

(2000) 02 PAT CK 0161

In the Patna High Court

Case No : Criminal Appeal (DB) No. 562 of 1986

Sheo Charan Yadav and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 08-02-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302

Citation : (2001) 1 PLJR 590

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

Bench : Division Bench

Advocate : Nand Kishore Singh, for the Appellant; Ashvini Kumar Sinha, for State and Bharat Lal, for Informant, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Prasad and S.N. Pathak, JJ.—The appeal has been preferred against the judgment and order dated 30.9.1986 passed by 10th Addl. Sessions Judge, Munger in S.T. No. 608/85 whereby Appellants Awadhesh Yadav and Mannu Yadav have been convicted for the offence u/s 302 of the Indian Penal Code and have been sentenced to undergo imprisonment for life. Rest of the Appellants have been convicted for the offence u/s 302/149 of the Indian Penal Code and have been sentenced to undergo imprisonment for life. Appellants Sheo Charan Yadav, Awadhesh Yadav and Mannu Yadav have further been convicted for the offence u/s 148 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for one year. Rest of the Appellants have been convicted for the offence u/s 147 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for one year. However, sentences have been ordered to run concurrently.

2. The prosecution case as has been stated in the First Information Report, is that one Bisheshwar Yadav gave his fardbeyan before the police on 30.7.1984 at about 9.30 p.m. stating therein that his brother Karu Yadav was grazing his he-

buffaloes in Chaukijor Bahiar. At about 1 p.m. when his wife had gone there with food, Awadhesh Yadav armed with gun, Manu Yadav armed with dagger, Sheo Charan Yadav armed with bhala, Debu Yadav, Mishri Yadav, Moti Yadav, Shankar Yadav and Nan Keshar Yadav armed with lathi surrounded his brother. Manu Yadav tied his hand on the order of Awadhesh Yadav. His wife requested not to assault but they did not listen. Thereafter, Awadhesh Yadav fired causing injury to his brother Karu Yadav. He fell down on the ground. Thereafter, Manu Yadav assaulted him with dagger on his neck. The other accused persons also assaulted him with lathi. The incident was witnessed by Ishwar Yadav, Jago Yadav and Surendra Yadav. He came to his village and informed about the incident to Tirath Yadav, Barhma Yadav and Sukhdeo Yadav. The people went to the place of occurrence. The motive of the occurrence was litigation with regard to land with Appellant Awadhesh Yadav.

3. On the aforesaid fardbeyan formal First Information Report, Ext. 2, was drawn. Investigation was taken up and on completion of investigation, charge-sheet was submitted, cognizance was taken and the case was committed to the court of Sessions for trial. The trial Court convicted the Appellants for the offences as indicated above.

4. The defence of the Appellants was that they were innocent and were falsely implicated in the case due to enmity. They denied participation in the occurrence. Awadhesh Yadav was not present at the place of occurrence. He was at Jamui at the relevant time to make pairvi in a proceeding u/s 145 of the Code of Criminal Procedure.

5. The prosecution in support of its case examined nine witnesses, out of whom P.W. 5 is the informant and is also an eye witness to the occurrence. P.Ws. 1, 2 & 3 claimed to have seen the occurrence. P.W. 4 is Doctor who held postmortem over the dead body. P.W. 6 is witness to the inquest, Ext. 3. P.W. 7 has been tendered. P.W. 8 is the first Investigating Officer who recorded the fardbeyan, inspected the place of occurrence and also recorded statement of the witnesses. P.W. 9 is also a police officer who submitted charge-sheet.

6. The defence has also examined three witnesses. D.W. 1 is an Advocate who was engaged by Appellant Awadhesh Yadav in a proceeding u/s 145 of the Code of Criminal Procedure. D.W. 2 is an Advocate clerk who claimed to have filed hazri of Appellant Awadhesh Yadav in the said proceeding. D.W. 3 proved hazri in the said proceeding, Ext. A.

