

(2007) 12 PAT CK 0007
In the Patna High Court
Case No : Criminal Appeal No. 97 of 1988

Niranjan Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 10-12-2007

Acts Referred:

Arms Act, 1959 — Section 25(A), 26
Criminal Procedure Code, 1973 (CrPC) — Section 164
Penal Code, 1860 (IPC) — Section 148, 149, 302, 307, 34

Citation : (2009) 1 PLJR 477

Hon'ble Judges : Syed Md. Mahfooz Alam, J; Shiva Kirti Singh, J

Bench : Division Bench

Advocate : Ranbir Singh, Amicus Curiae, for the Appellant; Ashwani Kumar Sinha, for the Respondent

Final Decision : Allowed

Judgement

S.M.M. Alam, J.—All the three appeals are being disposed of by this common judgment passed in Cr. Appeal No. 97 of 1988 as all the three appeals arise out of a single judgment passed in Sessions Trial No. 110/79 of 1985/87. The appellants have preferred these criminal appeals against the judgment dated 6th February, 1988, passed by Sri Lakshman Jee Jha, IInd Additional Sessions Judge, East Champaran. Motihari, in Sessions Trial No. 110/79 of 1985/87 whereby he has been pleased to convict appellant Dinesh Mahto and Niranjan Singh for the offence under Sections 148 and 302 of the Indian Penal Code and sentenced them to undergo imprisonment for life u/s 302 of the Indian Penal Code. He has further been pleased to convict appellant Upendra Singh for the offence under Sections 148 and 302 / 149 of the Indian Penal Code and sentenced him to undergo imprisonment for life under Sections 302 / 149 of the Indian Penal Code. It appears that the learned trial Court has not passed any separate sentence for the offence u/s 148 of the Indian Penal Code.

2. The prosecution case as per the fardbayan (Ext.-1) of P.W. 3 Vishwanath

Baitha son of Sheoraj Baitha of village Kuriya, P.S. Pipra, District-East Champaran recorded by S.I. Man Mohan Prasad of Pipra P.S. on 13.3.83 at 2.00 A.M. at village Kuriya, in brief, is that on 12.3.83 at about 6.00 P.M. his neighbour Mukhlal Baitha came to the Darwaza of the informant and kept there trimmed branches of Sisam tree claiming that the land belonged to him. A Panchayati was held amongst the parties but the informant's father did not agree to the Panchayati, whereupon, Mukhlal Baitha chased the informant's father with a countrymade gun. In order to save his life, the informant's father ran towards the Darwaza of Parichchan Singh and fell down on his feet and requested him to save his life but in the meantime, Mukhlal Baitha fired from behind from his countrymade gun, as a result of which, the informant's father and Parichchan Singh both sustained firearm injury and fell down. Since Parichchan Singh had sustained serious injuries, as such, he was immediately taken to hospital by some co-villagers and the informant's father alongwith his brother Ram Sagar Baitha proceeded towards Police Station but when they reached near the village pond Mukhlal Baitha intercepted them and then due to fear the informant's brother and father returned back to their house.

Further case is that on the same day at about 9-10 P.M. Mukhlal Baitha armed with gun, Niranjn Singh armed with farsa, Upendra Singh, Prabhu Rai and Dinesh Mahto armed with countrymade gun alongwith two unknown persons, who were also armed with countrymade gun came to the cattle shed of the informant. As soon as they came there Mukhlal Baitha opened firing from his gun at the informant's father, who being injured fell down. The informant's brother Ram Sagar Baitha rushed to save his father, whereupon, all the abovenamed accused persons started firing upon the informant's brother as well as his father, as a result of which, both persons sustained multiple firearm injuries. The informant witnessed the entire occurrence hiding himself in the same thatched room. After the occurrence all the accused persons fled away saying that they had taken revenge from the enemy. The occurrence was witnessed by the informant and his family members and several villagers but due to fear no one could dare to oppose the heinous crime committed by the accused persons. The motive behind the occurrence was that there were series of litigations pending between the informant's father and Mukhlal Baitha and Niranjn Singh with respect to land dispute. The other accused persons are said to be the associates of Mukhlal Baitha and Niranjn Singh.

