
(2010) 02 PAT CK 0062

In the Patna High Court

Md. Nabi Alam @ Md. Nabi, Md. Sadik and Md. Asfak

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 10-02-2010

Acts Referred:

Arms Act, 1959 — Section 27
Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2010) 02 PAT CK 0062

Hon'ble Judges : Rakesh Kumar, J; Dharnidhar Jha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Dharnidhar Jha and Rakesh Kumar, JJ.—The three appellants in the present appeal were tried by the learned Addl. Sessions Judge 1st, Khagaria, in Sessions Trial No. 235 of 2000 and by Judgment delivered on 24.1.2003, the above noted appellants were found guilty of committing the offences they had been charged with. Appellant Md. Nabi Alam @ Md. Nabi was held guilty of committing offence u/s 302 of the Penal Code as also that u/s 27 of the Arms Act and was directed to suffer rigorous imprisonment for life and for one years respectively on the above two counts. The sentences were ordered to run concurrently. The appellant Md. Sadik and Md. Asfak were charged of committing offence u/s 302/34 of the Penal Code and accordingly, they were also found guilty of committing that offence and each of them was directed to suffer rigorous imprisonment for life. The three appellants have questioned their respective convictions and the sentences passed upon each of them through the present appeal.

2. The prosecution story is contained in the fardbeyan of the informant, namely, Ajarabi Khatoon (P.W.4) in which she stated that her husband Sheikh Abbas was at his house at about 7.30 P.M. on 2.1.2000 when appellant Md. Nabi Alam came there and asked him to accompany the said appellant for Panchayati. P.W.4

stated that she asked her husband not to go, but he went out of the house telling P.W.4 that the accused were asking for attending the Panchayati and, as such, he had to go. The informant stated that she saw appellant Asfak, who was the Bahnoi of appellant Md. Nabi Alam, and Md. Sadik who was the father of appellant Md. Nabi Alam, the third appellant, standing outside her house. It was further stated that as soon as the deceased had proceeded to some distance in the north, the two appellants Md. Sadik Alam and Md. Asfak caught him from either of his sides, whereupon appellant Md. Nabi Alam fired a shot into the neck of the deceased, as a result of which he fell down and died there. The three appellants ran away from there.

3. As regards the cause of the occurrence, it was stated by P.W.4 that her daughter was married to appellant Md. Nabi Alam about three years prior to the occurrence and ornaments, etc. had already been given to the bride except a "Chandrahar" and for that appellant Md. Nabi Alam used to pick up quarrel regularly with the deceased and a Panchayati had also been convened in the past. It had been decided in the panchayati that the deceased would give "Chandrahar" on 20th January, 2000. It was stated that the deceased was an employee in the Directorate of Archeology and Museums and was holding the post of a Guard and had come home to spend his holiday.

4. On the basis of Ext.3, the F.I.R. of the case was drawn up by P.W.8 S.I. Ranjeet Kumar, who took up the investigation himself. He inspected the place of occurrence, which was a place outside the house of the deceased Sheikh Abbas, where P.W.8 found copious blood on the earth. The same was seized by him by preparing a seizure Memo (Ext.4) in presence of the witnesses Md. Salauddin (P.W.2) and P.W.6 Md. Murtaza. P.W.8, thereafter, held inquest upon the dead body and recorded the statements of the witnesses and after receiving the postmortem examination report (Ext.2) sent up the three appellants for trial, which ended in the impugned Judgment.

5. The defence of the appellants was many fold. It was suggested to P.W.4, the informant that she had developed an illicit relation with some one and, as such, she was not ready to live with the deceased at the place of his posting, i.e., Patna and that appellant Md. Nabi Alam has come to know about it and in turn had divulged the fact to the deceased and, as such, the informant in conspiracy with some one got the deceased killed. This suggestion also appears given to P.W.4 in paragraph 10 and 14 of her evidence. The other defence which appears to have been suggested in the evidence of P.W.4 was that the deceased could be a man of bad character and lewd behaviour and possibly he was killed by any one on that account. However, no such statement was made by any of the appellants in their respective statements u/s 313 of the Code of Criminal Procedure.

