

(1998) 04 PAT CK 0076

In the Patna High Court

Case No : Criminal Appeal No. 230 of 1990

Indradeo Singh, Bundi Chaudhary, Ram Chandra Chaudhary
and Deo Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 07-04-1998

Acts Referred:

Arms Act, 1959 — Section 27
Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 149, 302, 307, 395

Citation : (1998) 2 PLJR 213

Hon'ble Judges : N. Pandey, J;I.P. Singh, J

Bench : Division Bench

Advocate : Kanhaiya Pd. Singh, Sudarshan Sharma and Rama Kant Sharma, for the Appellant; G.P. Jaiswal, for the Respondent

Final Decision : Allowed

Judgement

N. Pandey, J.—These two appeals have been preferred against the judgment and order of conviction dated 21.6.1990 in Sessions Trial No. 234 of 1981, whereby applicant Suresh Chaudhary was convicted u/s 302 of the Indian Penal Code and sentenced to undergo imprisonment for life as also u/s 27 of the Arms Act but no separate sentence was awarded. The remaining appellants, namely, Indradeo Singh, Bundi Chaudhary, Ram Chandra Chaudhary and Deo Singh were, however, convicted u/s 302 read with Section 149 of the Indian Penal Code and sentenced to undergo imprisonment for life. The case of the prosecution, in short, as per the Fard-beyan (Ext.3) recorded on the statement of Jugeshwar Prasad on 6.5.1980 at about 23.15 hours in Sadar Hospital, Biharsharif, is that he along with his brother Arjun Prasad (deceased), Latan Manjhi (P.W. 7), Surendra Prasad (P.W. 4), Mauzi Paswan (P. W. 3) and Brij Mallah was returning in the evening at about 7.30 p.m. from, Gurdeyal Bigha. The moment they reached in the bed of river Panchane, accused persons variously armed with weapons appeared and appellant Suresh Chaudhary, who was having a country made pistol in his hand,

fired a shot on the back of Arjun Prasad, who having received injury fell down. The informant raised alarm on which certain persons from the neighbourhood came there and saw-the accused persons running away. The cause of incident, as alleged by the informant, was the land dispute. It was further stated that previously also appellant Suresh Chaudhary had committed the murder of the nephew of the informant. Thereafter, while injured was being taken to the Sadar Hospital, Biharsharif for treatment, he died on the way. Since the Fard-beyan of Jugeshwar Prasad was recorded by A.S.I. (P.W.10), he transmitted the same to Silao Police Station where a regular First Information Report was registered on the next day at about 2.00 p.m.

2. Thereafter, the Investigating Officer (P.W.9) proceeded to the place of occurrence and after completing the necessary formalities regarding examination of the witnesses and seizure etc., submitted chargesheet on the basis of which cognizance of the offence was taken by the A.C.J.M. Nalanda and the case was committed to the court of Sessions for trial.

3. The defence of the accused persons as would appear from their statement u/s 313 of the Code of Criminal Procedure was total denial of the allegations. Attempt was made in course of cross-examination of the prosecution witnesses to show that the deceased being a veteran criminal was done to death at different place and in a different manner but because of the land dispute these appellants were falsely Implicated.

4. The prosecution in support of its case had examined altogether ten witnesses. Out of them P. W. 1 is Dr. Bindeshwari Prasad, who had conducted autopsy of the deceased on 7.5.1980 at about 11.00 a.m. and found the following injuries:

(i) A lacerated wound of entrance, round shaped, 1" diameter with charred and inverted margin over the middle portion of the right side of back,

(ii) four lacerated wounds with everted margins. on the front of the chest, oval in shape, size 1/2" x 1/4" each.

(iii) On dissection-6th rib on the right side was found broken at two places. One anteriorly and one posteriorly. Liver was found completely lacerated where was recovered and blood was accumulated In abdominal cavity. Two L. G. (7) were found on the right anterior wall of the chest. Lung (Rt.) was lacerated In the lower part. Both lungs were pale. Heart chambers and great vessels were found empty. Brain, spleen, kidney & liver were pale. Stomach contained undigested food particles. Bladder & rectum were empty.

The death In his opinion was due to shock and haemorrhage on account of the above mentioned Injuries, caused by the fire arm.

