
(1998) 02 PAT CK 0060

In the Patna High Court

Case No : Criminal Appeal No. 418 and 419 of 1992

Manraj Mahto and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 26-02-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 304

Citation : (1998) 2 BLJR 1401 : (1998) 2 PLJR 416

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

N. Pandey, J.—These six appellants were called upon to explain charges for the murders of Baijnath Ram. Rama Shankar Chauhan and Vishwakarama Chauhan. On trial the Additional District & Sessions Judge, Chapra by his judgment dated 28th August, 1992 in Session Trial No. 266 of 1990/11 of 1990, has convicted and sentenced appellants Sheopujan Mahto and Bilas Mahto u/s 302 of the Indian Penal Code and sentenced each of them to undergo imprisonment for life. They have also been convicted u/s 148 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for three years. Appellants Manraj Mahto and Dharam Nath Mahto have, however, been convicted u/s 302 read with Section 149 of the Indian Penal Code and sentenced to undergo imprisonment for life. Appellant Dharam Nath Mahto has further been convicted under Sections 147 and 323 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for one year. Appellant Manraj Mahto has also been convicted under Sections 148 and 323 of the Penal Code and sentenced to undergo rigorous imprisonment for three years and one year respectively.

2. The case of the prosecution, as would appear from the Fard-beyan of Chandrama Chauhan (P.W. 7), in short, is that deceased Rama Shankar Chauhan, uncle of the informant (P.W. 7), had purchased a piece of land in Kashipur Bazar

Chour in the name of his wife Tileshari Devi from one Narain Mahto. It is alleged that accused Sheo Pujan Mahto, who is the cousin of Narain Mahto (vendor), was not allowing Rama Shankar Chauhan and his family members to take possession of the land. To solve the dispute, a Panchayati was organised and on the basis of the decision taken in that Panchayati prosecution party had grown paddy crops in the field and no obstacle whatsoever was put by the accused persons. But ultimately when crops were ripe, the accused persons harvested. Therefore, another Panchayati was organised in which Sheo Pujan expressed desire to return the consideration money, which was refused by the prosecution party. Thereafter, all the three deceased Rama Shankar Chauhan, Vishwakarma Chauhan and Baijnath Ram had gone to plough the field in the morning of 29.12.1989. But when those three persons after cultivating the land, started for their village and the moment they crossed the Nala and reached in the field of Ram Janam, appellants Sheo Pujan, Ram Babu Mahto, Raj Narayan Mahto, armed with Gupta, and other appellants armed with Dab Farsa, dagger etc. arrived there and committed the murders of Rama Shankar Chauhan, Vishwanath Chauhan and Baijnath Ram with Gupta at the spot. When the informant (P.W. 7), who was cutting grass at a little distance and Balmukund Chauhan (P.W. 4) arrived there, they were also assaulted.

3. The police as would appear from the Fard-beyan, arrived at the place of occurrence at about 6.15 and recorded the Fard-beyan of injured Chandrama Chauhan. He also recorded statements of both the injured witnesses as well as other witnesses at the spot and prepared inquest reports and sent the dead bodies for post-mortem examination.

4. The defence of the accused persons, as would appear from their statements, recorded u/s 313 of the Code of Criminal Procedure and the trend of cross-examination, was total denial of the allegations. A First Information Report (Ext. A) was also lodged on 29.12.1989 at the Sadar Hospital, Chapra by accused Ram Babu Prasad. It was stated that the accused persons were coming in possession of the land since last ten years. But the prosecution party was making regular efforts to take forceful possession of the land. It was alleged that on the day of occurrence, the members of prosecution party, being armed with weapons, arrived there and tried to dispossess the accused persons. They also assaulted Rampati Devi, wife of appellant Shiv Pujan Mahto, and two other appellants Ram Babu Mahto and Raj Narayan Mahto. Injuries of Rampati Devi and appellants Ram Babu Mahto and Raj Narayan Mahto were examined by Dr. N.K. Keshav (P.W. 8).

5. It would appear from the records of the case that prosecution in support of its case examined altogether thirteen witnesses. Out of them P.Ws. 1 (Gauri Shankar Raj), 2 (Mori Raj), 3 (Lalmuni Devi), 4 (Balmukund Chauhan) and 7 (Chandrama Chauhan) have figured as ocular witnesses. Amongst these witnesses, P.W.4 (Bal Mukund Chauhan) and P.W. 7 (Chandrama Chauhan) had also sustained injuries caused by Farsa and Chhura on the day of occurrence.

