

(1999) 07 PAT CK 0089

In the Patna High Court

Case No : Criminal Appeal (D.B.) 144 of 1991

Jogendra Pandit @ Yogendra Pandit

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 23-07-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302

Citation : (1999) 3 BLJR 1964

Hon'ble Judges : P.K. Deb, J;D.P.S. Choudhary, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

P.K. Deb and D.P.S. Choudhary, JJ.—This appeal has been preferred by the above named sole accused-appellant against the judgment and order passed by the then Sessions Judge, Katihar in Sessions case No. 145 of 1990 on 12-3-1991 convicting the accused-appellant and sentencing him rigorous imprisonment for life u/s 302, I.P.C. for committing murder of his father Bhajju Pandit intentionally.

2. The prosecution case in brief is that the deceased Bhajju Pandit had four sons. The accused-appellant Jogendra Pandit, informant Jyotish Pandit, P.W. 7 Nabin Chandra Pandit and another were the sons of the deceased Bhajju Pandit. About a year before the occurrence, the accused-appellant Jogendra Pandit allegedly by impersonating somebody else got some lands of Bhajju Pandit, being sold in the name of his son and wife and when the same came to the notice of Bhajju Pandit he lodged not only a civil suit but also criminal case of forgery against the accused-appellant Jogendra Pandit and some others, so bad relations started between the father and the son. Accused appellant was residing separately while Bhajju Pandit the deceased was residing along with two of his sons. The tendered witness Nabin Chandra Pandit was also residing separately. On the date of occurrence i.e. on 27-11-89 the deceased along with his other two sons including the informant P.W. 6 Jyotish Pandit were making bundles of their wheat packing

in the field and were being carried to their residence through two Bullockcart Bundles were being made by the informant along with two labourers, namely, P.W. 4 Narayan Mandal and P.W. 5 Satya Narayan Mandal when the bundles were being carried by deceased Bhajju Pandit towards home by bullockcarts. At about 3.30 p.m. when the bullockcarts were coming back to the field for carrying more bundle then on the way, it was intercepted by the accused-appellant being armed with Hasua he attacked Bhajju Pandit who was at one of the bullockcarts but somehow the first blow was being averted by the coachmen of the cart. Bhajju Pandit then came down to the earth and then he was caused several blows by the accused-appellant as a result of which he fell down at the spot. Hullah was raised and the informant, the labourers rushed to the place of occurrence and found deceased lying in a pool of blood having several injuries on his person. They also found the accused-appellant fleeing away from the place of occurrence with the Hasua in his hands. An information was lodged on that very date at about 6 p.m. at Barari police station by P.W. 6 Jyotish Pandit and in his fardbeyan he gave the detailed description about the whole of the occurrence including the mens rea behind it. Police came to the spot held inquest over the dead body and seized the blood-stained earth from the place of occurrence and the dead body was then sent for the purpose of post-mortem examination. The accused-appellant was arrested and after due investigation charge-sheet was submitted u/s 302, I.P.C. On being committed to the Sessions, charge was framed against the accused-appellant u/s 302, I.P.C. vide order dated 18-8-91 and when the same was read over and explained to the accused-appellant he pleaded not guilty. The defence plea is total denial of the occurrence and of false implication.

3. For and on behalf of the prosecution as many as seven witnesses have been examined. P.W. 1 Punit Lal Pandit and P.W. 3 Hitla Pandit are the cartmen of two bullock-carts by one of which Bhajju Pandit was coming to the field from his house. They are the direct eye-witnesses to the occurrence. P.W. 4 Narayan Mandal and P.W. 4 Satya Narayan Mandal are the labourers who were working in the field in making bundles of the paddy along with the informant. They rushed to the place of occurrence on hearing huttah and also had seen the accused-appellant fleeing away from the place of occurrence with Hasua in his hands. P.W. 6 Jyotish Pandit is the informant and a son of the deceased and the brother of the accused-appellant. He is also not a direct witness to the occurrence of assault. He also came to the place of occurrence along with the labourers on hearing the alarm raised by the coachmen and found the deceased lying in a pool of blood and injuries on his person and also had seen the accused-appellant fleeing away from the place of occurrence. P.W. 7 Navin Chandra Pandit is the another son of the deceased. He has just been tendered, P.W. 8 Lalit Narayan Choudhary is the Investigating Officer in the case. P.W. 2 Sarat Kumar Singh is the doctor who was attached to Sadar Hospital, Purnia at the relevant time of occurrence and he held post-mortem over the dead body of Bhajju's Pandit. During the course of autopsy following injuries were found on the person of the deceased:

- (1) Incised wound 8" x 2" x 2 1/2" with cut of 3rd cervical vertebra, back of neck.
- (2) Incised wound 5" x 2" x 3" on back of neck deep up to 1st cervical vertebra.
- (3) Incised wound 4" x 1" x 1" on left side of neck.
- (4) Incised wound 5" x 1" x 1" on left side of the head and on the ear.
- (5) Incised wound 3" x 1/2" x 1/2" on left side of head.
- (6) Incised wound 2" x 1/2 x 1/2" on left side of forehead.
- (7) Incised wound 3" x 1/2" x 1/2" on back hand and wrist.
- (8) Abrasion 3" x 1/2" on left forearm.
- (9) Incised wound 3" x 2" x 1 /2" on left shoulder.
- (10) Incised wound 2" x 2" x 1/2" on chin.
- (11) Incised wound 2 1/2" x 1/2" on left knee.
- (12) Incised wound 1"x 1/2" x 1/2" on left knee.
- (13) Incised wound 4" x 3" x 1" on medial aspect of right upper forearm.
- (14) Incised wound 5" x 2" x 1/2" on medial aspect of right lower part of arm.

