

(2001) 08 PAT CK 0005

In the Patna High Court

Case No : Criminal Appeal No. 196 of 1990

Ram Shresth Rai and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 20-08-2001

Acts Referred:

Penal Code, 1860 (IPC) — Section 149, 304, 307, 324

Citation : (2001) 4 PLJR 56

Hon'ble Judges : I.P. Singh, J

Bench : Single Bench

Advocate : Bindhya Keshari Kr. and R.C. Sinha, for the Appellant; A.P. Sahay, for the Respondent

Final Decision : Dismissed

Judgement

I.P. Singh, J.—The Appellants Rajendra Rai, Bindeshar Rai and Ram Shresth Rai were convicted u/s 307/149 of the Indian Penal Code and were sentenced to undergo R.I, for five years each, The Appellants Ram Parichhan Rai, Ram Swarath Rai. Shambhu Rai, Bilash Rai and Ram Ahalad Rai were convicted u/s 307/149 of I.P.C. and were sentenced to undergo R.I. for ten years.

2. The prosecution case in short is that on 31.5.80, election for Bihar Legislative Assembly was held. The informant Ram Sewak Prasad was present at the polling booth of his village which was situated in Upper Primary School. The accused Appellant Parichhan Rai, who was the local Mukhiya came with some of his associates and wanted to capture the booth for stamping votes in favour of his candidate. The informant and other villagers, however, resisted their attempt and frustrated their plan to capture the booth inspite of their persistent attempt and threat. It has been stated that at about 4 P.M. the said Mukhiya went away giving threatening to teach lesson to the informant and other villagers as they had not allowed him to capture the booth. After the polling was over the informant and other villagers stayed at the polling booth situated in village Sivraha Chaterbhuj for the smooth departure of the polling party. About 6 P.M. the Appellant Ram

Parichhan Rai came with a gang of 20-25 persons from the eastern side towards the polling booth. Among them the informant could identify Rajendra Rai, Bindeshar Rai, Ram Shresth Rai being armed with guns. He had identified Ram Swarath Rai, Ram Parichhan Rai, Shambhu Rai, Bilash Rai, Ram Ahlad Rai, Ram Dayal Rai and Lal Babu Rai (since deceased). It has been stated that the persons holding guns began to fire on the informant and the other villagers also indiscriminately as a result of which the informant, Ram Sewak Prasad (P.W. 18), Fida Hussain (P.W. 9), Krishn Nandan Pd. (P.W. 3), Jitan Paswan (P.W. 4), Dharichhan Paswan (P.W. 2) and Bindeshar Pd. (P.W. 12) were injured. After this occurrence, the accused Appellants fled away. The injured persons were brought to the Sadar Hospital, Muzaffarpur on the same date where at about 15 hours fardbeyan of the informant injured was recorded by the Sub-Inspector of Police of Sadar P.S. on the basis of whose the F.I.R. was drawn. The police started investigation and after completion of investigation chargesheet was submitted against these Appellants. Cognizance was taken and the case was committed to the court of Sessions, who are subsequently (sic) the trial concluded and Appellants were convicted hence this appeal.

3. The Appellants pleaded not guilty and have stated that they have been falsely implicated due to previous enmity and village rivalry. The prosecution in support of his case examined altogether 20 witnesses.

4. P.W. 1 is Bishwanath Prasad. He is a formal witness. P.W. 2 is Dharichhan Paswan. He has been declared hostile. P.W. 3 is Krishn Nandan Prasad, P.W. 4 is Jitan Paswan, P.W. 5 is Surajdeo Prasad, P.W. 6 is Pramodanand Jha. He is also formal witness. P.W. 7 is Kishori Prasad, P.W. 8 is Ram Chandra Rai, P.W. 9 is Md. Fida Hussain. P.W. 10 is Bishundeo Prasad, P.W. 11 is Ramkaran Thakur, P.W. 12 is Bindeshar Prasad, P.W. 13 is Ram Lakhnan Paswan. He is a tendered witness. P.W. 14 is Nathuni Bhagat, P.W. 15 is Ram Nandan Prasad, P.W. 16 is Saryug Prasad, He is a formal witness. P.W. 17 is Baiju Prasad. He is also a formal witnesses, P.W. 18 is Ram Sewak Prasad, the informant himself, P.W. 19 is Dr. A.K. Chaudhary. He has examined all the injured persons and P.W. 20 is a formal witness. He has proved the hand writing of the Investigating Officer Kamal Prasad, who had recorded the fardbeyan of the iniformant injured P.W. 13.

