
(2011) 12 PAT CK 0111

In the Patna High Court

Case No : Criminal Appeal (DB) No 18 of 1989

Pramod Kumar

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 22-12-2011

Acts Referred:

Arms Act, 1959 — Section 27
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2011) 12 PAT CK 0111

Hon'ble Judges : Navaniti Prasad Singh, J; Ashwani Kumar Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Honourable Mr Justice Navaniti Prasad Singh

1. These two appeals are from the judgment and order of conviction dated 26.11.1988 passed by the learned Additional Sessions Judge III, Nalanda at Bihar Sharif in Sessions Trial No 164 of 1987/11 of 1987 convicting the appellants u/s 302 read with Section 34 of Indian Penal Code (IPC) and both have been sentenced to undergo rigorous imprisonment for life. The appellants had been charged u/s 27 of the Arms Act as well but have been acquitted on ground of lack of sanction. In so far as Cr Appeal No 18 of 1989 is concerned, it has been brought to our notice that the learned counsel appearing on behalf of the appellant died a decade back but as Mr Chitranjan Sinha, learned Senior Counsel appears for the appellant in Cr Appeal No 23 of 1989, he agreed to assist us in the matter as all issues of fact and law are common to both. We, thus, saw no necessity of seeking any other assistance. We have heard Shri Chitranjan Sinha, learned Senior Advocate, Miss Shashi Bala Verma, learned counsel for the State and perused the records.

2. The prosecution case is based on the Fardbayan of one Kapildeo Singh (PW 15), inter alia, alleging that in the night intervening 16th and 17th of September 1986, adjacent to his house, a Notanki was being staged on the occasion of

Ganesh Utsav. At about 2.30 am, the two appellants started arguing that instead of the play, dance should be carried out. Informant's sister-in-law, who was watching the play from the roof of the house, started abusing the two appellants and rebuking them to permit the play to proceed. The two appellants then took out their countrymade pistols and fired on the informant's sister-in-law who received pellet injuries on chest and arm and fell down. With the help of relatives and villagers, she was carried to hospital but on way, she died and, as such, she was brought to the Police Station (PS) where this statement was recorded on 17.09.1986 at about 5 am and the case was immediately registered. Inquest report was then prepared which was witnessed by Rajeev Ranjan Singh (PW 9) and Sadhu Sharan Singh (PW 14) who have also witnessed the Fardbayan. The body was, thereafter, sent for post mortem and the post mortem report is Exhibit 2 which has been proved by Dr Yogendra Narayan singh, the Medical Officer, Biharsharif who conducted the post mortem examination and was examined as PW 16. The doctor recovered three pellets from the body of the deceased Maya Devi, the wife of younger brother of the informant which was sent to the police. The cloths of the deceased were also sent to the police. They have been produced as material exhibits in Court by Mir Abdul Hamid (PW 17), a Police Constable.

3. The appellants, upon chargesheet being filed and cognizance having been taken and the case being committed to the Court of Session, were charged under Sections 302/34, IPC and Section 27 of the Arms Act. They pleaded innocence and false implication and upon trial, they have been found guilty to the extent, as noted above.

4. The prosecution, in order to establish its case, has examined 17 witnesses. Out of the witnesses examined, PW 1 Shivnandan Paswan, PW 2 Nageshwar Paswan, PW 3 Ramautar Singh, PW 4 Bal Kishore Singh, PW 6 Baso Mahto, PW 7 Suresh Mahto, PW 8 Prabhash Chandra, PW 12 Ram Varan Singh, PW 14 Sadhu Sharan Singh have turned hostile and have not supported the prosecution case even though some of them are relatives of the deceased. As noted above, PW 17 is a formal witness. PW 16 Dr Yogenara Narayan Singh is the doctor who conducted the post mortem examination. In his deposition, he has deposed that there were about 18 pellet injuries on the body of the deceased. They were all charred injuries. He was specifically asked that what would be the distance from which the shot was fired in view of the charring of injuries, he avoided answering. This is significant because the prosecution story is that the two appellants fired from their pistol standing on the ground while the deceased was on the first floor which was about 10 feet above. The distance between the firearm and the deceased was, thus, more than 6 feet away and if that be so then, as established in forensic science, there could not be charring injury. Charring injury signifies a very close range fire.

5. Now we may note that in the First Information Report (FIR), one Brij Nandan Singh is mentioned as being a witness. He has been merely tendered as PW 5. At

this stage, we may also notice that other witnesses mentioned in the FIR have not been examined. Rajeev Ranjan Singh (PW 9) and Sadhu Sharan Singh (PW 14), who are witnesses to the Fardbayan and the inquest, when examined in Court, Rajeev Ranjan Singh (PW 9), in no uncertain terms, state that he had not seen the occurrence. Sadhu Sharan Singh (PW 14) is step forward and is declared hostile. We are then left with PW 10 Ram Swaroop Prasad who is alleged to be an eye witness not named in the Fardbayan. PW 11 Krishnadeo Prasad is again alleged to be an eye witness but not named in the Fardbayan,. Sitaram Mahto (PW 13) is again alleged to be an eye witness though not named in the Fardbayan and PW 15 Kapildeo Singh is the informant.

