

(2007) 01 PAT CK 0162

In the Patna High Court

Case No : Criminal Appeal No's. 326 and 314 of 1997 (DB)

In Re: Madan Lal Choudhary; In Re: Sanjay Jha and Another

Date of Decision : 18-01-2007

Acts Referred:

Explosive Substances Act, 1908 — Section 3, 4
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2007) 3 PLJR 514

Hon'ble Judges : J.N. Singh, J; Chandramauli Kr. Pd., J

Bench : Division Bench

Advocate : Jagdish Prasad, Dr. Alok Kumar "Alok" in 326; M/s Sandeep Kumar, A.K. Shahi in 314, Lala Kailash Bihari Pd. in both, for the Appellant;

Final Decision : Allowed

Judgement

Chandramauli Kr. Pd. and J.N. Singh, JJ.—Altogether six persons were put on trial for committing the offence punishable u/s 302/34 of the Indian Penal Code and Section 3/4 of the Explosive Substances Act. 5th Additional Sessions Judge, Samastipur, by judgment dated 15th of July, 1997 passed in Sessions Trial No. 73/18 of 1995, acquitted three accused persons, namely, Sajjan Choudhary, Gedri Devi and Ram Dichhit Singh of both the charges, as also the appellants of the charge u/s 3/4 of the Explosive Substances Act. However, by the said judgment, Madan Lal Choudhary, Sanjay Jha and Sita Ram Jha have been found guilty of offence u/s 302/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life. Madan Lal Choudhary, being aggrieved by his conviction, preferred appeal which was registered as Cr. Appeal No. 326 of 1997. However, during the pendency of the appeal, he died and his son Avinash Kumar Choudhary filed application to pursue the appeal, which prayer has been allowed by order dated 3.5.2005.

2. Appeal preferred by Sanjay Jha and Sita Ram Jha against the judgment of conviction and sentence has been registered as Cr. Appeal No. 314 of 1997.

3. As both the appeals arise of the same judgment, they were heard together and are being disposed of by this common judgment.

4. Prosecution story, according to the first information report given by P.W. 4 Prabha Devi before the Sub-Inspector of Police, Ghatho Police Station on 15.10.1993 at 1.30 A.M., is that on the same day at 1 A.M., while she was sleeping in a room alongwith her husband Bhutu Ishwar, daughter Savita Devi (P.W. 3), daughter Nitu Kumari, son Durgesh Ishwar and another daughter Rukmini Kumari besides her sister-in-law Sumitra Devi (P.W. 1), appellants broke open the door and entered in the room. According to the informant, in the light of a lamp in the room, she identified the appellants. According to the first information report, her husband was sleeping on the cot and when she stood up, she was pushed by appellant Sanjay Jha forcibly and appellant Sita Ram Jha gave Chhura blow on her abdomen. At this, her husband raised alarm, whereupon, appellant Madan Lal Choudhary threw bomb which caused smoke in the room, and upon the alarm, neighbours, namely, Vidya Nand Choudhary (P.W. 5), Upendra Choudhary and Ram Swagat Choudhary came and in the meanwhile her husband died.

5. According to the informant, the incident had taken place as they had won the case against Madan, Lal Choudhary. She has further stated in the first information report, that after appellant Madan Lal Choudhary lost the case, he threatened to kill her husband Bhutu Ishwar.

6. On the basis of the aforesaid information, Ghatho P.S. Case No. 116 of 1993 was registered u/s 302/34 of the Indian Penal Code and Sections 3 and 4 of the Explosive Substances Act Police, after investigation, submitted charge-sheet and the appellants were ultimately committed to the Court of Sessions, where they were charged for intentionally committing the murder of Bhutu Ishwar in furtherance of their common object punishable u/s 302/34 of the Indian Penal Code. They were further charged for hurling the bomb likely to endanger human life and thereby committing the offence punishable under Sections 3 and 4 of the Explosive Substances Act.

7. The prosecution, in support of its case, examined altogether eight witnesses, out of whom P.W. 1 Sumitra Devi, P.W. 2 Amita Kumari alias Anita, P.W. 3 Savita Devi and P.W. 4 Prabha Devi claimed to be eye witnesses to the occurrence.