5. P.W. 2 (Anandi Prasad) Is a resident of Village-Gurdeyal Bigha and has supported the case of the prosecution that the deceased had gone to that village on 6.5.1980 and returned on the same day to his village (Junedi) in the evening. This witness was examined by the prosecution to support its case that deceased

and others after visiting Gurdeyal Bigha were returning back to their village. P. W. 3 (Mauzi Manjhi) though as per the Fard-beyan was accompanying the deceased but he was declared hostile by the prosecution. P. W. 4 (Surendra Prasad) and P. W. 7 (Latan alias Ratan Manjhi) have figured as eye witnesses and claimed to have seen the entire occurrence. They have also identified the accused persons in court except Indradeo Singh. Both these witnesses were independent persons and not related to the deceased. P. W. 5 (Indradeo Prasad) is a formal witness and has proved certain petitions, marked as Ext. 2 series.

6. P.W.6 (Chandrika Prasad) and P.W.8 (Sheo Nandan Prasad) had reached at the place of occurrence on hearing Hulla as they also belong to Village-Junedi. P.W.6 has not named any of the accused persons and, therefore, declared hostile by the prosecution. P.W.8 (Sheo Nandan Prasad) is the witness in whose presence the Fard-beyan of Yugeshwar Prasad was recorded In the Hospital and he had also named the accused persons, as he had seen them running away from the place of occurrence.

7. P.W.9 (Deoraj Singh), as noticed above, is the Investigating Officer, who has recorded the statements of the witness on 10.5.1980. P.W. 10 Is Sukeshwar Sharma, who has recorded the Fardbeyan. During trial, on behalf of the prosecution different petitions were filed alleging that this witness had Interpolated the Fard-beyan to change the time of occurrence from 5.30 to 7.30 though In cross-examination prosecution failed to put any question to this witness that he had made interpolation in the Fard-beyan. The trial court, however, held that from the evidence of the witnesses particularly P.W.8, who had signed the Fard-beyan, it would appear that the occurrence had taken place at 5.30 p.m. but it was deliberately changed by this witness as 7.30.

8. Learned counsel appearing for the appellants firstly contended that from a bare reference to the evidence of PW.9 (Investigating Officer) it would appear though he had visited the place of occurrence and the village on 7.5.1980 and 9.5.80 but no witness including the informant Yugeshwar Prasad appeared before him to make their statements. It was for the first time on 10.5.1980, their statements were recorded. The submission was that having regard to such a conduct of the witnesses, not disclosing the names of the accused persons before the police for two days was a serious infirmity, which destroyed the credibility of the evidence of the witnesses. Reference in this regard was made to a decision of the apex Court in the case of State of Orissa Vs. Mr. Brahmananda Nanda, .

9. It was next contended that the medical evidence in this case also contradicted the manner of assault, as alleged by the prosecution. Because as per the case of the prosecution only one shot was fired at the deceased but the doctor has found two lacerated wounds with inverted margin. That apart, the wound of entrance was round shaped 1" diameter with charring and inverted margin in front of the chest, oval shaped, whereas wound of exit in front of the chest was found 1/2" x 1/4". It was urged that as per the medical jurisprudence, the wound of exit can not be bigger than the wound of entry. It was further asserted that unless the

gun shot was fired from a close range, there can not be mark of charring present near the wound. Therefore, submission was that having regard to the evidence of the doctor, a doubt arises whether the witnesses have actually seen the occurrence. Reliance in this regard was placed to a decision of the Supreme Court in the case of Tek Chand & anr, vs. State of Haryana, U.J. (S.C.) 1972 page 277. It was further contended that yet there was another vital lacuna in the case of the prosecution since the informant Yugeshwar Prasad was not examined. Two witnesses Chandrika Prasad (P.W.6) and Sheo Nandan Prasad (P.W.8) though had signed the Fard-beyan but P.W.6 (Chandrika Prasad) was declared hostile whereas the other witness, namely, P.W.8 (Sheo Nandan Prasad) is a chance witness, as he arrived at the place of occurrence on hearing Hulla. Though this witness has claimed to have seen the accused persons while running away but it appears really absurd that at late in the evening, he could identify the accused persons when they had already started running away from the place of occurrence. True it is the informant in this case has not been examined nor any substantial material was brought on the record to explain under what circumstances informant was not examined. But during course of hearing of this case, the court was orally informed about his death. Therefore, in my view, the reason for non-examination of the informant having been explained, no adverse inference can be drawn.