6. In support of the charges, the prosecution examined as many as eight witnesses, out of whom, as already indicated, P.W.4 Ajarabi Khatoon is the informant of the case, who happened to be the wife of the deceased who is the

only eye witness to the occurrence supporting the allegations in its entirety while deposing in the court as a witness. So far as P.W.1 Md. Irshad, P.W.2 Md. Salauddin, P.W.3 Shami Ahmad, P.W.6 Md. Murtuza and P.W.7 Md. Jubair Ahmad, they all have claimed coming to the place of occurrence after having heard the sound of gun shot. Almost all of them have stated that they had torches in their respective hands and in the flash of the torch light they had seen the three appellants running away from the scene of occurrence. One of the witnesses, namely, Md. Jubair Ahmad (P.W.7) has stated that he found the appellant Md. Nabi Alam armed with a pistol while he was running away. Though this fact has not been stated by the other witnesses, just mentioned above, who claimed to have reached the place of occurrence just after the occurrence. P.W.5 Dr. S.K. Pansari was the doctor who had performed autopsy on the dead body of deceased Sheikh Abbas and prepared the postmortem examination report (Ext.2). As pointed just now, S.I. Ranjeet Kumar (P.W.8) was the officer who had investigated the case.

7. We have heard Sri Abdul Mannan Khan, learned Counsel appearing for the appellants. Sri Khan took us through the evidence of each and every witness and submitted, firstly, that the story of dispute between the deceased and appellant Md. Nabi Alam for a "Chandrahari" and further story of Panchayati appears not established by the evidence of any of the witnesses and whatever evidence has come on record that does not appear acceptable, rather the same appears improbable. Sri Khan wanted this Court to hold that the genesis of the case or its very substratum, has not been established. Sri Khan next contended that the occurrence appears not taking place in the manner as stated by the witnesses. Possibly it may be appearing from the evidence that the deceased Sheikh Abbas might have been murdered in some other manner by some other person or persons, but P.Ws came together to tell the court a completely false and baseless story. As such, it was contended that their evidence should be rejected in its entirety. The third contention of Sri Khan was on the place of occurrence, when he contended that the evidence of witnesses was very much doubtful as regards the place where the dead body was found and the Investigating Officer was also not giving the correct fact on the place of occurrence and, as such, the whole prosecution case pales in doubt. Sri Khan submitted that on the above ground and in the light of the statements the three appellants deserve to be acquitted.

8. Against the above, Sri Ashwani Kumar Sinha, learned A.P.P. for the State, submitted that the most important feature of the case was that the mother-in-law of appellant Md. Nabi Alam whose own eldest child was the wife of the said appellant Md. Nabi has lodged the case and she was imputing a motive for the commission of the offence to the appellants. It was contended that the wife of the appellant Md. Nabi Alam was not present in the house of the informant, rather the evidence of P.W.4 indicated that she was very much there when the occurrence took place and it is utterly unacceptable that the mother-in-law, would be coming out with a false case to implicate her own son-in-law so as to leaving the real culprits and thereby jeopardizing the life of her own child. It was

contended that the identification of the appellants has been challenged because some of the witnesses have stated that it was foggy evening, but it was really foggy does not appear established and, secondly, it was contended by Sri Sinha that the witnesses have claimed to have come with a source of light and, as such, the evidence on identification could not be rejected. Sri Sinha, lastly, contended that the witnesses appear telling the truth correctly, what they saw exactly, else they would not have claimed themselves to be the eye witnesses to the occurrence assigning specific overt act to each of the witnesses. On the above premises, Sri Sinha supported the finding recorded by the learned trial court.

