

(2002) 07 PAT CK 0047

In the Patna High Court

Case No : Criminal Appeal No's. 274 and 325 of 1995

Ram Sharan Prasad @ Ram Sharan Mahto

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 19-07-2002

Acts Referred:

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

Citation : (2002) 2 BLJR 1638

Hon'ble Judges : Ram Nandan Prasad, J; Braj Nandan Prasad Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Braj Nandan Prasad Singh, J.—The appellants put on trial suffered conviction u/s 302 of the Indian Penal Code and also Section 27 of the Arms Act for which while they were sentenced to suffer rigorous imprisonment for life on the first count, no sentence was awarded on the second count.

2. At the earliest, I may briefly refer to the main features of the prosecution case against the appellants centering round the incident in question. The factual matrix are that at about midday on 29th July, 1992 while the deceased Kailash Mahto along with his family members was working in his field which situates in Nirgidhi Khandha for transplantation of seedlings of paddy, Chandar Mahto, RamShafan Mahto, Kapil Manjhi, Raghuni Manjhi and Rajendra Manjhi holding fire-arms, Kishore Mahto and Vijay Mahto carrying garasa with them emerged coming from the side of village Jafra. It was Chandar Mahto who set the ball in motion, firing a shot with his double barrel gun, on Kailash Mahto. Unexpectedly caught in this situation it was alleged that the deceased Kailash Mahto and his brother Rajendra Mahto ran towards east, pursuant to which those carrying arms chased them opening fire. As Kailash Mahto was stuck in the mud of the field, Chandar Mahto and Kapil Manjhi fired shots on him, pursuant to which Kailash Mahto dropped dead in the field and the assailants while reiterating, also opened

fire. The genesis of the incident assigned by the prosecution was that theft of fan of Kapil Manjhi was removed four months earlier by Sanjay Kumar, pursuant to which Sanjay Kumar was taken to their village by Chandar Mahto and Kapil Manjhi and for commission of theft they were fined in a panchaiti that was convened for release of the captive. Two days preceding the incident when Kapil Manjhi, Raghuni Manjhi and Rajendra Manjhi were irrigating their field, the deceased Kailash Mahto asked them for refund of the amount of fine realized from them on false allegation, and it is alleged that Kapil Manjhi and his brothers having retorted had also threatened him of dire consequences. After the prosecution was launched on behest of Rajendra Mahto (PW 1), as usual, investigation commenced, in course of which the police officer entrusted with the task of investigation, visited place of occurrence, recorded statement of witnesses, seized blood stained earth from the place of occurrence, prepared inquest report, sent the dead-body to mortuary for post-mortem examination and receipt of the report, having concluded investigation, laid charge-sheet before the Court. In the trial that eventually commenced against the appellants, the State examined altogether seven witnesses and those examined are the family members of the deceased including Rajendra Mahto who set the criminal law in motion, the doctor who held autopsy over the dead-body of the deceased and also the police officer who carried out investigation of the incident.

3. The defence of the appellants both before the Court below and this Court had been the denial of entire allegations and they ascribed their false implication due to animosity. The trial Court, however, having considered the prosecution evidence in its proper perspective while negating the defence of the appellants about their innocence, recorded verdict of guilt, finding appellants guilty and sentenced them in the manner stated above.

4. Though volume of arguments are sought to be made, which appear to be ex-facie meritless, before they are given due consideration, we wish to analyse evidences of the prosecution witnesses with brevity which have been fairly spelt out also in the judgment of the Court below. To begin with evidence of Rajendra Mahto (Prasad) P.W. 1, who happens to be the brother of the deceased and also the maker of the fardbeyan, one may find him reiterating his early version which he rendered before the police about appellants having emerged from the side of village Jafra taking recourse to firing causing fire-arm injury on Kailash Mahto who while fleeing sustained injuries and dropped dead in the field. This witness would claim not only identification of Chandar Mahto, Kapil Manjhi, Raghuni Manjhi and Rajendra Manjhi but would also saddle them with allegation of opening shots on Kailash Mahto who dropped dead on receipt of injuries by him. The appellants, it was stated by the witness, had either rifle or gun with them which was used as weapons for killing the deceased. If the witness is to be given any credence, it was Chandar Mahto who fired first of all setting the ball in motion which was followed by successive shots of firing by Chandar Mahto and Kapil Manjhi, as a result of which Kailash Mahto dropped in the field, pursuant to which all the assailants fired at him from close range making the victim dead.