8. P.W. 5 Vidyanand Choudhary is a witness to the fard beyan, seizure-list and the inquest report. P.W. 6 Manindra Kumar Thakur and P.W. 8 Ram Sharan Singh are advocate"s clerks and are formal witnesses. P.W. 6 had identified the writing of the Sub-Inspector of Police who had drawn the formal first information report and proved the same (Ext. 2). P.W. 8 has also identified the writing of the Sub-Inspector of Police who had recorded the fardbeyan and had proved the same. P.W. 7 Dr. Hari Sharan Prasad Singh is a Medical Officer who had conducted the post mortem examination on the dead body of Bhutu Ishwar and had proved the same.

9. Appellants denied to have committed the offence and have stated that they have been falsely implicated in the case. From the trend of the cross-

examination, their defence further appear to be that the deceased was accused in a large number of cases and might have been killed by unknown criminal. Their further defence is that one of the daughters of the deceased was married earlier to whom she deserted and married the second time and the ornaments given to her were misutilised by the deceased. He had purchased land from that and on account of that enmity, the possibility of he being killed by others, cannot be ruled out.

10. The learned Judge, on appreciation of evidence, came to the conclusion that the prosecution has been able to prove its case beyond all reasonable doubt and accordingly, convicted and sentenced the appellants as above.

11. P.W. 1 Sumitra Devi is the sister of the deceased and claims to be sleeping in the room alongwith the deceased, witnesses and other relatives, where the incident had taken place. According to her, all the appellants entered into the room forcibly and all of them assaulted the deceased by Chhura. Madan Lal Choudhary also hurled bomb and on account thereof, her brother sustained injuries on his thigh, abdomen and neck and he died at the spot. The occurrence had taken place as there was litigation pending between the deceased and the appellants. In the cross-examination, she admitted that the house in which the occurrence had taken place, consists of three rooms and a large number of houses exist adjoining the house in which the incident had taken place. She has further admitted that the deceased was a wrestler and had litigations with large number of persons. She, however, denied the suggestion that Savita Devi, daughter of the deceased, was married to another person earlier and the deceased had enmity with her in-laws. According to her evidence, the size of the room where the occurrence had taken place, is about 5-6 hands in length 4 hands in width. She has further admitted that had she slept in the darwaza of the house, she could not have seen the occurrence. She denied the suggestion of appellants that before the police, she had stated that she was sleeping at the darwaza.

12. P.W. 2 Amita Kumari @ Anita is the daughter of the deceased and according to her, she was sleeping on a mat in the room and in the said room, her father was also sleeping on a cot. According to her, all the appellants entered in the room. Madan Lal Choudhary was carrying bomb in one hand and Chhura in the other and "other appellants were also carrying Chhura. She has deposed that when her father got-up, appellant Sanjay Jha pushed him on the cot and appellant Madan Lal Choudhary threw bomb on the neck and also gave Chhura blow. Further, appellant Sita Ram Jha assaulted the deceased by Chhura in the abdomen and sustaining the same, he died, She identified the appellants in the light of the lamp kept in the room. According to her, the deceased was killed as he had won the case pending between him and the prosecution party.

13. In the cross-examination, she has stated that she had come to depose alongwith her aunt and she had explained to her what she had to depose. She had further stated that after the occurrence, about 100 persons collected at her

house. According to her, Vidyanand Choudhary went to the police station the next day when the Sub-Inspector of Police came and after the Sub-Inspector of Police had visited the place of occurrence, her mother had gone to the Police Station. In paragraph No. 7, of the cross-examination, she has stated that when she woke-up, she saw her mother at the darwaza of the house and when she, her sister and brother went to the darwaza, she found her mother shouting that the murder had taken place. According to her, thereafter, villagers collected and then she entered in the room and found her father dead. She had further admitted that there was burn injury on the head of her father but the bed on which he was sleeping, was not burnt.