6. P.W. 5 is Dr. Rajbali Singh, who had conducted postmortem on the dead bodies of the three deceased on 30.12.1989. According to his report and the evidence in Court, all the three deceased had received penetrating wounds caused by Gupti. The doctor has also opined that injuries found on the deceased persons were sufficient in ordinary course of nature to cause their death.

7. The trial Court after detailed scrutiny of the evidence of the prosecution witnesses as well as other relevant materials arrived at a conclusion that the case of prosecution was fully established that Rama Shankar Chauhan, Vishwakarma Chauhan and Baijnath Ram were done to death in the field of Ram Janam Rai and Harihar Mahto i.e. just west of the Nala. The Court also found all the eye-witnesses fully reliable and consistent.

8. It would appear from the judgment of the trial Court that P.Ws. 1, 2, 3 and 4 have fully corroborated the case of the prosecution as it was narrated in the Fard-beyan of Chandrama Chauhan (P.W. 7). It would also appear that at the relevant time these witnesses were present at a little distance from the place of occurrence. Therefore, they had full opportunity to witness the entire occurrence and the manner in which appellants assaulted the three deceased persons.

9. Mr. Rizwi, Investigating Officer of this case (P.W. 9) has proved the Fard-beyan of informant, marked as Ext. 7. Exts. 8 and 9 series are the inquest records and seizure etc. prepared by P.W. 9 on the same day at the place of occurrence. The Investigating Officer also found dead bodies of all the three deceased in the field of Ram Janam Rai and Harihar Mahto. As would appear from the evidence of the Investigating Officer that the disputed field was adjacent east of the Nala. The Investigating Officer also supported the case of the prosecution that ploughed field of Ram Janam Rai and Harihar Mahto were the place of occurrence. He has also specifically mentioned in his deposition that no sign of any occurrence was found in the disputed land. This objective finding of the Investigating Officer is also being supported by the testimony of eye-witnesses, namely, P.W. 7 (informant), P.W. 4, who is also one of the injured witnesses, besides P.Ws. 1, 2 and 3. The Investigating Officer also found that the disputed land was freshly ploughed and sown.

10. It would be significant to mention that P.W. 9 was also the Investigating Officer of the counter case, which was started on the basis of Fard-beyan of Ram Babu Prasad. In his deposition the Investigating Officer has accepted that the case of the defence was closed by submitting a final form.

11. Mr. Prasad appearing for the appellants firstly contended that from a bare reference to the Fard-beyan of the defence (Ext. A) it would appear that appellants Ram Babu Prasad, Raj Narajn Chouhan and Rampati Devi (wife of appellant Shivpujan) had also received injuries at the time of occurrence. But the prosecution and its witnesses have failed to explain such injuries. Therefore, it can be safely presumed that the prosecution has suppressed the genesis and origin of the case. The witnesses, who have denied the presence of the injuries

on the person of the accused are lying on a most material point, therefore, unreliable. He contended the omission on the part of the prosecution to explain such injuries assumes greater importance where the evidence consists of interested or inimical witnesses. In support of such a submission, Mr. Prasad Placed reliance on a decision of the Apex Court in the case of Lakshmi Singh and Others Vs. State of Bihar, . It was thus, contended that having regard to the ratio laid down in the aforesaid case particularly when no independent witness was examined by the prosecution, the Court should draw an inference that the prosecution has suppressed material facts and true genesis of the occurrence.

12. In my view, there cannot be any other opinion that in a case where grievous and serious injuries are sustained by the accused persons at the time of occurrence in courses of altercation, it will be an important circumstance for the prosecution to explain how such accused sustained injury. But one has to ascertain whether such injuries were caused to the accused at the time and place of occurrence and also in the same altercation. There is no doubt as would appear from the Fard-beyan (Ext. A) and the evidence of Dr. K.N. Keshav (P.W. 8) that Rampati Devi, appellants Ram Babu Prasad and Raj Narain Chouhan had received injuries on the date of occurrence itself. But the place of occurrence, as pointed out by the defence in the Fard-beyan (Ext. A) is the disputed land and not the land of Ram Janam Harihar Prasad where as per the objective findings of the Investigating Officer, these deceased persons were murdered. The I.O. has also indicated in his evidence that the disputed land was east of the Nala, whereas the land of Ram Janam Rai and Harihar Prasad was situated at west. The evidence of I.O. also shows that no sign of any occurrence was found on the disputed land, which was freshly ploughed and sown. Therefore, undisputedly the place of occurrence in both the cases being different, the prosecution had no obligation to explain injuries, sustained by the accused.

