

(2015) 08 PAT CK 0055

In the Patna High Court

Case No : Criminal Appeal (DB) Nos. 240 and 304 of 1992

Sheo Pujan Tiwary and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 21-08-2015

Acts Referred:

Arms Act, 1959 — Section 27
Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 323, 34

Citation : (2015) 08 PAT CK 0055

Hon'ble Judges : Dharnidhar Jha, J;A.K. Lal, J

Bench : Division Bench

Advocate : Ambuj Nayan Choubey and Ashok Kumar Garg, for the Appellant;
Mayanand Jha, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

A.K. Lal, J—Both these appeals arise out of the common judgment and order dated 22nd June 1992 passed by the 6th Addl. Sessions Judge, Rohtas at Sasaram in Sessions Trial No. 69 of 1986 by which Sheo Pujan Tiwary (appellant in Cr. Appeal No. 240 of 1992) has been convicted and sentenced to undergo rigorous imprisonment for life under Section 302/34 of the Indian Penal Code and further sentenced to undergo rigorous imprisonment for six months and five years under Section 323 of the Indian Penal Code and under Section 27 of the Arms Act respectively. Ram Bachan Tiwary (appellant in Cr. Appeal No. 304 of 1992) has been convicted and sentenced to undergo rigorous imprisonment for life under Section 302 of the Indian Penal Code. All the sentences have been directed to run concurrently.

2. The prosecution case, in brief, is that on 3.12.1984 at about 9 P.M. after taking meal Ramdhani Pandey (deceased) went to close the door. In the lane, he saw Sheo Pujan Tiwary and his son Ram Bachan Tiwary standing there. He enquired as to who were standing there. Sheo Pujan Tiwary asked his son to kill

him. Thereafter, Ram Bachan Tiwary (appellant) fired two shots with his double barrel licenced gun at point blank which caused his death instantaneously. The informant (Chandradeo Pandey) came out in the lane and tried to catch hold of Ram Bachan Tiwary, who assaulted on the mouth of Chandradeo Pandey (P.W. 2) with the butt of the gun causing injury on his upper lip. Chandradeo Pandey (P.W. 2) caught hold of Ram Bachan Tiwary and raised alarm. The members of his family Rup Narayan Pandey (P.W. 1) and Dular Pandey and co-villagers, namely, Ram Sewak Tiwary, Tribeni Tiwary, Jai Mangal Tiwary, Rajdeo Tiwary, Nathuni Tiwary (P.W. 4) and others came there. Sheo Pujan Tiwary and Ram Bachan Tiwary escaped leaving behind the gun. The reason for the occurrence is a dispute between the accused/appellants and the deceased. After the occurrence the double barrel gun, cartridges and the belt containing cartridges were produced before Sri Lal Bahadur Singh (P.W. 12), officer-in-charge of Karakat police station on 4.12.1984. The fardbeyan (Ext. 1) was recorded by P.W. 12 Lal Bahadur Singh, Officer-in-charge, of Karakat police station on 4.12.1984 at 2 hours. Karakat P.S. case No. 159 of 1984 was instituted against both the appellants for the offence punishable under Section 302 of the Indian Penal Code and Section 27 of the Arms Act. After investigation chargesheet was submitted, cognizance was taken and the case was committed to the court of sessions.

The charge against Ram Bachan Tiwary was framed for the offence punishable under Sections 302 and 323 of the Indian Penal Code and Section 27 of the Arms Act. The charges against Sheo Pujan Tiwary and Ram Bachan Tiwary were framed for the offence punishable under Section 302/34 of the Indian Penal Code. The charges were denied by both the appellants. As such, the trial proceeded and after the trial, both these appellants have convicted and sentenced by the learned trial court as aforesaid.

3. The defence of the appellants, as appears from the cross-examination, is of false implication and further that no occurrence, as alleged, had taken place and the deceased was shot dead by the dacoits while he was looking after his paddy crops due to having enquired from the dacoits as to who were there. No witness has been examined on behalf of the defence.

