
(2007) 05 PAT CK 0146
In the Patna High Court
Case No : Criminal Appeal No. 769 of 2002

Ram Swaroop Tanti and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 14-05-2007

Acts Referred:

Arms Act, 1959 — Section 27
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2007) PLJR 459

Hon'ble Judges : Shiva Kirti Singh, J; S.C. Jha, J

Bench : Division Bench

Advocate : Deepak Kumar, for the Appellant; Ashwini Kumar Sinha, for the Respondent

Final Decision : Allowed

Judgement

1. Both the appeals have been heard together because they arise out of same impugned judgment and order, They shall be governed by this common judgment. By the impugned judgment dated 11th December, 2002, passed by learned Additional Sessions Judge (FTC I). Begusarai, in Sessions Trial No. 147/89, the five appellants of Cr. Appeal No. 769/ 02 have been convicted for the offence u/s 302 with the aid of Section 34 of the Indian Penal Code and also u/s 27 of the Arms Act. The sole appellant of the other appeal Dhanik Tanti has been convicted u/s 302 I.P.C. and also u/s 27 of the Arms Act. All the appellants have been awarded rigorous imprisonment for life for the offence relating to Section 302 I.P.C. and no separate sentence has been passed under the Arms Act as per order of punishment passed on 12.12.2002 which is also under challenge.

2. The prosecution case, in short, is to the effect that deceased Lalan Tanti and his father Hirday Tanti, informant (P.W. 5) were cutting grass in their maize field on 5.9.1988 at about 10.30 A.M. That field situated in village Tulshipur had been taken by the informant on batai from Lakhan Singh of village Rajaura. While the deceased was cutting grass, appellants Dhanik Tanti, Jhunjhun Tanti, Jhuna

Mahto case and asked the informant's son for chewing tobacco leaf (khaini). Appellants Bijli Mahto, Ramswaroop Tanti and Jogi Yadav also came. They all had taken khaini and talked to each other. Suddenly appellant Dhanik Tanti took out a pistol and fired upon informant's son Lalan Tanti causing injury on the left side of his chest. Lalan Tanti ran for few steps towards southeast, fell down and died. When the informant raised hulla the accused persons pointed pistol at him. On hearing the sound of firing villagers, such as, Madho Tanti (P.W. 4), Karai Lal Tanti (P.W. 1), Bhuttu Tanti (P.W. 3) who were also cutting grass in the nearby fields came running and saw the accused persons running with their pistols towards east. The motive of the occurrence was that the accused persons allegedly belonged to a gang and indulged in anti-social activities which was protested by the prosecution party and on that account there was enmity from before. Such enmity was the reason for the occurrence. The fardbeyan was recorded at the place of occurrence on 5.9.1988 at 1 P.M.(noon) by Sub Inspector of Police J.P. Singh of Muffasil P.S., Begusarai leading to Muffasil (Begusarai) P.S. case No. 102/88.

3. Although the Investigating Officer has not been examined as a witness, it appears that on completion of investigation he submitted charge sheet against the accused appellants. After cognizance the case was committed to the court of sessions. The accused appellants pleaded not guilty to the charges framed against them leading to their trial and ending in their conviction by the impugned judgment and order noticed earlier. Although the defence has not examined any witness but from the trend of cross examination and arguments it appears that the defence has denied the entire prosecution case, particularly the claim of the witnesses including the informant that they saw the occurrence and that it took place in the manner as alleged.

4. The prosecution in order to prove its case has examined altogether six witnesses. P.W. 1 Karat Lal Tanti and P.W. 4 Madho Tanti have deposed as eye-witnesses of the alleged occurrence to support the prosecution case as made out by the informant Hirday Tanti (P.W. 5) who has also claimed to be an eye-witness. P.W. 2 Chittranjan Singh is a formal witness who has proved the formal F.I.R. as Ext.1, P.W. 3 Bhuttu Tanti is cited in the F.I.R. as a witness along with P.W. 1 and P.W. 4 who in his deposition has chosen not to support the prosecution case. He claims to have come after hearing the sound of shooting. According to him, the other witnesses and the informant came later on hulla. He has not claimed to have seen any of the assailants and has not named the accused appellants. If his version is accepted as correct then the claim of other witness to have seen the occurrence will be rendered highly doubtful. This witness has not been declared hostile. P.W. 6 Uma Kant Mishra is a formal witness who has proved the fardbeyan as Ext.2. The prosecution has not examined the Doctor nor has brought on record the post mortem report. Similarly, neither investigating officer has been examined as a witness nor the inquest or any other document prepared during investigation has been brought on record except the fardbeyan and the formal F.I.R.

