

(2015) 10 PAT CK 0035

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 263 of 2010

Rajendra Ram

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 06-10-2015

Acts Referred:

Arms Act, 1959 — Section 25(1-B)A, 27
Penal Code, 1860 (IPC) — Section 301, 304, 308, 326

Citation : (2015) 10 PAT CK 0035

Hon'ble Judges : V.N. Sinha, J;Rakesh Kumar, J

Bench : Division Bench

Advocate : Manohar Prasad Singh, Amicus Curiae, for the Appellant; S.C. Mishra, APP, Advocates for the Respondent

Final Decision : Allowed

Judgement

V.N. Sinha, J—This appeal arises out of judgment of conviction, order of sentence dated 15/16.03.2010 passed by 5th Additional Sessions Judge, Bhojpur, Ara in Sessions Trial No. 174 of 2007, whereby sole accused appellant herein has been convicted for the offence under Section 304 of the Penal Code read with Section 25(1-B)A and 27 of the Arms Act, directed to suffer Rigorous Imprisonment for eight years, fine of Rs. 25,000/- for the offence under Section 304 of the Penal Code, three years, fine of Rs. 1,000/- for the offence under Section 25(1-B)A and 27 of the Arms Act. The sentences, however, have been directed to run concurrently.

2. Prosecution case as set out in the fardbeyan of Tulsi Devi, wife of Suraj Ram, resident of Village-Jamorhi, P.S. Piro (Hasan Bazar) in the district of Bhojpur, recorded by Sub Inspector Bimal Kumar, Officer-in-Charge, Hasan Bazar Out Post at Middle School, Narayanpur on 29.12.2005 at 7:30 A.M is that on the same day i.e. Saturday around 6:30 A.M. her son Chhote Lal, aged about 8 years had gone to play in Kali Mai Asthan Field. The informant was attending to her house-hold chores, her husband had gone to harvest paddy. At the same time, her other son

came, told her that Chhote Lal has suffered fire-arm injury. In the meanwhile younger son of the informant Chhote Lal was brought by Sri Ram Ram, Sanjay Ram in injured condition as he had suffered fire-arm injury in his ribs, was crying with pain. Sometime earlier informant also heard firing sound but thought cracker may have exploded. Sri Ram Ram on being asked by the informant told her that little earlier he and other villagers were at the Sahan of their maternal uncle Barchu Ram, enjoying the bonfire . At the same time co-villager Palki Ram was going to eastern side of the village towards Kali Mai Asthan followed by the appellant. Appellant told Palki Ram in abusive language to stop, Palki Ram continued to move ahead but Rajendra Ram ran and apprehended him. Palki Ram some-how managed to run whereafter Rajendra Ram shot at him with his country made pistol, the shot missed its target causing injury to Chhote Lal. Informant put her injured son on a cot and was taking him to Hasan Bazar, reached near Narayanpur School, met the scribe, recorded her fardbeyan. There is quarrel between Rajendra Ram and Palki Ram from before as Rajendra Ram suspects Palki Ram of having illicit connection with the wife of his elder brother Sohrai Ram and disliked him, for the said, Rajendra Ram, with intent to kill Palki Ram, shot at him with his country made pistol (Katta) but the shot missed its target and Chhote Lal got injured while playing. Statement of the informant having been read over to her in presence of two witnesses, namely, Sri Ram Ram, Sanjay Ram, she having found the statement correct, put her Right Thumb Impression over the same. Said two witnesses also put their signature over the fardbeyan.

3. Bimal Kumar, scribe of the fardbeyan, forwarded the same to Piro Police Station for instituting a case under Sections 308/326 of the Penal Code and Section 27 of the Arms Act on the same day stating that he shall investigate the case. In the light of the fardbeyan, Officer-in-Charge Piro Police Station registered Piro (Hasan Bazar) P.S. Case No. 201/05 dated 24.12.2005 at 10:00 A.M. for the offence under Section 308/326 of the Penal Code and Section 27 of the Arms Act with further endorsement that Sub Inspector Bimal Kumar shall investigate the case. Column No. 15 of the First Information Report indicates that the First Information Report was dispatched to the Court on 25.12.2005, was also perused by the Chief Judicial Magistrate on the same day, as would appear from his initials on the first page of the First Information Report and the fardbeyan. Further statement of the informant, police statement of the witnesses was recorded by the Investigating Officer. Later, Investigating Officer learnt from the informant that her son died on 31.12.2005 while under treatment at P.M.C.H.

4. In the light of the fardbeyan, further statement of the informant as also the police statement of the witnesses and other objective findings of the Investigating Officer, the occurrence, as narrated in the fardbeyan, was found true during investigation and charge-sheet submitted against the appellant. In the light of the charge-sheet cognizance was taken, after supply of police papers case was committed to the court of Sessions. Trial court framed charge under order dated 09.08.2007 to which the appellant pleaded not guilty, claimed to be

tried.

5. In support of the charge prosecution examined as many as nine witnesses. P.W. 1 Tulsi Devi is the informant of the case. She herself is not an eye-witness of the occurrence as she has learnt about the same from her son and the two attesting witnesses of the fardbeyan Sri Ram Ram and Sanjay Ram. She has also stated that she also learnt from her deceased son that he was shot at by the appellant.

