

(2012) 11 PAT CK 0046

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 220 of 2000

Rekha Choudhary and Others

APPELLANT

Vs

The State Of Bihar

RESPONDENT

Date of Decision : 05-11-2012

Acts Referred:

Arms Act, 1959 — Section 27

Criminal Procedure Code, 1973 (CrPC) — Section 107, 144, 145

Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 321

Citation : (2012) 11 PAT CK 0046

Hon'ble Judges : Rajendra Kumar Mishra, J

Bench : Single Bench

Advocate : Jai Vardhan Narayan, Amicus Curiae, for the Appellant; Dashrath Mehta, Assistant Public Prosecutor for the State, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice Rajendra Kumar Mishra

1. As in this case, no one is appearing on behalf of the appellants for the last several dates, Mr. Jai Vardhan Narayan, Advocate, is appointed as amicus curiae on behalf of the appellants to assist the Court. The appellants have preferred this appeal against the judgment of conviction and order of sentence dated 31.05.2000 passed in Sessions Trial No. 13/96/11/2000 by the court of Additional Sessions Judge-IV, Jehanabad, whereby the appellants have been convicted u/s 395 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for five years. The appellants Shiv Bilash Paswan and Ram Bilash Choudhary have further been found guilty for the offence u/s 27 of the Arms Act and have been sentenced to undergo rigorous imprisonment for three years with order to run the sentences in both count concurrently.

2. On the basis of fardbeyan (Ext-3) dated 04.03.81 of Ram Dayal Singh (PW-5) Arwal P.S. Case No. 33/81 was instituted under Sections 147, 148, 149, 323, 324, 307, 380 and 448 of the Indian Penal Code and Section 27 of the Arms Act

against the nine appellants and two others, namely, Anup Paswan and Pooja Paswan. In brief the case of informant, Ram Dayal Singh (PW-5) is that on 03.03.81 at about 11:00 P.M. he slept in verandah situated in front of his house. At that time Rekha Choudhary armed with Lathi, Bal Chand Choudhary armed with Khanti, Ram Bilash Choudhary armed with pistol and Raj Ballabh Choudhary armed with Lathi came and unfolded his mosquito net and asked him about his son Rajendra Singh then he showed his ignorance. In the meantime, Raj Ballabh Choudhary opened the outer door of the house and 15 to 16 persons entered in his house, out of them one stood the bamboo stair at the roof and all the persons entered in the Angan through the bamboo stair. They started search of his son Rajendra Singh giving threatening to kill him. In the light of torch flashed by accused, he identified Pooja Paswan, armed with Lathi, Dil Bahadur Choudhary armed with Pasuli, Satya Narayan Choudhary and Gobardhan Paswan armed with Lathi, Anup Paswan armed with Khanti, Shiv Bilash Ram armed with pistol and Mahendra Paswan armed with Lathi but he could not identify some unknown. In course of search of his son, Rajendra Singh, they tried to break the door of the room in which his daughter-in-law was slept. One unknown associated with accused told that he had taken 2,000/- rupees to kill Rajendra Singh and entered in the room of his daughter-in-law by breaking the door. They asked to his daughter-in-law whereabouts her husband then she replied that she did not know whereabouts of her husband. Thereafter, she was taken in the Angan by causing assault, anyhow she reached near him where Ram Bilash Choudhary also reached and made fire causing injury to his daughter-in-law and also snatched her ear ring. At that time, Ram Bilash Choudhary told to carry the property on which Rekha Choudhary, Ram Bilash Choudhary and Bal Chand Choudhary took three boxes while Satya Narayan Choudhary took the brass pot. All the accused came out from house and started to dash the door of the room situated in the verandah in which his son Rajendra Singh was slept. They also flashed torch through the window, Ram Bilash Choudhary asked to make fire through the window. In the meantime the villagers rushed whereas Gaya, Ram Naresh and Bhal Bela Singh started throwing stone from the roof. At that time, Ram Bilash Choudhary opened fire through the window in the room of his son but his son anyhow saved him. It is further alleged that on hullah, several villagers rushed and made firing twice then all the accused persons fled away. The informant Ram Dayal Singh (PW-5) has alleged that the occurrence took place due to land dispute and in the case his son was doing the pairvi on behalf of villagers.