14. P.W. 3 Savita Devi is another daughter of the deceased and according to her, she besides other seven persons were sleeping in the room in which the deceased was sleeping on the cot. According to her, after breaking open the door, all the appellants entered into the room to whom she identified in the lamp. According to her, when her father got-up, appellant Sanjay Jha pushed him on the cot and appellant Sita Ram Jha gave Chhura blow in the abdomen. She had further stated that Madan Lal Choudhary hurled bomb on his neck and also gave Chhura blow. In paragraph No. 65 of the cross-examination, she had stated that when she woke-up, she saw Vidyanand Choudhary, Upendra and Ram Swaroop present there and thereafter, when the aforesaid three persons went in the room, they found her father dead. She had also stated that injuries were found on the person of her father and his thigh and hands were also burnt. She had denied the suggestion of the appellants that she had stated to the police during the course of investigation that her aunt was sleeping at the darwaza of the house.

15. P.W. 4 Prabha Devi is the wife of the deceased and the informant of the case. According to her, on the date of incident, she was sleeping alongwith her sons and daughters and sister-in-law in the room where her husband was sleeping on a cot when all the appellants entered in the room after breaking open the door. According to her, when her husband got-up from the cot, appellant Sanjay Jha pushed him on the cot and appellant Sita Ram Jha gave Chhura blow in the abdomen. Appellant Madan Lal Choudhary hurled bomb on his neck and thereafter, assaulted him by Chhura. According to her, as her husband had won the case lodged by Madan Lal Choudhary, he has been killed. The police came at the place of occurrence half an hour after the incident. She had denied the suggestion that her daughter Savita Devi was married to Sanjay Singh and there was dispute with Sanjay's family for the jewellery given in the marriage. She has also denied the suggestion that after selling the ornaments, her husband had purchased land. In paragraph no15 of the cross-examination, she had admitted that when she woke-up, saw injuries on the person of her husband which included burn injury on the neck, abdomen and thigh. Further, in the said paragraph she had admitted that in the night of the incident, she did not have any talk with anybody nor she had signed any document. According to her, she had signed the document the next day at the police station which contains her fard beyan.

16. P.W. 7 Dr. Hari Sharan Prasad Singh was, at the relevant time, posted as Civil Assistant Surgeon at Sadar Hospital, Samastipur and on 15.10.1993, he conducted the post mortem examination. on the dead body of the deceased Bhutu Ishwar at 4 P.M. In the post mortem examination, he found the following ante mortem injuries on the person of the deceased :

(i) Cut injuries left side neck, left side cheek and posterior aspect of the neck with whole depth of vertebral column was cut. Size: 10" x 4" into the whole depth of vertebral column.

(ii) Lacerated wound front of the abdomen 2" above the umbilicus transeversely of the size 4" x 1/2" skin deep with blackening of skin margin. Multiple black pin pointed wound over the whole of the front aspect of abdomen.

(iii) Lacerated wound right side medial aspect of the thigh of the size of 1/2 " x 1/2" x skin deep with blackening of skin margin. Multiple black pit pointed injury wound was present around lacerated wound.

(iv) Abrasion in the left side of abdomen of the size of 5" x 1/4" with blackening of skin margin.

17. In the opinion of the doctor, in jury No. (i) was caused by sharp cutting instrument such as Chhura but rest of the injuries were caused by explosive substance such as countrymade bomb. In his opinion, the death had taken place within 24 hours of the examination of the deceased and the cause of death was shock and haemorrhage on account of the injuries found on the person of the deceased.

18. In the cross-examination, he has stated that injury No. (i) is semi-circular which is possible to be caused by semicircular weapon. According to him, Chhura will cause penetrating injury but he had not found any penetrating injury on the person of the deceased. He had also stated that in case, the bomb is thrown from a close distance, gun powder should be present but he had not found any gun powder in injury Nos. 2, 3 and 4.

19. As stated earlier, appellant Madan Lal Choudhary is dead and the appeal is being pursued by his son who is represented by Mr. Jagdish Prasad. Appellants of Cr. Appeal No. 314 of 1997 are represented by Mr. Sandeep Kumar.

