
(2016) 06 PAT CK 0067

In the Patna High Court

Case No : Criminal Appeal (DB) No. 662 of 2012, (Arising out of PS.Case No. 22 Year - 2006 Thana - Harnaut (Telmar) District - Nalanda (Biharshariff)).

**Rajaram Paswan S/o Paras Paswan R/o Vill - Bheriya, P.S - Harnaut, Distt - Nalanda at Biharsharif - Appellant @HASH The State of Bihar

Criminal Appeal (DB) No. 729 of 2012.**

Date of Decision : 20-06-2016

Acts Referred:

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

Citation : (2016) 4 ECrc 449

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

Bench : Division Bench

Advocate : Mr. Ajay Thakur and Mr. Nilesh Kumar, Advocates, for the Appellant;
Mr. S.N. Prasad, A.P.P, for the Respondent

Final Decision : Allowed

Judgement

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

2. All the above Appellants have been convicted under section 302/34 I.P.C. and sentenced to undergo Rigorous Imprisonment for life along with fine of Rs. 25,000/- each, except Appellant No.4 Paras Paswan, in default of which, further Simple Imprisonment for three years and Appellant Paras Paswan was ordered to pay fine of Rs. 2 lakhs, in default of which, further Rigorous Imprisonment for three years. The Appellants have further been convicted under sections 452 I.P.C. and 27 Arms Act and sentenced to undergo Rigorous Imprisonment for five years and four years respectively and Appellant Paras Paswan has been sentenced to undergo Rigorous Imprisonment for three years for both the sections by the Adhoc Additional Sessions Judge-V, Nalanda at Biharsharif in Sessions Tr. No. 591 of 2006 and 713/2007 + 325/2008 + 103/ 2010.

3. It appears that two sets of trial i.e. Sessions Trial No. 591 of 2006 and 713 of 2007 were held wherein accused Jai Ram Paswan and Sudhir Paswan have been

acquitted whereas Appellants Paras Paswan and Hareram Paswan, Mahesh Paswan and Rajaram Paswan have been convicted on the basis of some common witnesses.

4. The Informant (P.W. 1) Sohagia Devi, who was P.W. 8 in Sessions Trial No. 713 of 2007, stated in the fardbeyan that on the night of 01.02.2006 when she was sleeping along with her son deceased Ramchandra Jamadar, his wife deceased Unarva Devi and grandson, the accused persons entered into the house and shot them dead. Thereafter, they entered into the house of Anandi Jamadar and shot him and his wife also. She learnt the names of the Appellants and other accused persons from her grandson and villagers. She names Jai Ram Paswan (acquitted), Sudhir Paswan (acquitted), Appellants Hareram Paswan, Mahesh Paswan, Raja Ram Paswan, Paras Paswan and accused Sheoji Paswan as the miscreants along with 4-5 unknown persons. She also claims to have identified the accused persons, who belonged to the adjacent to Bheriya Village. This fardbeyan was recorded next date on 02.02.2006 at 1:00 pm.

However, during Trial, the Informant Sohagia Devi did not support her own case and was declared hostile in both the Sessions Trial.

5. P.W. 2 Rambabu Jamadar, who happens to be the son of the deceased Ramchandrar Jamadar and Unarva Devi gave an eye witness account named the Appellants Mahesh Paswan, Raja Ram Paswan, accused Shiv Paswan and Rajaram Paswan and Mahendar Jamadar.

However, in cross-examination, he conceded that he had not come out of the adjacent room where he was sleeping and it was only the next morning that he learnt that his parents had been murdered. In such circumstances, his eye witness account has to be rejected.

6. P.W. 3 Rama Nand Singh has stated on the night of occurrence, he heard firings and when he lit his torch, he identified 5 accused persons, including Appellants Paras Paswan, Mahesh Paswan, Raja Ram Paswan, Hareram Paswan and also accused Shiv Paswan.

In cross-examination, he stated that he along with his brother Ram Narayan Singh, his son and one Birendra Singh was accused in a murder case instituted by the Clerk of Appellant Paras Paswan. It was suggested to him that in fact, Appellant Paras Paswan was cripple and unable to move.

This witness was examined as P.W. 6 in the subsequent trial wherein he stated about identifying 6 accused persons. Now, he named even the acquitted accused Sudhir Paswan. In cross-examination, he conceded that it was a dark night and he had identified accused persons from about 50 feet. He denied the suggestion that he had been examined two months latter but this fact stands corroborated by the Investigating Officer (P.W. 9) Arjun Prasad when he stated that he had examined this witness only on 08.04.2006, i.e. more than 2 months later.

In such circumstances, we are also not inclined to place any reliance on the

evidence of the instant witness.