7. The death in this case is not in dispute. The dispute is with regard to participation of the Appellants. P.W. 1 has accepted the relationship between the witnesses. Learned Counsel for the Appellants pointed out that eye witnesses are relation of the deceased and as such their evidence should not be accepted. In this regard it would be relevant to mention herein that there is no rule of law that evidence of such witnesses should be thrown out rather it is well established rule of law that evidence of such witnesses should be scrutinised with care and

caution. Keeping in mind the aforesaid well settled rule of law we proceed to examine the evidence of eye witnesses.

8. P.W. 5 is the informant. He stated in his evidence that he was taking bath near the place of occurrence at the relevant time. His brother Karu Yadav, the deceased, was sitting beneath a Mahua tree and was grazing he-buffaloes. Wife of Karu Yadav had gone with food. At that very time the Appellants, namely, Awadhesh Yadav armed with gun, Manu Yadav with dagger, Sheo Charan Yadav with bhala and the rest with lathi came there. Appellant Manu Yadav tied his hands with Gamchha on the order of Appellant Awadhesh Yadav. Wife of the deceased was requesting them not to assault him but Appellant Awadhesh Yadav fired his gun causing injury on the person of the deceased. Manu Yadav, thereafter, assaulted with dagger on his neck and rest of the Appellants assaulted him with lathi. His brother died at the spot. In cross-examination he stated that Ishwar Yadav, P.W. 2, was uprooting the paddy seedling and Jago Yadav, P.W. 3, was ploughing the field. Karu Yadav had Gamchha. His hands were tied with the said Gamchha. The gun was fired from a distance of 3-4 cubit. On receiving gun shot injury Karu Yadav fell down and thereafter he was assaulted with dagger. Blood had also fallen on the ground. The witness was cross-examined at length but nothing cogent was elicited to discredit the evidence of the witness.

9. P.W. 1 is wife of the deceased. She stated in her evidence that she had gone to her husband in the bahiar with food at the relevant time. Awadhesh Yadav with gun, Sheo Charan Yadav with bhala, Manu Yadav with dagger and rest of the Appellants with lathi came there. Manu Yadav tied his hands on the order of Awadhesh Yadav. She requested not to assault him. In the meantime Awadhesh Yadav fired his gun causing injury on the person of her husband. He fell down and thereafter Manu Yadav assaulted with; dagger. Rest of the Appellants assaulted with their weapon. The occurrence was witnessed by P.Ws. 2, 3 & 5. P.W.5 was bath near the place of occurrence was ploughing the field. P.W.5 was (sic) paddy seedlings. She admitted relationship between the witnesses and the deceased. She stated that her husband used to go to graze his cattle. On the date of occurrence also he had (sic) to graze his cattle. Blood had also (sic) the ground. The witness has (sic) details of the occurrence in her examination but nothing cogent (sic) be elicited to discard her evidence.

10. P.Ws.2 & 3 are also relation of (sic) deceased. They have given vivid pic (sic) of the occurrence in their evidence also corroborated the evidence of (sic) the point of assault and the on used in the occurrence. They supported the prosecution case in evidence on all material points. They cross-examined at length but they (sic) the test of cross-examination and (sic) cogent could be indicated by the (sic) counsel for the Appellants to dis- (sic) their evidence.

11. P.W.4 is Doctor who held postmortem over the dead body. He had gun shot injury on the left side of (sic) region and also on front of the (sic) just above externum. The said in- (sic) were caused by gun shot. One was sound of entry and the other was wound of exit. He also found incised wound on left side of the

neck. The Doctor also found multiple bruises on the person of the deceased. He has opined that the In was caused due to injuries on vital ins of the neck and by gun shot injury. Time elapsed since death was 48 hours. However, in cross-examination the witness stated that gun shot injury was sufficient to cause death in ordinary course.

