

(2017) 07 PAT CK 0059

In the Patna High Court

Case No : 134 of 2012

Raghunath Thakur S/o Late Raj Mohan Thakur

APPELLANT

Vs

The State Of Bihar

RESPONDENT

Date of Decision : 28-07-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 161](#) - Examination of witnesses by police
[Indian Penal Code, 1860](#), [Section 302](#),
[Section 34](#) - Punishment for

Citation : (2017) 07 PAT CK 0059

Hon'ble Judges : Samarendra Pratap Singh, Prakash Chandra Jaiswal

Bench : DIVISION BENCH

Advocate : B. P. Pandey, Prakash Kumar, Ashwani Kumar Sinha

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the appellant as well as learned APP for the State.

2. This appeal has been preferred against the judgment and order of conviction and sentence dated 12.01.2012 passed by the learned Additional Sessions Judge-III, Saran at Chapra in Sessions Trial No. 351 of 2011 arising out of Daudpur P.S. Case No. 64 of 2010, whereby convicting the appellant for the offence punishable under Section 302 of the Indian Penal Code and sentencing him to undergo life imprisonment and also slapping him with fine of Rs.15,000/- and in default of payment of fine to further undergo R.I. for one year.

3. The factual matrix of the case is that Daudpur P.S.

Case No. 64 of 2010 was instituted under Section 302 / 34 of the Indian Penal Code against the appellant, namely, Raghunath Thakur and one unknown accused on the basis of written report of the informant Santosh Barnwal, son of Sri Brij Mohan Prasad Barnwal, with the allegation in succinct that, his brother, namely, Shailendar Kumar Barnwal used to collect R.D. amount daily in the area. On 09.07.2010 in the evening, he had gone for the said collection in village Jaitpur Tiwari Tola. While the informant was proceeding via Tiwari Tola on an invitation, he abruptly heard alarm of "save-save" in the said area. He witnessed two persons, namely, Raghunath Thakur and one unknown miscreant assaulting his brother by means of Bhujali. He rushed to his brother, but his brother had died sustaining injury by that time. After committing murder, the accused persons left the scene. The bone of contention is previous animosity.

4. The aforesaid case was investigated by the Police.

During the course of investigation, the I.O. recorded further statement of the informant, statement of the witnesses, inspected the place of occurrence and prepared inquest report and sent the dead body for autopsy and filed the chargesheet against the appellant under Section 302 / 34 of the Indian Penal Code.

5. On the basis of the chargesheet and the case diary, the learned Magistrate took cognizance of the offence under Sections 302 / 34 of the Indian Penal Code and committed the case to the Court of Sessions for its trial. Charge against the appellant was framed under Section 302 / 34 of the Indian Penal Code to which he pleaded not guilty and claimed to be tried.

6. During the course of trial, in ocular evidence, the prosecution has been able to adduce altogether nine prosecution witnesses namely, Omprakash Barnwal (PW-1), Sunil Kumar

Barnwal (PW-2), Ramnath Bhartiya (PW-3), Dr. Shambhunath Singh (PW-4), Santosh Barnwal (PW-5), Bikram Prasad (PW-6), Jay Prakash (PW-7), Md. Hussnain Khan (PW-8) and Arvind Kr. Pandey (PW-9). Out of the aforesaid witnesses, Ramnath Bhartiya (PW-3) and Bikram Prasad (PW-6) turned hostile while Arvind Kr. Pandey (PW-9) happens to be formal witness. In documentary evidence, the prosecution has filed and exhibited several documents.

7. The statement of the appellant was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence claiming to have been falsely implicated in this case. The appellant has not adduced either any ocular or documentary evidence in buttress of his case.

8. After hearing the parties and perusing the record, the learned lower court convicted the appellant for the offence punishable under Section 302 of the Indian Penal Code and sentenced him to undergo life imprisonment and also slapped him with fine of Rs.15,000/- and in default of payment of fine to further undergo R.I. for one year.

9. The point for consideration in this case is, as to whether the prosecution has been able to bring home the charge levelled against the appellant beyond all reasonable doubts or not.

10. It is submitted by learned counsel for the appellant that the witnesses examined by the prosecution are interested witnesses in this case and the statement of the aforesaid witnesses are full of contradiction, so the same cannot be relied upon for conviction of the appellant. It is further submitted by learned counsel for the appellant that the ocular evidence has also not been corroborated by the medical evidence. One of the F.I.R. named witness, namely, Rajesh Singh has not been examined by the prosecution rather withheld by it and no explanation has been

