

(2003) 06 PAT CK 0009

In the Patna High Court

Case No : Criminal Appeal No. 37 of 1992

Ramdeo Kahar and Sitaram Kahar

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 30-06-2003

Acts Referred:

Arms Act, 1959 — Section 27
Penal Code, 1860 (IPC) — Section 307, 34

Citation : (2003) 3 PLJR 854

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

Bench : Single Bench

Advocate : R.K. Sharma, for the Appellant; I.M. Kumar, for infromant and R.K. Sinha, for State, for the Respondent

Final Decision : Dismissed

Judgement

I.P. Singh, J.—Both the Appellants Ramdeo Kahar and Sitaram Kahar have been convicted under Sections 307 and 34 of the Indian Penal Code and sentenced to undergo Rigorous imprisonment for seven years each with a fine of Rs. 1000/- each. Appellants were also convicted u/s 27 of the Arms Act but no separate sentence was awarded to them under the Arms Act.

2. Prosecution case in short is that one Sheoraj Singh, the informant gave his fard beyan on 15-4-1998 at 9. P.M. at State Dispensary, Gorari, Rs. Karakat, inter-alia, that at 6.15.P.M. while he was taking betel at Tea betel shop of Sheopujan Halwai, his uncle Sakhichand Yadav was taking tea. Both the Appellants along with one Rajdeo Kahar (since dead) came there and surrounded his uncle Sakhichand Yadav. The Appellant Rajdeo Kahar put Gamchha on the neck of Sakhichand Yadav and dragged him. It has been alleged that Sakhichand Yadav fell down and thereafter Rajdeo Kahar (since dead) inflicted several Fasuli blow at Sakhichand Yadav. During assault by the Appellant Rajdeo Kahar. both these Appellants, namely, Ramdeo Kahar and Sitaram Kahar, armed with their country made pistol, were threatening the people around not to come near

otheP.Wise they would be killed. Appellant Sitaram Kahar fired from his pistol to scare the witnesses who were assembled there and they fled away. On the alarm made by the witnesses, other villagers assembled there and all the Appellants fled away towards west. Then they came near Sakhichand Yadav and taken him to the hospital. He was senseless and was bleeding. Thereafter he was given treatment. It has been alleged that the witnesses had seen the occurrence. It has also been alleged that the motive of occurrence was enmity between the Appellants and the injured Sakchichand Yadav.

3. On the basis of fard beyan. police recorded Bikramganj Police Station Case No. 42 of 1988 dated 15.4.1988 at 10. P.M. and after completing the investigation police submitted charge sheet against the Appellants on the basis of which the learned C.J.M., Sasaram took cognizance and subsequently it was submitted to the court of sessions where the trial concluded in the manner indicated above. Appellants denied the charges and submitted that they have been falsely implicated in this case.

4. Prosecution altogether examined 17 witnesses. P.W. 1 is Sri Bhagwan Singh, P.W. 2 is Bilas Singh, he claims to be the eye witness of the occurrence. P.W. 3 is Banjhu Yadav. He also claims to be the eye witness. P.W. 4 is Birda Singh. P.W. 5 is Sakhichand Yadav. He is the injured. P.W. 6 is Bishwanath Singh. P.W. 7 is Shivaraj Singh, the informant of the case. P.W. 8 is Sheodhari Yadav. P.W. 9 is Ramdeyal Yadav. P.W. 10 Sabhapati Singh and P.W. 11 Ramchalitar Singh are said to be the tender. P.W. 12 is Bashista Singh. P.W. 13 who is the formal witness has proved the F.I.R. as Exhibit No. 2. P.W. 13 is Chhote Lai Singh. He is also the formal witness who has justified the writing of fard beyan Exhibit No. 3 by Chandreshwar Prasad. P.W. 14 is Dr. Balram Prasad. He has examined the injured Sakhichand Yadav. P.W. 15 is Yogendra Yadav. P.W. 16 is Chandreshwar Prasad. He is the Investigating officer of this case. P.W. 17 is Ashutosh Kumar Singh. He is a formal witness.

5. P.W. 7, the informant, Shivraj Singh (sic). According to him, on. the date of occurrence in the evening while he and his uncle Sakhichand Yadav were taking betel nuts and tea at the shop of Sheopujan Halwai. in the meantime, these Appellants including Rajdeo Kahar (since dead) came there and surrounded his uncle. While Rajdeo Kahar pulled down his uncle by putting Gamchha at his neck and started assaulting with Phasuli. Both the Appellants with their country made pistols in their hands were threatening the informant and other persons there by showing pistols to run away therefrom otheP.Wise they would be killed. It is alleged that in course of threatening Appellant Sitaram Kahar fired from his pistol in the air on which the informant and others fled away from the place of occurrence. Thereafter on Hullah other villagers came and seeing them Appellants fled away towards west. All the villagers came near the injured Sakhichand Yadav, who was badly injured and he was taken to the hospital for treatment. His fard beyan was recorded on 15.4.1988 at 10 RM. at State Dispensary, Gorari on which F.I.R. was registered. Other witnesses P.Ws. 1, 2, 3,

4, 5, and 6 have supported the version of the informant, as stated in his fard beyan. P.W. 14, Dr. Balram Prasas is the doctor who had examined the injured Sakhichand Yadav on 15.4.1988 at 7.45. P.M. while he was posted as the Medical Officer, In-charge State Dispensary and found as many as 16 injuries on the person of the injured. The injuries are as follow:

1. Extensive sharp cut injury on back of the neck, extending to the left side, size 8"x 2"x 1 1/2".
2. Extensive sharp cut on right side on the neck, size 1" x 3/4".
3. Extensive sharp cut on the left neck extending to interior side, size 5" x 1" x 1".
4. Sharp cut injury in front of the (sic)
5. Three sharp cut injury one above another extending from behind the left pinna to left cheek causing complete disfigure.
 - (a) upper one 5 1/2" x 3" x 2".
 - (b) middle 5" x 3" x 1".
 - (c) lower one on the mandible bone exposed, size 4 1/2" x 1 1/2" x 1/2".
6. Sharp cut injury obliquely on middle of the head size 2 1/4" x 1 1/4"x scalp deep.
7. Sharp cut injury transversely on the middle of fore head, size 2" x 1/3" x scalp deep.
8. Sharp cut injury on the right side of the fore head, size 1"x 1/3" x scalp deep.
9. Deep sharp cut injury transversely on upper lip, size 2 1/2" x 3/4" x 2/3".
10. Sharp cut injury on right shoulder prominence, size 3 1/2" x 3/4" x 1 1/2".
11. Sharp cut injury below injury No. 10, size 2 1/2" x 3/4" x 1".
12. Sharp cut injury from lower half of right forearm to right palm in the middle, size 8" x 2 1/2" x 2 1/2".
13. Sharp cut injury on all fingers of right hand, size each 1" x 1/3" x 1/3".
14. Sharp cut injury on left wrist on palmer surface with each injury on forefinger except thumb, size each 1" x 1 1/2" x 1".
15. Sharp cut injury on middle of the chest, size 1 1/2" x 1/3" x 1" and
16. Abrasion on right upper abdomen, size 5" x 1/4" x 1/6".

In the opinion of the doctor, all the injuries were grievous in nature caused by very sharp edged weapon made by Phasuli, P.W. 16 is the I.O. of this case. He has also supported the case of the prosecution. He has stated that he seized

blood stained Chadar and blood stained Gamacha and several other articles which exhibited as Exhibit Nos. X,Y and X/9. P.W. 16 has also stated that on 15.4.1988 he was posted as the officer-in-charge and got the O.D. slip and thereafter he proceeded to the hospital and then recorded the fard beyan of the informant, Sheoraj Singh. He started investigation of the case. The I.O. could not record the statement immediately as he was not in position to give his statement. His statement was recorded after he gained consciousness at 10 P.M. The I.O. thereafter inspected the place of occurrence and has given the full description on the same. He also saw the injuries on the person of the injured and foP.Warded the injured to the doctor. He also recovered blood stained white Chaddar, blood stained green Gamchha, blood stained black Charkhana Shawl, blood stained white Khadi Gamchha, Lungi, Dhoti, which were exhibits. He also found the plant of Brinjal and Tomato nearby trampled. He also found blood stains on the leaves of the Brinjal and Tomato.

6. Learned Counsel for the Appellants has submitted that the witnesses who have been examined in this case were related and interested witnesses. It has further been submitted that there is no allegation that these Appellants had assaulted the injured and even touched the body of the injured. It is also submitted that the prosecution has completely failed to prove that the blood stained clothes seized from the injured and the blood stains from Tomato and Brinjal plants were of the human body, since it was not sent for chemical examination. So far contention of the learned Counsel for the Appellants that the witnesses were related and interested, on this score alone, prosecution case cannot be discarded but such evidences were to be scrutinized with great care and caution. Witnesses examined in this case have supported the factum of the occurrence. They have stated that Appellants were armed with fire arm and were keeping vigilance when the injured was assaulted by Rajdeo Kahar (since dead). Witnesses have also stated that one of the Appellants Sita Ram Yadav fired from his pistol to scare the people. According to the witnesses the Appellants were aiding and thus abetting Rajdeo Kahar, who committed assault on Sakhichand Yadav. The doctor has examined the injured and found as many as sixteen injuries on the person of the injured. Out of them fifteen were grievous. Only injury No. 16 was simple in nature. Thus, from the evidence of the witnesses, it appears that although there is no specific overt act attributed in assaulting the injured to these Appellants but they were preventing the people from interfering with the assault made by Rajdeo Kahar, who died during trial.

7. Learned court below, on appreciation of the evidence so adduced, has rightly come to the conclusion and convicted both the Appellants under Sections 307/34 of the I.R.C. I see no reason to interfere with the conviction of these Appellants. Coming to the question of sentence, learned Counsel for the Appellants has submitted that the occurrence is of 1988 and the Appellants have suffered a lot. Moreover, they have remained in jail for some time. As such, it requires consideration on the point of sentence. He further submits that there is no criminal antecedent and previous conviction against these Appellants. On the

point of sentence, in the circumstances. I am of the view that it would not be proper to send the Appellants to the jail to serve out remaining period of sentence, rather it would be expedient in the larger interest of justice if the sentence of the Appellants are reduced to the period they have already undergone in jail with a fine of Rs. 4,000/-(four thousand) to be deposited by each of the Appellants within three months from the (sic) default, the substantive sentence, passed by the court below shall be automatically restored.

8. It is made clear that the amount of fine, if and when realised by these Appellants, the same shall be paid to the injured Sakhichand Yadav. P.W. 5.

With the aforesaid modification in the sentence, this appeal is dismissed.