Except one laceration i.e. the injury No. 8 all the other 13 injuries were incised wounds and the same reveal that blows were given on the person of the deceased by the assailant incessantly with a sharp cut weapon. The doctor has further opined that such injuries could be caused by weapon like sickle. According to the prosecution witnesses, injuries were caused by Hasua sickle and Hasua are almost of similar nature of sharp-cut weapons. Although evidence brought on record from the side of the prosecution going against the accused-appellant had been put in questionnaire u/s 313, Cr. P.C. to the accused-appellant and except a denial being made the accused-appellant has not been taken any plea for showing his innocence. After scrutiny of the evidence on record from the side of the prosecution the learned Sessions Judge came to the finding that the prosecution could be able to prove the guilt of the accused-appellant beyond all reasonable doubt and as such, convicted and sentenced him as mentioned above. In the present case, there are two direct eye-witnesses to the occurrence, namely, P.W. 1 and P.W. 3. They are independent witnesses. They were the cartmen of the two bullock carts which were hired on that date by the prosecution party for the purpose of carrying handle of wheat/paddy from the field to the house. The occurrence took place on the way a little distance from the field itself. Both the witnesses have given vivid description as to how accused jumped over cart and gave a blow by means of Hasua. P.W. 1 Punit Lal Pandit stated that the first blow could be asserted by him and when Bhajju Pandit came down from the cart he was given incessant blow by the accused-appellant. P.W. 3 has supported P.W. 1 at all material points. Learned Counsel for the appellant

tried to impress us by pointing some minor contradictions in their evidence. Such as one witness said that it was bullock-cart while another said the same was a buffalo-cart but on scrutiny of the evidence, it could be found that although once P.W. 3 said his cart to be a bullock-cart but on the same breath he has corrected the same by saying it to be a buffalo-cart. The other discrepancies as pointed out to the effect that P.W. 1 stated that the first blow was averted by him while P.W. 3 stated that the first blow was received by the deceased in the cart itself. These are very minor discrepancies. The broad facts that it was accused-appellant who had given incessant blows by means of sharp-cutting weapon on the person of deceased Bhajju Pandit who was none but his father have been supported by both the witnesses and could not dislodge in any way. Besides these two eye-witnesses, there are also three eye-witnesses who had seen the last part of the occurrence. They are two labourers, namely, P.W. 4 and P.W. 5 and also the informant himself i.e. P.W. 6. P.Ws. 4 and 5 are also independent witnesses as they were hired as labourers for doing work in the field on that date by the prosecution side. They had stated that on hearing hullah they rushed to the place of occurrence and found the deceased lying with injuries and pool of a blood and had also seen the accused-appellant fleeing away from the place of occurrence. They were also reported of the occurrence including the name of the accused-appellant by P.W. 1 and P.W. 3. P.W. 6 has also deposed in the same line as that of P.W. 4 and P.W. 5. Cross-examination of these witnesses could not dislodge regarding the contents of their examination-in-chief. The medical evidence totally supports the ocular evidence regarding the assault on the deceased. The weapon as stated by the prosecution witnesses also gets support from the nature of the injuries as deposed by the doctor who held post-mortem examination. Thus, on independent scrutiny of the evidence on record, we also came to the same finding as that of the learned Sessions Judge that the prosecution could be able to prove charge against the accused-appellant beyond all reasonable doubt. Another point has strenuously been argued from the side of the accused-appellant that although the bloodstained earth had been seized from the place of occurrence by the Investigating Officer but the same had not been chemically examined and, as such, it could not be proved that those earth-contained human blood and in that way the learned Counsel suggested that the prosecution could not be able to prove the place of occurrence beyond all reasonable doubt. There is faulty investigation no doubt in not getting the bloodstained earth examined through F.S.L. but that alone does not take away the prosecution case. There is overwhelming evidence regarding the place of occurrence not only by the independent witnesses supported by partisan witnesses but also by the Investigating Officer. Another point has been raised that one of the witnesses had stated, namely, P.W. 6 stated that when he reached the place of occurrence, the injured was found lying on the bullock-cart while the other witnesses had stated that the injured was lying on the earth by the side of the bullock-cart, I.O. when came to the place of occurrence found the dead body lying" on the earth and buffalo-carts were not present at the place of occurrence. But, when I.O. came at the place of occurrence leak of tyre of bullock-cart could be found on the earth

itself at the place of occurrence. When all the witnesses have stated that the deceased was lying on the earth in a pool of blood then the statement of P.W. 6 of saying the dead body or the deceased over the bullock-cart might be a mistake on his part or it might be that at one point of time, the injured was brought over the bullock-cart for taking to hospital with a hope that he was still living but such minor contradiction does not take away the prosecution case or effect the same in any way whatsoever.

4. In the result, we hold and find that the prosecution case has been established beyond all reasonable doubt and the accused-appellant has rightly been convicted and punished. The appeal is thus dismissed having no force and the impugned judgment of conviction and sentence is hereby upheld and confirmed.