3. On the basis of the above fardbayan of the informant Vishwanath Baitha, Pipra P.S. Case No. 12 of 1983 dated 13.3.83 was registered under Sections 302, 307 / 34 of the Indian Penal Code and Section 25(A) / 26 of the Arms Act and accordingly, a formal F.I.R. (Ext.-4) was drawn up. However, the Investigation was taken up by S.I. Man Mohan Prasad of Pipra P.S. at the spot itself. During investigation, the Investigating Officer inspected the place of occurrence, prepared inquest reports of the two dead bodies, and also prepared seizure list of blood stained earth, recorded further statement of the informant as well as the statements of the witnesses, obtained post mortem report of both the deceased

and after completing the investigation submitted charge-sheet against the appellants and others, on the basis of which cognizance was taken and thereafter by order dated 21.5.85 the appellants were committed to the Court of Sessions for trial. However, the case of the absconding accused, namely, Mukhlal Baitha, Musa Sah, Prabhu Rai and Heera Turha was separated.

4. During trial, all the three appellants were charged for the offence under Sections 148 and 302 of the Indian Penal Code and in the alternative they were further charged u/s 302 read with Section 149 of the Indian Penal Code. The appellants denied the charge and claimed to be tried and, thus, the trial proceeded and by the impugned judgment the appellants were convicted and sentenced to undergo imprisonment for life for the offences as stated above.

5. The defence of the appellants is total denial of the occurrence. However, the specific defence of accused Niranjana Singh is that on the alleged date of occurrence a dacoity was committed in the house of the informant and during the commission of the dacoity the informant's father and brother were murdered but due to previous enmity he has been implicated in the false case.

6. From perusal of the lower court records as well as the impugned judgment it appears that the prosecution in order to prove its case has examined altogether seven witnesses, namely, Bharat Baitha (P.W. 1), Dhaneshwari Devi (P.W. 2), Vishwanath Baitha (P.W. 3), Shesh Narain Singh (P.W. 4), Dr. K.K. Bajpai (P.W. 5), Abdul Jabbar (P.W. 6) and Dr. H.N. Gupta (P.W. 7). The defence has not examined any witness.

7. Out of the abovenamed seven witnesses, only three witnesses i.e. P.W. 1, P.W. 2 and P.W. 3 are on the point of occurrence. P.W. 4 is on the point of preparation of inquest reports and seizure list of blood stained earth. P.W. 6 is a formal witness, who has proved the formal F.I.R., whereas, P.Ws. 5 and 7 are the two doctors, out of whom P.W. 5 had conducted post mortem of the two deceased and P.W. 7 had examined injured Parichchan Singh, who had sustained firearm injury. Thus, there are only three witnesses who are on the point of actual occurrence and first of all, I would like to discuss their evidence.

8. P.W.1 is Bharat Baitha. He is the own brother of the informant being one of the sons of the deceased Sheo Raj Baitha. He has deposed that on 12.3.83 at about 6.00 P.M. he was at his house. In the meantime, Mukhlal Baitha came there and kept trimmed branches of Sisam tree, whereupon, his father Sheo Raj Baitha protested. Mukhlal Baitha told his father that the land belonged to him. On protest raised by his father, Mukhlal Baitha chased his father having a countrymade gun in his hand. His father rushed towards the house of Parichchan Singh and requested him to save his life. Parichchan Singh requested Mukhlal Baitha to leave the place but in the meantime Mukhlal Baitha fired from his countrymade gun causing injuries to Parichchan Singh as well as his father Sheo Raj Baitha. Parichchan Singh was carried away to hospital by the villagers and when his father Sheo Raj Baitha was going to the Police Station alongwith his

