

(2011) 07 PAT CK 0256

In the Patna High Court

Case No : Criminal Appeal (DB) No. 163 of 1989

Jagannath Mishra, Bhola Mukhia

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 25-07-2011

Acts Referred:

Arms Act, 1959 — Section 25(A), 26, 27
Criminal Procedure Code, 1973 (CrPC) — Section 145, 161
Juvenile Justice Act, 1986 — Section 26
Penal Code, 1860 (IPC) — Section 120B, 302(34), 307, 326

Citation : (2011) 07 PAT CK 0256

Hon'ble Judges : Shyam Kishore Sharma, J; Rajendra Kumar Mishra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Shyam Kishore Sharma and Rajendra Kumar Mishra, JJ.—Above named Appellants have preferred this appeal against the judgment of conviction and order of sentence dated 15th April, 1989 passed in Sessions Trial No. 49 of 1983 by the learned Sessions Judge, Madhubani whereby these Appellants were found guilty under Sections 302/34 of the Indian Penal Code and they were sentenced to undergo rigorous imprisonment for life. Along with these Appellants one Murari Mishra was also tried and he was found guilty for committing offence u/s 302 of the Indian Penal Code and Section 27 of the Arms Act but he was found to be minor aged below 16 years so under the provisions of Section 26 of the Juvenile Justice Act he was forwarded to the court of the learned Chief Judicial Magistrate, Madhubnai to pass the order with regard to his sentence.

2. The occurrence of about 11.00 A.M. on 23.12.1981 led to killing of Raghu Jha and on the basis of fard-beyan (Ext. 3) of the informant Faudar Yadav (PW 3), initially the First Information Report was registered under Sections 307, 326 and 120B of the Indian Penal Code and Section 25(A), 26 and 27 of the Arms Act because Raghu Jha was injured but during treatment he died on the same day and then Section 302 IPC was added.

3. The Chowkidar 9/2 Faudar Yadav has given his fard-beyan that he along with another Chowkidar Rameshwar Mandal were deputed at the disputed field of Krishna Kant Khan (PW 10) and Jagannath Mishra (Appellant No. 1) to keep watch over the standing crops. Paddy and Khesari crops were grown over the disputed field. On 29.12.1981 at 11.00 AM Krishna Kant Khan (PW 10), Raghu Jha (deceased), Chandra Kant Khan (PW 8), Madan Khan (not examined) and Hari Mohan Khan (PW 9) on one side and Jagannath Mishra (Appellant No. 1), Bhola Mukhia (Appellant No. 2) and Murari Mishra on the other side along with several labourers went to the field for harvesting the standing paddy crops. PW 3 and another Chowkidar Rameshwar Mandal (PW 4) requested them against harvesting but despite their insistence against harvesting both sides started harvesting through labourers. Seeing this, PW 3 rushed to Hanuman Nagar where the members of armed forces were kept on deputation. The informant ultimately informed them but the Armed Forces refused to proceed to the disputed land due to non-availability of the Magistrate. PW 3 then came back to the disputed land and sent PW 4 (another Chowkidar) to Sarsopahi Out Post to give the information. In the meanwhile both sides completed the harvesting. When division of the harvested paddy crops was being started then Appellant No. 1 Jagannath Mishra and others claimed half of the harvested crops but Krishna Kant Khan (PW 10) and others were not agree to that extent and they stated that at best the Appellant No. 1 and others should keep 1/4th share in the harvested crops. A long altercation ensued but no amicable settlement could be arrived. Both sides started carrying the harvested paddy crops bundles to their respective places through their labourers. In the meanwhile Jagannath Mishra (Appellant No. 1) armed with lathi, Murari Mishra armed with country made gun and Bhola Mukhia (Appellant No. 2) having Farasa came from the direction of their house. Seeing them, Krishna Kant Khan (PW 10), Madan Khan (not examined), Raghu Jha (deceased), Chandrakant Khan (PW 8), Hari Mohan Khan (PW 9) and their labourers started running for their safety. Jagannath Mishra, Murari Mishra and others reached at the field. Murari Mishra fired one shot which caused injury in the stomach of Raghu Jha who initially ran out to the field of Deo Kant Chauhdary but due to sustaining injury of firearm he fell down and become unconscious. He was taken to Manigachi for treatment and the informant gave his fard-beyan (Ext. 3) to S.I. Janak Mishra (PW 13) at Bhaur Tole Hanuman Nagar and formal FIR (Ext. 9) was drawn. The case was investigated into. Inquest report (Ext. 7) was prepared, blood was seized and seizure list (Ext. 4) was prepared. Exhibit 4 contains the signatures of the witnesses which have been duly marked as Exhibit 1 and 1/1. The post mortem examination report (Ext. 2) was received, statement of witnesses were taken u/s 161 Code of Criminal Procedure and after investigation the case was found to be true under Sections 302/34 of the Indian Penal Code and Section 27 of the Arms Act. Accordingly, Chargesheet was submitted and cognizance was taken. The case was committed to the Court of Sessions where the charges under Sections 302/34 IPC and 302/120B IPC were framed against these two Appellants and against Murari Mishra charge u/s 302 IPC and 27 of the Arms Act was framed.

