
(2005) 08 PAT CK 0071

In the Patna High Court

Case No : Criminal Appeal No's. 34 and 51 of 2002

Ramdeo Kahar and Another and Upendra Kahar

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 09-08-2005

Acts Referred:

Arms Act, 1959 — Section 27

Penal Code, 1860 (IPC) — Section 149, 302, 307, 323, 324

Citation : (2005) 3 BLJR 2022

Hon'ble Judges : Rekha Kumari, J;Aftab Alam, J

Bench : Division Bench

Advocate : Shyamendra Kumar, Amicus Curiae, for the Appellant; Ganesh Pd. Jaiswal, APP, for the Respondent

Final Decision : Dismissed

Judgement

Aftab Alam, J.—Both the appeals are directed against the same judgment and order passed by the trial Court. In Criminal Appeal No. 34 of 2002 there are two appellants. Each of them was convicted under Sections 302/34 of the Penal Code and sentenced to undergo rigorous imprisonment for life and a fine of Rs. 2000/- and on default in payment of fine, rigorous imprisonment for a further period of one year. Appellant No. 1 was also convicted u/s 323 of the Penal Code and sentenced to rigorous imprisonment for six months. Similarly appellant No. 2 was additionally convicted u/s 324 of the Penal Code and sentenced to rigorous, imprisonment for one year. In the analogous Criminal Appeal No. 51 of 2002 there is only one appellant who was convicted by the trial Court u/s 302 of the Penal Code and Section 27, Arms Act. For committing the offence of murder he was sentenced to undergo rigorous imprisonment of life and fine of Rs. 2,000/- and on default in payment of fine, further imprisonment for one year. For the use of an un-licensed rifle for committing the murder he was sentenced to rigorous imprisonment for three years and a fine of Rs. 500/- and on default in payment of fine, imprisonment for a further period of three months. The different sentences of all three appellants were directed to run concurrently.

2. The prosecution case is based on a FIR lodged by one Sanjit Yadav (PW 8), the son of the deceased Mauji Yadav at Silao police station on 29.5.1997 at 5 p.m. In the FIR the informant stated that on that day at about 3 in the afternoon he and his father were weeding out wild grass in their piece of land lying adjacent west to their village Govindpur. A number of other villagers, namely, Lakhan Yadav (PW 3), Anil Yadav (PW 6), Ragho Yadav (PW 7), Indradeo Yadav (PW 1), Ramji Yadav (PW 2) and Dwarik Yadav (PW 4) were sitting and chatting under a nearby Pipal tree. At that time a number of accused came out of the lane from the village; Upendra Kahar, the appellant in Cr. Appeal No. 51 of 2002 was carrying a country made rifle and Ramdeo Kahar and Shiv Shankar Paswan, the two appellants in Cr. Appeal No. 34 of 2002 were carrying a lathi and a gadasa respectively. Apart from the three appellants, the informant named eight other persons along with four to five unknown as accused who were similarly armed with country-made fire-arms or other weapons. The accused were shouting abuses and were declaring their intent not to leave one Patali Yadav alive. The accused came to the spot where the informant and his father were working on their land and abusing them asked about Patali. The informant's father said "my dears, why do you fight? What is the use of it?" (Babu ladai jhagra kyon karte ho, kaya faida ho ga). At this point appellant Ramdeo Kahar ordered to shoot him down. On this appellant Upendra Kahar aimed at his father and fired from his country-made rifle. The shot hit him on the right side of abdomen, slightly above the waist. He staggered for a few paces and "fell down in the plot of land of Paryag Yadav. Appellant Ramdeo Kahar then hit Ragho Yadav on his left hand and appellant Shiv Shankar Paswan gave a gadasa blow on the head of Anil Yadav with the intent to kill him. The occurrence caused panic all around and the accused fled away towards north making indiscriminate firing. The appellant along with some other villagers then put his father on a khat and took him for treatment but on the way he breathed his last. He then brought the dead body of his father Mauji Yadav and the two injured, namely, Anil Yadav and Ragho Yadav to the police station where in presence of a number of villagers, namely, Lakhan Yadav (PW 3), Dwarak Yadav (PW 4), Indo Yadav (PW 1) and Ramdahim Yadav (PW 5) he lodged the FIR. The informant further stated that there was old enmity between the two sides and cases were also going on in Court and that was the reason behind the occurrence. He also stated that on the previous day (28.5.1997) while some women of his family had gone to the Government well for fetching water, Upendra Kahar had come there in an inebriated state and had made some obscene remarks. Patali Yadav had objected to that and Upendra Kahar had then threatened him to teach a lesson. He further stated that the occurrence was seen by many witnesses named by him in the FIR and a number of other villagers who would state about it. The FIR was read out to him and finding it to be correctly recorded he (Sanjit Yadav) put his signature on it. The FIR was also signed by one Awalesh Yadav (PW 9) and Lakhan Yadav (PW 3).

