
(2002) 12 PAT CK 0069

In the Patna High Court

Case No : Criminal Appeal No. 159 of 1997 (D.B.)

Nagina Singh and Jharo Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 11-12-2002

Acts Referred:

Arms Act, 1959 — Section 27

Penal Code, 1860 (IPC) — Section 109, 302, 323, 34

Citation : (2003) 1 PLJR 420

Hon'ble Judges : B.K. Jha, J;A.K. Sinha, J

Bench : Division Bench

Advocate : Ashish Anshu, for the Appellant; Bhagya Narain Gupta, for the Respondent

Final Decision : Allowed

Judgement

B.K. Jha, J.—This appeal has been preferred against the judgment of conviction and sentence passed on 26th March, 1997 in Sessions Trial No. 794/89 by the learned Additional Sessions Judge, Naugachia, District-Bhagalpur. The Appellant, Nagina Singh, has been convicted under Sections 302/109/34 of the Indian Penal Code and sentenced to rigorous imprisonment for life. The Appellant, Jharo Singh, has been convicted u/s 302 of the Indian Penal Code and sentenced to Rigorous imprisonment for life. He has further been convicted u/s 27 of the Arms Act and sentenced to Rigorous imprisonment for 2 years. The sentences awarded to the Appellant, Jharo Singh, have been ordered to run concurrently.

2. The occurrence took place at about 11 A.M. on 24.8.1989 In Rajwara Bahiyar of village Paschimi Gharari, P.S. Kharik, District Bhagalpur. On the alleged date the informant, Bipin Kumar Singh alias Bablu Singh, P.W. 5, alongwith his father, Sada Nand Singh, from 8 A.M. was getting his Kheri crops harvested by the lady labourers in his field, Rajwara Bahiyar, north to the Railway line. At about 11 A.M., the accused, Jharo Singh, Nagina Singh, Rakesh Singh with three nuts Mushan Singh and Putali Singh with lathi and three nuts came in his field and

objected to Sada Nand Singh from harvesting the Kheri crops. In the mean time, the accused, Mushan Singh, gave a lathi blow on the head of Bipin Kumar Singh alias Bablu Singh, the informant, P.W. 5. Thereafter, all the five accused encircled Sada Nand Singh and Nagina Singh, ordered to shoot him whereupon Jharo Singh fired from his three nuts which hit Sada Nand Singh in his abdomen and he fell down injured on the ground. Then the accused persons fled away towards eastern direction. Thereafter, Mathuri Singh, P.W. 4, the uncle of the informant who was present in his nearby basa and Bindeshwari Singh, P.W. 1, who was cutting grass in the nearby field arrived, saw the occurrence and also the fleeing accused persons from the place of occurrence. Besides them the labourers engaged in harvesting the Kheri crops also(sic)aw the occurrence. Further case of the prosecution is| that thereafter Mathuri Singh, the uncle of the informant brought a cot from, his basa and while Sada Nand Singh wail being removed to Telghi hospital for treatment he died on the way near the place of Mahant Baba. The motive behind the occurrence has been alleged to be the land dispute in between the accused, Nagina Singh and the deceased Sada Nand Singh. The dead body of the deceased was left there and the informant, Bipin Kumar Singh alias Bablu Singh, P.W. 5, went to the Police Station. On the same day i.e., 24.8.1989 at 1.30 P.M. the informant, Bipin Kumar Singh alias Bablu Singh, P.W. 5, gave his fardbeyan (Ext. No. 1) before the Sub Inspector of Police of Kharik Police Station. His fardbeyan was forwarded to the Officer Incharge of Naugachia P.S. for institution of a case, on the basis of which a formal F.I.R. (Ext. No. 3) was drawn up and Naugachia (Kharik) P.S. Case No. 179 dated 24.8.1989 was registered against all the five accused persons u/s 302/34 of the Indian Penal Code and Section 27 of the Arms Act. The police switched over to investigation and on completion of the investigation of the case, all the five accused persons were charge-sheeted for trial u/s 302/34 I.P.C. and Section 27 of the Arms Act. After observing the legal formalities they were put on trial before the learned Additional Sessions Judge, Naugachia, Bhagalpur. The learned trial Judge acquitted the accused Rakesh Singh, Putali Singh of the charge u/s 302/34 of the Indian Penal Code and the accused Mushan Singh alias Shankar Singh of the charge under Sections 302/34 and 323 of the Indian Penal Code framed against them. But convicted and sentenced the accused Appellants, Nagina Singh and jharo Singh, in the manner, indicated above. Hence, they have preferred this appeal.