9. We, first, want to take up the contention on the existence of the dispute between the deceased Sheikh Abbas and appellant Md. Nabi Alam on account of the fact that the deceased had not given a "Chandrahar" to his daughter at the time of her marriage. The evidence on the above fact has come from P.W.4, the informant of the case who was the mother of the lady who was married to appellant Md. Nabi Alam and also from P.W.6 Md. Murtuza. P.W.4 Ajarabi Khatoon has stated in paragraph 3 of her evidence that a "Chandrahar" was due to be given by the parents of the wife of appellant Md. Nabi Alam and for that the accused persons had called a Panchayati also and the Panches had asked the deceased Sheikh Abbas to give a "Chandrahar" to his daughter. P.W.4 stated in the same paragraph that the deceased had assured to purchase the "Chandrahar" for giving it to his daughter on 20th January when he would get his salary, but in the meantime the occurrence had taken place. On perusal of the evidence of P.W.4 we find it was a fact. It was stated at the very threshold of the launching of the prosecution through Ext. 3, the fardbeyan. Secondly, the above facts were being narrated by a witness who was the mother of the wife of appellant Nabi Alam and wife of the deceased. On account of the special relationship of the informant with her daughter and her husband and also on account of being the lady of the household, she could be presumed to be in full know of the episode, including as to what promise was held out by her husband or by herself to her daughter or her husband as regards giving of ornaments and other articles in dowry or as presents at the time of the marriage. She could be the most competent person to testify on the non-fulfilment of the promise and the dispute arising out of that non-fulfilment and the Panchayati being convened in that behalf. While being cross-examined P.W.4 was put some questions as to where the deceased was likely to be taken for Panchayati as may appear from paragraph-12 of his evidence but there is no denial even by throwing a suggestion to her that the story of a "Chandrahar" which was to be given to her daughter was untrue, fictitious or a mere ploy. P.W.6 Md. Murtuza has stated in paragraph 2 of his evidence almost the same fact that a "Chandrahar" was due to be given by deceased Sheikh Abbas to his daughter, who had been married to appellant Md. Nabi Alam and for that there had been some sittings between the parties and the deceased had promised to give "Chadrahar" on the 20th January after having purchased it from his salary of the said month. This witness was

cross-examined on the fact in paragraph 11 of his evidence and on perusal of his evidence in cross-examination what we find is that it was not that this fact had been introduced by the witness for the first time in court, rather this was his previous statement also. Besides, the witness appears acquainted with the affairs of the family as he had given some details of the Panchayati and the gap between two sittings of the Panchayati in the same paragraph 11. On consideration of the evidence of the witness (P.W.6). in paragraph 11 we find him a competent person to make statement on Panchayati. Besides the above evidence of the two witnesses, P.W.2 Md. Salauddin also appears making his statement in paragraph 1 and who was cross-examined in paragraph 5 of his evidence, but the question which appears put to P.W.2 in cross-examination, does not indicate that the defence was serious in challenging his claim of having knowledge about the dispute and the holding of the Panchayati. Thus, from perusal of the evidence of three witnesses we come to a conclusion that the prosecution established the fact that there was some dispute between the deceased and his son-in-law, appellant Md. Nabi Alam on the non-presentation of a "Chandrahari" to his daughter by the deceased and for that dispute some sittings of Panchayati had also been held. It does not appear to us improbable, in view of the established fact that there had been Panchayati earlier also and that another sitting of Panchayati was convened by accused on the non-presentation of "Chandrahari". In our opinion, the genesis of the occurrence or the substratum of the prosecution case appears established by satisfactory evidence.

