
(2016) 05 PAT CK 0063

In the Patna High Court

Case No : Criminal Appeal (DB) No. 1370 of 2010 Arising out of P.S. Case No. 01
Year-1999 Thana-Mushahari District-Muzaffarpur

Rakesh Jha

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 09-05-2016

Acts Referred:

Citation : (2016) 3 ECrC 315

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

Bench : Division Bench

Advocate : Mr. Nand Kishore Prasad Sinha, Senior Advocate, for the Appellant;
Mr. A.K. Sinha, APP, for the Respondent

Final Decision : Allowed

Judgement

Smt. Anjana Prakash, J. (Oral) - The Appellants have been convicted under Sections 302/149 and 147 of the Indian Penal Code and sentenced to R.I. for life and one year respectively by a judgment of conviction and order of sentence dated 27/30.09.2010 by the District & Sessions Judge, Muzaffarpur in S.Tr. Case No. 541 of 2008 arising out of Mushahari P.S. Case No. 01 of 1999.

2. The case of the prosecution according to the Informant (P.W. 3), Gopal Kumar Jha is that on 02.01.1999 while he was returning with his father Surendra Jha from Bazaar five accused persons including the Appellant stopped him and started to talk something. In course of talks they told his father (the deceased) that he was opposing them a lot in doing anti-social activities and then Appellant, Rakesh Jha pulled out a pistol from his waist and fired on the left of his forehead on account of which his father fell down on the ground. When he started screaming P.W. 2, his uncle, Maheshwar Jha, P.W. 4, Ganesh Jha and Rajeshwar Jha, P.W. 6 came there to whom he disclosed the names of the accused persons. He further stated that Appellant, Rakesh Jha was an anti-social element and he was opposed by the deceased on account of which this occurrence had taken place.

3. During trial the prosecution examined seven witnesses.

4. P.W. 1, Lallan Jha is the son of the deceased who stated that he reached the place of occurrence on hearing sound of firing at which he, his uncle P.W. 2, Maheshwar Jha and P.W. 4, Ganesh Jha went and saw his father in an injured condition. He saw all the five accused fleeing away towards the Litchi Orchard. The Informant, Gopal Kumar Jha allegedly disclosed that while the rest of the persons caught hold of the deceased, Appellant, Rakesh Jha had fired at him.

In cross-examination, he conceded that he was not an eye-witness and he was narrating only what his brother had told to him. He added that his father (the deceased) and his uncle, P.W. 2, Maheshwar Jha had gone to jail in some offence. It was suggested to him that in his earlier statement he had not stated that the Informant had told him about the manner of occurrence which was elicited in some detail.

5. P.W. 2, Maheshwar Jha, brother of deceased is also a hearsay witness and that he had seen the accused fleeing away. He further stated that Appellant, Rakesh Jha was of criminal antecedents and used to drink toddy to which his brother the deceased used to object.

In his cross-examination, he also stated that he was not any eye-witness. His attention was drawn to his earlier statement that he had not stated about seeing the accused fleeing away with arms and that the Informant had disclosed to him as to the manner of occurrence.

He denied that the deceased, or, he himself, was a naxalite but admitted that he was an accused in a case of dacoity in which he had gone to jail. He further stated that several villagers gathered and they removed the injured/deceased to the hospital which was next to the Police Station. The Police came to the Hospital but did not record the statement and recorded the statement of P.W. 3 at the Police Station.

6. P.W. 3, Gopal Kumar Jha is the Informant who stated all the facts which he had given in the fardbeyan but developed his case to the extent that all the accused persons having caught hold of the deceased and thereafter Appellant, Rakesh Jha fired. He further stated that Maheshwar Jha, P.W. 2, Lallan Jha, P.W. 1 and Ganesh Jha, P.W. 4 came to the place of occurrence and saw the accused persons fleeing away.