The witness would also state about enmity between the parties. The other witness examined by the State was Manoj Kumar P.W. 2, who was son of the deceased. He along with his family members were working in the field when he noticed appellants coming from west holding fire-arm with them and it was Chandar Mahto who fired shot when his father began to flee in the east. In course of chase of his father, Chandar Mahto fired shot twice, pursuant to which his father dropped in the field and after all of them fired on him with close range, his father succumbed to the injuries in the field of Sumangal Mahto. The witness would make similar narration as that of P.W. 1 about past enmity with regard to theft of fan and plate allegedly by Sanjay Kumar and Surendra. The witness would state to have heard sound of firing thrice or fourth time. Similar narrations were made also by Kalwa Devi P.W. 3, wife of Rajendra Mahto, who too was working in the field with her family members at the time of incident. She too stated to have noticed the appellants coming from the side of village Jafra along with others holding fire-arms with them and it was Chandar Mahto who shot fire from his double barrel gun/pursuant to which she along with her family members began to flee in the south direction. About act attributed to the appellants, the witness would state that they began to flee pursuant to which Kailash Mahto sustained fire-arm injury in the chest and dropped dead in the field of Shyam Sunder Babu.

5. Sanjay Kumar P.W. 4 was son of the informant and he too claimed to have been working in the field along with his family members on the date of incident when the appellants along with others were seen holding fire-arms coming from the side of village Jafra and it was Chandar Mahto who instantaneously fired shots on Kailash Mahto. His family members began to flee in south direction while Kailash Mahto ran towards east, when he was chased by the appellants, and after he dropped in the field of Sumangal Mahto, the appellants shot him dead and returned in the west direction. The witness would make similar narration about past enmity with the assailants in the matter of theft of fan and plate allegedly by him. Shyam Devi P.W. 5, other witness was the wife of the deceased who too claimed to have been working in the field with her family members on the date of incident when noticed appellants coming along with others holding fire-arm with them from west direction and no sooner had they reached, they fired two shots and first shot was that of Chandar Mahto, while her husband began to flee in the east direction, the others ran towards south, and in process of fleeing, Chandar Mahto repeated firing when her husband dropped in the field, pursuant to which others fired from the close range.

6. Sri Suresh Prasad Singh P.W. 7, was the Police Officer who conducted investigation of the case and the witness stated to have recorded fardbeyan of Rajendra Mahto and visited the place of occurrence. The Police Officer states that first place of occurrence was the field of Sheo Mangal Mahto with mud which was about 1 k.m. from village Koshnara, where he noticed dead-body of Kailash Mahto with multiple fire-arm injuries on the person of the deceased. He noticed blood in the field and also seized blood stained earth. The foot prints in the field

were quite visible, Adjacent west to it, was field of Rajendra Mahto and at about 200 yards in west, lies the field of the deceased in Nirgidhi Khandha. The Police Officer stated to have prepared inquest report over the dead-body of the deceased, sent the dead-body for postmortem, and on conclusion of investigation stated to have laid charge-sheet before the Court.

7. Dr. Dayanand Prasad P.W. 6, who held autopsy over the dead-body of Kailash Mahto noticed following ante-mortem injuries on his person:

(i) 1/2" x 1/2" cavity deep margin black inverted on right side chest on upper part of its side--wound of entry.

(ii) 1/2" x 1/2" cavity deep black margin inverted margin on right side chest about 2" below the first wound-wound of entry.

(iii) 1/2" x 1/2" cavity deep margin black inverted right side chest about 1 1/2" below to the second wound-wound of entry.

(iv) 3/4" x 3/4" cavity deep margin inverted on left side of chest near axilla--wound of exit which was communicating to injury No. (i).

In estimation of the doctor, the death of the deceased was due to shock and haemorrhage due to aforesaid injuries caused by fire-arms. The doctor stated to have extracted two bullets from the wound during post-mortem examination. The injuries, in the opinion of the doctor, were sufficient to cause death of the deceased. This is all the evidence that has been adduced on behalf of the State.

