

(2016) 06 PAT CK 0077

In the Patna High Court

Case No : Criminal Appeal (DB) No. 62 of 2011.

Nitin Kumar @ Banti, son of Shubh Narayan Singh, Resident of Mohalla Rathaur Tola, Narayan Nagar, P.S. Chapra Muffasil, District - Saran - Appellant @HASH The State of Bihar

Date of Decision : 05-06-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2016) 4 ECRC 79 : (2017) 1 PCCR 43

Hon'ble Judges : Anjana Prakash and Rajendra Kumar Mishra, JJ.

Bench : Division Bench

Advocate : Mr. Sanjay Kumar Singh, Advocate, for the Appellant; Mr. A.K. Sinha, A.P.P, for the Respondent

Final Decision : Allowed

Judgement

Smt. Anjana Prakash, J.(Oral) - Heard learned counsel for the Appellant and learned counsel for the Additional Public Prosecutor.

2. This case has been heard on priority basis on the submission of learned counsel for the Appellant that he has qualified for a Government post, but is unable to face the Interview on account of pendency of this Appeal, under which circumstances, this Appeal is heard out of turn.

3. The above named Appellant has been convicted under section 302 I.P.C. and sentenced to undergo Rigorous Imprisonment for life vide Judgment dated 13.01.2011 passed by the Additional Sessions Judge-XI, Saran at Chapra in connection with Sessions Trial No. 358 of 2001 arising out of Chapra Muffasil P.S. Case No. 123 of 2000.

4. The prosecution case, according to Ajay Kumar Pandey (P.W.4), is that his nephew Kumar Amit had come from Delhi on 02.03.2000 and had gone to attend a function in the house of his maternal uncle Shubhnarayan Singh, where some boys started to fight with each other. Suddenly, in course of it, somebody assaulted the deceased on his stomach with a knife (Chhura), on account of

which, he was injured. He was removed to Chhapra Sadar Hospital for treatment from where, he was referred to P.M.C.H, Patna, where he was brought on 07.03.2000 itself. But in course of the treatment, he died on 21.03.2000 at about 11.20 A.M. and hence, the present information was given before the Officer of Pirbahore Police Station, Patna.

5. During trial the prosecution examined altogether five witnesses.

6. P.W.1 Rajiv Ranjan stated that on 07.03.2000, he had gone to the house of Shubh Narayan Singh along with his nephews Kumar Amit (Deceased). Another nephew namely, Abhisekh and Sanjeev Kumar were also with them. On the terrace, the "Tilak" function was going on in which course, Shubh Narayan Singh, Alok Kumar, Appellant Banti and Barku started abusing his brother-in-law Maheshwar Pandey saying as to what kind of articles had been brought by them. His nephew Kumar Amit protested as to why they were abusing his father. Then all four accused persons took Kumar Amit down and 10-15 minutes later, the daughter of his elder brother-in-law, namely, Jhumki came to inform that they had locked up Amit in the room. They then went down and started to knock the door from where the Appellant Banti ran out with a blood stained knife. Shubh Narayan Singh also ran away. When he went inside, he saw Amit injured and was struggling for life. When he asked him, he disclosed that Shubh Narayan Singh, Alok and Badku had caught hold of him, whereas Appellant Banti had assaulted him with knife on his stomach. He was then removed to Sadar Hospital, Chapra where the Doctor referred him to P.M.C.H., Patna. He informed his brother-in-law about the occurrence and then an Ambulance was arranged and the deceased was operated, but in course of treatment, he died on 21.03.2000. He identified the accused persons in the dock.

In cross-examination, he stated that the deceased was his sister's son and Shubh Narayan Singh was the father of Appellant Banti and the uncle of the deceased meaning thereby that the Appellant and the deceased were cousins. He stated that his brother-in-law Kameshwar Pandey (father of deceased) had not gone to attend the Tilak Ceremony, but his wife and son (mother and brother respectively of the deceased) had gone. He stated a number of persons, who were standing on the terrace and he did not protest, when Amit was taken down by the accused persons. He was allegedly lifted by four persons. He confirmed that he was in the hospital right till the death of his nephew. He stated that the Doctor at Chapra had reported the matter to the Police and hence, he did not report the matter to any Police Officer. He also stated that the father of the deceased Kameshwar Pandey had given information to Chhapra Muffasil Police Station, but he could not remember as to when exactly such report was made.