brother Ram Sagar Baitha, they were intercepted by Mukhlal Baitha near the village pond and due to fear both the persons returned back to their cattle shed. At that time, he, his mother Dhaneshwari Devi (P.W. 2) and brother Vishwanath Baitha (P.W. 3) were also present in the said cattle shed. This witness has further deposed that on the same night at about 9-10 P.M., Mukhlal Baitha, Upendra Singh, Dinesh Mahto, Prabhu Rai armed with countrymade gun and Niranjn Singh armed with farsa alongwith two unknown persons, who were also armed with gun, came there and started doing firing from their respective weapons aiming at his father. On being injured, his father fell down, whereupon, his brother Ram Sagar Baitha rushed to save his father then Prabhu Rai fired and accused Niranjn Singh attacked his father with farsa on neck and shoulder. Due to firing Ram Sagar Baitha also sustained injury and fell down. Being injured both his father as well as his brother died at the spot. P.W.1 has further deposed that at the time of occurrence one lantern was burning in the cow shed and in the light of the lantern he had identified the accused persons. He has further deposed that after the death of his father and brother Ram Sagar Baitha all the accused persons fled away shouting that they had killed their enemies.

9. P.W. 2 Dhaneshwari Devi in her evidence has deposed that on the alleged date of occurrence she was sitting at her cow shed alongwith her husband Sheoraj Baitha, and her three sons Ram Sagar Baitha, Bharat Baitha and Vishwanath Baitha. She was applying medicine on the injury of her husband which he had sustained due to firing. In the meantime, accused Upendra Singh armed with countrymade gun, Dinesh Mahto armed with double barrel gun, Prabhu Rai and Mukhlal Baitha armed with gun and Niranjn Singh armed with farsa alongwith two other unknown persons entered into her covv shed. Mukhlal Baitha, Dinesh Mahto and Prabhu Rai started firing at her husband, as a result of which, her husband sustained injury and he fell down and died at the spot. Her eldest son Ram Sagar Baitha tried to save his father, whereupon, Niranjn Singh inflicted farsa blow on his neck and Upendra Singh fired at him from his countrymade gun due to which Ram Sagar Baitha also sustained firearm injury and fell down. He also died at the spot. She has further deposed that after committing the murder of her husband and her son Niranjn Singh shouted that he had taken revenge from his enemy and then all the accused persons fled away.

10. The informant, namely, Vishwanath Baitha, has been examined as P.W. 3 in this case. His evidence is as follows:-

On 12.3.83 at 6.00 P.M. Mukhlal Baitha came to his darwaza and kept the dry branches of Sisam tree at his darwaza claiming the land of the darwaza of his own. He also started abusing the informant and his father. Mukhlal Baitha, Upendra Singh, Niranjn Singh, Dinesh Mahto and Prabhu Rai asked the informant's father to give up his claim over the said land but the informant's father did not agree and claimed that the land belongs to him. Mukhlal Baitha started abusing the informant's father and chased him who fled to the darwaza of Parichchan Singh for his safety. Mukhlal followed his father and fired at him, as

a result of which, the informant's father sustained injury in his left thigh. Due to the said firing Parichchan Singh also sustained injury and he was removed to hospital by Ram Ekbal Singh and Deolachchan Singh. P.W. 3 has further deposed that after the said occurrence he alongwith his brother Ram Sagar Baitha and his father was proceeding towards Police Station but near the village pond they were intercepted by Mukhlal Baitha and, so, they all returned back to their cow shed and started applying medicine on the injury of his father. P.W. 3 has further deposed that at about 9.00 P.M. Mukhlal Baitha, Prabhu Rai, Dinesh Mahto, Niranjana Singh, Upendra Singh and two unknown persons came to his cattle shed. Mukhlal Baitha, Prabhu Rai, Dinesh Mahto and Upendra Singh were armed with gun, whereas, Niranjana Singh was armed with farsa. As soon as they came there Mukhlal Baitha, Prabhu Rai, Dinesh Mahto and Upendra Singh started firing from their respective firearms. His brother Ram Sagar Baitha rushed to save his father, whereupon, accused Niranjana Singh inflicted farsa blow at him and at his father, as a result of firing his father as well as Ram Sagar Baitha both sustained firearm injury and within ten minutes both the persons died and thereafter all the accused persons fled away saying that their enemies had been killed. He has further deposed that about 1.30 A.M. S.I. Man Mohan Prasad arrived at the cattle shed and recorded his fardbayan and he also inspected the place of occurrence.