3. The police after investigation submitted charge-sheet against all the accused named in the FIR and hence, eight other accused faced trial along with the three

appellants before the Court below. The appellant Upendra Kahar was charged u/s 302, (PC, simpliciter while the rest were charged u/s 302 read with Section 149 of the Penal Code. At the end of the trial however, the Court below acquitted the other eight accused and convicted and sentenced the three appellants as noted above. As regards one of the accused, namely, Shankar Ram, the trial Court found that in the night intervening May 27/28, 1997 he had fell down in sleep from the roof of the house of his father-in-law in the village where he was sleeping. As a result of the fall both his legs were badly hurt and on 29.5.1997 he was lying in the house of his father-in-law. The rest of the seven accused were acquitted mainly on the ground that there was no allegation of any overt act in so far as they were concerned.

4. This leaves this Court to consider whether the conviction of the three appellants before it has been arrived at properly and whether their convictions and sentences are sustainable in appeal.

5. In support of its case the prosecution examined thirteen witnesses. PWs 1 to 8 are the eye-witnesses of the occurrence. PWs 9 and 10 are formal witnesses; PW 9 was examined to prove his signature on the inquest report and the FIR and PW 10 to prove his signature on the inquest report. PW 11 is the doctor who examined the injuries on the persons of the injured Ragho Yadav and Anil Yadav and PW 12 is another doctor who held post mortem on the body of Mauji Yadav, PW 13 is the I.O. of the case.

6. Taking up first the medical evidence PW 12 stated before the Court that on the deceased Mauji Yadav he found the following ante-mortem injuries :

One wound of entry 1" in diameter with inverted charred margin with bleeding over right iliac fossa near anterior - superior iliac spine was present.

7. On dissection the abdominal cavity was found full of blood, about 500 c.c. in volume. Liver was ruptured and embedded with bullet like structure" on external surface with laceration of transverse colon with mesentry. Other abdominal viscera like spleen, kidney, stomach were intact. The doctor gave his opinion that death was caused due to shock and haemorrhage due to the above injuries caused by a fire-arm, damaging vital organs. The bullet extracted from the body of the deceased was handed over to the constable. The medical report, thus, confirms that Mauji Yadav was killed by a single gun-shot.

8. PW 11 examined Ragho Yadav on 29.5.1997 at 5.45. p.m. and Anil Yadav at 5.55 p.m. on the same day. On the person of Ragho Yadav, he found the following injuries which according to him were caused by some hard and blunt substance:

I. lacerated bleeding wound over middle of back of left fore hand size 3/4" x 1/2" x 1/6".

II. Reddish bruise over back of left arm, size 3" x 1".

On the person of Anil Yadav, PW 11 found the following injuries:

(i) incized bleeding wound with clean cut margin over left parietal area of head.

"Size of injury - 2-2/1" x 1/4" x 1/4".

(ii) Tender swelling with redness over back region of head.

"Size-1-1/2" diameter.

Injury No. (i) was caused by some sharp cutting instrument while injury No. (ii) was caused by some hard and blunt substance.

9. The evidence of PW.11, thus, confirms the prosecution case that Ragho Yadav was hit on his left arm by a lathi and Anil Yadav was given a gadasa blow on his head.

10. PW 13, the I.O., in his turn, stated before the Court that on the date and time mentioned in the FIR the informant Sanjit Kumar came to the police station along with the dead body of his father Mauji Yadav and two injured persons Ragho Yadav and Anil Yadav and in presence of some other persons of his village, namely, Lakhan Yadav, Dwarik Yadav, Indradeo Yadav and Ramdahin Yadav lodged the FIR. After instituting the case on the basis of the FIR the I.O., took the further statement of the informant and also recorded the statements of the injured Anil Yadav and Ragho Yadav before sending them to the Government hospital for treatment. After completing other formalities like preparation of inquest report etc. he came to the place of occurrence. There he found Indradeo Yadav, Dwarik Yadav, Ramji Yadav and Lakhan Yadav and took their respective statements. He then made an inspection of the P.O. In this regard he stated before the Court that the spot where Mauji Yadav was shot is a plot of land at a distance of about 100 yards towards the west of the village Govindpur. The piece of land belonged to one Nand Kishore Pd. from who it was taken by Mauji Yadav on Batai. He had grown vegetables like lauki, bhindi and nenua over it. About ten yards towards west of this plot was the plot of Paryag Yadav where the deceased had fallen down. At a distance of about twenty five yards towards south from this piece of land was a pipal tree and at a distance of five yards from the tree was a Government well. The I.O. found some blood splattered over the PO and seized some blood-stained earth under a seizure list. The house of the deceased was at a distance of about 100 yards towards the east of the place of occurrence and further east was the house of the accused.