The charges were explained to the Appellants to which they not pleaded guilty and claimed to be tried.

4. The defence of the accused persons was of denial of murder of Raghu Jha by them. The plea of false implication was taken due to long standing enmity. Their further defence was that Krishna Kant Khan has fired from his gun on Raghu Jha which hit him as a result thereof he received injury which led to his death. Their further defence was that Hirday Narayan Mishra cousin of Jagannath Mishra had filed a written report before the Officer Incharge of Pandaul Police Station on 4.1.1982 with regard to occurrence of 29.12.1981 at 11.00 AM wherein the correct version of the occurrence was given. Their further defence was that paddy crops were planted by the brother of Jagannath Mishra. Jagannath Mishra and Raghu Jha were protesting the harvesting by Krishna Kant Khan and others which resulted in verbal altercation. Raghu Jha has appeared in a proceeding u/s 145 Code of Criminal Procedure which was supported by Jagannath Mishra and it was being protested by the harvesting by Krishna Kant Khan and on account of that Krishna Kant Khan fired a shot which hit Raghu Jha and that was the cause of death. Their further defence was that once Raghu Jha fell injured then he was carried by the Appellants and their men for treatment but unluckily he could not be saved.

5. In order to prove the case, the prosecution has examined 14 witnesses. They are: Phul Dia (PW 1), Singheshwari Devi (PW 2), Chowkidar Faudar Yadav (PW 3), Chowkidar Rameshwar Mandal (PW 4), Ishwar Nath Khan (PW 5), Nitya Narayan Jha (PW 6), Indra Narayan Khan (PW 7), Chandrakant Khan (PW 8), Hari Mohan Khan (PW 9), Krishna Kant Khan (PW 10) Binda Devi (PW 11), Dr. Manindra Bhatta (PW 12), Janak Mishra the Investigating Officer (PW 13) and Jugeshwar Mukhiya (PW 14).

6. PW 2 has been tendered by the prosecution. PWs 5 and 7 are the seizure witnesses of blood. PW 14 is a formal witness.

7. The post mortem on the dead body of Raghu Jha was performed at 3.00 P.M on 30th December, 1981 by PW 12 and he found (i) lacerated wound oval margin inverted and echymosed was present on the 10th intercostal space at the level of posterior axillary line in left side. Size of which was 1" x 3/4" x cavity deep and (ii) circular lacerated wound, the margin was everted size which was 1 1/4" x 1 1/4" x cavity deep on the right hypochondrium 1" lateral to xiphoid process and 1/2" below the right costal margin. At the time of examination the blood was come out from both the injuries. Injury Nos. (i) and (ii) were entry and exit of the bullet respectively. Death was within 30 hours. Therefore, from the evidence of PW 12 it has been proved that the death of Raghu Jha was by the use of single shot of firearm by bullet and it was on the time and date alleged by the prosecution. The death of Raghu Jha by use of firearm has not even been challenged rather it stands undisputed. The defence of the Appellant is merely of false implication and innocence.

8. Before proceeding oral evidence, it would be appropriate to discuss the deposition of the informant PW 3 who was in his duty on 29.12.1981 at 11.00 AM on the place of occurrence. It was a paddy field and paddy was grown up. PW 3 was deputed for the purpose of maintaining law and order. At that very time the informant saw Jagannath Mishra (Appellant No. 1) and Krishna Kant Khan (PW 10) coming with their labourers upon the field. The informant forbade them to harvest the paddy crops. Krishna Kant Khan was accompanied with Chandrakant Khan (PW 8), Madan Khan (not examined), Hari Mohan Khan (PW 9) and Raghu Jha (deceased) whereas these Appellants were accompanying with Murari Mishra. The informant refrained them from harvesting then both sides ignored the request made by the informant. The force was being deputed at Hanuman Nagar Library. The informant went there and passed on the information. Members of armed forces told that due to non-availability of the Magistrate they would not be in a position to proceed upon the paddy field. The informant, thereafter, returned and he sent his friend (PW 4) to inform the Officer Incharge. He accordingly, went to Sarsopahi Out Post. Paddy was planted and it was being harvested. Krishna Kant Khan (PW 10) demanded 3/4th share and he allowed to give 1/4th share to Jagannath Mishra. This was not being obeyed by Jagannath Mishra so both the parties started lifting the paddy crops bundles through their labourers. Jagannath Mishra, Bhola Mukhiya and Murari Mishra also went to their houses but after some time Jagannath Mishra with lathi, Murari Mishra with gun and Bhola Mukhiya with Farsa came towards the paddy field. Krishna Kant Khan (PW 10), Chandrakant Khan (PW 8), Hari Mohan Khan (PW 9), Madan Khan (not examined), Raghu Jha (deceased) escaped at the sight of the accused persons. When Raghu Jha reached near the field of Deokanth Chaudhary then he was shot at by Murari Mishra. This shot caused injury on the stomach of Raghu Jha who just merely proceeded for 5 steps and fell down and thereafter, all the three accused persons retreated. The injured was carried to hospital. The informant later on knew that Raghu Jha is no more.