6. P.W. 2 Arbind Kumar is also the brother of the deceased, son of the informant. From his evidence it appears that he is also an eyewitness of the occurrence but about him the First Information Report is silent as at the time of recording of the fardbeyan his mother has not stated that P.W. 2 also came to her soon after the occurrence to inform her about the same. P.W. 3 Amawash Ram is the uncle of deceased Chhote Lal by village relationship. He also claims himself to be an eye-witness as he has categorically stated that on the date of occurrence Palki Ram was going to attend call of nature. He was followed by the appellant who shot at him but the shot missed the target, causing injury to Chhote Lal. From Paragraph 6 of his cross-examination, however, it appears that he is not an eye-witness of the occurrence as he has categorically admitted that the shot was fired prior to his arrival at the place of occurrence. P.W. 4 Ramjee Ram @ Ramjee Paswan also claims himself to be an eye-witness as at the time of occurrence he was also going to attend the call of nature, saw the appellant firing shot at Palki Ram but the shot caused injury to Chhote Lal and that Rajendra Ram was apprehended at the place of occurrence itself, his Katta was seized by the villagers. In Paragraph 4 of the cross-examination P.W. 4, however, has admitted that he is a hear-say witness as after the occurrence he learnt about the same after he came to the place of occurrence. P.W. 5 Nanhu Ram is also a co-villager but from the tenor of his evidence it appears that he is a hearsay witness as he came to the place of occurrence after hearing the firing sound. P.W. 6 Virajan Ram has deposed that while he was enjoying bonfire in the morning of the occurrence, saw Palki Ram going ahead followed by Rajendra Ram, there was scuffle between the two, whereafter Rajendra shot at him but the shot missed the target, caused injury to Chhote Lal and that Rajendra was apprehended by this witness and other villagers with his weapon, handed over to the police by them. He has also stated that Chhote Lal was first taken for treatment to Ara, therefrom referred to Patna where he died. P.W. 6 has been cross-examined at length but the defence has not been able to extract any material contradiction during his lengthy cross-examination. P.W. 7 Vimal Kumar is the scribe of the fardbeyan as on the date of occurrence he served as Incharge of Hasan Bazar Out Post within Piro Police Station, reached Village-Jamorhi after receiving telephonic information about the occurrence, making Station Diary Entry No. 375 dated 24.12.2005. Having recorded the fardbeyan at 7:30 hours he recorded further statement of the informant at 7:45 A.M. From Paragraph 10 of his evidence it, however, appears that he received information about the death of Chhote Lal in P.M.C.H. from the informant herself on 31.12.2005. Perusal of his evidence, however, does not

indicate as to when he or any other police officer conducted inquest proceedings on the dead body of Chhote Lal. It also does not appear from his evidence as to when post mortem of Chhote Lal was conducted. Though from Paragraph 12 of his evidence it appears that he conducted investigation of the case until 14.02.2006, whereafter the same was transferred to Sub Inspector Jiwat Ram, Incharge Out Post, who also handed over the charge of the investigation of the case to A.S.I. Harendra Prasad, who submitted charge-sheet in the case. In Paragraph 23 P.W. 7 has stated that he could not record the statement of the injured Chhote Lal as he was suffering from pain. In Paragraph 25 Investigating Officer P.W. 7 further stated that he did not record the statement of the informant at her house. In the same paragraph he further stated that after having referred the injured to hospital he did not visit him ever, came to learn that from Piro the injured was referred to Patna which fact is mentioned in the case diary as the said information was given to him on telephone. P.W. 8 Harendra Prasad Singh is the subsequent Investigating Officer of the case who has submitted formal charge-sheet after obtaining Post Mortem Report of Chhote Lal from P.M.C.H. which is enclosed in the case diary but has not been brought on record in the instant trial. P.W. 9 Arun Kumar Singh at the relevant time served as Sergeant Major in Bhojpur, Ara, has received one sealed packet containing the material exhibit (country made Katta) seized in the instant case pursuant to order dated 07.01.2006 passed by Chief Judicial Magistrate, Ara in connection with present case and on that basis examined the firearm which was .315 bore country made pistol barrel whereof was 11 cm long and the total length of the arm was 23 cm. Having examined the firearm witness submitted report. Exhibit A, A/1 is the empty of .315 bore cartridge. From the evidence of P.W. 9 also it does not appear that any inquest proceeding of the deceased was ever conducted. Post Mortem Report of the deceased though received from P.M.C.H. and kept in the case diary but for reasons best known to the prosecution, was not brought on record by getting the same proved and marked exhibit.

7. None appeared for the appellant, as such, we appointed Sri Manohar Prasad Singh, Advocate to appear in this case as Amicus Curiae to assist us.