However, he does not say anything about disclosing the manner of occurrence to the persons who had arrived. He proves his signature on the fardbeyan which is marked as (Exhibit-1). His attention was drawn to the earlier statement that he had not stated about the accused persons having caught hold of the deceased which he denied. He denied that the deceased had gone to jail in a dacoity case and explained the relation-ship between himself and P.W. 1 and P.W. 2. He further stated that he had not spoken to any one till date and generally stated that he had disclosed the names of the accused persons to those persons who

had come after the occurrence. His attention was drawn to the earlier statement that he had not stated about disclosure of the names of the accused persons to his uncle, Maheshwar Jha, P.W. 2, Ganesh Jha, P.W. 4, Rajeshwar Jha, P.W. 6 but he denied such suggestion.

7. The next witness Ganesh Jha, P.W. 4 also happens to be the brother of the deceased who has stated that he reached the place of occurrence and saw his brother injured and the accused persons fleeing away.

However, his attention was drawn to the earlier statement that he had not stated that he had seen the accused persons fleeing away which fact has been corroborated by the Investigating Officer.

He explained the relation-ship between the witnesses and the deceased and that several independent witnesses had arrived after the occurrence. He explained that he had seen the accused persons fleeing away from a distance of 20 laggas i.e. about 60 feet in which circumstances the identification does not appear plausible.

8. P.W. 5, Prabhat Ranjan Shrivastava, the Investigating Officer proves the signature on fardbeyan which is marked as (Exhibit-2) and the formal First Information Report marked as (Exhibit-3). He further stated that after preparing the Inquest Report he sent the dead body for post-mortem and inspected the place of occurrence. He further stated that he had examined independent witnesses who had given different version about the occurrence. He further stated that the accused Kamleshwar Jha had been arrested the very next from his house and when he searched the house of the accused persons no incriminating article was found. As mentioned earlier, the contradiction in the evidence of the witnesses was corroborated by him.

9. P.W. 6, Rajeshwar Jha has been declared hostile and did not support the case of the prosecution.

10. P.W. 7, Dr. Mumtaz Ahmad found the following injuries on the person of the deceased and proved the Post-mortem Examination Report marked as (Exhibit-4).

"(i) A. One oval wound ?" diameter with inverted and margin and burning and burning of surrounding nap head hair was found on back of upper part of neck. 3" in medial to right ear and 4.7" medial to left ear.

B. Another oval wound ?" diameter with inverted margin was found on the front of head ?" above eyebrow ?" left lateral middle part.

On dissection both injuries were communicating to each others with fracture of adlar Bone and punctured on base of brain. Injury No. 1 was round of entry or B was exit wound.

Deceased died due to shock and hamorrhage and coma.

Cause of injuries-fire arm by single fire."

In cross-examination, he stated that the deceased had sustained injuries from the backside.

11. On a fair discussion of the evidence on record, we find that the case depends on the sole eye-witness account of P.W. 3. The principle of law in regard to evidence in a case resting on a solitary witness is that he should be completely unimpeachable and reliable. No doubt some of witnesses stated in Court about seeing the accused fleeing away from the place of occurrence but since they did not do so in their earlier statement thus their account has to be rejected.

12. The evidence of sole eye-witness finds no corroboration from any independent source since we find that the Doctor's evidence directly contradicts the manner of occurrence inasmuch as he stated that the injuries by the deceased were sustained from the back. We, also, find that the sole eye-witness, P.W. 3 has tried to develop the prosecution case in Court by saying that some of the accused had caught hold of the deceased which was not his earlier version under which circumstances we are not inclined to place absolute reliance on him.

13. We, further, find the motive was said to be because the deceased used to oppose the anti-social activities of the Appellant, Rakesh Jha but on the contrary witnesses conceded that the deceased himself and they themselves were accused in serious cases and had gone to jail. In such circumstances, evidently, it appears highly unlikely that the deceased would oppose the anti-social activities of the accused persons while he himself was an anti-social element.

14. In such circumstances, giving benefit of doubt to the Appellants, the Appeals are allowed and the judgment of conviction and order of sentence dated 27/30.09.2010 passed by the District & Sessions Judge, Muzaffarpur in S.Tr. No. 541 of 2008 arising out of Mushahari P.S. Case No. 01 of 1999 is, hereby, set aside. The Appellants are discharged from the liabilities of their bail bonds. The Appellant, Rakesh Jha who is in custody shall be released forthwith, if not wanted in any other case.