4. Learned counsel for the appellants has submitted that in the instant case there is no eye witness to the occurrence rather the prosecution is based on circumstantial evidence. P.Ws. 1 and 2 are the material witnesses and at the same time they are interested witnesses who have not seen the occurrence. The ocular evidence is not in consonance with the medical evidence. There is no material on the record to show that the double barrel gun belonged to the appellants. The prosecution case is that two shots were fired whereas the injury report shows that there were three wounds of entry.

5. Learned counsel for the State submits that the occurrence had taken place during the winter season in the month of December in the night hours. The occurrence had taken place just in front of the house of the deceased in the lane when the deceased went to close the door of his premises. P.W. 1 went to the

place of occurrence and had seen both the appellants present at the place of occurrence and Ram Bachan Tiwary was found scuffling with the informant Chandradeo Pandey (P.W. 2). Soon thereafter the other witnesses came at the place of occurrence. The investigating officer (P.W. 12) had found copious blood at the place of occurrence which had also been seen by several witnesses. The defence has taken the plea that the occurrence had taken place in the khalian of the deceased but no blood stains were found there. It is admitted fact that P.Ws. 1 and 2 are interested witnesses but their evidence cannot be discarded on that ground alone. However, both of them are interested in the real culprits being punished.

6. In view of the divergent pleas taken by both the parties, this Court is required to reappraise the prosecution evidence to consider as to whether the prosecution has been able to substantiate its case beyond reasonable doubt.

7. The prosecution has examined the following witnesses to substantiate its case. They are P.W. 1 Rup Narayan Pandey, P.W. 2 Chandradeo Pandey, P.W. 3 Rajendra Nath Sharma, P.W. 4 Nathuni Tiwary, P.W. 5 Kedar Pandey, P.W. 6 Suraj Chouhan, P.W. 7 Krishna Kumar Gupta, P.W. 8 Dr. C.S. Pd. Singh, P.W. 9 Dhaneshwar Tiwary, P.W. 10 Sheo Muni Tiwary, P.W. 11 Dr. Balram Prasad, P.W. 12 Lal Bahadur Singh and P.W. 13 Kameshwar Singh.

8. P.W. 3, P.W. 7, P.W. 9 and P.W. 13 are formal witnesses. P.W. 4 has proved the signature on the inquest report and is hostile to the occurrence. P.W. 5 is hostile. P.W. 6 and P.W. 10 have been tendered.

9. P.W. 1 Rup Narayan Pandey has supported the prosecution case. He has stated that his Dalan is fortified with the boundary wall and the entrance is in the eastern side. Ramdhani Pandey (deceased) went to close the door of the entrance, there was noise of firing then Chandradeo Pandey (P.W. 2) rushed there. He also followed him. He saw that Ramdhani Pandey was lying in the lane and P.W. 2 Chandradeo Pandey was scuffling with Ram Bachan Tiwary and Sheo Pujan Tiwary was also there. On raising alarm, several persons came there. Thereafter, both the accused escaped. The gun of Ram Bachan Tiwary fell down there. The licenced gun and the cartridge belt containing cartridges were also lying there. Ramdhani Pandey had fired two shots causing injuries in his neck and he succumbed to his injuries. The office-in-charge came to the village in the night itself. Chandradeo Pandey (P.W. 2) handed over the gun, cartridges and the belt containing cartridges to him. His statement was recorded by the police officer. In his cross-examination he has stated that P.W. 2 Chandradeo Pandey is his nephew and Ramdhani Pandey (deceased) was his cousin. All of them are of the same family. He has stated that at the time of occurrence the door was to be closed from inside and the deceased had gone to close the door and at that time he received gun shot injuries. In paragraph-16 the defence has suggested that the deceased Ramdhani Pandey was looking after the paddy bundle in the field and the unknown dacoits were crossing from that place, Ramdhani Pandey made queries from them, whereafter the dacoits shot him dead and the dead body had

been brought from there to his house and the accused had falsely been implicated in this case, which suggestion was denied by P.W. 1. He has also denied the fact that there was no blood stains where Ramdhani Pandey fell down and red colour had been sprinkled there and he deposed a lie.

