
(2000) 01 PAT CK 0109

In the Patna High Court

Case No : Criminal Appeal No's. 180, 193 and 210 of 1987

Salim Khan @ Shamim Khan and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 14-01-2000

Acts Referred:

Arms Act, 1959 — Section 27

Penal Code, 1860 (IPC) — Section 148, 302, 307

Citation : (2000) CriLJ 1546 : (2000) 2 PLJR 1

Hon'ble Judges : S.N. Pathak, J; R.N. Prasad, J

Bench : Division Bench

Advocate : Shakeel Ahmad Kha Rashid Izhar, for the Appellant; Ashwini Kumar Sinha, for the Respondent

Final Decision : Allowed

Judgement

1. These three appeals arise out of common judgment. They have been heard together and are being disposed of by this judgment.

2. The appellants in all the three appeals have been convicted for the offence u/s 302, IPC and have been sentenced to undergo imprisonment for life. They have further been convicted for the offence u/s 307, IPC and have been sentenced to undergo rigorous imprisonment for ten years. They have also been convicted for the offence u/s 148, IPC and have been sentenced to undergo rigorous imprisonment for two years. All the appellants except Mustaque have further been convicted for the offence u/s 27 Arms Act and have been sentenced to undergo rigorous imprisonment for five years.

3. The prosecution case as emerges from the First Information Report is that one Naimur Rahman Khan gave his fardbeyan on 20-3-1985 at about 11-30 a.m. in the State Dispensary, Imamganj that at about 8 a.m. he and Gulam Ali Khan had gone to wash their mouth in the Chhotaki river. All of a sudden 20-22 persons came from the house of accused Khurshid Khan and surrounded them. On the order of Mustaque Khan, Khurshid Khan fired gun causing injury on the thigh of

Gulam Ali. Zafu Khan fired causing injury on the stomach of Gulam Ali. He fell down. He went to lift him but Hasnat Khan fired causing injury on his arm and back. Rest of the accused persons except Shamim Khan were armed with revolver. Shamim Khan had jhola in his hand. On hearing sound of gun firing Kashibur Rahman and Ajibur Rahman came and witnessed the occurrence. He anyhow took the deceased Gulam Ali to the house of Ataullah Khan and he went to the hospital on the cycle of Masroor Khan. The motive of the occurrence was dispute for land with Mustaque and Gulam Ali.

4. On the aforesaid fardbeyan a formal First Information Report was drawn and the investigation was taken up. On completion of investigation charge-sheet was submitted. Cognizance was taken and the case was committed to the Court of Sessions for trial. During trial Zafu Khan died. The trial Court convicted the appellants for the offences as stated above.

5. The defence of the appellants was that they were innocent and were falsely implicated in the case. No occurrence took place in the manner as alleged by the prosecution.

6. The prosecution in support of its case examined 17 witnesses, out of whom P.Ws. 4, 5, 9 & 10 have been tendered. P.W. 1 has proved formal First Information Report, Ext. 1 P.W. 7 has been declared hostile. P.W. 13 is Doctor and he examined the informant. P.W. 14 is a constable who proved Inquest Report. P.W. 15 is Doctor who held postmortem over the dead body. P.W. 17 is a police officer who submitted chargesheet in the case. P.W. 16 is the Investigating Officer. P.Ws. 2, 3, 6, 8 and 11 claimed to have seen the occurrence. P.W. 12 is the informant and he also claimed to have seen the occurrence.

7. P.W. 12 is informant. He deposed that he and deceased Gulam Ali were washing their mouth in the Chhotki river. He saw 20-22 persons variously armed coming from the house of Khurshid Khan. On the order of Mustaque Khan, Khurshid Khan fired causing injury on the thigh of Gulam Ali. Zafu Khan fired causing injury on the stomach of Gulam Ali. Gulam Ali fell down on the ground. He went to lift him but Hasnat Khan fired causing injury on his arm and back. He also fell down. Rest of the appellants had revolver except Shamim Khan who had a bag in his hand. Gulam Ali died then and there. On hearing sound of firing Kashibur Rahman, P.W. 6, Ajibur Rahman, P.W. 8, Md. Ali Khan, P.W. 2, Shaukat Ali, P.W. 3, Gulam Sarvar Khan, P.W. 11, Ataullah Khan, P.W. 7 and wife of Ataullah Khan came there. The dead body of Gulam Ali was taken to the house of Ataullah Khan, P.W. 7. He himself went to the Hospital for treatment. In cross-examination the witness stated that the dead body was lying at the place of occurrence for half an hour. Blood had fallen at the place of occurrence. The witness also stated about the enmity. Suggestion was given to the witness that no occurrence took place in the manner as alleged by the prosecution which has been denied.