10. It was next contended that having regard to the conflicting statement of P.W. 10 and some of the witnesses whether the occurrence had taken place at 5.30 or 7.30 p.m. and the long criminal history of the deceased, it was quite possible that he was killed at a different place. Reference in this regard was made to paragraph No. 7 of the evidence of the Investigating Officer to show that the deceased was the main accused in as many as eleven cases under Sections 395, 302 307, Arms Act etc.

11. True it is from the evidence of the Investigating Officer this has been fully established that deceased Arjun Prasad was a veteran criminal and involved in large number of cases of serious nature like 395, 302 and other offences. But simply because he was a criminal and involved in many cases, would not justify the act of the appellants, if they had committed his murder.

12. It was next contended that apart from the aforesaid inherent lacunae in the case of the prosecution, no evidence was adduced to show that crime in question was committed in furtherance of the common object of the appellants Indradeo Singh, Bundi Chaudhery, Deo Singh and Ram Chandra Chaudhary. Though witnesses have said about their presence at the place of occurrence but there is no allegation that these appellants had committed any offence nor there is any allegation that they surrounded the deceased or made attempt to cause harm in any manner. Therefore, in these backgrounds it can be safely held that these appellants were not constructively liable for the offence committed by appellant Suresh Chaudhary. In support of such a contention, reliance was made to a decision of this Court in the case of Abdul Salam Vs. S.M. Aslam, .

13. Mr. Jaiswal appearing on behalf of the State contended that from a bare reference to the decision of the apex Court in the case of Masalti Vs. State of U.P., it would appear that Section 149 makes it clear if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, every person who, at the time of committing that offence, is a member of the same assembly, is guilty of that offence. Therefore, the actual participation of all the accused in assault of the deceased along with the main accused would not be necessary.

14. In my view, there can not be any dispute with regard to the proposition, which Mr. Jaiswal has just canvassed. But from a bare reference to the said judgment, it would appear that the mere presence in an assembly does not make a person, who is present, a member of unlawful assembly unless it is shown that he had done something. It would be the duty of the prosecution and its witnesses to show that all such accused persons had shared common object of the main accused to commit murder of the deceased. Reliance in this regard can usefully be made to another decision of the apex court in the case of Rambilas Singh and Others Vs. State of Bihar, . Therefore, in absence of any evidence on record that all the accused persons had shared the common intention of the main accused or they had premeditated with him for such offence the conviction against them u/s 302 read with Section 149 of the Indian Penal Code would not be maintainable.

15. But having regard to the specific-evidence of the eye witnesses like P.Ws. 4 and 7 coupled with the evidence of P. W. 8, who had also seen the accused persons running away, there appears no reason to disbelieve the case of the prosecution that appellant Suresh Chaudhary took out his country made pistol and fired at the deceased, which ultimately proved fatal. The prosecution has also successfully proved by cogent evidence on record that this appellant was on enmity terms and had also committed the murder of the nephew of the informant. True it is there are contradictions in the evidence of the Medical Officer and that of the eye witnesses, but on such mere contradictions, credibility of the independent eye witnesses like P.Ws.4 and 7 can not be doubted. Therefore, for the reasons, stated above, conviction and sentence awarded against appellant Suresh Chaudhary is hereby affirmed and his appeal (Cr. Appeal No. 244/90) stands dismissed. Since this appellant is on bail, therefore, his bail bonds are cancelled and he is directed to be taken into custody forthwith for serving the remaining sentences. However, conviction and sentences of appellants 1. Indradeo Singh, 2. Bundi Chaudhary, 3. Ram Chandra Chaudhary and 4. Deo Singh are set aside and all of them are acquitted by giving them a benefit of doubt and Cr. Appeal No. 230 of 1990 is, thus, allowed. All these four appellants are on bail, therefore, they are discharged from the liabilities of bail bonds.

I.P. Singh, J.

16. agree.