8. The for most criticism that was levelled against bona fide of the prosecution case was that though the appellants were shown to have fired shots showering bullets on the deceased, the Police Officer who visited the place of occurrence failed to find even the solitary empty shell of cartridge there, and in this backdrop it is urged that it was most unlikely that all empty shells of cartridges in case of such showering of bullets would vanish. Inconsistent narrations made by the witness about manner of occurrence and also mode of assault on the deceased was also highlighted at bar, and in quick succession was urged that though the assailants were shown to have fired shots on the deceased with close range, no charring or tattooing was noticed around the wounds by the doctor who held autopsy over the dead-body of the deceased. Contentions were raised that though a good number of witnesses were stating about deceased having sustained injuries in the process of being chased, caunter version was that of P.W. 4 negating the story of chase by the assailants, and regard being had to the posture of the deceased it was contended that the deceased was not erected to have sustained injuries on his chest, particularly when he sustained those injuries in the process of being cashed by the assailants. Though the female members of the deceased, it is urged, began to flee being panicky on seeing the assailants coming holding arms and also left their utensils in which they had brought their meals to the field and had also left some of their wearing apparels there, the Investigating Officer neither noticed those article in the field nor even

the bullock and yoke which had been allegedly brought there for pouching the land for transplantation of paddy. The inconsistent narrations made by the witnesses even about place where the dead-body of Kailash Mahto was noticed by the Police Officer was also highlighted at bar.

9. If the evidences of the prosecution witnesses are analyzed in proper perspective to determine to complicity of the appellants in the incident, about identification of the miscreants, we have evidence of P.Ws. 1, 2, 3, 4 and 5 against Chandar Mahto, Against Kapil Manjhi, there are evidences of same witnesses about his identification during incident. Similar was the case with Rajendra Manjhi and Ram Sharan Mahto also, against whom there has been identification of five persons. Against Raghuni Manjhi there are identification by four persons and they are P.Ws. 1, 2, 3, 4 and 5. Those who suggested Chandar Mahto to be the assailant of the deceased were P.Ws. 1, 2, 3, 4 and 5 who also stated about firing repeated by this assailant, pursuant to which, Kailash Mahto dropped dead. Against Kapil Manjhi, the prosecution had led evidence of P.Ws. 1, 3 and 4 suggesting him to be the assailant of the deceased and similar was the case with Raghuni Manjhi, Rajendra Manjhi and also Ram Sharan Mahto. In case of Ram Sharan Mahto, Shyam Devi P.W. 5 too, who was wife of the deceased would identify him as assailant of her husband. Though attention of these witnesses on some material particular of the incident was drawn by the defence at trial, we have noticed that the Police Officer who recorded their statements was not confronted with such narrations allegedly made before him. The Police Officer would state that P.W. 1 did not state before him that after Kailash Mahto dropped in the field, Raghuni and others fired shots from close range. Similarly, the Police Officer states that P.W. 4 did not state before him the names of Kapil Manjhi, Raghuni Manjhi and Rajendra Manjhi among those who chased the deceased.

About Shyam Devi P.W. 5, the Police Officer states that the witness did not state in clear terms that after Chandar Mahto fired shots, Kailash Mahto dropped in the field. The Investigating Officer states that this witness did not narrate before him that others too fired shots from close range. Though all particulars about the works, which the family members of the deceased were doing in the field had not been stated in so many words before the Police, by Rajendra Prasad P.W. 1, the Police Officer states that he narrated before him about his female members working in the field for transplantation of paddy, and omission on part of the this witness on this score, would hardly discredit the witness. The prosecution had a case that while the female members of the deceased were transplanting paddy in the field, others were dressing the field, and about deceased, the prosecution had a case that he too was dressing the land to make ready for transplantation of paddy. No such evidence of mitigating native even during cross-examination of the witnesses was brought on the record which could strongly mitigate against the bona fide of the prosecution version and also credibility of the witnesses. About the place, where the dead-body of Kailash was noticed by the Police Officer, we have the evidence of P.Ws. 1,2 and 3 that the dead-body was lying in