8. P.Ws. 2, 3, 6, 8 and 11 have also stated in their evidence that occurrence took

place on the bed of river. However, they stated that the dead body of Gulam Ali was taken from the bed of the river to the house of Ataullah. P.Ws. 2, 3 & 11 stated that from the house of Ataullah the dead body was taken to the house of Fida Hussain, father of the informant, blood had fallen on way to the house of Ataullah and blood had also fallen at the house of Ataullah. The Investigating Officer, P.W. 16, has stated in his evidence that distance between the house of Khurshid and the place of occurrence is 125 yards. He stated that he inspected the place of occurrence but he did not find blood at the place of occurrence, on way to the house of Ataullah or at the house of Ataullah. He did not find any incriminating articles at the place of occurrence. The witness further stated in his evidence that he found sign of pillet on the window of the house of Khurshid Khan and also found sign of explosion on the wall of the house of Khurshid Khan, the appellant. The witnesses further stated that he found burnt harvested crops in the Khalian of Khurshid Khan. Suggestion to the eye-witnesses has also been given that no occurrence took place in the manner as alleged by the prosecution. In fact the prosecution party attacked on the house of Khurshid Khan, made firing and also exploded bomb which has been denied by them. In view of the finding by the Investigating Officer, P.W. 16 it is obvious that the prosecution in fact has failed to establish the manner of occurrence. The finding by the Investigating Officer, rather, supports the case of defence.

9. P.W. 15 is Doctor. He held postmortem over the dead body of Gulam Ali. The witness has stated in his evidence that he held postmortem over the dead body of Gulam Ali on 21-3-1985 and found four lacerated wounds on the person of the deceased. Injury No. 4 was simple in nature and the rest were grievous in nature. Injuries were caused by explosive substance. The cause of death was shock and haemorrhage due to injuries on the person of the deceased. The evidence of the Doctor does not support the prosecution case. The prosecution case is that firing was made which hit the deceased and he died. The informant, P.W. 12 and other eye-witnesses have categorically stated that Khurshid Khan fired causing injury on the thigh of Gulam Ali and Zafu Khan fired causing injury on the stomach. In the First Information Report there is no mention that bomb was exploded at the place of occurrence. It is well known that if the oral evidence is found to be credible the same would be preferred and the medical evidence may be ignored but it depends upon the facts and circumstances of the case. In the instant case the finding by the Investigating Officer is contrary to the case of the prosecution. Moreover, the postmortem report also does not support the prosecution case rather it supports the defence case. In such a situation, in our view, it is difficult to ignore the evidence of P.W. 15.

10. During trial some of the witnesses also stated that they were at their house and they heard hulla near the house of Khurshid Khan. Thereafter, they stated that the occurrence took place on the bed of river. Therefore, it is evident even from the evidence of prosecution witnesses that an alarm was heard near the house of Khurshid Khan but the case of the prosecution is that no hulla was raised at the house of Khurshid Khan. The said piece of evidence in fact supports

the defence case that no occurrence took place in the manner as alleged by the prosecution rather prosecution party themselves raided the house of Khurshid Khan, exploded bomb and fired gun. It is well established rule of law that the prosecution has to establish its case beyond all reasonable doubt. The defence is not required to establish a case rather it has only to create doubt with regard to the prosecution case. The evidence as discussed above itself creates doubt about the manner of occurrence, place of occurrence and as such it is not safe to uphold conviction of the appellants.

11. Thus, on consideration, as discussed above, we find that the prosecution has failed to establish its case, accordingly all these appeals are allowed. The judgment and order of conviction and sentence are hereby set aside. The appellants are discharged from the liability of their bail bonds.