

(2019) 06 PAT CK 0006

In the Patna High Court

Case No : Criminal Appeal (DB) No. 577, 584, 588 Of 1994

Lakshmi Chouhan And Ors

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 26-06-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 120B, 302

Citation : (2019) 06 PAT CK 0006

Hon'ble Judges : Partha Sarthy, J; Hemant Kumar Srivastava, J

Bench : Division Bench

Advocate : Anukriti Jaipuriyar, Amicus Curiae, Durgesh Nandan

Final Decision : Allowed

Judgement

1. The above three Criminal Appeals have been preferred against the judgment of conviction dated 05.10.1994 and sentence order dated 06.10.1994 passed by the learned 5th Additional Sessions Judge, Purnea in Sessions Case No. 133 of 1993 whereby and whereunder the learned Additional Sessions Judge (hereinafter referred to as 'the Trial Court'), convicted Lakshmi Chouhan (appellant no. 1 in Cr. Appeal (DB) no. 577 of 1994), Omnand Chouhan@ Abhinandan Chouhan (appellant no. 2 in Cr. Appeal (DB) no. 577 of 1994), Ganesh Chauhan (sole appellant in Cr. Appeal (DB) no. 584 of 1994), Raghubir Chauhan (appellant no. 1 in Cr. Appeal (DB) no. 588 of 1994), Birj Narayan Chauhan@ Vijay Chauhan (appellant no. 2 in Cr. Appeal (DB) no. 588 of 1994) and Santu Chauhan @ Sant Kumar Chauhan (appellant no. 3 in Cr. Appeal (DB) no. 588 of 1994) all under Section 302 read with Section 34 of the Indian Penal Code and sentenced them to undergo imprisonment for life.

2. It may be stated here that as all the three appeals arise out of the common judgment of conviction dated 05.10.1994 and order of sentence dated 06.10.1994 passed by the 5th Additional Sessions Judge, Purnea in Sessions Case No. 133 of 1993. As such all the three appeals were heard together and are being decided by this common judgment.

3. By order dated 29.04.2019 Ms. Anukriti Jaipuriyar, learned Advocate was appointed as Amicus Curiae for the appellants. We have heard the learned Amicus Curiae for the appellants and the learned Additional Public Prosecutor for the State.

4. The prosecution case in brief is that P.W. 9 Sachchidanand Chauhan, gave his fard-e-beyan to A.S.I, S.N. Singh, of K. Hat Police Station on 20.03.1992 at 15.30 hours in the male surgical ward of Sadar Hospital, Purnea stating therein that on the same day at about 11 A.M., his father Rameshwar Chouhan, was returning from his agricultural farm in Baskhal after engaging labourers. At this time, all of a sudden Abhinandan Chouhan, Lakshmi Chouhan, Birj Narayan Chauhan, Ganesh Chouhan, Sant Kumar Chauhan and Raghubir Chouhan came out variously armed with lethal weapon and surrounded his father. Brijnarayan Chouhan was armed with lathi, Laxmi Chouhan with farsa, Ganesh Chouhan was armed with garhel while other persons were also carrying different arms. The named accused persons as also 4-5 other persons started attacking the informant's father. It is stated that at this time the informant was going towards his agricultural field and seeing the attack on his father from some distance, he stopped. It is alleged that on seeing the informant, Lakshmi Chouhan stated that both the father and son should be killed. On this, the informant states that he ran towards his house shouting. Thereafter, all the accused persons ran away. It is alleged that at the time of occurrence, co-villager Chandra Shekhar Chouhan, Rajendra Chouhan, Sarban Prasad Chouhan and others reached the place of occurrence and saw the occurrence. It is alleged that the accused persons thinking that the father of the informant namely, Rameshwar Chouhan had died, went away. On reaching, the informant found that the entire body of his father was soaked in blood and he was still breathing. With the assistance of the villagers, he was taken to the Sadar Hospital, Purnea where he died in course of treatment. It is alleged that land dispute is going on between the informant and Lakshmi Chouhan. The informant claimed that the accused persons in a planned and premeditated manner assaulted his father with lethal weapon and killed him.