7. P.W. 4 Bineshwar Jamadar also speaks of identifying 5 accused persons, including appellants Paras Paswan, Mahesh Paswan and Raja Ram Paswan in torch light while they were fleeing away.

In cross-examination, he conceded that the two deceased were his nephews. He surprisingly stated that when he went about 100 yards, he saw the accused persons running away at which he returned home and it was only on the next morning that he went to the house of the deceased, which is surprising in the circumstances of the case. This witness was examined as P.W. 5 in the subsequent trial wherein he once again named the 6 accused persons, including 4 Appellants having been identified in the torch light from a distance of about 100 yards while they were running away.

It appears highly un-doubtful that the witness would be in a position to identify the accused in a dark night while fleeing away from the distance of 100 yards. Hence, we are not inclined to place reliance on this witness on the question of identification of the present Appellants.

8. P.W. 5 Dr. Mithilesh Kumar, who was examined as P.W. 1 in the subsequent trial, conducted the Postmortem of the 4 deceased and proved the same as Exhibits-1, 1/A, 1/B and 1/C. He corroborated the fact that all the four deceased had sustained fire arm injury, which was the cause of death.

9. P.W. 6 Paras Nath was examined as P.W. 2 in the subsequent trial is merely a formal witness on the point of preparation of seizure list of two empty cartridges.

10. P.W. 7 Surendra Jamadar is the brother of P.W. 2 Rambabu Jamadar and son of the deceased Ranchandar Jamadar and Unarva Devi. He also pretends to be an eye witness in Examination-in-chief, but later he concedes that he had come to the room of the two deceased only after the accused persons had fled away. Therefore, evidently, he was not an eye witness.

11. P.W. 8 Gorakh Baitha, the Investigating Officer, who was examined as P.W. 10 in the subsequent trial, had assumed investigation on 02.02.2006 and prepared the Inquest Report of the four deceased which he proves as Exhibit-3 series. He also seized certain articles which he proved as Exhibit-4/A. He inspected the place of occurrence and found the two places of occurrence at a distance of about 30 feet. He seized empty cartridges of which he prepared the seizure list which he marked as Exhibits-A, B, C and D. He also proves the signature of another Police Officer on the fardbeyan which he proves the Exhibit-6.

In cross-examination, he stated that on the date of occurrence, Jai Ram Paswan was in jail on which count the said accused was acquitted by the trial Court.

12. P.W. 9 Arjun Prasad was also examined in the subsequent trial as P.W. 9 and was the Investigating Officer for a certain period, in course of which, he submitted charge-sheet against some of the accused persons and he found the

acquitted accused Sudhir Paswan to be in custody in connection with another case on the date of occurrence. He also recorded the statement of some witnesses including P.W. 3 Rama Nand Singh on 08.04.2006 as mentioned earlier.

13. In the subsequent trial, P.W. 3 Mangli Jamadar and P.W. 4 Chandradeep Bind have been examined as formal witnesses on the point of Seizure and Inquest.

14. The Appellant Paras Paswan examined two Defence witnesses on his behalf namely Chatur Paswan and Ramlagan Rabidas on the point that he was a cripple and unable to move.

15. On a bare appreciation of evidence, which we have discussed above, we find the following notable points :

1. The Informant has not supported the prosecution case.

2. Two eye witnesses namely Rambabu Jamadar and Surendra Jamadar, both sons of the deceased Ramchandrar Paswan and Unerva Devi have contradicted themselves in their cross-examination making their eye witnesses highly unreliable.

3. P.W. 3/6 Rama Nand Singh and P.W. 4/5 Binehshwer Jamadar, who have claimed to identify the Appellants from a distance of about 100 yards while they were fleeing away, also do not inspire confidence, inasmuch as Rama Nand Singh was examined more than 2 months later and the conduct of Binehshwer Jamadar is highly suspicious, apart from the fact that it appears unreliable that he would have been in a position to identify the accused from such a long distance.

16. In such circumstances, finding evidence for confirming the conviction of the Appellants totally wanting, we are inclined to give the Appellants benefit of doubt.

17. Thus, the above Appeals are allowed. The Judgment of conviction dated 19.06.2012/10.10.2006 and Order of sentence dated 23.06.2012/13.10.2006 passed by the Adhoc Additional Sessions Judge-V, Nalanda at Biharsharif in Sessions Tr. No. 713/2007 + 325/2008 + 103/2010 and 591 of 2006 arising out of Harnaut (Telmar) P.S. Case No. 22 of 2006 against the Appellants, above named, is set aside. They are acquitted of the charges. The Appellants Rajaram Paswan and Hareram Paswan are in jail custody. Therefore, they are directed to be released forthwith, if not wanted in any other case. The Appellants Mahesh Paswan and Paras Paswan are on bail. They are discharged from the liabilities of their bail bonds.