4. The Appellants have pleaded their Innocence and false implication in this case at the instance of Bindeshwari Singh, P.W. 1 and Mathuri Singh, P.W. 4, the uncles of the. informant, Bipin Kumar Singh alias Bablu Singh, P.W. 5. Their specific defence is that at the relevant hour of occurrence when Sada Nand Singh along with three labourers had been in the P.O. land to forcibly harvest their Kheri crops a pistol kept by him in his waist mis-fired which hit in his abdomen and by taking the advantage of this situation this false case was launched against them. In support of their defence, four witnesses have been examined.

5. At trial, the prosecution examined 7 witnesses. Out of them, P.W. 1,

Bindeshwari Singh and P.W. 4, Mathuri Singh, are own uncles and P.W. 2, Laddu Singh, is the cousin brother of the informant, Bipin Kumar Singh alias Bablu Singh, P.W. 5. P.W. 3 is Md. Ayub. P.W. 6 is Dr. Durga Nand Mahto, who conducted autopsy on the dead body of the deceased, Sada Nand Singh and P.W. 7 is Chandra Nand Jha, the I.O. of this case.

6. The evidence of Dr. Durga Nand Mehta, P.W. 6, is that he conducted post mortem examination on the dead body of Sada Nand Singh on 25.8.1989 at 8.30 A.M. and found one circular wound of 1/2 diameter, as per post mortem report, but as per his deposition 1 and 1/2 diameter 6" below the left nipple in left hypochandtrial region 2" left to medial line of rectas surrounding area of this circular wound have some blackish spot and the bullet removed from the chest cavity in between 5th and 6th rib in the mid axillary line in right side. Mid portion of left lobe and 2/3rd upper portion of right lobe liver ruptured. According to him the injury was ante mortem caused by fire arm having direction from left to right side from a distance of more than 5". Further, according to him the death was caused by bullet injuries causing rupture of liver and ear haemorrhage and the time elapsed since death was within 22 hours. Bullet preserved, scaled, size 1 and 1/2" brass colour was handed over to the police. He proved the post mortem report (Ext. No. 2). The post mortem examination was held on 25.8.1989 at 8.30 A.M. and the occurrence took place on 24.8.1969 at 11 A.M. Thus, the time elapsed between the death and post mortem examination held was about 21 and 1/2 hours and according to the Doctor it was within 22 hours. Thus, the medical evidence is in consonance with the prosecution case.

7. Out of the witnesses on facts, P.W. 3, Md. Ayub, is not an eye witness to the occurrence. His, evidence is that at the relevant hour of. occurrence while he was in his basa in Rajwara Bahiyar, he heard the sound of firing. He went in the field of Sada Nand Singh and noticed the accused Jharo Singh, Patuli Singh, Nagina Singh and Rakesh Singh fleeing away from there. He also saw Sada Nand Singh lying injured and learnt from him that "Hamra Nagina Ke Beta Jharua Goli Maar Delke, Hum Nahi Bachbai." His further evidence is that on account of land dispute this occurrence took place.

8. Now, the remaining witnesses, P.W. 1, Bindeshwari Singh, P.W. 2, Laddu Singh, P.W. 4, Mathuri Singh and P.W. 5, Bipin Kumar Singh, are the eye witnesses to the occurrence.

The evidence of P.W. 5, Bipin Kumar Singh, the informant, is that on 24.8.1989, he alongwith his father was getting his Kheri crops harvested in his land situated in Rajwara Bahiyar. At about 11 A.M., the accused, Jharo Singh, Nagina Singh, Rakesh Singh with three nuts, Mushan Singh and Patuli Singh with three nuts and lathi came and the accused Mushan Singh protested his father from harvesting the Kheri crops. The accused, Mushan Singh, gave a lathi blow on his (the informant) forehead. Thereafter all the accused surrounded his father, Sada Nand Singh and accused Nagina Singh exhorted to shoot him down. On his order, the accused-Appellant, Jharo Singh, fired at him which hit in the abdomen of