assigned by the prosecution for his non-examination which goes to create serious doubt about the prosecution case. It is further submitted by the learned counsel for the appellant that the occurrence is said to have taken place at 06:30 P.M. and the police is said to have arrived at the place of occurrence on giving information by some other person at 06:45 P.M and a written report was furnished by the informant to him which indicates that the occurrence had not taken place at the aforesaid time rather preceding to that and a written report prepared earlier was handed over to the police by the informant on its arrival which creates serious doubt about the sanctity and veracity of the said written report. PW-2, namely, Sunil Kumar Barnwal is not the eye witness of the occurrence and his statement was not recorded by the police under Section 161 of the Code of Criminal Procedure. Hence, the statement of the aforesaid witness cannot be relied upon for conviction of the appellant. Barring the interested witness, no other witness of the vicinity of the place of occurrence has been examined by the prosecution. PW-9, namely, Arvind Kumar Pandey was also not examined by the I.O. under Section 161 of the Code of Criminal Procedure. So his statement has also no credence. It is also submitted by learned counsel for the appellant that the occurrence took place on 09.07.2010 and F.I.R. was lodged on 10.07.2010 at 04 A.M., but the same was sent to the court concerned on 11.07.2010 which creates serious doubt about the prosecution case, as there was sufficient time for manipulation of the case after deliberation.

11. On the other hand, it is submitted by learned APP that though PW-2 Sunil Kumar Barnwal does not happen to be the eye witness of the occurrence, but the informant (PW-5) and his companion (PW-1) have supported the occurrence as alleged in the F.I.R. in toto. Albeit they happen to be the interested witnesses of the

case, but their statements are consistent inter se and with the prosecution case and nothing cogent and convincing has been elicited in their cross examination by the defence to rule out their testimony. The aforesaid ocular evidences of the prosecution also stand corroborated by medical evidence. The Investigating Officer of this case has also been examined by the prosecution who has proved the place of occurrence and recording of the statement of the witnesses. Thus prosecution has successfully substantiated the charge under Section 302 of the Indian Penal Code levelled against the appellant beyond all reasonable doubts and the learned lower court has passed the impugned judgment and order of conviction and sentence correctly appreciating the evidence, facts and law involved in the case which is liable to be sustained and this appeal is liable to be dismissed.

12. From perusal of the testimony of PW-1, namely, Om Prakash Barnwal who happens to be the cousin brother of the informant, it appears that the said witness happens to be the eye witness of the occurrence. He is also F.I.R. named witness and the companion of the informant at the time of occurrence. In Para-1 and Para-2 of his examination-in-chief, he has stated that when he arrived near Jaitpur Tiwari Tola, he heard the alarm of "save-save". Responding to halla, Santosh Barnwal rushed to the place of halla and he followed him on motorcycle. The said alarm of "save-save" was of Shailendra Kumar Barnwal. He witnessed the appellant, namely, Raghunath Thakur and one unknown miscreant assaulting Shailendra Kumar Barnwal indiscriminately by means of Bhujali. Sustaining Bhujali injury on his neck, he fell dead. He had sustained 4-5 more injuries at other places, on ear and head. In Para-12 of his cross examination, he has further stated that Santosh Barnwal was with him when they arrived at the place of occurrence. Both the

accused were present there. On his arrival at the place of occurrence, accused escaped assaulting on the neck of the deceased.

13. The informant Santosh Barnwal (PW-5) also happens to be the eye witness of the occurrence and he appears to have supported the occurrence in toto. In Para-1, 2, 3 and 4 of his examination-in-chief, he has stated that on the date and time of occurrence, he was proceeding via said passage on an invitation to Jaitpur Tiwari Tola. On listening alarm of "save-save", he went there and witnessed Raghunath Thakur and one unknown miscreant assaulting his brother indiscriminately by means of Bhujali. When he arrived close to the aforesaid place, Raghunath Thakur escaped assaulting on the neck of his brother by means of Bhujali. Sustaining injury, his brother died. In Para-8 of his cross-examination, he has further stated that he and Om Prakash Barnwal (PW-1) had arrived at the place of occurrence at first. At the time of his arrival there, accused persons had not escaped rather were assaulting the deceased.

14. From the aforesaid testimony of PW-1 and PW-5, it appears that both the aforesaid witnesses have claimed each other to their companion to the place of occurrence and corroborated their presence at the place of the occurrence at the time of occurrence and witnessing the occurrence by them. Nothing convincing and cogent has been elicited by the defence in the cross-examination of the aforesaid witnesses having potential to rule out their presence at the place of occurrence at the time of occurrence and witnessing the occurrence by them.

15. Albeit, PW-2 Sunil Kumar Barnwal who happens to be the own brother of the informant, in his examination-in-chief, has claimed himself to be the eye witness of the occurrence and witnessed the occurrence of assaulting the deceased by the appellant and one unknown miscreant by means of Bhujali. But the informant

has ruled him out to be the eye witness of the occurrence by stating in Para-9 of his cross examination that Sunil Kumar Barnwal and Ramnath Bhartiya had arrived at the place of occurrence responding halla made by them.