5. On the basis of fard-e-beyan of the informant P.W. 9 Sachchidanand Chouhan, K.Hat P.S. Case No. 155 of 1992 was registered under sections 302 and 120B of the Indian Penal Code and, thereafter, a formal First Information Report was drawn up against the appellants under Sections 302 and 120B of the Indian Penal Code.

6. Sub Inspector, A.K. Singh of Marang O.P under K. Hat Police Station took charge of the investigation and on completion of the investigation submitted charge sheet against the appellants under section 302 read with 34 of the Indian Penal Code. Cognizance of the offence was taken and the case was committed to the Court of sessions. All six appellants stood charged for the offence punishable under section 302/34 of the Indian Penal Code.

7. In course of trial, the prosecution examined, altogether, 10 prosecution witnesses and also got exhibited some documents. None of the appellants

adduced any evidence in support of their defence. However, when the statement of the six appellants were recorded, they denied the prosecution story and claimed false implication due to land dispute. Learned Trial Court after analyzing the prosecution evidence and mainly relying on the testimonies of P.W. 1, P.W. 3 and P.W. 5 to P.W. 9, convicted and sentenced the appellants as stated above.

8. Learned Amicus Curiae appearing for all the appellants assailed the impugned judgment of conviction and order of sentence arguing that the learned Trial Court committed error in appreciating the prosecution evidence. As per the learned Amicus Curiae, the accused persons as also the informant belong to the same family having common ancestors. It was contended that there was pending land dispute between the informant and the accused persons which at present had reached the High Court. It was as a result of the pending land dispute that the appellants had been falsely implicated in the case. Further contention was that from perusal of the depositions of P.W. 9 which has been supported by P.W. 1, P.W. 3 and P.W. 7, it would transpire that none of the four prosecution witnesses i.e., P.W. 1, P.W. 3, P.W. 7 or the informant P.W. 9 are eye-witness to the occurrence. It was contended that there was serious differences between the medical and ocular evidence, no independent witness had been examined on behalf of the prosecution and non-examination of the Investigating Officer had led to serious prejudice to the case of the defence as the place of occurrence had also not been established.

9. On the other hand, the learned Additional Public Prosecutor while supporting the impugned judgment of conviction and order of sentence argued that in course of trial, not only P.W. 9 the informant but P.W. 1, P.W. 3 and P.W. 7, who were also eye-witness to the occurrence, had also supported the prosecution case. All the four prosecution witnesses had witnessed the assault on the father of the informant and their evidence had been supported by P.W. 8, the Doctor who conducted the postmortem examination. It was further submitted that it was a deed of gift executed by the grand mother of the informant in favour of the deceased, father of the informant, which was the cause of occurrence and the prosecution had successfully proved the time, the place and the manner of occurrence and, therefore, there was no need to interfere in the impugned judgment of conviction and order of sentence.

10. Having heard the rival contentions of the parties, I went through the record along with the lower court records. On perusal of the evidence it transpires that a total of 10 witnesses were examined on behalf of the prosecution and a number of documents were got exhibited which included the postmortem report (Ext.1), the fard-e-beyan (Ext. 3), certified copy of gift deed (Ext. 11), certified copy of the charge sheet in K. Hat P.S. Case No. 218 of 1987 (Ext. 15) and certified copy of FIR in K.Hat P.S. Case No. 218 of 2018 (Ext. 16). No. witness was examined on behalf of the defence. Out of the 10 prosecution witnesses, P.W. 9 Sachchidanand Chauhan happens to be the informant of K.Hat P.S. Case No. 55 of 1992 and also son of the deceased Rameshwar Chouhan. The deposition of

this witness is said to be supported by P.W. 1 Bhubneshwari Devi, P.W. 3 Sarban Prasad Chouhan and P.W. 7 Bhola Kumar Chouhan, who all claim to be eye-witnesses.

11. Besides the above P.W. 2 Rajendra Chouhan and P.W. 4 Nawal Kishore Chouhan, were both tendered. P.W. 5 Balkrishna Kumar Chouhan, was the 10 years old minor son of P.W. 2. P.W. 6 Upendra Chouhan, is a hearsay witness and son of P.W. 1. P.W. 8 Dr. D.K. Patel, was the doctor who held the postmortem examination on the body of deceased Rameshwar Chouhan. P.W. 10 Bimal Kumar Mondal, was a formal witness. It may be stated here that the Investigating Officer of this case was not examined.

