

(2004) 08 PAT CK 0009

In the Patna High Court

Case No : Criminal Appeal (DB) No. 104 of 2001

Shambhu Hazara and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 23-08-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144, 313
Penal Code, 1860 (IPC) — Section 149, 201, 302, 307, 323

Citation : (2004) 4 PLJR 662

Hon'ble Judges : R.N. Prasad, J; Mridula Mishra, J

Bench : Division Bench

Advocate : Krishna Pd. Singh and Jhakhandi Upadhyay, Madan Mohan Prasad, Manindra Kumar and Anurag Pandey, for the Appellant; Lala Kailash Bihari, for the Respondent

Final Decision : Dismissed

Judgement

Mridula Mishra, J.—These three appeals have been preferred by the appellants against the judgment and order of conviction and sentence dated 6.2.2001/12.2.2001, passed by 6th Additional Sessions Judge, East Champaran, Bettiah in Sessions Trial No. 196 of 1996. Appellant Ramadhar Patel has been convicted u/s 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life. Other eight appellants have been convicted u/s 302/149 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life. All the appellants have further been convicted u/s 201 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for five years. Appellant Mahendra Prasad has further been convicted u/s 323 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for one year.

2. Fardbeyan of the informant Suraj Prasad was recorded on 30.8.1995 at 9.30 A.M. by the Officer-in-charge of Lauriya P.S. in the orchard of Jadan situated at village Gobraura. In his fardbeyan the informant stated that on the same day at 6 o'clock in the morning he proceeded alongwith his brother Satya Narain for

orchard of Jadan to attend the call of nature. At 6.15 A.M. they reached near the orchard of Jadan. He sat for attending the call of nature and Satya Narain also sat at some distance from him. In the meantime he saw his villagers Ramadhar Patel, armed with rifle, Sumeshwari Yadav armed with Dabia, Bechu Prasad, Rajendra Prasad, Nathuni Sonar and Shambhu Hazra armed with country made gun, Mahendra Prasad, Sarjug Prasad and Pramod Sah armed with lathi coming out from sugarcane field. They proceeded towards Satya Narain Prasad and caught hold of him. Ramadhar put the rifle on chest of Satya Narain Prasad and fired at him due to which he died instantly and fell down. The informant raised alarm and ran towards Satya Narain on which Mahendra Prasad assaulted him with lathi at his leg and he fell down. Mahendra Prasad again assaulted him with lathi for 4-5 times due to which his legs and hands received injuries. His teeth were also broken. In the meantime on the direction of Ramadhar, Sumeshwari Yadav and Sarjug Prasad beheaded the head of Satya Narain from his body who was lying dead. Nathuni also opened fire which caused pellet injury to Haribansh Dubey. Accused persons went towards sugarcane field carrying the head of Satya Narain and left the place of occurrence. The reason behind the occurrence as alleged was the dispute regarding land between Ramadhar and the deceased.

3. Lauria P.S. Case No. 83 of 1995 was registered under Sections 302, 307, 401/34 of the Indian Penal Code and 27 of the Arms Act against all named accused persons. The case was investigated by the police and after completion of investigation chargesheet was submitted against all named accused persons. Cognizance was taken and the case was committed to the court of sessions for trial. On completion of trial the accused persons were convicted and sentenced as stated above.

4. The defence of the appellants is of false implication at the instance of the informant and witnesses. Their case is that the deceased was a veteran criminal and was killed some where else, but his dead body was placed at the alleged place of occurrence simply to implicate the appellants due to land dispute. Appellant Ramadhar had taken the plea of alibi stating that he settled at another village and at the time of occurrence he was not present.

5. The prosecution has examined altogether eight witnesses in order to prove its case. P.W. 1 Munna Mishra, P.W. 2 Sheonath Baitha are hearsay witnesses. P.W.3.Lalan Bhagat has deposed to the effect that he saw the accused persons running away with arms. P.W. 4 Haribansh Dubey has claimed to be the injured eye witness. PW. 5 Suraj Prasad is the informant and also an injured eye witness. P.W. 6 Dr. Vijay Kumar Bhatt is the doctor who conducted post-mortem on the dead body of the deceased. P.W. 7 is Dr. Madan Prasad Gupta who examined P.W. 5 for his injuries. P.W. 8 Mahendra Prasad Singh is the Investigating Officer of this case.