5. Defence has also examined one witness. D.W. 1, Dr. Uday Shankar Bhagat, out of 20 witnesses, P.Ws. 5, 6, 16, 17 and 20 are formal witnesses who have proved certain documents. P.Ws. 2, 3, 4, 9, 12 and 18 are persons who were injured due to gun firing.

6. P.W. 18, the informant Ram Sewak Prasad has fully supported the prosecution of the case as narrated in her first information report. He has stated that he and other villagers did not allow the Mukhiya Ram Parichhan Rai and his associates to capture the booth for stamping the votes due to which he went away giving threats to them. According to him, when the polling staff went aw(ay the Appellant Ram Parichhan Rai came with 20-25 persons among whom Appellants Rajendra Rai, Bindeshar Rai and Ram Shresth Rai had gun in their hands. The

Appellants Ram Parichhan Rai had spear while Ram Swarath Rai and Dinesh were also armed with lathi. According to him Appellant Rajendra Rai began to fire indiscriminately which caused injury to him as well as the witnesses Fida Hussain, Krishnandan, Bindeshar, Dharichhan and Jitan Paswan. All the injured persons were brought to the hospital where he gave his statement before the Sub-Inspector of Police.

7. P.W. 9, Fida Hussain has also supported the genesis of the case and firing on the informant and other villagers.

8. P.W. 2, Ram Parichhan Paswan has stated that firing took place as a result of which he was also injured but he could not see who was firing and he was declared hostile.

9. P.W. 3, Krishnandan who is an injured witness had also supported the firing at the polling booth but he did not name the assailant and he was declared hostile.

10. P.Ws. 4, 5, 10 and 12, they have also supported the version of the informant and they have stated that there was firing at the booth which caused injury to the informant and other witnesses.

11. P.W. 19, Dr. A.K. Choudhary who is the Assistant Professor of S.K. Medical College, Muzaffarpur examined all the three injured persons on 31.5.80 between 8-9 P.M. He found on the person of Bindeshar Pd. the following :--(i) Multiple pillet injuries on neck, chest, right, forearm, left index finger 1/4" in diameter approximately. On the person of Jitan Paswan found (i) Multiple pillet injuries 1/4" in diameter approximately on chest, (ii) Multiple pillet injuries 1/4" in diameter on both shoulders, (iii) Multiple pillet injuries 1/4" in diameter on abdominal wall. On the person of Fida Hussain he found pillet injury 1" in diameter on his right forearm. On the person of Krishnandan Pd. She found (i) Multiple pillet injuries each 1/4" in diameter approximately on left arm; (ii) Multiple pillet injuries 1/4" in diameter approximately on left leg. On the person of Ram Sewak Pd. he found single pillet injury 1" in diameter on front of left thigh. On the person of Dharichhan Paswan he found (i) Multiple pillet injuries on chest, forehead, cheek and left shoulder in 1/4" diameter approximetely. He has opined that all the injuries aforesaid were simple in nature and were caused within six hours by fire arms. Injury reports granted by him have been marked as Ext. 4 to Ext. 4/5 respectively. He has further stated that injuries indicated that the firing was done from a considerable distance as pillets were spread over. On behalf of the defence also one Dr. Udai Shankar Bhagat, the then medical incharge of Jandaha Primary Health Centre has been examined to support the plea of alibi of accused Rajendra Rai.

12. According to the doctor, all the injuries on the injured persons were simple in nature and superficial.

13. The I.O. of this case has not been examined. D.W. 2 is Ram Khilawan Prasad. He identified the handwriting of the I.O. Kamla Prasad, who recorded the

fardebayan of the informant (Ext. 5).

14. The defence witness D.W. 1, Dr. Udai Shankar Bhagat has been examined to prove the presence of Appellant Rajendra Rai at Jandaha Hospital, which is miles away from the place of occurrence. He has stated that the Appellant Rajendra Rai was suffering from acute appendicitis with fever and was under treatment of him as indoor patient. According to him, he was discharged from the hospital on 6.6.80 at 7 A.M. He remained in the hospital as indoor patient from 31.5.80 to 6.6.80. According to him he was not in a position to move during that period. He has prescribed medicine to him. The prescription was marked Ext. A and his certificate issued by him was marked" Ext. B, but it appears very peculiar that being a doctor himself the Appellant Rajendra Rai did not prefer to go to Muzaffarpur Medical College Hospital neither to any eminent Surgeon available at Muzaffarpur, which was certainly in way to Jandaha and much near from his house. The court below has rightly discarded the plea of alibi on ground that nor the Register of Hospital neither the cash-memo for purchase of medicine were brought on record.