10. P.W. 2 Chandradeo Pandey, is the informant of the case. He has stated that it was 9 P.M. He and his uncle were at the Baithaka. After taking meal his uncle Ramdhani Pandey went to close the door of the Baithaka. Sheo Pujan Tiwary and his son Ram Bachan Tiwary @ Bachan Tiwary were standing in the lane. Ramdhani Pandey made query from them. Shree Pujan Tiwary asked his son to kill him. Thereafter, Ram Bachan Tiwary fired two shots with his licenced double barrel gun which caused death of his uncle (deceased). After hearing the sound of shots he came out in the lane and tried to catch hold of Ram Bachan Tiwary who assaulted on his mouth with the butt of the gun causing injury on his upper lip. He scuffled with Ram Bachan Tiwary and caught hold of the gun and raised alarm. Rup Narayan Pandey, Ram Dular Pandey, members of his family, and co-villagers, namely, Jai Mangal Tiwary, Tribeni Tiwary, Nathuni Tiwary (P.W. 4), Ram Sewak Tiwary and others came there. Thereafter, both the accused escaped leaving behind the gun. He handed over the gun and the belt containing cartridges to Lal Bahadur Singh, the officer-in-charge of the police station (P.W. 12) who recorded his statement and it was read over to him and finding it correct he put his signature. He has proved the fardbeyan (Ext. 1). The police officer after seeing the injuries, prepared the injury report and sent him to the Government Hospital where treatment was given. He has further stated that he had seen the injuries on the person of his uncle (deceased). The police officer also saw the dead body and also found blood on the spot. The seizure list was prepared. He told Rup Narayan Pandey (P.W. 1), Nathuni Tiwary (P.W. 4), Kedar Pandey (P.W. 5), Suraj Chouhan (P.W. 6) that Ram Bachan Tiwary fired the shots at Ramdhani Pandey. In his cross-examination, he has stated that he told the name of the appellants who made query from him. He has also stated that after hearing the sound of firing he went to the lane and at that time the accused were at a distance of 3 to 4 cubits from him. They did not fire at him. P.W. 1 came to the place of occurrence after his arrival. He has stated in paragraph-9 that Jai Mangal Tiwary, Ram Sewak Tiwary, Rajdeo Tiwary and others came to the place of occurrence, out of whom Ram Sewak Tiwary had died. He has stated that Ramdhani Pandey fell down in the lane and blood was oozing out from his body. No one lifted him since he died. In paragraph-12 he has stated that at 8-30 P.M. his uncle Ramdhani Pandey had gone to the police station. In paragraph-16 he has stated that at about 8 P.M. a quarrel took place between Ram Bachan Tiwary and Chandradeo Pandey (P.W. 2). He has denied the suggestion of the defence that paddy bundles were kept in the outer part of the village, some dacoits were crossing through that place and the deceased made queries, as such, the dacoits shot him dead. He has also denied the suggestion that after the occurrence the police officer was called and the gun and the cartridges had been taken out from the house of the accused and got the seizure list prepared in collusion with the

police officer. He has also denied that no firing was made from that gun which was seized. In his re-examination after recall he has identified the seized articles, i.e., double barrel gun, empty cartridges, live cartridges and the belt containing cartridges which have been marked as material Ext. Nos. I to VII. In paragraph-22 he has denied the suggestion that the seized articles were taken from the house of the accused and kept with him and when the police office came, those articles were handed over to him. In paragraph-23 after recall on cross-examination he has stated that it was a moon lit night.

11. P.W. 8 Dr. C.S. Pd. Singh, has held the post mortem examination on the dead body of Ramdhani Pandey on 4.12.1984 while he was posted as Civil Assistant Surgeon in the Sadar Hospital, Sasaram and found the following anti mortem injuries:--

"(1) The wound of entrance on left buttock 1" in diameter inverted and the skin was burnt around the entrance 1/4" on around the entrance there was a fracture of left hip bone.

(2) Wound of entrance in right clavicle region below neck 1 1/2" in diameter which was inverted.

(3) A wound of entrance left clavicle region 1 1/2" and margin inverted.

Fracture of left leg clavicle. Both lungs upper lobes were lacerated. Fracture of upper three ribs in left side and upper four ribs on right side.

The cause of death was injuries on vital organs caused by firearms.

Time of death within 24 hours.