6. The defence has also examined three witnesses, D.W. 1, 2 and 3. They all have deposed on the point of alibi of appellant Ramadhar.

7. P.W. 5 is the informant and own brother of the deceased. He has stated that on the date of occurrence at 6.30 A.M. he and Satya Narain Prasad went for walk in their field. When they reached at the orchard of Jadan both of them sat separately to attend the call of nature. Satya Narain Prasad after attending the call of nature proceeded towards east on the ridge of Haribansh Dubey. As soon as he went ahead towards east of orchard, Ramadhar armed with rifle, Bechu, Shambhu, Jhulal; and Nathuni armed with gun, Sarju and Sumeshri armed with Khand, Mahendra and Pramod armed with lathi came out from sugarcane field. All of them went towards Satya Narain and caught hold of him. Ramadhar pointed his rifle at the chest of Satya Narain. Witnessing this he raised alarm and he was assaulted by Mahendra with lathi at his left leg near the knee. Mahendra repeatedly assaulted on his head, on his mouth and on his left hand. His teeth were broken and he also received injury in between his two fingers. The dead body of Satya Narain was lifted by the accused and put on the ridge. Thereafter Sarju, Sumeshri beheaded the head of the deceased Satya Narain. Accused Ramadhar carried the head of Satya Narain and proceeded from there. In the meantime Nathuni Sonar fired from his gun on Haribansh Dubey and he received pellet injury. Accused persons thereafter left the place raising slogan and went towards sugarcane field. P.W. 5 has stated that there was no apparent reason for the occurrence though ten years earlier there had been some land dispute in between Ramadhar and deceased Satya Narain. His statement was recorded by the Investigating Officer and he had put his thumb impression on the fardbeyan. In cross examination P.W. 5 admitted that Jadan Raut was his grand father who had four sons namely Bishwanath, Mukhlal, Bhola and Chandrika. The informant and deceased are the sons of Bishwanath and accused Ramadhar and Ramnandan are the sons of Chandrika. He has further disclosed that ten years ago a proceeding u/s 144 Cr. P.C. was initiated but he has shown his ignorance that proceeding was with regard to property gifted by Mukhlal. P.W. 5 has also admitted that a case u/s 307 of the Indian Penal Code was lodged by Ramadhar against Satya Narain which was subsequently compromised and as a consequence a registered partition deed was prepared with regard to gifted property. P.W. 5 has also stated that Bindeshwari Yadav brother of accused Sumeshri Yadav had lodged a case against him, his nephew and other persons. The case was instituted by Bindeshwari in connection with the dacoity committed in his house on the same day at 5.30 A.M. P.W. 5 has further stated that he and Satya Narain as a routine used to take walk in the morning. On the date of occurrence while they were going Haribansh Dubey was also there on the ridge of his field situated to the west of the orchard. P.W. 5 has stated that blood had fallen on the ridge as well as in the field, but it was washed away with the water in the field. He has also stated that he did not go to police station, but police came there after one and half hours of the occurrence. More than two hundred people had assembled there. Haribansh Dubey received only one pellet injury and there was blood stain on his clothes. A suggestion was given to this witness that his brother Satya Narain was a leader of criminal gang therefore he was killed some where else in the night and after severing the head his dead body

was thrown at the place of occurrence, which he has denied. He has also denied the suggestion that since Ramadhar has taken away his share in the landed property he has falsely been implicated.