Sada Nand Singh and he fell down injured on the ground and the accused persons fled away from there. Then Mathuri Singh, P.W. 4, who was in his adjacent Basa and Bindeshwari Singh, P.W. 1, who was cutting grass came at the P.O. and witnessed the occurrence. Besides them Mazdoors engaged in harvesting the crops had also seen the occurrence. Mathuri Singh, P.W. 4, brought a cot from his Basa and while his father was being removed to Telghi Hospital for treatment, on the way he died in Kushmaha Bahiyar near the place of Mahant Baba. He has further stated that from there he went to the police station and lodged F.I.R. His fardbeyan was recorded by S.N. Jha and he put his signature thereon (Ext. No. 1). P.W. 2, Laddu Singh, also put his signature on the fardbeyan. In cross examination at para 6 his evidence is that the trial area of P.O. land is 9 Kathas and in the adjacent west the Appellant, Nagina Singh, has also got his land measuring 9 Kathas. He has further stated that in the recent survey the P.O. land has been entered in the name of" Tarni Singh, his vendor, and his father had purchased the said land from him on 9.2.1982. He has further stated that he had handed over the blood stained clothes like towel, lungi and ganzi of his father to the I.O.. Blood oozed out from the abdomen of his father but the injured portion was. wrapped by a towel. His further evidence is that after the departure of the accused persons, Ayub, Aruna Jha, Sheikh Muslim and Sheikh Janno, had arrived at the P.O.

The evidence of P.W. 1, Bindeshwari Singh, P.W. 2, Laddu Singh and P.W. 4, Mathuri Singh, is that on the alleged date at 11 A.M. while Sada Nand Singh was getting his kheri crops harvested in his field, the accused, Jharo Singh, Rakesh Singh, Nagina Singh, with three nuts Mushan Singh and Patuli Singh with there nuts and lathi arrived in that field and protested Sada Nand Singh from harvesting the kheri crops. The accused. Mushad Singh, gave a lathi blow on the head of Bipin Kumar Singh, P.W. 5, the informant. Thereafter, all of them surrounded Sadanand Singh and the accused, Nagina Singh instigated to shoot him. On his order, the accused-Appellant, Jharo Singh fired at Sada Nand Singh which hit in his abdomen and all of them made good escape in the eastern direction. P.W. 1, Bindeshwari Singh, wrapped a towel around his injured portion and P.W. 4, Mathuri Singh brought a cot from his Basa. While the injured Sada Nand Singh, was being removed to Telghi Hospital for treatment he died on the way near the place of Mahanta Baba in Kushmaha Bahiyar. The informant, Bipin Kumar Singh, P.W. 5 went to the police Station from there. The further evidence of P.W. 1 Bindeshwari Singh and P.W. 2 Laddu Singh is that the accused-Appellant Nagina Singh has got his land adjacent west to the disputed land purchased by Sada Nand Singh from one Tarni Singh, the cousin brother of accused-Appellant, Nagina Singh. The accused-Appellant, Nagina Singh, also claimed share in the disputed land and hence the present occurrence. In cross examination, P.W. 1, Bindeshwari Singh, has stated that: at the relevant hour of the occurrence he was cutting grass in Rajwara Bahiyar. The area of the land on which the occurrence of murder took place is nine kathas and in its adjacent west the Appellant Nagina Singh has got his land. The total area of both the land is 18

Kathas. He has further stated that the deceased Sada Nand Singh had purchased the aforesaid land from one Tarni Singh about 4/5 years prior to the occurrence. He has furnished the boundary on the aforesaid 18 kathas of the land. According to him in the north Sk. Ayub, in south the deceased Sada Nand Singh in east Mahendra Singh Jotdar and in the west Sk. Ali got their land in the boundry of the above both composite land. He has further stated that in the year, 1978 the Appellant Nagina Singh had mortgaged the said land in favour of him (this witness) and the deceased Sada Nand Singh. His further evidence is that the police visited the RO; on the very day of the occurrence. P.W. 2, Laddu Singh, In his cross examination, has stated that Bablu @ Bipin Singh, the informant is his brother in relation. On the day of the occurrence at about 11 A.M. he was in his Basa situated in Rajwara Bahiyar and the deceased Sada Nand Singh was at a distance of 300 yards from there. The accused-Appellant, Nagina Singh, has also got his land near Basa and on the alleged date there was maize crops in his land. P.W. 4, Mathuri Singh, in his cross examination has stated that the total area of P.O. plot is 18 kathas and on partition it was divided in two equal parts measuring 9 kathas each. At para 8 of his cross examination he has deposed that Amrit Singh died leaving behind four sons, Tulsi Singh, Eklal Singh, Paltu Singh and Gulab Singh. Tarni Singh was the son of Gulab Singh and Appellant, Nagina Singh, is the son of Paltu Singh. Tarni Singh and the Appellant Nagina Singh happened to be the cousin brothers. He has further stated in his cross examination at para 9 that in the year, 1978 the Appellant Nagina Singh had mortgaged the P.O. land to Tarni Singh, Sindeshwari Singh P.W. 1 and the deceased Sadanand Singh.