13. Mr. Prasad next contended that as would appear from the case of the prosecution as well as evidence of eye-witnesses that the accused persons all of a sudden appeared at the place of occurrence and started assaulting the deceased persons and the witnesses. The prosecution was not able to disclose what was the immediate cause due to which such occurrence took place. Therefore, such improbability also raises a doubt about the truth of occurrence. In my view, there is no substance in this submission. Because it would appear from the facts brought on the record that in the morning of the day of occurrence, all the three deceased had gone to plough the disputed field, which they had purchased. This has also come in evidence that immediately after sowing wheat, the deceased persons were going back to their houses. But no sooner they crossed the Nala and arrived in the field of Ram Janam Rai, accused persons variously armed with deadly weapons attacks and assaulted. Therefore, it can be safely inferred that accused persons having learnt that the members of prosecution party had ploughed and sown wheat in the disputed land, attacked them with deadly weapons and committed murders of three persons. But in order to concoct a false story, the Fard-beyan (Ext. A) was lodged to show that

the occurrence had taken place in the disputed field in the manner in which the defence had described in the Fard-beyan.

14. Mr. Prasad next contended that even the case of the defence, as disclosed in the Fard-beyan (Ext. A) was disbelieved it will be open to them to raise a plea of right of private defence of their property. In other words, if the prosecution party tried to plough the field forcibly, the defence had every right to protect their properties and dispossess from the land, even by use of force. In support of such a submission, Mr. Prasad placed reliance on decisions of the Supreme Court in the case of *Munshi Ram and Ors v. Delhi Administration* AIR 1968 SC 702 and yet another decision in the case of *Puran Singh and Others Vs. The State of Punjab*, .

15. Mr. Prasad contended that even in the worst cases, where it is held accused had the first degree of right of private defence of property of any mischief to the property and if it is found that such a right was exceeded, at best a conviction u/s 304 Part I can be recorded, but not u/s 302 of the Indian Penal Code. Reliance in this regard was made to a decision of the Apex Court in the case of *Mahabir Choudhary Vs. State of Bihar*, .

16. In my view, though the propositions, as noticed above, are very sound and convincing, but in this case such a right was never pleaded nor exercised. Rather the defence by instituting the Fard-beyan (Ext. A) had come forward with a separate case, which has taken place at a different place of occurrence. Therefore, to my mind, appellants cannot be allowed to raise such hypothetical questions and submission at this stage.

17. Learned Counsel for the State also while drawing our attention to the contents of the Fard-beyan (Ext. A) coupled with the evidence of P.W. 3 and the objective findings of the Investigating Officer (P.W. 9) appearing in paragraph No. 17 of his evidence, contended that the defence version about the existence of injuries on the appellants was not only improbable, rather false and concocted. He contended that unless and until right of defence was pleaded during trial, the accused will not be permitted to raise such questions without being any substance. In support of his contention, Mr. Counsel relied upon a decision of the Supreme Court in the case of *Dnyanu Hariba Mali and Others Vs. The State of Maharashtra*, .

18. He contended assuming the defence had a right of private defence of property but in such a case where they had ample opportunity of having recourse to the authorities and there was no need to take the law in hand, right of private defence will not survive. Reference in this regard was made to a decision of the Supreme Court in the case of *Lala Ram Vs. Hari Ram*, .

19. In my view, the submission of the State counsel appears quite justified. Because as per the case of prosecution itself they had gone to plough the field in the morning and were returning back in the evening after completing the work. This has also been established that entire occurrence took place in the field of

Ram Janam Rai and Harihar Mahto at a time when all the three deceased were going back to their houses. Therefore assuming some wrong was done by the deceased persons, the defence had full opportunity to approach the authorities and raise grievances. But in no circumstances accused persons can be permitted to take law in their hand and commit murders of three persons.

20. Therefore, having considered all the facts and circumstances of the case, in my view, the trial Court appears quite justified while holding the appellants guilty for the alleged occurrence. In the result, therefore, both the appeals are dismissed as devoid of any merit and the judgment and order of conviction, passed against them by the trial Court, are hereby affirmed. Since appellants Manraj Mahto and Dharam Nath Mahto (Cr. Appeal No. 418 of 1992) and appellant Sheo Pujan Mahto (Cr. Appeal No. 419 of 1992) are on bail, therefore, their bail bonds are cancelled and they are directed to be taken into custody forthwith for serving the remaining sentences.