8. Another eye witness is P.W.4. He has stated that on the date of occurrence he had gone to his field in the morning, Satya Narain was also coming towards west on the ridge of his field. Orchard of Jadan is situated on the western side of the field and sugarcane field is also adjacent to the orchard. He saw accused persons coming from sugarcane field. The accused persons rushed towards Satya Narain Prasad. Ramadhar fired from his rifle at the chest of Satya Narain. Suraj Prasad who was in the orchard of Jadan came there runningly and was assaulted by Mahendra Prasad with Lathi. Ramadhar ordered to sever the head of Satya Narain and on his order Sarju and Sumeshwari beheaded the head of Satya Narain. Nathuni opened fire from his gun and he received pellet injury on his right arm. Since his injury was superfluous he did not get himself treated by the doctor. He has stated that he was not examined by the police during investigation. P.W. 4 has denied the suggestion that he has deposed falsely because the accused persons had stopped taking his services as Purohit. P.W. 4 has stated that the dead body of Satya Narain was lying on the ridge and blood had fallen at the place of occurrence but it was washed away with the water in the field. He has further stated that there was some land dispute in between accused Ramadhar and the deceased 12 years earlier. He has admitted that inquest report of Satya Narain was prepared in his presence and he had put his signature on the inquest report Ext. 1/B.

9. P.W. 1 and 2 are hearsay witnesses and they have not stated anything about the occurrence.

10. P.W. 3 is also an eye witness. He has stated that he was grazing his she buffalo near the place of occurrence. On hearing the sound of firing he came at the place of occurrence and saw Ramadhar coming with gun in his one hand and severed head of Satya Narain in the other hand. Sarju and Sumeshwari were armed with Dabia and other accused persons were armed with lathi and gun. They were going towards north. He reached near the dead body and saw that there was injury of fire arm on the chest of the deceased. P.W. 5, P.W. 4 and Bacha Prasad were present therein. Suraj was sitting there in an injured condition. His teeth were broken. Haribansh Dubey had also received pellet injury. He has also stated, that ten years prior to the occurrence there had been some land dispute in between the parties. According to P.W. 3 few months prior to this occurrence Ramadhar was shot at by someone and he became injured. Ramadhar suspected that Satya Narain was instrumental behind this firing. This was the reason behind the killing of Sayta Narain. P.W. 3 has also stated that the blood oozing out from the body of deceased had fallen at the place of occurrence. A suggestion was given to this witness that he has falsely deposed in this case because Ramadhar is a witness in a case lodged against him, but it has been denied. He has also stated that Bindeshwari Yadav has lodged a false case

bearing Lauria Rs. Case No. 84 of 1995 in order to save his brother Sumeshri from the present case. He has denied the suggestion that he has deposed falsely on account of enmity.

11. P.W. 6 is Dr. Vijay Kumar Bhatt who had conducted the post-mortem on the dead body of Satya Narain on 30.8.1995. He found that rigor mortis was present in all the limbs and he found following injuries on the person of the deceased: -

(i) Circular lacerated wound of 1/2" diameter with inverted margin on upper part of front of chest over sternum. This was wound of entry.

(ii) Another lacerated circular wound of 1" diameter with everted margin on right side of back of chest in ninth intercostal space. This was the wound of exit.

(iii) The neck was clear cut at the level of seventh carvical vertebra. All the soft tissues including troches oes-pphaqus the carotid blood vessels and the body of sixth carvical vertebra were cut in one plane (post mortem injury). The head and neck portions were missing.

On dissection there was fracture of sternum, mediastinum, the plours and the right lung was severely lacerated underneath injury No. 1.

The injury No. 1 and 2 communicated each other the line being obliquely, downwards and laterally towards right. There was blood and blood clot in right chest cavity.

In the opinion of the doctor the death was due to haemorrhage and shock as a result of fire arm injury which was sufficient to cause death in ordinary course of nature. The injury on the neck was post mortem in nature caused by sharp cutting weapon. In cross examination P.W. 6 has stated that if the fire arm is fire from a distance of less than 4 ft. it will cause charring tattooing and blackening of skin around the injury. He admitted that he did not find any charring or blackening of skin around injury No. 1.