11. P.W. 5 is Dr. K.K. Bajpai. His evidence shows that on 13.3.1983, he was posted as Assistant Civil Surgeon in Sadar Hospital, Motihari and on that very date he had performed the post mortem on the dead body of Sheo Raj Baitha son of Bigu Baitha and Ram Sagar Baitha son of Sheo Raj Baitha of village Kuriya P.S. Pipra District-East Champaran. According to his evidence, he had found following ante mortem injuries on the dead body of deceased Sheo Raj Baitha:-

- (i) One incised wound 3" x 2" x muscle deep on lateral aspect of right side of abdominal wall just below right hip line.
- (ii) Two wounds of entrance of 1/2" diameter with charred margins on right chest wall lower portion.
- (iii) Two wounds of exit right side of back wall of chest.
- (iv) On dissection right lobe of liver was found torn into pieces and right cavity of chest was found full with blood.

He has opined that injury No. (i) was caused by sharp cutting weapon may be of farsa, whereas, injury Nos. (ii) to (iv) were caused by firearms and injury No. (ii) was the cause of death which was sufficient in the ordinary course of nature to cause death. He has further opined that the time of death was within twenty four hours of the post mortem examination. He has proved his post mortem report with respect to deceased Sheo Raj Baitha which has been marked as Ext.-3.

12. P.W. 5 has further deposed that on post mortem examination on the dead body of deceased Ram Sagar Baitha, he had found the following ante mortem injuries on his dead body:-

(i) One incised wound of size 5" x 1" x 5" on lateral aspect of left shoulder causing dislocation of shoulder joint.

(ii) One incised wound 3" x 6" x 6" on left side of neck at the root causing cutting of large vessels of neck and trachea.

(iii) Half inch diameter size wound of entrance with black margins on left side of chest wall lateral aspect below the axilla with wound of exit on back portion of left chest wall lower portion.

He has further deposed that on dissection laceration of lower lobe of left lung with blood filling the left chest cavity was found. According to his opinion, injury Nos. (i) and (ii) on the person of deceased Ram Sagar Baitha were caused by sharp cutting weapon such as farsa, whereas, injury No. (iii) was caused by firearms and injury Nos. (ii) and (iii) were sufficient in ordinary course of nature to cause death. He has further opined that injury No. (iii) was caused by the shot fired from close range extending to six feet. He has further opined that the time of death of both the deceased was within twenty four hours from the time of post mortem examination. The post mortem report of deceased Ram Sagar Baitha was also proved by this witness and marked Exhibit-3/1.

13. P.W. 4 Shesh Narain Singh is on the point of preparation of inquest report as well as seizure of blood stained earth. In his evidence he has deposed that the inquest report of both the deceased were prepared by the police in his presence but so far seizure of blood stained earth and farsa is concerned, he has deposed that no such seizure was made in his presence although he has admitted his signature on the seizure report (marked Ext. 2/4). The signature of this witness on the inquest report of Ram Sagar Baitha has been marked as Ext.-2 and on his identification the signature of another witness, namely, Ram Swaroopi Singh has been marked as Ext. 2/1. The signature of this witness on the inquest report of Sheo Raj Baitha has been marked as Ext.-2/2 and the signature of Ram Swaroopi Singh over the same has been marked as Ext.-2/3. Since this witness has not deposed on the point of occurrence, as such, his evidence is not very much relevant so far the actual occurrence is concerned. Moreover, it appears that this witness has been declared hostile by the prosecution.

14. P.W. 6 Abdul Jabbar is out and out a formal witness and he has proved formal F.I.R. which has been marked as Ext.-4. The last witness is P.W. 7 Dr. H.N. Gupta. He has proved the injury report of Parichchan Singh which has been marked as Ext.-5. At the appropriate stage, I would like to make discussion upon his evidence.

15. Learned Amicus Curiae at the outset submitted that even according to the defence the two deceased were killed by unknown dacoits at the place of occurrence i.e. Gowas belonging to the deceased and, therefore, the main issue to be decided is whether the occurrence took place in the manner alleged by the prosecution and whether the witness who all belong to family of the two deceased, can be relied to hold that they were eye witnesses of the occurrence

which took place in dark hours outside the house in a cattle shed and whether their claim of identification in the light of lantern as given out in Court is reliable and acceptable when no source of light is mentioned in the fardbayan of Bishwanath Baitha, P.W. 3 and no seizure list has been brought on record to show that the investigating officer had found and seized any lantern at the place of occurrence. Learned Amicus Curiae has further submitted that the material witness i.e. P.Ws. 1, 2 and 3 are interested witnesses on account of admitted previous enmity between the parties and, therefore, their evidence needs careful scrutiny and appreciation. It was further submitted that the material witnesses were cross-examined with reference to their earlier statements before the police regarding the manner of occurrence as well as source of light but the contradictions could not be brought on record due to non-examination of the investigating officer as a witness and that has prejudiced the defence of the appellants.