12. P.W. 9 Sachchidanand Chauhan, who happens to be the informant, supported the case of the prosecution claiming to be an eye-witness. He stated that when he was going from his house to the peas farm, he saw the accused persons variously armed. They came and surrounded his father. Lakshmi was carrying farsa, Ganesh had garhel, Sant Kumar was carrying a bhala while others were carrying lathi. They started to assault his father. It is stated that Lakshmi Chauhan, on seeing the P.W. 9 said that both father and son should be killed and then they would see as to who cultivates the land. It was stated by P.W. 9 that out of fear, he went shouting towards his house and returned to the place of occurrence with others. By this time the accused persons had run away. He took his injured father, who was still breathing but was unconscious, to the Sadar Hospital, where his father died in course of treatment. It was further stated by P.W. 9 that the land dispute between Lakshmi Chauhan and Abhinandan Chouhan, has been going on since prior to the occurrence. It was stated that the grand father of P.W. 9 namely, Sudama Chouhan had two sons, namely, Damodar Chouhan and Rameshwar Chouhan (deceased). The accused Lakshmi Chouhan and Omnand Chouhan@ Abhinandan Chouhan are both sons of Damodar Chouhan. On the other hand, P.W. 9 happens to be the son of Rameshwar Chouhan (deceased). It was, further, stated by P.W. 9 that in the pending land dispute, the father of P.W. 9 had filed C.W.J.C. No. 1508 of 1988 in the High Court wherein Lakshmi Chouhan, Abhinandan Chouhan besides others were respondents. It was stated that the witnesses had been gained over and a protest petition had been filed by P.W. 9. In his cross-examination P.W. 9 stated that the cause of dispute was a deed of gift executed by his grand mother whereby she had gifted land measuring an area of 4.5 acres on 10.10 1985 to his father. It was stated that the Chakbandi matter relating to the gifted property was the subject matter of the dispute/case pending in the High Court. In Paragraph 15 of his cross examination, P.W. 9 stated that no accused person moved towards him but Lakshmi Chouhan on seeing him said that both father and son should be killed. As a result of the threat, P.W. 9 became nervous and ran towards his house. He soon returned to the place of occurrence. In paragraph 17, he states that on returning from the village to the place of occurrence he did not see any accused person.

13. P.W. 1 Bhubneshwari Devi, who happens to be a labourer working in the land of the deceased, claims herself to be an eye-witness to the occurrence. She states that she was working on the field and on hearing hulla she ran towards the place where the assault was taking place. Lakshmi was carrying a farsa, Santu had a bhala, Ganesh had a garhel while the remaining three accused persons were carrying lathi in their hand. Rameshwar Chouhan, had fallen down as a result of the assault and had become unconscious. It was stated that besides her, Kripanand Chouhan, Bhola Chouhan, Rajendra Chouhan (P.W. 2), Sarban Chouhan (P.W. 3), Prasad Chouhan and Sachchidanand Chauhan (P.W.9) also reached there. Rameshwar Chouhan, was taken to the hospital where he died. In her cross examination, she has stated that her son Upendra Chouhan(P.W. 1), is also a prosecution witness in the case. She, further, states that her daughter is married to Sitaram Chouhan, brother of Sarban Chouhan (P.W.3). She, states, that she had never plucked peas on earlier occasion in the said land. In paragraph 3 of her cross examination, she, categorically, states that other persons had also reached there but by the time she reached, the assailants had run away from the place of occurrence. She states that wife of Rameshwar Chouhan had come with her. In paragraph 9 of her cross-examination, she states that she cannot say whether any accused person was carrying a pistol or not. She, thereafter, states that she had told the police that Santu had a pistol in his hand.