7. P.W.2 Sanjeev Kumar is another uncle of the deceased, who stated about having gone to the house of the Appellant for attending Tilak Ceremony along with Rajeev Ranjan (P.W.1), deceased and others. Since the Tilak ceremony was in progress, they were on the terrace. Allegedly, the marriage had been got arranged by Kameshwar Pandey, father of the deceased and it was with them

that there was a dispute over the exchange of gifts. In course of the same, cousin brother of the deceased started to altercation with Shubh Narayan Singh, the father of the Appellant and the Appellant himself to which he protested. A little later, Amit was taken down by the Appellant and another person, namely, Barku while they were sitting up-stairs. A little later, his niece Munki came and told them that they had locked up Amit in the room and when they went to the room, they saw the room was locked. They tried to get opened the door. After 5-7 minutes, the door was opened and the Appellant was seen while fleeing away with a knife. While the deceased was in an injured condition. The deceased disclosed that Appellant Banti had assaulted him in his stomach. He was then removed to Chapra Sadar Hospital from where he was referred to P.M.C.H, Patna. In cross examination he stated that he was not involved in fixing the marriage of brother of the Appellant and there were about 50 to 60 persons in the house at the relevant time, including some Advocates. He explained the mode in which the deceased was removed to the Hospital, but he did not inform anyone at the Police Station, Chapra. He confirmed that the deceased died on 21.03.2000 at Patna and he himself did not report to any Police Officer at the Police Station in regard to the occurrence. He learnt about the instant case 20 days after the same was instituted.

8. P.W.3 Kameshwar Panday is the father of the deceased, who stated that on the fateful day, the deceased was taken to Sadar Hospital, Chapra from where he was referred to P.M.C.H. and admitted in a serious condition and in course of treatment, he died. Till date he did not know as to who had wielded the knife blow on his son.

9. P.W.4 Ajay Kumar Pandey stated that he learnt that on the date of occurrence his nephew Amit had been injured and taken to Chhapra Hospital and from where he was referred to P.M.C.H. Patna. His family members also went along with him. He proves his signature on the fardbeyan, which is marked as Exhibit-1 and further stated the deceased died at the Hospital itself.

In cross-examination, he stated that he did not learn as to who had assaulted his nephew with knife.

10. We find that the prosecution has not adduced the evidence of independent and important witnesses like the Investigating Officer and the Doctor. Admittedly, the date of occurrence is 07.03.2000, but the instant case was instituted only on 21.03.2000 i.e. after 14 days of the occurrence, yet no names were disclosed then. P.W. 1 Rajeev Ranjan has stated that he himself was all along at PMCH till his nephew died so there was no reason why the name of the Appellant was not mentioned in the fardbeyan. We also see from his evidence that the mother and another brother of the deceased were also at the "Tilak" function. Neither have they been examined nor has any explanation been offered in this regard. If at all they were present at the scene of occurrence there was no reason why they did not disclose the facts narrated by P.W. 1 and P.W. 2 to the Informant. Subsequently, P.W. 1 Rajeev Ranjan and P.W.2 Sanjeev Kumar deposed as eye-

witness and named the present Appellant as the assailant of the deceased. However, father of the deceased stated that till date he had not learnt as to who had assaulted his son in which circumstance, the evidence of P.W.1 and P.W.2, who are close relatives of not only the deceased but also of the informant Ajay Kumar Pandey appears highly suspicious and no reliance can be placed on their belated disclosure in the circumstances of the case.

11. In the result, the Appeal is allowed. The Judgment of conviction and order of sentence dated 13.01.2011 passed by the Additional Sessions Judge-XI, Saran at Chapra in connection with Sessions Trial No. 358 of 2001 arising out of Chapra Muffasil P.S. Case No. 123 of 2000 is hereby set aside. The Appellant is on bail. Therefore, he is discharged from the liabilities of his bail bonds and acquitted of the charges.