16. On a careful perusal of the prosecution case as given in the fardbayan of P.W. 3, it is noticed that genesis of the main occurrence was alleged to be an earlier occurrence in the evening of the same date wherein a Panchayati was held due to keeping of Sisam tree trimmings and allegedly Mukhlal Baitha chased father of the informant, deceased Sheo Raj Baitha and fired causing firearm injuries to Sheo Raj Baitha and one Parichchan Singh. Allegedly, the two deceased had then proceeded to the police station but were surrounded by Mukhlal near the village pond and out of fear they returned home. In Court, the informant, P.W. 3 did not support the story of Panchayati and instead the names of four accused persons were introduced as persons present with Mukhlal Baitha, who pressurized informant's father to give up claim over the concerned land. In Court, the informant has specified that firing made by Mukhlal in the evening hours caused injury on the left buttock of his father and also to one Parichchan Singh. According to P.W. 3, many persons of the neighbourhood had seen the alleged occurrence but none of them or Parichchan Singh was ready to support the prosecution case. In Court, he has added that near the village pond accused appellant Niranjana Singh was also with Mukhlal Baitha and they abused the informant, his family members forcing them to return home. At one place he has stated that his father was being carried while tied in a bed-sheet and at another place he has deposed that near the pond Mukhlal Baitha and Niranjana Singh chased the informant and his family members but did not cause any assault. He has admitted that the occurrence took place on a dark night and the alleged lantern was not seized by the investigating officer. He has also admitted that there were two unknown persons among the miscreants who had covered their faces and he could not identify them. He has feigned ignorance about his earlier statements made before the Magistrate u/s 164 Cr.P.C. as well as before the investigating officer. He has further admitted that there was no enmity with appellant, Upendra Singh and he did not know appellant, Dinesh Mahto from before. In Court, he alleged enmity with Niranjana Singh because allegedly Niranjana Singh had encroached upon his land to construct "Bathan" but no

particulars of any previous litigation was furnished. A suggestion on behalf of the appellant Niranjana Singh that informant had implicated him at the instance of one Kedar Singh, an immediate neighbour of the informant, was denied to the extent that the informant denied signature of Kedar Singh as a witness on the fardbayan although the signature of one Kedar Singh is available on the fardbayan, Ext.-1.

17. It has come in the evidence of P.W.1, Bharat Baitha, a brother of the informant, that the cattle shed (Gowas) is in the form of a thatched hut (Marai) consisting of one room which is 10-12 cubit long and 5-7 cubit wide and there is a door on the southern side facing east. According to evidence on record all the material witnesses were inside the cattle shed at the time of the alleged occurrence and at least two cattle were also tied inside. The objective findings of the investigating officer at the place of occurrence are not available on record but the description of the cattle shed and the evidence of P.Ws. 1, 2 and 3 regarding the manner of the occurrence rules out any place where the three material witnesses could have hidden themselves so as to avoid any injury to them in spite of alleged indiscriminate firing by six persons armed with firearms. In the FIR the informant has claimed that he was hiding himself in the cattle shed and saw the occurrence while hiding. It has further been stated in the fardbayan that may be his mother, sister and other family members had also identified the miscreants and if it was so, they would disclose in their statements. In the earliest version it is not the case of the informant that his brother, P.W. 1 and his mother, P.W. 2 were also present with him inside the cattle shed so as to see the alleged occurrence.