10. As regards the contention that the light may not be sufficient for picking up the identity of the three appellants, we want to point out that the argument was framed in the light of the evidence of P.W.4 in-paragraph 13, in which she has stated that it was quite dark and besides, it was a foggy evening also and, as such, she had come out of her house with the lantern. The place of occurrence has been described by almost all the witnesses and also by P.W.8 the Investigating Officer. We find from the evidence of P.W.1 that the place where the occurrence took place was surrounded by bamboo clumps from all sides. This appears found almost correctly by P.W.8, the Investigating Officer also when he described the place of occurrence in his examination in chief and we find that the evidence of witnesses that the occurrence had taken place at a place which was surrounded by bamboo clumps may not be untrue. It was evening time and the clock was striking 7.30 P.M. It was the second day of January and the witnesses appear narrating in court that it was a foggy evening. May be that some fog had also appeared in the environment but when we consider the evidence of witnesses, except P.W.4, they all have stated that they arrived at the scene of occurrence with a torch light. When we consider the evidence of each individual witness, like, P.Ws.2, 3, 6 and 7 we find all the witnesses informing the court that they had appeared and seen the occurrence in the torch light. They further stated that they saw the appellants running away from the scene of occurrence in the flash of torch light. Considering the evidence of above four witnesses, who claimed having arrived at the place of occurrence with torch light, we find that it

was not for the first time that they were making the above statement in the court, because the defence has not cross-examined the witnesses by suggesting to them that none of them had made such a statement before the police during the investigation. What we find is that some of the witnesses have been cross-examined and put questions that they have not produced or shown the torch light before the Investigating Officer. All of them except P.W.7 replied that they had shown their torch lights to the Investigating Officer, but he did not seize and take them in his possession. The contention was that the Investigating Officer ought to have seized the torch and prepared the Seizure Memo. In our opinion, the non-seizure of the light may be an act of incompetence on the part of the Investigating Officer. We do not feel any hesitation to record further finding that the Investigating Officer might have not understood the importance of the statements of the witnesses and, as such, the relevance of seizing the torch light. For that reason we are cautious in not saying that the witnesses were liars or persons who had made the statement falsely justifying their claim of identifying the accused persons. The witnesses were not even suggested that they did not have any torch light or that they had not seen the accused running away and that they were making false statement.

11. As regards the presence of fog, our experience is that in a foggy evening or a foggy night or morning one can not see clearly while moving a river side or a pond filled with water. We find a thick layer of fog gushing out from such places. But, as soon as one enters an orchard or a place like the place of occurrence in the present case, which is surrounded from all around with thick bamboo clumps spread over a good area, he could find clear visibility. It may be a fact that the place outside the house of P.W.4, informant, which was a vacant place up to the edge of the bamboo clumps, might have fog over it but as soon as bamboo clumps had started, there must not be fog for the reasons just stated. Moreover, the question of identity is answered fully by the witnesses when they claimed that they had come to the place of occurrence with torch lights and had seen the appellants fleeing away in the light thereof.

12. The evidence of P.W.4 was criticized on the above score as also on the score that she stated in paragraph 13 that she had come out with a lantern. It was submitted that the statement indicates that the visibility could be nil. The other criticism of the evidence of P.W.4 was that while she was being cross-examined in the court, a question was put to her as to what time the clock hanging from the wall of the court was showing. The answer to the above question, which appears in paragraph 13 of P.W.4, was that she was at that time having a weak vision and she could not be able to see the time which the court clock was showing on that particular moment. The contention was that if the vision of P.W.4 was weak as admitted by her, it would be more appropriate for us to hold that she could wrongly pick up all the three appellants. The argument, one of the most aspects of evidence of P.W.4. She had stated on the day, she was deposing that she had a weak vision. The occurrence had taken place on 2.1.2000 and the witness was being cross-examined on 4.10.2001, i.e., after one year and ten

months. One cannot sure about health. No question was put to P.W.4 as to what was the state of her vision on the day when the occurrence had taken place. Moreover she was the mother-in-law of appellant Md. Nabi Alam and she would be well acquainted with the appellants, who were the father and brother-in-law (Bahnoi) of appellant Md. Nabi Alam. She must have the occasion of seeing them many times and as soon as she had seen the occurrence she must have picked up the identities of the appellants because they were at the very steps of the house of P.W.4.

