CK 0020

Judgement

Mandhata Singh, J.—Cr. Appeal No. 252 of 2001 has been filed against the judgment and order of conviction dated 20.7.2001 passed by Shri Subhash Kumar Singh, 5th Additional Sessions Judge, Begusarai while Cr. Revision No. 794 of 2001 has been filed against the aforesaid order of the said case on the point of sentence that the sentence awarded to accused persons is not sufficient, so both the appeal as well as this revision have been heard together and are being disposed of by this common judgment.

2. The prosecution case, in brief, initiated on the statement of Laxmi Prasad Sahu, injured is that he was working as a Helper in Barauni Oil Refinery, on the day of occurrence he was lying on a cot in his room after taking his meal at Mungeriganj. In the meantime, a jeep came, stopped in front of his house. One of the occupants came from the jeep and called him. He opened the door, came out from his room and identified the person calling him as Gujo Paswan. Two of the persons in jeep were also identified in electric light as Ram Chandra Paswan and Upendra Paswan. Fourth one was identified as son of Prasadi Paswan and fifth one was known but his name could not be remembered. Ram Chandra Paswan thereafter Guja Paswan shot firing from their pistol upon the informant Laxmi Prasad Sahu which hit his right arm pit and right elbow. There is specification also that shot of firing by Ram Chandra Paswan injured the informant on right elbow and Guja Paswan on the right arm pit. Informant fell down on the ground. People nearby came and rescued him. Miscreants left the place of occurrence. The informant was taken to Sadar hospital by the gathered

people for treatment.

3. After conclusion of trial, all the appellants have been convicted for alleged offences committed by them. There are different aspects and areas which have been taken for assailing the conviction by the appellants. Similarly nature and manner of the offence has been raised awarding insufficient punishment.

4. Now the point for consideration in appeal is-

(i) whether contradictions in prosecution witnesses and other illegalities have satisfactorily and legally been replied or not?

(ii) As for criminal revision, the nature of offence under prevailing circumstance was justifying awarded sentence sufficient.

5. In all eight witnesses were examined in the case. They can be divided in different categories, as P.W.1 Rameshwar Sahu and P.W.6 Laxmi Prasad Sahu are the witnesses to state the whole prosecution story. P.W.2 Nathu Sahu and P.W.3 Amulya Kumar Bose are mainly on the point of seizure of blood stained ganji and empty cartridge recovered from the place of occurrence though they have stated about taking place of the incident also but in cross-examination only. P.W.4 and P.W.5 though appeared to state the prosecution case but turned hostile. P.W.7 is a retired dresser who has identified the signature of the doctor who had prepared injury report after examining the injured along with its exhibition and P.W.8 is a formal witness to get exhibited documents.

6. The defence has also produced two witnesses and they are D.W.1 Prem Kumar and D.W.2 Gopal Sah.

7. All the prosecution witnesses save and except P.Ws 7 and 8 are examined to corroborate the prosecution case. Of them P.Ws 1 to 6 are on the point that firing was shot by miscreants hitting the informant Laxmi Prasad Sahu and they are more specific on the point of incident that all the accused persons along with two more came on jeep which halted in front of the informant's house whereupon the informant was shot by Ram Chandra and Guja Paswan and shot firing hit the informant.

8. As non-examination of the doctor and the I.O. has also been raised to doubt the prosecution case but that is sufficiently replied that there was no point existing to be taken from the I.O. which could prejudice the prosecution case.

9. As about the non-examination of the doctor that has also been satisfactorily replied. All the witnesses in the case save and except P.Ws 4, 7 and 8 are either stating about shot of the firing which only if hit as in the instant case constituting offence u/s 324 IPC or injuring of P.W.6 by fire arm. Though defence witness may not be a leg to stand the prosecution case but can be taken that same is not countered by the defence. In this connection, paragraph 2 of cross-examination of D.W.1 can be referred who states about injury of the fire arm on person of P.W.6.

10. Gravity including part of the body, intervening circumstance etc. makes the case of Section 324 IPC to one u/s 326 IPC or 307 IPC. So the offence for which conviction has been concluded is for the offence u/s 324 IPC only for which examination of the doctor to state its nature is not necessary otherwise also the doctor who examined the victim is said dead.

11. As stated, P.Ws 1 and 6 remained constant stating in support of prosecution case so their testimony needs to be testified. In this regard statement of P.Ws 2, 3, 4 and 5 is pointed out that either they are denying the presence of P.W.1 on the spot or denying to identify or told to be identified by the victim if accused persons have any hand.

12. It is made clear before discussing the case ahead that P.W.4 and P.W.5 though are stating about taking place of the incident but denying to involve any of the accused persons and on that point they have been declared hostile even cross-examined by the prosecution. They have not been relied by the trial court either for prosecution or for defence relying a decision of the Apex Court reported in M.S. Bansal (Pvt.) Ltd. and Another Vs. Bhagwan Swarup Mathur and Others, that a hostile witness cannot be believed in part and disbelieved in part.