12. The Investigating Officer, P.W.8 stated in his evidence that he recorded the fardbeyan, inspected the place of occurrence, prepared inquest report and sent the dead body for postmortem. He recorded the statement of the witnesses. He found blood at the place of occurrence. However, in cross-examination the witness has stated that he did not send blood stained earth for chemical test nor he mentioned in the case diary that any incriminating articles including bangles, utensils were found or not.

13. On analysis of evidence as discussed above, it is manifest that oral evidence of witnesses is consistent to each other. The witnesses have supported the prosecution case on all material points including the manner of occurrence, place of occurrence etc. The oral evidence is also corroborated by the medical evidence. The Doctor, who held postmortem over the dead body, has found the injuries caused by gun shot, dagger and also by lathi. The findings of the Investigating Officer also support the prosecution case. Thus on consideration we find that the evidence of prosecution witnesses, though they are related to the deceased, is trustworthy and their evidence cannot be thrown out merely on the ground that they are relation witnesses.

14. Learned Counsel for the Appellants contended that fardbeyan was recorded much after the occurrence. In this regard it is to be noticed that the occurrence took place at about 1 p.m. and the fardbeyan was recorded at about 9.30 p.m. i.e. after more than 8 hours. However, it is evident from the material on record that distance between the place of occurrence and the Police Station is 38 K.M. In such a situation, in our view, the delay in informing the police is not at all material. Learned Counsel also pointed out that Appellants have falsely been implicated due to enmity but to us it appears that learned Counsel has forgotten that enmity is a double edged weapon which cuts both sides. Offence may be committed out of enmity and a person may be implicated falsely out of enmity but the court has to consider the aforesaid aspect of the matter and quality of the evidence brought on the record to come to a conclusion. In the instant case we have scrutinised the evidence of witnesses in foregoing paragraphs but we could not get anything to doubt the evidence of the eye witnesses. Thus, in our view, contention of learned Counsel for the Appellants has no leg to stand.

15. Learned Counsel for the Appellants next contended that Appellant Awadhesh Yadav was not present at the place of occurrence at the relevant time. He was at Jamui and was making pairvi in a proceeding u/s 145 of the Code of Criminal Procedure. Hazri filed in the said proceeding has been proved as Ext.A. It is well established rule of law that plea of alibi is a very weak defence. If any person takes such plea it is his burden to establish it beyond all reasonable doubts.

Ext.A does not bear signature of Appellant Awadhesh Yadav. It also does not bear seal of the court. D.W.1 stated that hazri on behalf of Awadhesh Yadav was filed. D.W.2 also stated to the same effect but in view of the fact, stated above, that hazri does not bear signature of Appellant Awadhesh Yadav, it cannot be said that Awadhesh Yadav was present at Jamui court specially when all the eye witnesses have stated in their evidence that Appellant Awadhesh Yadav was present at the spot armed with gun and he used his gun causing injury to the deceased. Thus on consideration, in our opinion, hazri, Ext.A does not inspire confidence to say that Appellant Awadhesh Yadav was not present at the place of occurrence.

16. Learned Counsel for the Appellants also pointed out that it has come in the evidence of witnesses that firing was made from 3-4 cubit but the Doctor did not find any charring injury on the person of the deceased. In this regard it would not be out of place to mention herein that all the witnesses are rustic. Therefore, it cannot be said that the distance given by the witnesses was accurate. Moreover, at the time of occurrence It is not expected" that the witnesses will measure the distance. It Is merely an expectation. The Doctor, no doubt, has not found any charring wound on the person of the, deceased but has categorically stated that he found gun shot injury on the person of the deceased. Moreover, such injury depends upon the quality of the fire arm used. Thus, on consideration, we find no merit in the contention.

17. Thus on consideration, as discussed above, we are of the view that the prosecution has succeeded in establishing its case beyond all reasonable doubt. Accordingly, appeal is dismissed. The Appellants are on bail and as such their bail bonds are cancelled. They are directed to surrender before the trial court; to serve the remaining period of sentence.