12. P.W. 7 is Dr. Madan Prasad Gupta, who stated that on 30.8.1995 he examined Suraj Narain Prasad and found the following injury: -

(i) Lacerated wound 1 1/2" x 1" on upper lip region.

(ii) Bruise 2 1/2" x 2" on left scapular region.

(iii) Lacerated wound 2 1/2" x 1" near thumb on left palm.

(iv) Lacerated wound 1" x 1 1/2" on left tibio febular region of left leg.

P.W. 7 in his cross examination has stated that injury No. 1 cannot be caused if a person falls on a hard surface.

13. P.W. 8 is the Investigating Officer. He has stated that on 30.8.1995 he was posted as Officer-in-charge in Lauria Police Station. On that day at about 7.30 A.M. he came to know that one person has been shot in village Gobraura. He

made Sanha Entry No. 566 in the station diary and proceeded for village Gobraura in order to ascertain the reality of the information. He reached near the orchard of Jadan at village Gobraura. He recorded the fardbeyan of Sarjug Prasad, who put his L.T.I. after finding it to be correct. He recorded the further statement of the informant and prepared inquest report Ext. 5 in presence of P.W. 4 at the place of occurrence itself. He saw fire arm injury on the chest of the deceased. The head of the deceased was severed by sharp cutting weapon. He inspected the place of occurrence situated near the orchard of Jadan. The place of occurrence was a ridge in between the fields of Ganesh Thakur and Haribansh Dubey. Thereafter he came at the police station and registered formal F.I.R. Ext.6. The injuries on the person of the informant were inspected at the police station and injury report was prepared marked Ext.7. He sent requisition for examining the injured at hospital. On completion of investigation he submitted chargesheet. He had found blood near the place of occurrence, but did not mention it in the case diary. Since the blood was washed away as such he did not prepare seizure list.

14. Counsel for the appellants has stated that admittedly Satya Narain was killed and his headless dead body was found on the ridge in between the fields of Haribansh Dubey and Ganesh Thakur, but their alleged involvement in the death of Satya Narain has not been proved. The conviction has been challenged on the ground that the prosecution has not been able to prove the genesis of the occurrence, the manner of occurrence and participation of the appellants in the occurrence. It is submitted that in the F.I.R. itself it has been stated by P.W. 5 that the motive behind the alleged occurrence is the land dispute. In deposition P.W. 5 has totally denied that there was any land dispute in between the parties rather he has stated that there was no apparent reason for commission of the offence. He has specifically stated that whatever dispute was there in between the parties ten years ago that had already been compromised. Presently there was no dispute in between the parties. P.W. 3 and P.W. 4 have also deposed to this effect that whatever dispute was there that was compromised ten years ago though P.W. 4 has tried to improve the prosecution case by saying that sometime ago Ramadhar was shot by someone and he suspected that he got injured at the instance of Satyanarain and this resulted into the present case. The genesis which was there in the F.I.R. has not been proved. A new genesis was introduced by P.W. 4 but it was also not proved by any corroborative evidence. In such circumstances conviction of the appellants is fit to be set aside. The genesis which was there in the F.I.R. has not been proved and as such the conviction of the appellants is fit to be set aside.

15. There is no force in this argument of the appellants. From perusal of the evidence, it is apparent that all the witnesses have stated that there was land dispute earlier. P.W. 4 has rather specifically stated that still there was land dispute in between the parties, simply because it has been deposed by the P.W. 5 that there was no land dispute at the time of occurrence between the parties it cannot be held that the genesis of occurrence was not proved. The prosecution of

the appellants cannot fail on this solitary ground specially when the prosecution story has consistently been supported by the ocular evidence of P.W. 5 and P.W. 4 who are injured.