3. The police on investigation submitted the final form on 19.08.81 for the offences under Sections 147, 148, 149, 323 and 324 of the Indian Penal Code and Section 27 of the Arms Act but allegation untrue against all F.I.R. named accused. The Chief Judicial Magistrate after hearing the informant on his protest petition and on perusal of case diary took the cognizance of the case under Sections 147, 148, 149, 323, 321, 380 and 448 of the Indian Penal Code and Section 27 of the Arms Act. Section 307 of the Indian Penal Code was also added later on and the case was committed to the court of sessions for trial.

4. The Charges u/s 395 of the Indian Penal Code and Section 27 of the Arms Act were explained to the accused to which they pleaded not guilty and claimed to be tried.

It is pertinent to mention here that out of eleven accused named in the First Information Report one Anup Paswan died in course of commitment of the case and other Pooja Paswan died in course of trial, as such, only nine accused-appellants faced trial. The defence of the accused-appellants is that they are the co-villagers of the informant and have been falsely implicated in this case due to land dispute as the proceeding u/s 145 of the Code of Criminal Procedure was going on and also decided in favour of the accused and against the informant and others.

5. To substantiate the charges leveled against the accused-appellants, the prosecution has examined altogether 9 witnesses, who are Naresh Singh (PW-1), Manbodh Singh (PW-2), Ram Baleshwar Bishwakarma (PW-3), Rajendra Singh (PW-4), Ram Dayal Singh, informant, (PW-5), Janki Devi (PW-6), Surti Devi (PW-7), Vijay Kumar (PW-8) and Parmanand Prasad Verma (PW-9). The defence has not examined any witness only the certified copy of order dated 02.03.89 passed in Case No. 1111-M/81 (Shiv Pujan Singh Vs. Rekha Choudhary) in proceeding u/s 145 of the Code of Criminal Procedure decided in favour of O.P. Rekha Choudhary has got been Exhibited as Exhibit-"A".

PW-8, Vijay Kumar, is the advocate's clerk and has proved the protest petition of informant Ram Dayal Singh (PW-5) filed in the Court of Chief Judicial Magistrate as Exhibit-3. PW-9, Parmanand Prasad Verma, is also the advocate's clerk and he has proved copy of entry no. 80 in the register of Sadar Hospital, Arwal regarding the injury of Janki Devi wife of Rajendra Singh, said to be written by Kishun Dev Prasad, clerk of Arwal Hospital.

PW-1, Naresh Singh, has stated in his evidence that at the time of occurrence he was slept in his house. On hearing the voice of theft he woke up and came at the roof and heard hullah at the house of Rajendra Singh. Thereafter, he started throwing Dhela and saw 12 to 14 persons there in which he identified Rekha Choudhary and Sattan Choudhary in the light of torch flashed by them. After moving the dacoits he and villagers also reached there and saw the blood oozing injury at the ear of wife of Rajendra Singh and also the spots of pillet injury in the hand. The defence has drawn the attention to this witness regarding his statement recorded before the police that he had not stated before the police about sustaining injury in the ear and pillet spot at the hand of wife of Rajendra Singh. This witness has further stated in paragraph-6 in his cross examination that the proceeding of 145 of the Code of Criminal Procedure was going on in between him and Rekha Choudhary and Sattan Choudhary, in which Ram Dayal Singh (PW-5) was opponent to Rekha Choudhary and Sattan Choudhary. There was also the proceeding u/s 107 of the Code of Criminal Procedure with Sattan Choudhary and Rekha Choudhary. From the evidence of this witness, it is apparent that he has inimical and litigating term with accused-appellants, Rekha

Choudhary and Sattan Choudhary and in that litigation informant, Ram Dayal Singh (PW-5) was party with this witness.

Manbodh Singh (PW-2) has also stated in his evidence that the occurrence is of eight years age in the night. At that time he was slept in his house and heard sound of firing then he came out in the Angan and raised hullah from the roof and saw that the dacoits were making attempt to break the door. This witness has further stated that in the light of torch he identified Rekha Choudhary, Sattan Choudhary and Gobardhan Paswan. This witness has further stated in his cross examination in paragraph-5 that there was litigation in between him and the accused persons of 145 Code of Criminal Procedure and against the order of that case, appeal has been preferred in the High Court, The informant, Ram Dayal Singh (PW-5) was with him in that case. The defence has drawn suggestion to this witness to the effect that he has not seen any occurrence but due to enmity with the accused persons he gave the evidence in the pressure of the informant only to create pressure at the accused persons.