the field of Sumangal Babu. The fields of villages Jafra and Koshnara, as witnesses state, are adjacent to each other. In conformity with the narrations made by the witnesses, the Police Officer had noticed marks of foot prints in the field. There being no evidence of the Police Officer about seizure of utensils or wearing apparels or the bullock or the instruments for ploughing land, these factors were matter of petty details which did not belong to real issue, so as to affect broad features of the prosecution case. Comments made on credibility of P.W. 1 about there being remote possibility of presence of the witness at the place of occurrence on account of witness working at Silao for sewing gunny bags, did not altogether rule out impossibility of physical presence of the witnesses at the place of occurrence. His job was not of such a nature which would improvabilis his presence at the place of occurrence during material time of incident. Similar was the case with P.W. 2 who was a school going boy and his presence too at the place of occurrence cannot be disbelieved in absence of any mitigating evidence on the record that at the material time of incident he was in school which may rule out his presence at the place of occurrence. Yet, the Police Officer had not mentioned about the blood stained wearing apparels of the deceased or the dead-body smeared with mud on account of deceased having dropped in the field full of water but the prosecution is not to suffer for negligence of the Investigating Agency. True it is that there was no finding of the expert about blood seized from the place of occurrence, to be the human blood but that too was not a vital factor to discredit the prosecution version, rather in view of ocular testimony of witnesses and also the positive finding of the doctor it did not remain disputed that the deceased died homicidal death. While assailants of the deceased were suggested to be Chandar Mahto, Kapil Manjhi, Raghuni Manjhi, Rajendra Manjhi and Ram Sharan Mahto, the doctor had noticed only three injuries which were the wounds of entry, the possibility of some shots of firing by assailants having missed the target cannot be said to be remote. All the injuries on the deceased were on the chest and the doctor extracted two bullets from the wounds and opined that these injuries sustained by the deceased were sufficient to cause death in ordinary course of nature. However, Chandar Mahto who was shown to have set the ball in motion who fired first shot on the deceased is not at trial, he having absconded. The analysis which we have made are determination of the accusations only against Kapil Manjhi, Raghuni Manjhi, Rajendra Manjhi and Ram Sharam Mahto who are appellants before this Court, and as we have discussed, the State had led good and positive evidence about these appellants too having been suggested to be the assailants of the deceased. Though the doctor did not state in so many words about there being charring or tattooing around the wounds, stated to have noticed that the injuries were of black margin. Though estimation made by the witnesses about distance from which shots were fired should not be considered to be the mathematical precision, P.W. 4 states that shots were fired by the assailants from a distance of 20 yards, and finding of the doctor cannot be said to run counter with the ocular testimony of the witnesses. Even about motive assigned behind the incident, there has been evidence of P.Ws. 1,2 and 4 suggesting that the preceding the

incident, the fan and plate of Kapil Manjhi were suspected to have been stolen by Sanjay Kumar for which he was awarded fine by Kapil and Chandar Mahto. The witnesses stated that after Kailash Mahto reprimanded these two persons for refund of the fine, they threatened him of dire consequences. Though the motive did not play vital role in cases where evidences are direct and clear, in this case we have noticed the prosecution, establishing even the motive behind the gruesome killing of the deceased. As has been urged at bar, Ram Kishun Mahto, Mahendra Mochi, Bachhu Mahto, Charitra Mistry and Bishun Mahto who were suggested to have witnessed the incident were not examined by the State. Though the witnesses have stated about presence of these persons in the adjoining field at the time of incident but their non-examination would not make exclusion of ocular testimony of the family members of the deceased and their evidences did not merit rejection only for the reason that they were family members of the deceased. By virtue of being family members of the deceased, they cannot be said to be interested and partisan witnesses.

10. Having analyzed i.e. prosecution evidences, we find that the finding recorded by the Court below was not against the weight of mass of evidence that was placed on the record and hence did not require interference. There being no merit, these two appeals fail and is accordingly dismissed. Since Kapil Manjhi, Raghuni Manjhi and Rajendra Manjhi are on bail, the trial Court shall take coercive step for their apprehension and to consign them to custody to serve out sentences awarded to them.

Ram nandan Prasad, J.

I agree.