16. Another ground taken by the appellants for setting aside the judgment of conviction is that the medical evidence has totally demolished the prosecution story that Ramadhar put his rifle on the chest of Satya Narain and fired at him. P.W. 6 the doctor who conducted the post-mortem has stated in clear words that if firing is made from a distance of 4-5 ft, it will cause tattooing blackening and charring of skin around the injury. P.W. 6 did not find any such mark around the injury on the person of the deceased. Opinion of P.W. 6 contradicted the evidence of P.W. 5 and P.W. 4 who have stated that Ramadhar was shot by Satyanarain by putting his rifle on his chest. P.W. 5 has stated this in the F.I.R. as well as in his deposition in the court. P.W. 4 also stated in his deposition that Satyanarain was shot by Ramadhar by putting his rifle on his chest. The evidence of P.W. 5 and P.W. 4 has not been corroborated by the post mortem report as well as by evidence of P.W. 6, who did not find blackening, charring or tattooing mark around the injury on the chest of the deceased. According to the medical evidence firing must have been from a distance of more than 5 ft. This makes the evidence of P.W. 5 and P.W. 4 as eye witnesses, very much doubtful and also creates doubts about the prosecution case.

17. This argument, however, may look attractive but has no leg to stand. P.W. 5 and P.W. 4 did not state in their deposition that Satyanarain was fired by Ramadhar by putting his rifle on his chest. They simply stated that Ramadhar fired at the chest of Satyanarain without disclosing the distance. Although in the fardbeyan it was stated that Ramadhar put his rifle near the chest of the deceased and fired but in court all witnesses consistently deposed that it was Ramadhar who fired at Satyanarain. There is ocular evidence consistent to prosecution story as such there is no reason to disbelieve their evidence. It is well settled that ocular evidence consistent and trust worthy must be given preference in comparison to medical evidence.

18. Another point raised by the appellants' counsel was that from the evidence it is clear that on the same day at 5.30 in the morning the informant, his nephew and some other persons entered into the house of Bindeshwari Yadav and committed dacoity. A police case was instituted by Bindeshwari Yadav in this regard. It is highly improbable that the accused persons could have committed any occurrence immediately after the commission of dacoity in their house. This submission also has no force. Legally, the F.I.R. of another case cannot be looked into unless it is proved by defence witness or the maker of the F.I.R. The F.I.R. of the case instituted by Bindeshwari Yadav has not been proved. The case was instituted subsequent to institution of the present case. P.W. 5 has stated in his deposition that Bindeshwari Yadav had instituted a false case in order to create a defence for his brother Sumeshwari. It is also relevant that the appellant Sumeshwari in his statement recorded u/s 313 Cr. P.C. did not even mention

about the occurrence or institution of any case against the informant and other by his brother. In this view there is no reason to disbelieve the prosecution case on the ground that Bindeshwari had instituted a case against informant and others. It was also argued that since there was no seizure of blood stained earth and it was not sent for chemical examination, the prosecution story that the occurrence took place at that place of occurrence in the manner as stated by the prosecution cannot be believed. In a decision reported in Sanjeev Kumar Vs. State of Punjab, the Supreme Court has held that non-seizure of blood stained earth and not sending it for chemical examination cannot affect the veracity of the prosecution evidence. Further it was argued that the deposition of P.W. 4 as an injured eye witness cannot and should not be believed as no injury report was brought on the record. Regarding non-production of injury report of P.W. 4, no adverse inference can be drawn as P.W. 4 in his deposition has clearly stated that the injury received by him was superfluous in nature and as such he did not think it proper to get himself examined by the doctor.

19. On consideration of the evidence as well as the facts and circumstances of the case I do not find any ground for interference with the judgment of conviction and order of sentence. The prosecution has proved its case beyond reasonable doubt. The witnesses are consistent, reliable and trustworthy specially P.W. 4 and 5 who are injured. There is no reason for disbelieving the evidence of such witnesses. Accordingly all the three appeals are dismissed and the judgment of conviction and order of sentence passed by the trial court are affirmed. The appellants of Cr. Appeal No. 104 of 2001 and Cr. Appeal No. 190 of 2001 are on bail, as such their bail bonds are cancelled and they are directed to surrender before the trial court to serve out the remaining period of sentences awarded to them.

Ram Nandan Prasad, J.

I agree.