9. Similar is the version of other eye witnesses who have been examined on behalf of the prosecution. They are: PWs 1, 6, 8, 9, 10 and 11. It would be wastage of time to reproduce their evidences in view of their consistent evidence and almost with regard to manner, time and place and culpability of the accused persons they have supported the evidence of informant in toto. Therefore, their evidences that the accused persons came and one of the accused fired which proved fatal for Raghu Jha is there. Murari Mishra has already been convicted u/s 302 of the Indian Penal Code but on behalf of these Appellants it has been submitted that their cases are distinguishable with the case of Murari Mishra in view of the evidences gathered against them. The role attributed to these Appellants, even according to the witnesses, is that they were the members of mob. No overt act of assault or even touching Raghu Jha has been attributed upon them. The sole responsibility has been fastened against Murari Mishra. These Appellants were said to be armed with lathi and Farsa. The post mortem report goes to show that death was only on account of single firearm injury

which has been attributed to another accused not against the Appellants. These Appellants have been alleged to be accompanying Murari Mishra sharing common intention. There must be some evidence to show that the accused has premeditation of mind or they have contributed any part to the occurrence. If three persons are coming together and there is no evidence at all that they were sharing common intention and if one of the three causes any overt act then all three cannot be held responsible. Though they have been named by the witnesses but if their evidences are analyzed then it is apparent that they have not described the overt act before the Investigating officer and this development has taken place at the stage of their deposition before the Court. PW 1 in paragraph 3, PW 6 in paragraph 3, PW 8 in paragraph 5, PW 9 in paragraph 3 and PW 10 in paragraph 4 have deposed about the common intention or approach of the accused persons. Attention of the Investigating Officer was drawn towards the evidences of the eye witnesses who have deposed here and have given some specific role but the I. O. has flatly denied and has clearly stated that these witnesses have not stated about the common intention of the accused persons. Therefore, the role attributed to the Appellants has come for the first time when the witnesses were examined in the Court. Their depositions were recorded after about 6-7 years of the occurrence and the Investigating Officer has recorded their statements u/s 161 Code of Criminal Procedure soon after the occurrence but these witnesses have kept mum when they were describing the role of the Appellants. Their only evidence was that these Appellants were also there.

10. The presence of the Appellants cannot be said to be for the purpose unless some motive or role is attributed. The Appellants were at their fields. The place of occurrence of the present case is Plot No. 3812 and 3813 and it has come in evidence that Jagannath Mishra was succeeded in a proceeding under Sections 145 Code of Criminal Procedure with regard to the said land. The matter was challenged before the learned Sessions Judge in a criminal revision and that was also dismissed. Therefore, if the Appellants were present at the place of occurrence then it cannot be said that they were having any common intention to do any harm. So the evidence to that extent that these Appellants were sharing common intention or common object cannot be deemed to be satisfactory rather it can be said that the prosecution has utterly failed to prove that these two Appellants had shared common intention for causing hurt to Raghu Jha. Therefore, on this score also, it can be held that the prosecution has failed to establish the charge that on the date and time of occurrence, these Appellants had common intention to share with Murari Mishra. Therefore, their cases are quite distinguishable from the case of Murari Mishra who are Appellants here.

11. Another aspect which can be considered is that age of Appellant No. 2 Bhola Mukhiya was recorded to be 25 years in March, 1988. The occurrence is of the year 1981. After seven years of the occurrence Bhola Mukhiya was assessed to be 25 years and if 7 years deducted from 25 then his age comes to be 18 years at the time of occurrence but this assessment was not taken into account by the

Court. Another version of age given by Bhola Mukhiya who described himself to be aged about 22-23 years on the date of his examination. If this version of Bhola is taken into consideration then he was merely 14-15 years of age on the date of occurrence. Because it has been held that the prosecution has failed to prove that these two Appellants had common intention to share with Murari Mishra so no definite finding is required to be given with regard to juvenility of Bhola Mukhiya. 12. Considering the entire facts and circumstances discussed above, it is apparent that the prosecution has failed to prove that these two Appellants have common intention to cause any hurt to Raghu Jha. Accordingly, we are of the view that the prosecution has failed to prove its case against the Appellants beyond the shadow of all reasonable doubts. 13. In the result, the impugned judgment of conviction and sentence is set aside and the Appellants are acquitted from the charges levelled against them. They are on bail. They are discharged from the liabilities of their bail bonds.