6. Mr Chitranjan Sinha, learned Senior Counsel appearing in support of the appeals submits that so far as Ram Swaroop Prasad (PW 10) is concerned, firstly he is not mentioned in the FIR then he has not been examined by the Investigating Officer (IO) but has merely given his statement before the supervising authority that is the Deputy Superintendent of Police (DySP). He submits that the DySP or for that matter, the IO have not been examined. Ram Swaroop Prasad (PW 10), in his cross examination, has admitted that he is closely related to Krishnadeo Prasad (PW 11) who is the Sarpanch. He admits that the father of appellant Pramod Kumar had contested the elections for Sarpanch opposing Krishnadeo Prasad (PW 11). He also admits that Krishnadeo Prasad (PW 11) is in inimical terms with the family of the appellants. Mr Chitranjan Sinha also points out that so far as this Sarpanch is concerned though he alleges that he was present when the incident took place and being an important person in the village, his name is not referred to in the Fardbayan and even the IO examines him after three days of the occurrence, as admitted by himself in his cross examination. In our view, learned Senior Counsel is correct in his submission that in view of the facts as aforesaid in relation to these two witnesses that is Ram Swaroop Prasad (PW 10) and Krishnadeo Prasad (PW 11), their evidence cannot be relied upon. Now we are left with Sitaram Mahto (PW 13) who admits that he is a man of PWs 10 and 11 and have deposed in their favour earlier also. Once again, if we see the evidence of PWs 10, 11 and 13, it would be apparent that there are cases as between their family and the appellants' family.

7. This apart, learned Senior Counsel has drawn our attention to the fact that IO has not been examined and there is no plausible explanation thereof. He submits that in respect of all these three witnesses, contradictions were sought to be established as between their statements as made in course of their statements and those deposed in the Court but in absence of IO, the same could not be done. Further, the place of occurrence could not be objectively verified or proved in absence of IO. This had caused serious prejudice to the defence. In our view, the submissions are correct and have to be accepted. The prosecution, at no point of time, has brought any material on record to show that the IO was not available for examination. Rather the trial Court notes in the judgment that several times, summons were issued to the IO but he did not turn up. Thus, it

has to be assumed that IO has been withheld by the prosecution and in the facts, as noted above and his non-examination, has caused serious prejudice to the defence. It must, thus, be held that had the IO been produced, he would not have supported the prosecution case.

8. Learned Senior Counsel then points out that two of the persons named in the Fardbayan, namely, Gopal Prasad and Shivnandan Paswan as witnesses to the occurrence have not been examined. No explanation for that has been given by the prosecution. In the Fardbayan itself, it is noted that there were several ladies on the terrace of the house where the deceased received the injuries and dropped dead. None of them have been examined. This has also caused serious prejudiced to the appellants. In our view, the submission has to be accepted.

9. Now we come to the all important witness PW 15, the informant himself. If we refer to the Fardbayan, it would be seen that the Fardbayan gives narration of the incident as if the informant is an eye witness but when we come to his cross-examination in Court, he, in no uncertain terms, states that he was sleeping on the terrace and woke up after hearing the shots to find his sister-in-law lying injured on the terrace. He admits that he had not seen any part of the occurrence. That virtually demolishes the whole prosecution case. In his deposition, he further admits that it is on the statement of Rajeev Ranjan Singh (PW 9) and Sadhu Sharan Singh (PW 14) that he instituted the case at the PS. As we have noted above, Rajeev Ranjan Singh (PW 9), in his cross-examination, has clearly stated that he had not seen the occurrence. If that be so how he could tell about the occurrence to the informant. When we come to Sadhu Sharan Singh (PW 14), as noted above, he has not supported the prosecution case in any manner and has been declared hostile. Thus, the statement of the informant in the Fardbayan about the incident is not witnessed by the informant and the information derived is from sources which are not reliable and do not corroborate the fact.

10. Now coming to the medical evidence. As noted above, all injuries found, had charring mark. The doctor avoided to answer the question with regard to the distance. Here, I may refer to HWV COX Medical Jurisprudence and Toxicology, 07th Edition wherein in chapter dealing experimental study of firearm, three of the results, as noted by him, is quoted hereunder:

Results

(i) Scorching was found upto a distance of one foot with the standard shotgun and upto six inches with the country made pistol.

(ii) Tattooing was obtained upto a distance of three feet with the standard gun and one foot with the country made pistol.

(iii) Blackening was obtained upto a distance of three feet with the standard gun and one foot with the country made pistol.

(iv) ...

(v) ...

(vi) ...

11. The aforesaid would clearly establish that if indeed charring injury was found caused by firearm, it must have been a very close range fire but the prosecution story is that the firing was shot from the ground on a person standing on the terrace. In such a situation, there could not be charring injury.

12. All these facts taken together would lead to only one conclusion that the genesis of the occurrence is something else or other than what the prosecution is trying to establish. Thus, the prosecution, in our opinion, has failed to prove conclusively, beyond reasonable doubt, the case as against the appellants. We have no option in the facts aforesaid but to acquit the appellants and discharge them from the liabilities of their bail bonds. The appeals are allowed.

13. It may be mentioned here that learned Senior Counsel, in course of argument, points out that probably Pramod Kumar has died. He also points out, with reference to matriculation certificate of Anandi Prasad, that he was juvenile of 17 years of age when the offence was committed. In our view, those questions become irrelevant in view of the decision on merit, as rendered by us acquitting the appellants.