20. They contend that the prosecution has developed its story from stage to stage. According to them, according to the first information report, Madan Lal Choudhary is alleged to have thrown only bomb, whereas, during the course of trial, the witnesses have stated that he also gave Chhura blow on the neck of the deceased. The place where the occurrence had taken place, is a small room in which, according to the prosecution itself, seven persons were sleeping and in case, the bomb is hurled, others ought to have sustained injuries. They point out that none of the witnesses have stated that they have sustained any injury. The only purpose to propound the story of the witnesses sleeping in one of the rooms where the occurrence had taken place despite other rooms in the house being

available is to make them eye witnesses to the occurrence. They also submit that the claim made by P.W. 2 Amita Kumari, P.W. 3 Savila Devi and P.W. 4 Prabha Devi to be the eye witnesses to the occurrence, is falsified from their own cross-examination. It has also been pointed out that Sumitra Devi (P.W. 1), in fact, was sleeping at the door and according to her own evidence, incident was not possible to be seen from the door. They also contend that the eye witnesses account do not find corroboration from the evidence of the doctor (P.W. 7) who had conducted the post mortem examination. According to the eye witness account, all the three appellants had given Chhura blows to the deceased but the doctor had found only one Chhura injury on his person. According to P.W. 2 Amita Kumari, P.W. 3 Savita Devi, appellant Sita Ram Jha gave Chhura blow in the abdomen and Madan Lal Choudhary on the neck of the deceased but no such injury has been found on his person. Not only this, according to the Learned Counsel, the injury found on the person of the deceased was semi-circular in nature which, according to the doctor, was possible to be inflicted by a semi-circular weapon. They submit that Chhura is not a semi-circular weapon and from the evidence of the doctor, it will be evident that Chhura causes penetrating wound but no such injury has been found on the person of the deceased. They also highlight that, in case, story propounded by the prosecution is correct, gun powder ought to have been found on the person of the deceased but the doctor had not found any such powder. These infirmities, according to the Learned Counsel, create serious doubt to the case of the prosecution and as such, they submit that the appellants deserve to be acquitted.

21. Mr. Lala Kailash Bihari Prasad, Additional Public Prosecutor, however, submits that in a case in which the appellants are charged for committing offence u/s 302/34 of the Indian Penal Code, individual act is not to be seen and, in case, the prosecution is able to prove that the occurrence had taken place in the manner propounded by it, conviction is fit to be sustained.

22. Having considered the rival submission, we find substance in the submission of the Learned Counsel for the appellants. We are of the opinion that the claim made by P.W. 1 Sumitra Devi and P.W. 2 Amita Kumari @ Anita and P.W. 3 Savita Devi to be the eye witnesses to the occurrence is falsified from their own cross-examination. It has come in the evidence that Sumitra Devi was at the door from where it was not possible to see the incident. P.W. 2, in her cross-examination, had admitted that when she woke-up, she found her mother at the darwaza shouting that murder had taken place. Similarly, claim of P.W. 3 to be the eye witness to the occurrence, is falsified from her own evidence when she admits that when she woke-up, she saw three persons and when those persons entered the room, her father was found dead. Similarly, P.W. 4 Prabha Devi had admitted in the cross-examination that when she woke up, she found her husband in injured condition.

23. From what had surfaced during the cross-examination, the claim made by the aforesaid witnesses to be eye witnesses to the occurrence, is falsified. We are

also of the opinion that had the occurrence taken place in the manner propounded by the prosecution, other witnesses ought to have sustained injuries but none of them had sustained any injury. We also find that the eye witness account is not, at all, corroborated from the evidence of the doctor, who had conducted the post mortem examination. According to the eye witnesses, all the three appellants had assaulted the deceased with Chhura and they have gone to the extent of attributing specific role to Madan Lal Choudhary of having caused Chhura injury on the neck and Sita Ram Jha on the abdomen, but no such injury has been found on his person. According to the doctor, injury No. (i) found on the person of the deceased was possible to be caused by semi-circular weapon. Chhura undisputedly is not a semi-circular weapon Not only this, according to the doctor Chhura, causes penetrating wound but such wound was not found on the person of the deceased. Further, absence of gun powder on the person of the deceased also is not in conformity with the case of the prosecution.

24. All these infirmities which we have narrated hereinbefore, clearly persuade us to hold that the prosecution has not been able to prove its case beyond all reasonable doubt hence, appellants deserve to be given the benefit of doubt and we grant that to them accordingly. In the result, the appeals are allowed, impugned judgment of conviction and sentence of Madan Lal Choudhary (since dead) and appellants Sanjay Jha and Sita Ram Jha is set aside. They are on bail. They be discharged from the liabilities of their bail bonds.