18. P.Ws. 1 and 2 claimed to be in the cattle shed and seen the occurrence. They have apparently supported the prosecution case but in absence of any injury to these material witnesses it appears doubtful that they were present inside the cattle shed so as to witness the alleged occurrence from there as claimed by them. The dark night occurrence could not have been seen and specially the miscreants could not have been identified unless there was a source of light. Non-mention of any source of light in the fardbayan and admission of the informant that no lantern was seized by the investigating officer creates some doubt as to whether there was any source of light at the cattle shed at the time of the alleged occurrence.

19. So far as the manner of occurrence is concerned, on going through the fardbayan it is clear that allegedly Mukhlal had caused firearm injury to Sheo Raj Baitha in the evening hours and again he caused firearm injury to Sheo Raj in the main occurrence at night. The other deceased Ram Sagar son of Sheo Raj was allegedly fired upon by all the miscreants having firearms and as a result both the deceased became seriously injured and died. Although in the fardbayan appellant Niranjana was said to be armed with farsa, there was no allegation that he used farsa on any of the deceased. The medical evidence discloses that deceased Sheo Raj had sustained one incised wound by sharp cutting weapon

such as farsa on right side of abdominal wall besides sustaining two wounds of entry caused by firearms and two wounds of exit. Both the wounds of entry were having charred margins. It is obvious that the claim of the prosecution that Sheo Raj had sustained a firearm injury on the left hip (as per P.W. 3) in course of the occurrence during evening hours has not been found by the doctor in course of post mortem examination and though an incised wound was found on his body, P.W. 1 has deposed in Court that two farsa injuries were caused to Sheo Raj on the neck and shoulder by accused Niranjana Singh. According to P.W. 2, three persons fired on Sheo Raj but no assault was made on him by farsa and Niranjana assaulted by farsa on the neck of the other deceased Ram Sagar upon whom Upendra also fired with countrymade gun. According to P.W. 3, four persons fired at Sheo Raj and several rounds were fired on deceased Ram Sagar by all and Niranjana assaulted both the deceased with farsa. According to the doctor, the deceased Ram Sagar had sustained two incised wounds and one wound of entry with black margin on the left side of chest caused by firearm. The charring nature of firearm injuries on the chest of the two deceased shows firing from a close range with precise aim and not indiscriminate firing from near the door of the Gowaas as claimed by the witnesses. The door was towards east and Sheo Raj was towards west on a bed. The aforesaid discussion clearly shows that the prosecution case as given out by the three material witnesses is neither consistent with each other nor with the medical evidence.

20. The admission of P.W. 3, the informant, that he saw at least two unknown persons among the miscreants whose faces were covered also creates a doubt that the offence may have been committed by persons who had concealed their faces although the night was dark and it was later when the police arrived at the place of occurrence by itself, on account of deliberation for which at least four hours time was available, the name of enemies or the supporters of the enemies could have been introduced as the accused. P.W. 3, the informant, has admitted that no one from his family went to inform the police.

21. In a serious case of double murder, the non-examination of the investigating officer without any good reason when details of the P.O. like position of dead bodies, presence of blood etc. were relevant and when attention of the witnesses was drawn to their earlier statements on important issues like disclosure of source of light or manner of occurrence leaves no option but to hold that withholding of the evidence of investigating officer in this case has prejudiced the defence of the appellants. The submission on behalf of the appellants as made by learned Amicus Curiae that the prosecution case should not be accepted on the face value of evidence of interested witnesses like P.Ws. 1, 2 and 3 is found to have sufficient merit. Non-examination of an alleged witness of the genesis of the occurrence, namely, Parichchan Singh whose injuries have been proved by Dr. H.N. Gupta, P.W. 7 as well as non-examination of any witness from neighbourhood also creates doubt regarding truthfulness of the case. As a result of aforesaid discussion, it is not found possible to accept the finding of the trial court that the prosecution has proved the charges against the three appellants

beyond reasonable doubts. In view of failure of the prosecution witnesses to prove the manner of the alleged occurrence in a consistent and reliable manner as also on account of doubt regarding presence of the witnesses or any lantern at the place of occurrence so as to identify the appellants as the miscreants, the appellants deserve to be extended the benefit of doubt. Accordingly, their appeals are allowed and they are acquitted of all the charges. Since all the appellants are on bail hence, they shall stand discharged from the liability of their bail bonds.

Shiva Kirti Singh, J.

22. I agree.