Rigors mortis present in all the four limbs. The post mortem report has been marked as Ext. 4."

In his cross-examination he has stated that he found three injuries on the body of the deceased. They were caused by three shots. The injury on the buttock could have been caused from back. The injury on neck was caused from behind.

12. P.W. 11, Dr. Balram Prasad, is another doctor, who has examined Chandradeo Pandey (P.W. 2) and found the following injuries on his person.

"(1) Lacerated cut injury left upper lip obliquely size 3/4" x 1/3" x 1/4".

(2) Painful swelling of left chin cheek, size 2" x 2".

Both injuries simple and caused by hard and blunt substance. Age of injuries within 12 hours. This examination was held at 9 A.M. on 4.12.1984. The injury report has been marked as Ext. 5."

In his cross-examination he has stated that cut injury is possible by cutting instrument only is not essential. He has not mentioned the colour of injury No. 2.

13. P.W. 12 is the investigating officer. He has stated that on 4.12.1984 he was

officer-in-charge of Karakat police station. At about 12 in the night he heard a rumour that there had been firing in village Manikparasi. It was entered into the station diary as Sanha No. 52 dated 4.12.1984 and he went to village Manikparasi to verify its authenticity. He reached there at 12 in the night. He took the statement of Chandradeo Pandey (P.W. 2) and instituted a case under Section 302 of the Indian Penal Code and Section 27 of the Arms Act. He prepared the injury report and sent him for treatment. The inquest report on the deadbody of Ramdhani Pandey (deceased) was prepared in presence of the witnesses. The inquest proceedings was witnessed by the witnesses and the report had been marked as Ext. 6. He has also stated that the informant Chandradeo Pandey (P.W. 2) produced one double barrel gun and cartridges. Seizure list (Ext. 7) was prepared in those respects. He took these articles in his charge and kept them in the Malkhana of the police station. After preparing the inquest report, he sent the dead body for post mortem examination. He inspected the place of occurrence.

The place of occurrence was the lane in front of the Dalan of the informant. The exit of the Dalan was in the eastern side. The lane ran from north to south. Its width was about 10 ft. The dead body was found in the lane. Blood was found in huge quantity in the lane which was seized in presence of the witnesses. The blood stained soil was seized. The seizure list was prepared which has been marked as Ext. 8. He has further stated that he obtained the post mortem examination report. He made recommendation for cancellation of the licence of the gun. He has also stated that the smell of gunpowder was coming out from that gun. After some time he was transferred and handed over the charge to Deepak Kumar Sinha, who had submitted the chargesheet in that case. He has further stated that he took the statement of Nathuni Tiwary (P.W. 4), who had stated before him that he came to know from Chandradeo Pandey that accused Ram Bachan Tiwary shot Ramdhani Pandey dead by firing from his double barrel gun. There was scuffling between the informant and Ram Bachan Tiwary and thereafter the accused fled away leaving the gun which was taken over by the police. He has also stated that he took the statement of Kedar Pandey (P.W. 5) who came to the place of occurrence and found Ramdhani Pandey dead in injured condition and came to know from Chandradeo Pandey that Ram Bachan Tiwary shot dead Ramdhani Pandey and after scuffling with the informant the accused fled away. He (P.W. 5) stated before him that there has been quarrel between the informant and Ram Bachan Tiwary one hour prior to the occurrence. In his cross-examination he has stated that he has found blood coming out from the body of the deceased. He did not send blood stained soil for forensic examination. He did not send the gun, empty cartridges and the live cartridges to the ballistic expert for examination. He has denied the suggestion of the accused that the gun and cartridges were brought from the house of the accused when they were not present in their house. In paragraph-16 he has stated that Chandradeo Pandey had given the reason for the occurrence in his re-examination.

14. After the prosecution evidence, both the appellants were examined under

Section 313 of the Code of Criminal Procedure. Ram Bachan Tiwary stated in his defence that the police officer entered into his house and took the gun and cartridges after chiding the female members while they (accused) were not present in the house. Ramdhani Pandey was killed by the dacoits in the cattle-shed and the dead body was taken to his darwaja by his family members. He has also stated that in the evening on the date of occurrence there has been quarrel and scuffle between him and Chandradeo Pandey (P.W. 2). As such, he and his father had been falsely implicated in this case. His father was not present in the village on that day. The appellant Sheo Pujan Tiwary has also been examined under Section 313 of the Code of Criminal Procedure and he has stated that he came to know that Ramdhani Pandey was killed by dacoits and his name had been mentioned as an assailant.