9. P.W. 7, Chandra Nand Jha is the investigating officer of this case. He has proved formal F.I.R. (Ext.3) and Fard beyan (Ext. 1/1). His evidence is that after recording the fard beyan he switched over for investigation and visited the P.O. on the same day situated at Rajwara Bahiyar. There was kheri crop in the P.O. land and a portion of which was found harvested from the western side. He found blood there and prepared inquest report of the deceased Sada Nand Singh in presence of the witnesses Bhabisya Kumar Singh and Dilip Kumar Singh. He found the dead body submerged with blood and sent the dead body for post mortem examination. He examined the witness and submitted charge sheet. In cross examination he has stated that while he was on way to the place of occurrence he also visited Kushmaha Bahiyar and found there bloodstained Napkin, Lungi and towel This witness failed to recollect about seizure of bloodstained clothes of the deceased.

10. On the other hand, four defence witnesses have been examined. They are Diwakar Choudhary, D.W. 1, Md. Salim, D.W. 2, Vilakshan Thakur, D.W. 3 and Hari Nath Malakar, P.W. 4. D.W. 1, Diwakar Choudhary, has proved the signature of the Appellant Nagina Singh on the mortgaged deed executed by him in the year 1982 in favour of Mahesh Jha (Ext-"A"). In cross examination his evidence is that Mahesh Jha got the said mortgaged deed executed in his presence. The evidence of D.W. 2, Md. Salim, is that at the relevant hour of the occurrence he

was cutting grass in his field in Musha Mauja situated adjacent south to the field of Appellant Nagina Singh. At about 10 A.M. Sada Nand Singh along with three labourers came and uttered for having forceful possession of the I.O. land in question. He alongwith the labourers started harvesting kheri crops in course of which a revolver kept in his waist misfired and hit in the left side of his abdomen. He became injured. He with the help of the labourer wrapped his injured portion from which blood started oozing out. Sada Nand Singh became unconscious. About 10-15 persons including Laddu Singh came and removed Sadanand Singh to the hospital for treatment. He further stated that the entire 18 kathas of the land has been in possession of the Appellant Nagina Singh and the said land never came in the cultivating possession of the deceased Sada Nand Singh. D.W. 1 Bilakshan Thakur has deposed that in his presence the Appellant Nagina Singh got the mortgaged deed redeemed on 21.5.81 on payment of Rs. 1,000/- to Bindeshwari Singh, P.W. 1, and the deceased Sada Nand Singh, and they put their signature thereon. D.W. 4, Hari Nath Malakar, has proved the signature of Rameshwar Choudhary scribe of mortgaged deed executed by the Appellant Nagina Singh in favour of the deceased Sada Nand Singh and Bindeshwari Singh, P.W. 1 on 20.7.78 (Ext. B). In cross examination he has stated that the deed was executed in his presence.

11. After hearing the learned Counsel for the parties and the perusal of the evidence on record I feel that the case of the prosecution is failing on account of the following grounds:

(i) The prosecution has not filed any document of the purchase of the P.O. land. It has come in the evidence of the informant Bipin Kumar Singh, P.W. 5, that on 9.2.82 the deceased Sadanand Singh purchased the P.O. land measuring 9 kathas from one Tarni Singh and adjacent west to the P.O. land 9 kathas of the land belongs to the Appellant Nagina Singh, cousin brother of Tarni Singh. P.W. 1, Bindeshwari Singh, and P.W. 2, Laddu Singh, have also deposed the aforesaid factum of the purchase of the P.O. land by the deceased Sada Nand Singh from one Tarni Singh. According to them the Appellant Nagina Singh also claimed the P.O. land and hence the occurrence. The I.O. Chandra Nand Jha, P.W. 7 visited the P.O. on the same day but he failed to prepare any sketch map to establish the place of occurrence.

On the other hand, the defence has filed the documents to show that the occurrence, took place on the land bearing Khata No. 411, Plot No. 2277 having total an area of 75 decimals. In its support two mortgaged deeds and Khatiyan were brought on record by the defence.