PW-3, Ram Baleshwar Vishwakarma, has stated in his evidence that before eight years at about 11:00 P.M. he was slept in his house and woke up on the sound of firing and went at the roof of his house, then Naresh Singh told him that dacoity is being committed in the house of Rajendra Singh (PW-4). He saw toward the house of Rajendra Singh where the dacoits were flashing torch, in which he identified Raj Ballabh, Sattan Choudhary, Ram Bilash Choudhary and Dil Bahadur, then he started pelting brick pieces. On hearing the voice of villagers, the accused fled away from the house of Rajendra Singh. Thereafter, he went there and saw the injuries at the ear and shoulder of wife of Rajendra Singh and also on the neck. He further stated that he did not see the dacoits to carry the house hold articles. The defence has drawn the attention to this witness regarding his statement given before the police to the effect that he had not said before the police that Naresh Singh told him that the dacoits were entered in the house of Rajendra Singh and he identified in the light of torch to Dil Bahadur and also about pelting bricks pieces and also about raising voice by the villagers. Attention was also drawn to this witness about seeing the injury on the ear and shoulder of wife of Rajendra Singh. This witness has further stated in his cross-examination that the name of his father is Deoki Mistry and proceeding under Sections 144 and 145 of the Code of Criminal Procedure was going on in which his father and informant were in one side and the accused were in other side regarding the land situated near Sone river. Regarding that land there was also proceeding u/s 107 of the Code of Criminal Procedure.

PW-4, Rajendra Singh, who is the son of informant, Ram Dayal Singh (PW-5), has stated in his evidence that at the time of occurrence of dacoity he slept in the room situated in east of verandah locking the door from inside and after dashing the door he woke up. The accused were pressing the door from outside and some other accused also flashed torch through the window situated in the west. On raising hullah, the villagers, Baleshwar, Manbodh Singh and Ram

Naresh Singh started pelting stones and rushed there then accused persons fled away by making fire. This witness has further stated that he identified Ram Bilash Choudhary, Sattan Choudhary, Rekha Choudhary, Anup Paswan, Gobardhan and Dil Bahadur in the light of torch flashed by the accused during dacoity. This witness has further stated that his wife sustained injuries and the dacoits also took away two boxes of ornaments. This witness has further stated that his injured wife and his father were taken at police station from where they were carried at hospital and his father lodged the case. This witness has further stated in his cross-examination in paragraph-4 that before the occurrence the proceeding u/s 145 of the Code of Criminal Procedure was going on with the accused. Suggestion was drawn to this witness that the occurrence as alleged is not taken place rather the case has been lodged against the accused persons due to old enmity and land dispute and the police have also submitted the final form in this case.

PW-5, Ram Dayal Singh, who is the informant of this case, has stated in his evidence that at the time of occurrence he was slept in his Dalan. At that time, the four accused came near him and unfolded the mosquito net of his bed, who were Ram Bilash Choudhary, Raj Ballabh Choudhary and Baldev Choudhary. Ram Bilash Choudhary pointed pistol on him and asked him about his son. Raj Ballabh Choudhary open the eastern door then 15 to 20 persons entered in the house and on putting the bamboo stair some entered in the Angan through the roof and open the main door from inside. The unknown accused who was present near him asked about his son Rajendra Singh saying that he has taken 2,000/- rupees to kill Rajendra Singh. This witness has further stated that the accused entered in the room, in which his daughter-in-law was sleeping by breaking the door. His daughter-in-law started crying then Ram Bilash Choudhary carried her in Angan and sought fire at her through pistol asking her about her husband Rajendra Singh, on which she replied that she did not know and rushed to near him. Due to firing through pistol his daughter-in-law sustained injuries at her ear, finger of left hand, shoulder and also on the face. After raising hullah by the villagers and pelting the brick pieces by Naresh Singh, Ram Khilawan and Manbodh Singh, the accused fled away. This witness has proved his signature on the fardbeyan as Exhibit-1 and also proved the signature of his son, Rajendra Singh as Exhibit-1/1. This witness has also stated in his evidence that the accused committed the occurrence due to land dispute. This witness has further stated that he had shown the empty cartridges of the pistol to the police. This witness has further stated in his cross-examination in paragraph-11 that the case u/s 145 and 107 of the Code of Criminal Procedure were going on in between him and accused. The defence has drawn suggestion to this witness to the effect that the occurrence as alleged in the F.I.R. never took place rather the case has been lodged against the accused due to dispute of land situated near Sone river.