5. In this case the material witnesses are P.Ws. 1, 4 and 5. It has been submitted on behalf of the appellants that the claim of P.Ws. 1 and 4 that on hearing the sound of firing they came and witnessed the occurrence is not supported by the topography of the alleged place of occurrence because the witnesses including the informant have admitted that maize crop was standing in and around the place of occurrence which was of man's height. It has further been submitted that even the informant, father of the deceased, as per P.W. 3 came later and this version is probable because if the deceased was killed on account of family dispute and previous enmity, there is no probable reason as to why the assailants, large in number, would spare father of the deceased, the informant, if he would have been present at or near the place of occurrence. It has further been submitted that non-examination of the investigating officer has prejudiced the defence of the accused persons because attention of P.Ws. 1 and 4 was drawn to several statements made by them before the investigating officer in order to point out that earlier they had not claimed to be eye-witnesses but such contradiction could not be established on account of non-examination of the investigating officer. It has also been submitted that there is no good ground furnished by the prosecution for non-examination of the I.O. and the Doctor. It has been submitted that due to non-examination of the Doctor and failure of the prosecution to bring on record the post mortem report, the defence has been prejudiced because the exact manner and cause of death of the deceased has been suppressed. It has been submitted that in any case since presence of P.Ws. 1 and 4 at the place of occurrence as eye-witnesses is doubtful, conviction of the appellants only on the solitary eye-witness's account of the informant (P.W. 5) should also not be accepted in absence of corroboration from medical evidence.

6. On going through the deposition of P.W. 1 it is found that in paragraphs 6,8 and 13 a number of pertinent and material questions relating to earlier statements by this witness before the I.O. have been put to the witness. Questions have also been put to indicate that the defence has challenged the place of occurrence also because the dead body was found at some distance and in another field of one Baiju Singh which is adjacent to the field of Lakhan Singh taken by the informant on batai. Similarly a perusal of deposition of P.W. 4 Madho Tanti shows that questions relating to his earlier statements have been put to him in paragraphs 5 and 11 of his deposition. On careful consideration of the questions put to these witnesses regarding their earlier statements it is clear that the defence has been prejudiced due to non-examination of the I.O. The claim of these witnesses, i.e., P.Ws. 1 and 4 to be eyewitnesses is not free from doubt.

7. So far as the informant, P.W. 5, is concerned, in the fardbeyan he had claimed that he was cutting grass at a distance of five steps from the deceased. That would come to around 13 feet and in his deposition in court also he has claimed that he was cutting grass at a distance of three lagga, i.e., about 18 feet from the deceased. Such estimate of distance is not very material but apparently he was at a distance of about 15 feet as per his own claim. He has admitted that

maize crop was fully grown and according to him at the time of shooting the concerned persons, i.e., accused and the deceased were in standing position. Once the accused persons and the deceased would get up or be in a standing position in fully grown up maize crop of man's height it would be difficult for even a person at a distance of about 15 feet to witness the actual shooting and pin point as to who amongst the several persons actually fired at the deceased. Later in court this witness has tried to improve the case by claiming that when the accused persons had asked for khaini and were consuming khaini along with the deceased, he proceeded towards them and was present in immediate vicinity so as to see the occurrence of shooting. Such is not the claim of the informant in the fardbeyan and even otherwise lack of any injury on the person of the informant creates a serious doubt regarding his presence at the place of occurrence in view of statement of P.W. 3 Bhuttu Tanti that he was the first person who arrived at the place of occurrence and the witnesses as well as the informant arrived later. According to the informant the deceased was shot from the front in the chest but in absence of any medical evidence to corroborate his such claim it is difficult to accept his oral claim that the deceased was killed on account of fire arm injury in the chest. Had there been independent and reliable witnesses, on unimpeachable oral evidence the factum of death by firing could have been accepted even in absence of corroborative medical evidence. But the situation in the present case is different. As discussed earlier, P.Ws. 1 and 4 have not been found acceptable as eye-witnesses of the occurrence, thus only P.W. 5 is left as the sole eye-witness of the alleged occurrence whose evidence has been discussed above. His very presence at the place of occurrence and claim of having seen the occurrence is not free from doubt and in such a situation the position of the prosecution is clearly worsened due to non-examination of the doctor and withholding of the post mortem report.

8. It is also worth noticing that the F.I.R. was allegedly lodged on 5.9.88 at 1 P.M. (noon) but the same was perused by the learned Magistrate only on 8.9.88. Learned counsel for the appellants has rightly submitted that such unusual delay in producing the F.I.R. for perusal of the Magistrate without any explanation for the delay raises a doubt that the prosecution case may have been ante-dated and developed as an after thought to implicate persons who were inimical to the informant. Had the inquest report and post mortem report showing prompt police action on the date of occurrence been available on record, the matter would have been different but in absence of such materials on record and there being no explanation as to why the I.O. and Doctor were not examined and the post mortem report was not brought on record, we find force in the aforesaid submission of learned counsel for the appellants that in this case delay in production of the F.I.R. before the Magistrate creates doubt regarding the prosecution case. For all the aforesaid reasons, we find that the prosecution has failed to prove its case against the appellants beyond reasonable doubts. Hence, both the appeals are allowed and all the appellants of both the appeals are acquitted of all the charges. It appears that Dhanik Tanti, appellant of Cr. Appeal

No. 18 of 2003 is in jail custody. He is directed to be released from such custody forthwith if not required in connection with any other case. The other five appellants of Cr. Appeal No. 769 of 2002 appear to be on bail. They shall stand discharged from the liability of their respective bail bonds.