16. I.O., Jay Prakash (PW-7) of this case has also stated in Para-12 of his examination-in-chief that Sunil Kuamr Barnwal had divulged him that when he arrived at the place of occurrence, the dead body of the deceased Shailendra Kumar Barnwal was lying there. The aforesaid statement of the informant and the I.O. candidly indicates that PW-2 Sunil Kumar Barnwal had arrived at the place of occurrence responding halla made by the informant and Om Prakash Barnwal and witnessed Shailendra Kumar Barnwal lying dead there. Which means that the said witness had not seen the appellant and one unknown miscreant assaulting the deceased by means of Bhujali and thus he does not happen to be the eye witness of the occurrence.

17. Though PW-1 and PW-5 happens to be cousin brother and own brother respectively of the deceased and may be dubbed as interested witnesses of the case, but it is the settled principles of law that merely being the interested witnesses, testimony of such witnesses must not be discarded outrightly rather it should be scanned and scrutinized cautiously and carefully. On careful and minute scanning of the testimony of PW-1 and PW-5, we find no material contradiction between the testimonies of the aforesaid witnesses inter se and between their testimonies and prosecution case rather their testimonies are worth credence and reliable.

18. On perusal of the medical evidence, such as post mortem report and testimony of Dr. Shambhunath Singh (PW-4) who conducted the autopsy of the dead body of the deceased, it appears that the doctor has found six incised wound on various parts of the

person of the deceased including the neck and has opined the cause of death due to hemorrhage and shock due to said injuries specially No.2 i.e. neck injury caused by sharp cutting weapon. Thus, medical evidence also goes to corroborate the aforesaid prosecution case.

19. As per the prosecution case, the bone of contention is the previous animosity. The informant (PW-5) in Para-4 of his examination-in-chief has stated that the occurrence had taken place due to demand of extortion earlier. He (deceased) had informed the SDJM earlier regarding the same in writing on the date of occurrence and the said statement of the informant stands corroborated by exhibit-7 which is an informatory petition dated 09.07.2010 given by the deceased to SDJM, Chapra regarding the demand of weekly extortion of Rs. 500/- by the appellant and others on 07.07.2010 at 12 O'clock and extending threatening of dire consequences. The said petition was received in the office of SDJM on 09.07.2010 itself. The said document has been approved by PW-9 who happens to be the formal witness of the case. Thus, the motive behind the occurrence, which was of demand of extortion by the appellant from the deceased with the threat of dire consequences, stands substantiated by the prosecution. I.O. Jay Prakash (PW-7) has proved the place of occurrence.

20. Submission of the learned defence counsel that one of the F.I.R. named witness, namely, Rajesh Singh has not been examined by the prosecution and no explanation has been assigned by the prosecution for his non-examination which creates serious doubt about the prosecution case does not appear convincing and acceptable to us. Because it is the prosecution who has to decide as to which witness it wants to examine in support of its case. It cannot be forced to examine any particular witness. Moreover, the witnesses examined by the prosecution as discussed above have fully

substantiated the prosecution case by their consistent, trustworthy and reliable testimony. Hence, non-examination of the said witness does not go to shatter the prosecution case.

21. Further submission of the learned defence counsel

is that the occurrence is said to have taken place at 06:30 P.M. and the police arrived within 15 minutes at the place of occurrence on the information given by some other person and the written report was furnished to it by the informant on his arrival indicates that the occurrence had taken place preceding to the aforesaid time as there was no evidence adduced by the prosecution that the informant had kept pen and paper at the aforesaid time and wrote down the written report and handed over the same to the police on his arrival within short span of time of 15 minutes. Said submission of learned defence counsel also does not appear to be convincing and acceptable to us because albeit the police is said to have arrived at 06:45 P.M. and the occurrence is said to be of 06:30 P.M, but it might not be the exact time as mentioned in the written report. There might be some variation of time and a bit earlier time might have been mentioned in the written report as time of occurrence. Moreover, the burden was on the defence to cross-examine the prosecution witness regarding keeping of the pen and paper at the time and place of occurrence by the informant. But it failed to discharge its aforesaid burden.

22. Further submission of the learned defence counsel

that F.I.R. was lodged on 10.07.2010 at 04 A.M., but the same was sent to the Court on 11.07.2010 after delay of one day, which creates serious doubt about the prosecution case also does not appear convincing and acceptable to us, because the delay of one day in sending the F.I.R. to the Court does not appear to be so inordinate and abnormal to smack otherwise. Moreover, in view of the aforesaid consistent, reliable and worth credence ocular and documentary

evidence of the prosecution, the aforesaid delay in sending the F.I.R. to the Court does not have potential to rule out the prosecution case.

23. Considering the facts and circumstances of the case and evidence of the prosecution, we find and hold that the prosecution has successfully substantiated its case and accusation levelled against the appellant by adducing cogent, consistent, reliable and worth credence ocular and documentary evidence. We do not find any irregularities and impropriety in the impugned judgment and order of conviction and sentence passed by the learned lower court warranting our intervention. Accordingly, the appeal is hereby dismissed and impugned judgment and order of conviction and sentence passed by the learned lower court is upheld.