11. The objective findings recorded by the I.O. at the place of occurrence, thus, further go a long way to support the prosecution case.

12. Coming now to the ocular evidence, we find that it is simply over-whelming and hardly leaves a doubt with regard to the correctness of the prosecution case. As noted above there are eight eye witnesses out of whom PW 8 is the informant himself and PWs 6 and 7 are the other two who received injuries in course of the occurrence.

13. PW 8, the informant reiterated his statement in the FIR, before the Court and fully supported his case. He stated that on the given date and time he along with his father was weeding-out wild grass from his piece of land that lay towards the west of their village. Further west, at a little distance some of his co-villagers, namely, Ragho Yadav, Dwarik Yadav, Lakhan Yadav, Anil Yadav, Ramji Yadav, Indiradeo Yadav and Ramdahin Yadav were sitting under the p/pa/tree. He saw a number of accused coming from the direction of the village. Upendra Kahar was carrying a country made rifle, Ramdeo Kahar a lathi and Shiv Shankar Paswan a gadasa. The other accused named by him were similarly armed with country-made fire-arms and other weapons. Shouting abuses, they came near his father where he was working in the field. On reaching there Upendra Kahar asked where was Pataliya, declaring that he would kill him. His father replied that Pataliya was not there and further added that what was the use of thus fighting. At this point Ramdeo Kahar said that he should be killed. On this Upendra Kahar fired at his father from his country-made rifle. The shot hit his father on the right side of his abdomen slightly above the waist as a result of which he took a few steps and fell down in the land of Paryag Yadav. Witnessing the occurrence, Ragho Yadav and Anil Yadav who were sitting in a group under the p/pa/tree ran towards his father but they were intercepted by Ramdeo Kahar who hit Ragho Yadav on his left arm by lathi as a result of which Ragho Yadav was injured. Anil Yadav who was coming behind him was given a gadasa blow on his head by Shiv Shankar Paswan with the intent to kill him. As a result of that Anil Yadav fell down. Then there was panic all around and the accused fled away towards north shouting abuses and making indiscriminate firings from their weapons. He went on to state how the deceased and the injured were brought to the P.S. where the FIR was lodged. He further stated about the incident taking place on the previous day when Patali had objected to the obscene remarks being made by Upendra Kahar when the women of his family had gone to the Government well for bringing water. He was cross-examined at length but nothing of any significance, could be elicited by the defence.

14. PWs 6 and 7 similarly described the entire occurrence in graphic details. They stated about the accused coming to the piece of land where the informant and his father were working, the accused asking about Patali, the deceased trying to placate them, appellant Ramdeo Kahar urging that instead of Patali, he should be killed and Upendra Kahar firing a shot hitting Mauji Yadav and causing his death. The two witnesses further stated that on seeing Mauji Yadav hit by the gun-shot and falling down as the result, they naturally ran towards him to see whether or not he was alive and to help him but they were intercepted by appellant Ramdeo Kahar who gave a lathi blow on the left hand of Ragho Yadav and Shiv Kumar Paswan who gave a gadasa blow on the head of Anil Yadav. These two witnesses had received injuries in course of the occurrence and otherwise also their testimonies are perfectly consistent and there appears no reason to doubt their evidence.

15. The depositions of other eye-witnesses from PWs 1 to 6 are similarly very

consistent both internally and in relation to the other eye-witnesses and they too appear worthy of full credence.

16. At this stage it may be noted that according to the defence an occurrence had taken place at 4 p.m. on that date when the members of the prosecution party had fired at appellant Shiv Shankar Paswan and had also caused injury to another accused Nagina Paswan. In the commission of that offence somehow Mauji Yadav was killed at the hands of his own men. On the statement of appellant Shiv Shankar Paswan, a counter case was registered u/s 307 of the Penal Code in which the witnesses of the present case were named as accused.