14. P.W. 3 Sarban Prasad Chouhan happens to be the brother of son-in-law of P.W. 1 Bhubneshwari Devi. P.W. 3 states that on hearing hulla she saw Lakshmi assaulting Rameshwar with a farsa. Thereafter, it is stated that other accused persons assaulted him with lathi, bhala, garhel and farsa. It is stated that Lakshmi was carrying a farsa and Ganesh a garhel while others were carrying lathi. P.W. 3 states that on their reaching the place of occurrence the accused persons ran away. They took Rameshwar to the hospital where he died on the same day. In his cross examination, he states that the statement of his father was not recorded in his presence. There has been enmity with Lakshmi since prior to the occurrence. It is stated that the land where P.W. 3 was going, belonged to his father. It is stated that at the place of occurrence 30-40 persons had come there. He states that he saw Lakshmi assaulting with farsa, while others assaulting with Bhala. As a result of the severe assault, the father of the informant was seriously injured. It is stated by P.W. 3 that when he reached there, Rameshwar had fallen down on the land.

15. P.W. 7 Bhola Kumar Chauhan happens to be the son of P.W. 2 and co-villager of the deceased Rameshwar Chauhan. P.W. 7 states that on hearing the hulla he went towards the place of occurrence and saw Lakshmi Chauhan, Omnand Chauhan, Ganesh Chauhan, Brijnarayan Chauhan, Santu Chauhan and Raghuveer Chauhan variously armed with lathi, farsa, garhail and bhalla running away in south direction. He states that on going to the land of Bhim Manjhi, he saw Rameshwar Chauhan in a seriously injured condition. He was taken to Purnea Hospital where he died in course of treatment. In his cross- examination

he states that on coming out of his agricultural land he saw the accused persons running in the south direction. He further states that on reaching the place of occurrence he saw 3- 4 persons i.e. P.W. 5, P.W. 3, P.W. 1 and P.W. 4.

16. As stated above, the witnesses P.W. 2 Rajendra Chauhan and P.W. 4 Naval Kishore Singh were tendered by the prosecution for cross-examination. P.W. 6 Upendra Chauhan is admittedly a hearsay witness. P.W. 10 Vimal Kumar Mandal is a formal witness who has identified that paragraph nos. 1 to 87 of the case diary of K-Hat P.S. Case No. 155 of 1992 to be in the hand of Daroga Ajay Singh, paragraph no. 5, 88 to 107 of the case diary to be in the hand of Daroga Chandra Kumar and the inquest report to be in the hand A.S.I., S.N. Singh. He states that he has worked with the three of them in Police Station and recognizes their handwriting.

17. P.W. 5 Balakrishna Kumar Chaudhary who is also son of P.W. 2 and brother of P.W. 7 is a 10 year old boy. From perusal of the evidence of this witness, it would be clear that the learned trial court did not take any steps to test the capacity of this minor witness to testify. As per the principles of the voir dire test ('oath to tell the truth'), a judge must ascertain and verify the competency of the child to testify in court. From the records of the case, it being apparent that the learned trial court not having carried out any such test, we are not entering into the details of his deposition.

18. Besides the above, the only remaining prosecution witness is P.W. 8, Dr. D.K. Patel who was posted as Civil Assistant Surgeon at Purnea Sadar Hospital and conducted post- mortem examination on the body of Rameshwar Chauhan. He states that Rameshwar Chauhan was admitted in the Sadar Hospital on 20.03.1992 at 1.00 P.M. and died in course of treatment on the same day at 1:35 P.M. P.W. 8 admitted the patient in emergency and thereafter transferred him to another ward under Dr. M.K. Singh (not examined). He further states that the patient was conscious. He conducted the post-mortem examination and in his opinion the cause of death was shock due to the injuries mentioned in the post-mortem report.

19. From perusal of the records of the case and submissions of the parties, it would transpire that the prosecution has mainly relied on the deposition of the informant P.W. 9 who claims himself to be an eyewitness and further that the prosecution case is supported by the evidence of three other eye witnesses i.e. P.W. 1, P.W. 3, P.W. 7.

