

(1998) 05 PAT CK 0043

In the Patna High Court

Case No : Criminal Appeal No's. 242 and 252 of 1985

Ram Barai Rai and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 12-05-1998

Acts Referred:

Arms Act, 1959 — Section 27
Penal Code, 1860 (IPC) — Section 149, 302

Citation : (1998) 3 BLJR 1934 : (1998) 2 PLJR 540

Hon'ble Judges : R.N. Sahay, J;A.K. Prasad, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Ravi Nandan Sahay, J.—By judgment pronounced on 25.3.1985 in Sessions Trial No. 264/87 of 1982-83, the 6th Additional Sessions Judge, Patna convicted the appellants of two sets of appeal for the offence punishable u/s 302/149 Indian Penal Code and sentenced to imprisonment for life. Two of the appellants, namely, Nawal Rai and Vali Rai (appellants in Cr. Appeal No. 242 of 1985) were convicted u/s 27 Arms Act but no separate sentence has been, passed.

2. The prosecution case has been set out in para-2 of the judgment under appeal as follows:

2. The case of the prosecution, as made out in the statement of PW 3 (informant), in short is that, (on 19.9.1981 at about 3.30 p.m. while the informant, Ashok Kumar Singh, his uncle Ambika Singh and Parmeshwar Singh were returning from village Daudpur and when they had arrived near Heera Tola Badhar, accused Ram Barai Rai suddenly came out of a Masuria (Millet) field and caught hold of the waist of Ambika Singh. He gave a call "Come, he had caught hold of him" and thereupon, Rupan Singh with a gun, Nawal Rai and Vali Rai with pistols in their hands, Srikant Rai, Munga Rai, Akhilesh Rai and Jaleshwar Rai having chhuras in their hands came out of the field. It is said, that Rupan Singh put the barrel of his gun close to the waist of Ambika Singh and then fired and

accused Nawal Rai put the barrel of his pistol on the hip of the deceased and fired and when he faltered and was about to fall down as a result of the fire arm shots received, accused Vali Rai fired from his pistol which hit Ambika Singh on his leg who ultimately fell down. After that accused Srikant, Munga, Akhilesh and Jaleshwar gave indiscriminate chhura blows to him. When the informant made an attempt to save Ambika Singh from being assaulted, accused Nawal Rai hit him on his right hand with the butt portion of his pistol. He gave a call to finish the informant also. On hearing this, the informant ran to a safe distance and from there he saw the above named accused persons fleeing towards east. After the accused persons had run away, he came to the place where Ambika Singh had fallen and found him lying dead in a pool of blood. Parmeshwar Singh and Madan Kishore Singh who had in the meanwhile arrived there stayed at the P.O. to guard the dead body and the informant ran to his village to inform the members of his family of the occurrence. He then immediately returned to the P.O. along with the members of his family. The members of his family stayed back at the P.O. at the informant left for P.S.. along with Ram Babu Singh and Anirudha Tiwari to lodge information. While on way, the informant met his father, he narrated the entire incident to him. The informant's father also accompanied them to the P.S. where FIR (Ext. 2) was lodged.

3. The defence of the appellants was that Ambika Singh was murdered by some unknown persons at lonely place not in presence of any witness and the appellants have been implicated due to enmity.

4. During trial, two persons came forward to claim to be eye-witnesses and they are Madan Singh (PW 1) and Ashok Kumar Singh the informant (PW 3). The investigating Officer, who held inquest over the dead body found fourteen injuries on the person of the deceased. The doctor, who held post-mortem examination was not examined.

5. Learned Additional Sessions Judge placed no reliance on the evidence of PW 1 and conviction of the appellants is based solely on the evidence of the informant PW 3. The evidence of the informant was that he was going from village Sherpur with his uncle Ambika Singh. Parmeshwar Singh was also going along with them. Parmeshwar Singh was an important witness but he was not examined by the prosecution. The informant was relied for the simple reason that he had received injuries in his right hand when he tried to save his uncle but in para-2 of his deposition he developed a story that when he tried to save his uncle, appellant Nawal Rai assaulted him with barrel portion of his pistol in his right hand. The injury of the informant has not been legally proved.

6. According to the jardbeyan Rupan Singh fired gun at the deceased and Nawal Rai and Vila Rai (appellants in Cr. Appeal No. 242/85) fired with country made pistol but in his evidence in Court, the informant gave a new story that Rupan Singh put his gun on the waist of his uncle and then fired and that Nawal Rai fired by his pistol touching it on his buttock. In the fardbeyan there is general statement that Nawal Rai and Vali Rai fired at his uncle but in his evidence the

informant said that when Nawal Rai fired, it hit the deceased on the left leg.

7. So far motive part is concerned, the informant stated in the fardbeyan that Chapra Police had raided the house of Rupan Singh in connection with a dacoity case on the information said to have been given by Ambika Singh the deceased. In Court the informant has given altogether different motive of land dispute with regard to an orchard purchased by his uncle Ambika Singh which was in mortgage with Ram Barai Rai.

8. Learned Counsel for the appellants has argued that learned Additional Sessions Judge grievously erred in basing conviction on sole testimony of interested witness, nephew of the deceased whose evidence was full of holes. The definite evidence of the informant is that firing was done from close range. This is belied by the post-mortem report which does not show any charring mark on the deceased. It has been argued that from the evidence of the Investigating Officer it would appear that the informant had not stated before him that Rupan Singh put the barrel of his gun on the upper part of the waist of the deceased and then fired nor had he stated that Nawal put his barrel on the hip of the deceased and then fired.

9. There is considerable force in the submission of the learned Counsel for the appellants that in view of the infirmities in the evidence of PW 3 and other facts of the case, it was extremely unsafe to sustain the conviction of the appellants. Learned Counsel for the appellants has contended that the prosecution is not clear about the motive for the crime and the motive as alleged has not been established. It is true that it is not necessary for the prosecution to establish the motive for the crime but the evidence is bit shaky. There must be some evidence regarding motive. The evidence of the sole eyewitness is not corroborated by medical evidence. PW 3 the informant is the own nephew of the deceased. It is also significant to note that not a single independent witness from the village was examined. The evidence of the informant is uncorroborative. It is difficult to believe that some of the appellants were catching hold of the deceased while other companions were firing at him. The evidence is extremely shaky and far from satisfactory for sustaining the conviction of the appellants. More so, many persons are involved in this case.

10. In the result, I hold conviction of the appellants is not free from doubt and both the appeals must be allowed and are accordingly allowed. Judgment and order of conviction and sentence is set aside and the appellants are acquitted of the charge by giving them benefit of doubt. All the appellants are on bail. They are discharged from the liability of their bail bonds.