13. Witness No. 1 has not been named in the F.I.R. like other witnesses which is the first version of the informant made before an independent agency that is the police official that has not been questioned or doubted also and relying the same, the prosecution has got it exhibited. In the F.I.R. in clear words it is given that the informant was lying in his room alone on a cot when called by accused and then he came after opening the plank of the door. If the F.I.R. cannot be taken as substantive piece of evidence then also the statement of P.W.6 is there that he was lying alone in his room on a cot while this witness states about his presence at Darwaza of the house in which the informant was sleeping along with others. In paragraph-6 in clear words he admits that he does not know the house of neighbours. If he is not aware of the neighbours then the possibility about his sitting with them does not arise. So the statement of this witness as eye witness can easily be doubted.

14. For P.Ws 2 and 3 also it is made clear that they have been relied only for taking place of incident without identification of any of the accused. P.W.2 is restricted himself about handing over of billet hit ganji to the I.O. while P.W.3 has stated about taking place of the incident, injuring of P.W. 6 in the firing.

15. Now a single witness remains to discuss if he can be accepted for conviction of the accused. As much deviation is found in the statement of rest prosecution witnesses either by turning them hostile or otherwise not supporting the prosecution case, so it is pertinent to mention here that the incident took place at 9.00 PM that is mentioned by the police official who recorded the F.I.R., that has been corroborated by the victim informant himself that the incident was of 9.00 PM that has not been questioned anywhere by the defence. Further fardebayan speaks about its recording by the police official at 9.30 PM that has

also been not questioned on behalf of either parties. Further it is the case of the prosecution that immediately after receiving injury, the informant was taken to hospital.

16. No doubt D.W.2 a rickshaw puller is there who partly supports the prosecution case that the informant received injury who was taken instantly by him to the hospital and in the way it is said that the informant was telling him that he did not identify the assailants but as mentioned above, this span of time is very short that is of half an hour. No question arises about coming in picture any circumstance suggesting naming of some enemies including accused persons. His attention is drawn on the point that if he had told Darogaji about causing of injury to Laxmi Sahu, by unknown persons that is against his statement recorded in the case diary. The witness cannot be allowed to make statement of his choice at different stage of the case.

17. P.W.6 categorically states about lying in his room on cot, coming of a jeep, its halting, calling his name, opening one plank of his door, identifying Guja Paswan and others, further firing by Guja Paswan and Ram Chandra Paswan which hit him, his previous enmity with Guja Paswan and Ram Chandra Paswan.

18. It is worthless to mention that the case in which Guja Paswan and Ram Chandra Paswan were convicted, was pending in appellate court, later acquitted in revision. That is relevant for enmity only. Enmity may not be affecting the merit of the case.

19. Discussed witnesses if found contradictory on several points may not affect the trust of this witness. They have already been doubted, disbelieved and not accepted for identifying any of the accused persons.

20. As about the identification though a doubt is cast on behalf of defence that it was night time and as both D.Ws are stating about remaining of no source of light to identify while hostile witnesses are also stating about the dark night only, in absence of electric power, their statements have already been observed not to be accepted for prosecution. In case it is assumed that there was no light at all then also it is admitted case of the parties that the informant and accused were well known to each other, having litigation and enmity for several years. Firing was shot also from close range, so identification cannot be doubted as observed by their Lordships in a decision reported in State of U.P. Vs. Sheo Lal and Others, otherwise also the trial court has well discussed the witnesses taking into consideration the law point also and coming to the conclusion of conviction which only is interfered on a single point that the statement of one of the prosecution witnesses namely P.W.1 is doubted. But the Evidence Act never provides number of witnesses, a single witness is sufficient and in instant case that witness is injured and defence failed to point out any defect to disbelieve this witness, thus finding the witness (P.W.6) trust worthy the conviction reached by trial court is affirmed. Accordingly, the appeal is dismissed.

21. As about the sentence, all the accused persons have been convicted u/s 324

IPC, of them Upendra Paswan and Rajeet Paswan have been given privilege of Probation of Offenders Act, released on probation, they have been released on execution of a bond of Rs. 3000/- each to maintain peace and good behaviour for a period of one year that is elapsed without any adverse reporting and specific reasoning is given, the Court is bound also to consider if a convicted is not given benefit under this section. So I find no mistake committed by the court below on this point.

22. As about the sentence awarded to accused Guja Paswan and Ram Chandra Paswan it is said that they have been awarded less than minimum for offence u/s 27 of the Arms Act which the Court is not empowered but after argument at length learned Counsel for revisionist also conceding that while the incident took place there was no minimum limit for the punishment u/s 27 of the Arms Act though that was upto seven years. For the offence u/s 324 IPC maximum punishment which can be awarded is three years or with fine. Considering the previous enmity, time taken in disposal of the case, six months simple imprisonment for each offence has been awarded. Further eight years have elapsed, so I do not find any justification to interfere in the conclusion arrived at by the trial court on the point of sentence also.

23. Accordingly, both the Criminal Appeal and Criminal Revision are dismissed and order in question is affirmed.

24. However, there shall be no order as to cost.