20. So far as the informant P.W. 9, Sachidanand Chauhan is concerned, although initially he claims to have seen the occurrence, but at the same instance he states that while he was watching from some distance, Lakshmi Chauhan referring to him said that both father and son, meaning the deceased and P.W. 9, should be killed and then he would see as to who cultivates the land. P.W. 9, categorically, admits that out of fear he ran away towards his house and on returning to the place of occurrence, he saw that by this time all the accused

persons had run away. This witness narrates about taking his injured father for treatment to the Sadar Hospital where he died. He also admits about both the sides having common ancestors, pending land disputes leading to cases up to the High Court and cause of land dispute being a deed of gift executed with respect to 4.45 areas of land by his grandmother in favour of his father. From perusal of the deposition of this witness, it is clear that he is not an eye-witness to the actual occurrence.

21. With respect to the deposition of P.W. 1 Bhuneshari Devi it would be evident that she was not named as an eye- witness in the FIR by the informant P.W. 9. In paragraph no. 3 of her cross-examination she has stated that on hearing hulla, she came towards the place of occurrence, but by the time she reached, the accused persons had run away. Thus, she is also not an eye-witness to the occurrence.

22. P.W. 3 Sarban Prasad Chauhan happens to be the brother of son-in-law of P.W. 1. He in paragraph no. 1 of his deposition has stated that the accused persons ran away on their reaching the place of occurrence. He proceeds to give a vivid deposition of the 2-3 farsa blows, blows by bhalla and over hundred lathi blows. Besides his statement that on his reaching there the accused persons ran away, in our opinion P.W. 3 also is not an eye-witness for the reason that the description of the assault given by him does not corroborate with the evidence of P.W. 8 Dr. D. K. Patel who conducted the post-mortem examination. From perusal of the post-mortem report (Exhibit- 1) it would transpire that out of the 6 injuries, except injury no.4, all are on non-vital part of the body. Injury no. 4 is a bruise on left lower portion of the chest. Further neither the post- mortem report nor the deposition of the Doctor P.W. 8 mentions about the nature of the arms which could cause the injury as found on the body of the deceased.

23. With respect to the deposition of P.W. 7 Bhola Kumar Chauhan, it is stated that in clear terms he has stated that as soon as he came out of his agricultural land, he saw the accused person running away. Thus, in unequivocal terms he admits not having seen the actual occurrence and of not being an eye- witness.

24. That further from perusal of the record it transpires that the investigating officer of the case S.I., A.K. Singh has not been examined as a prosecution witness which caused great prejudice to the case of the defence. As a result of non- examination, the contradictions in the statement of the witnesses, their improving on their case as also non- establishment of the time, place and manner of occurrence could not be put to the Investigating Officer thus causing great prejudice and consequently the benefit of which would go to the defence.

25. From the facts stated and the evidence of the prosecution witnesses dealt with herein above, it would be evident that there is admitted land dispute between the parties, no independent witness has been examined on behalf of the prosecution, there is large variance between the ocular and medical evidence and none of the four prosecution witnesses i.e. P.W. 9, P.W. 1, P.W. 3 and P.W. 7 are

eye-witnesses to the actual occurrence, as claimed. The benefit of all this will have to go to the accused appellant herein. Accordingly, giving benefit of doubt to the appellants, it is held that the prosecution has not been able to prove the charges beyond all shadows of reasonable doubts. Thus, it is an appropriate case where the appeals preferred by all the appellants be allowed.

26. In view of the above facts and circumstances I, hereby, allow all the three appeals and set aside, the judgment of conviction dated 05.10.1994 and order of sentence dated 06.10.1994 passed in Sessions Case No. 133 of 1993 against the six appellants namely, Lakshmi Chauhan, Omnand Chauhan, Ganesh Chauhan, Raghubir Chauhan, Brijnarayan Chauhan alias Vijay Chauhan and Santu Chauhan alias Sant Kumar Chauhan. Accordingly, all the above stated appellants are acquitted of the charge. The appellants are on bail. Hence, they are discharged from the liability of their bail bonds.

27. All the three appeal stands allowed.

28. I appreciate the assistance rendered by learned Amicus Curiae Ms. Anukriti Jaipuriyar, Advocate and I think it proper to direct the Legal Services Committee, High Court Patna to ensure the honorary payment of Rs. 2000/- to Ms. Anukriti Jaipuriyar.

29. Let a copy of first and last page of this judgment be handed over to Ms. Anukriti Jaipuriyar, learned Amicus Curiae so that she could make claim before the above stated authority as per direction of this Court.