15. In this case, the learned Counsel appearing on behalf of the Appellants was submitted that in this case, the I.O. has not examined and non examination of I.O. has caused prejudice to the defence. On this point, he has relied a decision reported in 1997 (1) PLJR 1167 in which it was held that it would not be proper to sustain conviction where prejudice appears to have been caused to the defence by denial of opportunity to cross examine the investigating officer. It has been further submitted by learned Counsel that the nature of injuries were simple and superficial. Therefore, there was no intention to kill the injured and informant and other witnesses and case u/s 307 I.P.C. is not attracted. On this point, he has relied on a decision reported in 1998 (1) B.L.J. 760. In this case, it was held that the accused fired at one injured and it was not on vital part of body and nature of injuries were simple. The conviction of Appellants u/s 307 I.P.C. was set aside and it was altered u/s 304 of I.P.C. It has been further submitted that the amongst the witnesses who have supported the case of the prosecution only four witnesses were from village Sivraha, others were of village Majhaulia and were inimical to the Appellants. As regard the submission of non-examination of the I.O. prejudicing the case of the defence but it appears from the evidence of the witnesses that the non-examination of the I.O. have not prejudiced the case of the defence as the defence could not have found anything by cross examining the Investigating Officer since there are number of ocular witnesses examined in this case on behalf of the prosecution who all have supported the case of the prosecution. In the present case, the alleged occurrence took place after the polling of Sivraha booth and members of polling party had also left the place of occurrence by that time. It is also evident that occurrence took place in the month of May having brighter sun light. There are seven eye witnesses of the occurrence. Some of them got injured by the firing which took place during the occurrence. P.W. 9 who is of village Majhaulia had also got injured and has supported the case that mob variously armed came and

the Appellant Rajendra Rai started firing. The doctor P.W. 19 who examined the injured witnesses found fire arm injuries on the persons of the injured which was caused by pillet and all the injuries were simple in nature and superficial. Though the I.O. was not examined but P.W. 2 proved the fardbeyan of the informant and seizure list which was in the pen and hand of the I.O. Kamla Prasad. From the deposition of the eye witnesses, it appears that during the election there was some difference between the informant and Appellant on question of capturing the booth and soon after the polling the Appellant forming mob came to the place of occurrence and from a distance they fired at informant and witnesses still assembled there, which caused simple and superficial injuries to them. The nature of injuries and the distance of firing with cartridges filled with pillets itself indicates that the Appellants had no intention to kill the informant and other witnesses rather it appears that their intention was to terrorise them to teach lesson since they opposed their move to capture the booth and thereby frustrated the design of the Mukhiya Ram Parichhan to prove his supremacy.

16. In the aforesaid facts and circumstances, the act of the Appellants did not attract the offence punishable u/s 307 of the Indian Penal Code since they had no intention to kill the informant and the other injured witnesses. From the evidence of the witnesses, it is amply clear that the Appellants who did not fire but were members of unlawful assembly and they were also variously armed came along with Appellant who started firing and caused injury to the informant and witnesses as mentioned above they are also liable to be punished under Sections 324/149 of the Indian Penal Code. Accordingly, the conviction of all the Appellants under Sections 307/149 of the Indian Penal Code is altered to them (sic) under Sections 304/149 of the Indian Penal Code.

17. Coming to the question of the sentence, the learned Counsel appearing on behalf of the Appellants submitted that the occurrence took place in 1980 and since then the Appellants have been amply punished and harassed during the prolong litigation. It has been further stated that in this case the I.O. was not examined and the witness who were examined were inimical to the Appellants. He has also submitted that the Appellants have no criminal history and there is no previous conviction against them.

Moreover, they have also remained in jail for sometime, therefore, it requires consideration on point of sentence.

18. Having regard to the submission raised on behalf of the counsel for Appellants and in the facts and circumstances of the case that the Appellants have gone through the mental strain and financial crisis during the prolong litigation lasting about 21 years. In my opinion, it will be expedient in the interest of justice, if the sentence of these Appellants are reduced to the period they have already gone in jail with a fine of Rs. 1,000/- by way of compensation to be deposited by the Appellants Rajendra Rai, Bindeshar Rai and Ram Shresth Rai and the rest of the Appellants with a fine of Rs. 600/- each to be deposited by them within three months from the date of receipt of a copy of this order. In

default, they will be further undergo R.I. for six months. It is made clear that the amount of fine if and when realised by these Appellants will be paid to the six injured P.W. 2, Darichhan Paswan, P.W. 3, Krishnandan, P.W. 4, Jitan Paswan, P.W. 9, Md. Fida Hussain, P.W. 12, Bishundeo Prasad and P.W. 18, Ram Sewak Prasad by way of compensation.

19. Subject to the modification in the conviction and sentence to the Appellants, this appeal is dismissed.