13. The evidence of P.W.4, when we consider it carefully, does not appear leaving any feature which could create a doubt in court. It does not suffer from any infirmity. The witness has answered all questions correctly. Above all she was the mother of the lady who was married to appellant Md. Nabi Alam and no reason has been shown to us as to why she could be so inclined to implicate her own son-in-law, whose life could be tagged with the life of her eldest child, in such a serious charge of committing the murder of Sheikh Abbas. She was suggested that she had a motive of getting eliminated her husband but she has not been suggested as to what was compelling reason for implicating Md. Nabi Alam except the flimsy fact which was denied by her.

14. As regards the other witness, it similarly appeals to us that none of the witnesses like P.Ws 1, 2, 3, 5 and 6 have been shown to be related or interested in any manner with the informant P.W.4. Similarly, no fact has been brought on record to indicate that any of the above witnesses were impelled for any substantial reasons to depose falsely against the three appellants and to ensure that they were convicted and sentenced to a long term of imprisonment. No motive was imputed or brought by their cross-examination or otherwise to even remotely to brand the witnesses interested or related. We find them inspiring our confidence and we further find that it was rightly submitted by Sri Sinha, learned A.P.P. appearing for the State that the witnesses have stated what they had seen, else what was the obstruction to them if they had projected themselves as eye witnesses and had assigned specific roles by giving eye witness account to the occurrence. The witnesses have not stated that they had seen any part of the occurrence except that they had seen the accused persons running away. P.W.1 has stated, and so has been stated by other witnesses, that when they came to the place of occurrence, P.W.4 stated to each of them as to how her husband had been killed by appellant Md. Nabi Alam by the shot fired into the neck of her husband. The witnesses have further stated that P.W. 4 stated to each of them that the remaining two appellants caught hold of her husband from either of his sides whereupon shot was fired by the appellant Md. Nabi Alam.

15. That other reason due to which we place explicit reliance upon the evidence of the witnesses is that it was within the month of Ramjan that the occurrence had taken place. The evidence of P.W.4 and some other witnesses indicate that after breaking their day long fast on that particular day they were inside their houses, when the occurrence took place. The month of Ramjan is very

sacrosanct and it could be simply unimaginable that a stomach Muslim would speak lies during such a period.

16. The evidence of P.W.5, Dr. S.K.Pansari supports the manner of occurrence. The Doctor found lacerated wound of entry on the upper third of neck which was inverted and had blackened margin. The wound was measuring ?" x ?" x muscle deep. The wound of exit described by P.W.5 was measuring 1" x 1". On dissection, the Doctor found that some of the internal organs like muscles, Vessels and nerves in right side of the neck were lacerated and trachea and oesophagus were also found lacerated. Lung was found lacerated. The injuries were ante mortem in nature. The injuries, in our opinion, were sufficient to cause the death of the deceased.

17. The contention of Sri Khan on the non establishment of place of occurrence also does not appear to us acceptable, inasmuch as when we consider the evidence of witnesses and that of Investigating Officer we find that the place where the dead body was found was a place which could not be said exactly to be bamboo clumps, but it was definitely surrounded by many bamboo clumps. The argument was framed on only one line of statement of P. W.4 in paragraph 14 in which she stated that the dead body of her husband was lying in the bamboo clumps, literally it could be correct, but really it is not acceptable.

18. Considering the evidence of P.W. 1 we find that the dead body of the deceased was found lying north of the house of the informant (P.W.4) on a road which was passing west of the Primary School, about 50-60 yards from there and that place on road was surrounded from all sides with bamboo clumps. P.W.4 was an illiterate lady who deposed in the court in the case which was being tried in respect of the murder of her husband. Her narration at the various stages may be a bit different from what we expect from a person who could be lettered and who could have the better knowledge of affairs. The evidence of doctor in paragraph 4 does not indicate that the dead body was found at a place different from what was found by the witness and what was recorded by P.W.8.

19. On discussion of the evidence as pointed just now we find that the findings recorded by the trial Judge on the guilt of the appellants was correctly born out from the evidence on record. We find that the impugned Judgment does not suffer from any impropriety leaving no room to us to interfere with.

In the result the appeal appears of no merit and the same is dismissed.