8. Learned Amicus Curiae has submitted that the Inquest, Post Mortem Report of the deceased being not available on record and the doctor who conducted the Post Mortem on the dead body of Chhote Lal also having not been examined, there is nothing on record to establish beyond doubt that Chhote Lal suffered death because of the fire-arm injury caused on his ribs by the appellant. He also submitted that perusal of the evidence of informant (P.W. 1) would indicate that she is not an eye-witness of the occurrence and as informant is not an eye-witness of the occurrence and the two attesting witness of the fardbeyan who not only brought the injured to the informant but also informed her about the manner in which her son Chhote Lal suffered fire-arm injury at the instance of the appellant having not been examined, there is no authentic ocular account as well on record which should persuade this Court to maintain the conviction of the

appellant.

9. Learned Amicus Curiae further invited out attention to the evidence of P.W. 6 Virajan Ram who not only appears to be an eyewitness of the occurrence but his evidence has also been found reliable by the trial court, as from his cross-examination there does not appear any material contradiction. It is, however, submitted by the Amicus Curiae that his name having not been mentioned in the fardbeyan as the one who came to the informant either with the child or soon after the occurrence, as such, his presence at the place of occurrence may be doubted otherwise there was no reason for him not to have accompanied the injured child to his house with Sri Ram Ram, Sanjay Ram and for the informant not to include his name in the fardbeyan.

10. Learned counsel for the State on the other hand submitted that the impugned judgment of conviction, order of sentence is required to be maintained notwithstanding the fact that Inquest, Post Mortem Report of Chhote Lal has not been brought on record as informant has very fairly stated not only in her fardbeyan but also in her deposition in Court that she learnt about the occurrence from two of her co-villagers and if the informant had any intention to speak falsehood, she could have very well become an eye-witness of the occurrence itself but she having stated the fact that she learnt about the occurrence from co-villagers has maintained the same stand even while deposing in Court, thereby she having not endeavoured to embellish her deposition we are required to accept her evidence. Learned counsel for the State further refuted the submission of learned Amicus Curiae that P.W. 6 may not be accepted as his name does not found mentioned in the fardbeyan. It is submitted by the State counsel that the fardbeyan being not an encyclopedia about everything concerning the occurrence even if the name of P.W. 6 is not mentioned in the fardbeyan his presence at the place of occurrence cannot be doubted as he has categorically stated that at the time of occurrence he was near the place of occurrence, was enjoying the bonfire in the morning when he saw appellant Rajendra Ram following Palki Ram and the two indulged in scuffle, thereafter appellant shot at him but the aim somehow missed Palki Ram causing injury to Chhote Lal. It is submitted that from perusal of the entire evidence of P.W. 6 it will appear that he has withstood the test of lengthy cross-examination and there does not appear any contradiction in his evidence, in these circumstances, according to learned counsel for the State, his evidence is required to be accepted even though not corroborated in material particulars with Inquest, Post Mortem Report of deceased Chhote Lal. It is submitted that there are cases in which conviction for the offence of murder has been maintained even when Inquest, Post Mortem Report is not brought on record because of the mistake on the part of the Investigating Officer. In the instant case, Post Mortem Report was received by P.W. 8 who kept the same in the case diary but for reasons best known to the prosecution same was not formally brought on record, thereby such lapse on the part of Investigating Officer the appellant cannot be allowed to take advantage of.

11. In view of the rival submissions we have examined the evidence on record including the evidence of the informant, her son P.W. 2, brother-in-law P.W. 3 and P.W. 6. Having perused the aforesaid evidence, we are of the view that P.W. 1 though informant of the case, is not an eye-witness of the occurrence as she has learnt about the same from two attesting witness, namely, Sriram Ram, Sanjay Ram. Both having not been examined, there is nothing on record to confirm that informant learnt about the occurrence from the two. So far the son, brother-in-law of the informant are concerned, from their evidence itself it appears that they are not eye-witness of the occurrence. P.W. 6 though an eye-witness of the occurrence and his evidence is not affected in any manner by his lengthy cross-examination, yet there is nothing on record to establish that Chhote Lal suffered firearm injury in ribs and because of such injury he died during treatment at P.M.C.H. on 31.12.2005 as neither his Injury, Inquest Report nor Post Mortem Report has been brought on record nor doctor who treated, conducted his post mortem in P.M.C.H. has been examined to establish that Chhote Lal died because of the fire-arm injury. Prosecution having not been able to establish that Chhote Lal died because of fire-arm injury, we are of the view that in the instant case appellant deserves grant of benefit of doubt as sole testimony of P.W. 6 may not inspire confidence in us to uphold the finding of guilt against the appellant. We have granted the appellant benefit of doubt and acquitted him. There does not appear any necessity to examine the question raised by this Court under order dated 28.04.2011 whether he is likely to be convicted under Section 301 of the Penal Code.

12. Accordingly, we set aside the impugned judgment of conviction, order of sentence. The appeal is allowed. Appellant is in jail custody with effect from 25.12.2005, as such, by now he must have served out the sentence imposed on him under the impugned judgment but in case he is still in custody in this case, he be released forthwith, if not wanted in any other case.

13. Sri Manohar Prasad Singh, learned Amicus Curiae shall be entitled to fee from Patna High Court Legal Services Committee in accordance with Rules.

14. Let the operative portion of this order be forwarded to Secretary, Patna High Court Legal Services Committee for needful.

Rakesh Kumar, J.

I agree.