17. It was contended on behalf of the appellants that the prosecution case was liable to be rejected if for no other reasons, for its failure to explain the injuries on the persons of appellant Shiv Shankar Paswan and another accused Nagina Paswan (who was acquitted by the trial Court.)

18. In support of its case the defence also examined two witnesses. Ashok Kumar Acharya (DW 1) is a SI of police who had examined Shiv Shankar Paswan and Nagina Paswan and had prepared the requisitions for their medical treatment. The requisitions are on records as Exts. "A" and "A/2". DW 2 is the doctor who on 29.5.2005 at 6.20 had examined Nagina Paswan and Shiv Shankar Paswan. On the person of Nagina Paswan he found the following injuries :

(i) lacerated wound 1" x 1/2" x muscle deep on lateral aspect of left sole.

(ii) Abrasion 1/4" x 1/4" on middle portion of left sole.

The injuries were caused by hard and blunt substance.

On the person of Shiv Shankar Paswan he found the following injuries:

(1) Lacerated wound 1/2" x 1/2" x muscle deep on upper portion of lateral aspect of left fore arm.

(2) Abrasion 1/4": x 1/4" on upper portion of lateral aspect of left fore arm.

These injuries too were caused by hard blunt substance.

19. It is, thus, to be seen that the injuries on the persons of accused were so trivial and nominal that they required hardly any explanation by the prosecution. Having regard to the nature of the injuries it can not even be ruled out that those were caused by some friendly hands.

20. We, thus, find it impossible to give any credence to the defence version and to reject the prosecution case supported by such over-whelming evidence on the ground that the injuries on the persons of two of the accused were not explained.

21. Mr. Shyamendra Kumar, Amicus Curiae appointed by the Court to appear on behalf of the appellants stated that the prosecution had failed to prove the motive as alleged in the FIR. Learned counsel pointed out that no witness was

examined in support of the incident of the previous day. No woman from the family of the informant came forward to depose that any vulgar remark was passed by Upendra Kahar on the previous day. He contended that since a motive was advanced by the prosecution it was duty bound to prove it and since no evidence was produced in connection with that incident, the entire prosecution case was liable to be rejected.

22. We are unable to accept the submission. In view of the very convincing ocular evidence fully supported by the medical evidence and the objective findings of the I.O. the question of motive loses practically all relevance and whether or not the incident of the previous day was proved in this case is of no consequence.

23. Learned counsel next submitted that all the witnesses said that the accused had come looking for Pataliya and, therefore, they could have no intention to kill Mauji. We find no substance in this submission either. It is well established that a common intention may develop in course of the occurrence itself and the facts of the case as established by the prosecution evidence leave no room for doubt that Mauji Yadav was killed by appellant Upendra Kahar in furtherance of the common intention of all the three appellants.

24. Mr. Kumar next submitted that the place of occurrence was not established inasmuch as no blood was found in the informant's piece of land. There is no substance in this submission either. All the witnesses have stated that on being shot the victim staggered for a few steps in a frenzy before falling down in the plot of land of Paryag Yadav and the evidence of the I.O. is clear that blood was found splattered on the ground where the victim had fallen down.

25. Mr. Kumar lastly submitted that all the prosecution witnesses were chance witnesses as there was no reason for them to assemble at that time under the Pipal tree near the place of occurrence. We find no substance in this submission either. It is well known that in rural India the shade of a large tree like pipal or banyan is a common meeting point where people assemble and sit during their idle hours. It was perfectly natural that on a summer afternoon a number of villagers should be sitting under the Pipal tree simply chatting away their free time and we are unable to agree that they were chance witnesses in the sense that their testimonies should not be relied upon by the Court.

26. On a careful consideration of materials on record and the submissions made on behalf of the parties we are fully satisfied that the conviction and sentence of the three appellants were justly arrived at and those warrant no interference by this Court in appeal.

27. The bail bonds of Ramedeo Kahar and Shiv Shankar Paswan, the two appellants in Cr. Appeal No. 34 of 2002 are cancelled and they are directed to immediately surrender before the Court below for undergoing the rest of their sentences. In case they fail to surrender within one month from today, the trial Court must take all steps, including coercive ones, to secure their arrest in order

to make them serve out their remaining sentence.

28. In the result, the judgment and order under appeal is affirmed and the two appeals are dismissed as devoid of any merit.

Rekha Kumari, J.

29. I agree.