PW-6, Janki Devi, is the daughter-in-law of the informant, Ram Dayal Singh (PW-5) and wife of Rajendra Singh (PW-4). She has stated in her evidence that at the time of occurrence 10 to 15 persons entered in the house through the roof

and made quarry about her husband, on which she showed her ignorance then she was assaulted by them through slaps and stick. On raising hullah, she rushed near her father-in-law but she was carried by Ram Bilash Choudhary in Angan, who fired at her causing injuries at his cheek, left hand and middle finger of left hand. At that time, his ear ring was also snatched, in which her ear was slightly cut. The accused also took away three boxes and brass pot. She claimed to identify Ram Bilash Choudhary and Dil Bahadur in course of dacoity. The defence has drawn attention to this witness regarding her statement given before the police to the effect that she had not stated that he reached near her father-in-law but she was pooling by Ram Bilash Choudhary who fired at her. The defence has also drawn suggestion to this witness to the effect that the occurrence as alleged was never took place rather false case has been filed against the accused persons due to dispute of land situated near Sone river.

PW-7, Surti Devi, who is the wife of informant, Ram Dayal Singh (PW-5) has stated in her evidence that at the time of occurrence she was sleeping in her room. At that time accused came in the Angan through roof. Three accused came near her and snatched her gold ear ring. They also took the property and ornaments by breaking the two boxes. Thereafter, they entered in the room of her daughter-in-law, Janki Devi, and snatched her gold ear ring. This witness claimed to identify Rekha Choudhary, Dil Bahadur, Bal Chand Choudhary, Raj Ballabh Choudhary, Ram Bilash Choudhary, Gobardhan Paswan and Anup Paswan in the light of torch flashed by them. The defence has drawn suggestion to this witness to the effect that the occurrence was never took place rather the case has been filed against the accused persons only to harass them and to give undue pressure due to dispute of land situated near Sone river, regarding which the case was going on.

6. From the record, it appears that in this case the doctor who is said to examine Janki Devi (PW-6) has not been examined in this case to prove the injuries as alleged to be caused at her through fire arm. The I.O. has also not been examined in this case while the defence has drawn the attention of the witnesses regarding their earlier statements recorded before the police. Admittedly, the informant Ram Dayal Singh (PW-5) and the accused-appellants are of co-villagers and proceeding u/s 145 of the Code of Criminal Procedure in between informant and the accused-appellants was going on regarding the land situated near Sone river. Rajendra Singh (PW-4), Janki Devi (PW-6), Surti Devi (PW-7), PW-1, Naresh Singh, PW-2, Manbodh Singh, and PW-3, Ram Baleshwar Bishwakarma, are inimical to the accused as they were also party with the informant in the proceeding under Sections 144 and 145 of the Code of Criminal Procedure, which were against accused-appellants. While the witness have said about reaching the villagers then accused moved from the place of occurrence but not a single independent witness has been examined to corroborate the prosecution case. There is also contradiction in the evidence of PW-6, Janki Devi, and PW-7, Surti Devi about looting of the property. PW-6 (Janki Devi) has stated about taking away three boxes and brass pot at the time of dacoity by the

dacoits (accused-appellants) but PW-7, Surti Devi, has stated that the accused took the ornaments and property by breaking the boxes.

7. Under the aforesaid facts and circumstances of the case, it would be unsaved to rely on the evidence of the witnesses without corroboration of the independent testimony especially in the circumstance that the informant has inimical term with the accused-appellants due to land dispute and the proceeding under Sections 144 and 145 of the Code of Criminal Procedure were going on.

8. In view of the aforesaid discussions made above, I am of the view that the prosecution has not been prove its case and charges u/s 395 of the Indian Penal Code and 27 of the Arms Act against the accused-appellants beyond all reasonable doubts and the appellants are entitled to get the benefit of doubt.

9. In the result, the judgment of conviction and order of sentence passed against the appellants are set aside, the appeal is allowed. The appellants are acquitted to the charges and they are discharged from the liabilities of their bail bonds. Let a copy of the first and last page of this judgment be supplied by the office to Mr. Jai Vardhan Narayan, Advocate, who has assist this Court as amicus curiae.