In Khatiyan (Ext. B) Khata No. 411, Plot No. 2277 measuring 75 decimals has been shown in the possession of the Appellant Ram Nagina Singh. The evidence of D.W. 3, Vilakshan Thakur, indicates that the Appellant Nagina Singh mortgaged the said land to the deceased, Sadanand Singh and Bindeshwari Singh, P.W. 1 on 20.7.78 for Rs. 1,000/- and redeemed on 21.5.81. The deceased Sada Nand Singh and Bindeshwari Singh, P.W. 1, signed the documents

contained in Exts. A/1 and A/2. P.W. 1 Bindeshwari Singh at Para 6 of his cross examination had admitted the execution of the mortgaged deed of the P.O. land by the Appellant Nagina Singh in favour of him and the deceased, Sada Nand Singh. The evidence of D.W. 1, Diwakar Choudhary, further indicates that on 4.3.82 the Appellant Nagina Singh again mortgaged the said land to one Mahesh Jha and proved his signature (Ext. A). In spite of the claim of the purchase of the P.O. land by the deceased, Sada Nand Singh, no such document has been filed by the prosecution.

It may be pointed out here that Khatiyani (Ext. B) and the signatures of the deceased, Sada Nand Singh (Ext. A/1) and Bindeshwari Singh, P.W. 1, (Ext. A/2) on the mortgaged deeds were not considered by the trial Judge because they remained unsigned by the Presiding Officer, but in my opinion, it was mere irregularity and not illegality. The trial Court committed an error of record by not considering those documents. Thus, it is established that on the alleged date of occurrence the alleged plot was owned and possessed by the deceased, Sada Nand Singh.

(ii) On coming to the ocular evidence I find that P.W. 1, Bindeshwari Singh, P.W. 2, Laodu Singh, and P.W. 5, Bipin Kumar Singh, the informant have claimed to be the witnesses of the occurrence. The evidence of P.W. 5, Bipin Kumar Singh, the informant, is that his uncle Mathuri Singh, P.W. 4, who was present near by his Basa and Bindeshwari Singh, P.W. 1, who was cutting grass in nearby the field, arrived at the P.O. and saw the occurrence. Several labourers present there also witnessed the occurrence but he failed to name any of them, His further evidence is that the place of occurrence was surrounded from all sides by maize crops. The evidence of P.W. 1 Bindeshwari Singh, is that at the relevant hour of the occurrence he was cutting grass at a distance of about 10 yards from the place of occurrence and he remained standing there. He has specifically stated at para 8 of his cross examination that he did not move from the grass cutting place. The evidence of P.W. 2, Laddu Singh, on (sic) is that on the alleged date of the occurrence at 11 A.M. he was at his Basa and Sada Nand Singh was at a distance of 300 yards from his Basa. The evidence of P.W. 4, Mathuri Singh, is that he concealed himself in a Rahar field and saw the occurrence from a distance of 15 steps. At paragraph 6 of his cross examination he stated that his eye sight has become hazy since the month of the last Kartic.

Thus, it appears from the plain reading of the evidence of P.W. 1, Bindeshwari Singh, P.W. 2 Laddu Singh, and P.W. 4, Mathuri Singh, that they had arrived at the place of occurrence after the departure of the accused-Appellants from there and had not seen the actual occurrence. This sort of finding finds corroboration from the evidence of P.W. 3, Md. Ayub. The evidence of P.W. 3, Md. Ayub, is that on the day of the occurrence while he was at this Basa situated at a distance of 200 yards from the place of occurrence he heard sound of firing. On hearing the sound of firing he rushed towards the field of the deceased, Sada Nand Singh. He saw the accused persons fleeing away from the place of occurrence and also saw

P.W. 1, Bindeshwari Singh, P.W. 4, Mathuri Singh and P.W. 5, Bipin Kumar Singh, the informant, going towards the place of occurrence.

(iii) Further it has come in the evidence of the informant, Bipin Kumar Singh, that after the departure of the accused persons witnesses, Md. Ayub, Arun Jha, B.K. Muslim and Sk. Gannu arrived at the P.O. but none of them except Md. Ayub was produced and examined. The prosecution has only examined the closely related witnesses, the brothers of the deceased, Sada Nand Singh and cousin of the informant, who have given parrot like tutored statements. Their evidence gives an assurance about the false implication of the Appellants in this case on account of the land dispute.

12. On appreciation of the entire materials on record, above discrepancies and the circumstances, I am satisfied that the prosecution has failed to prove beyond all reasonable doubts that the Appellants were responsible for the commission of the murder of Sada Nand Singh, the father of the informant, Bipin Kumar Singh.

13. In the result, I allow this appeal, set aside the judgment of conviction and sentence passed by the Addl. District and Sessions Judge, Naugachia, and acquit both the Appellants. The Appellant Jharo Singh who is in custody shall be set at liberty immediately, if not required in any other case. The Appellant Nagina Singh is on bail, so he is discharged from the liability of his bail bond.