15. It appears that the defence has taken different pleas at different stages. It has been suggested to P.W. 1 in paragraph-16 that Ramdhani Pandey was looking after the bundles of paddy in the field in the night, when unknown dacoits were crossing through that place who were asked by Ramdhani as to who they were and they killed him by firing shots and the dead body was brought to his house and the accused had been falsely implicated. No blood was found at the place of occurrence. Same suggestion had been made to P.W. 2 in paragraph-16. But in the examination under Section 313 of the Code of Criminal Procedure, accused Ram Bachan Tiwary has stated that Ramdhani Pandey was killed by dacoits in his cattle-shed and similar defence has also been taken by another appellant Sheo Pujan Tiwary.

16. It has been submitted by the learned by the learned counsel for the appellants that there is no material or documentary evidence on the record to show that the seized gun belonged to the appellants. But it appears from the evidence of P.W. 2 in paragraph-16 that it had been suggested to P.W. 2 that the gun and the cartridges were taken out from the house of the accused and handed over to the police. It has also been suggested to P.W. 2 in paragraph-22 that the seized articles were taken out from the house of the accused by the informant who kept those articles with him and when the police officer came there, those articles were handed over to the police officer. From these statements it appears that the seized gun and the cartridges were owned and possessed by the accused/appellants. It appears from the evidence to P.W. 2 in paragraph-23 of the cross-examination that it was the month of Paush and it was a moon lit night.

17. After considering the prosecution evidence, it appears that the ocular evidence stands corroborated by the medical evidence. The witnesses have stated that both the appellants were standing in the lane adjacent to the house of the deceased. At the time of closing the door the deceased made enquiry as to who and why they were standing there whereafter the firing was made. It has been stated by the witnesses that at the time of occurrence they were in the Dalan and after taking meal the deceased went to close the door when he made

the query and at the instance of Sheo Pujan Tiwary, Ram Bachan Tiwary fired the shot at Ramdhani Pandey which proved fatal and he died on the spot. The only difference is that the witnesses have stated that two firings were made whereas the doctor has found three wounds of entry caused by fire arms. Both the ocular and medical evidence suggest that fire arm injuries were the cause of death of the deceased. The investigating officer (P.W. 12) has also found copious blood in the lane where the dead body of Ramdhani Pandey was lying. The investigating officer came to the place of occurrence after hearing a rumour, which was entered into the station diary and for verification he came to the village and at the place of occurrence the dead body with copious blood in the lane adjacent to the house of the deceased was found. No blood or dead body was found either in the cattle-shed or in the field where bundles of paddy crops were lying and the deceased was killed by dacoits as suggested by the defence. Both the appellants have been found near the dead body. There has been scuffle between the informant and Ram Bachan Tiwary (one of the appellants) after firing shots. On raising alarm when the co-villagers assembled there, both the appellants escaped leaving the arms and ammunitions which were handed over to the police officer when the police came to the place of occurrence for taking statement of the informant and to start the investigation of the case. The investigating officer (P.W. 12) has also found the smell of gun powder coming out from the double barrel gun. There is sufficient material in the evidence of P.Ws. 1 and 2 suggesting that the defence has admitted that the arms and ammunitions belonged to them. Admittedly, P.Ws. 1 and 2 are the family members of the deceased. Certainly, they are interested witnesses but on that ground alone their evidence cannot be discarded. Their evidence has been corroborated by the investigating officer and the medical officer. The informant (P.W. 2) has received injury while scuffling with appellant Ram Bachan Tiwary, who assaulted him with the butt of the gun. The doctor (P.W. 11) has found two injuries on the person of P.W. 2. The injury report is Ext. 5.

18. It has been experienced that no independent witness come to depose or they want to support or to deny the occurrence as they do not want to bear the brunt of either of the parties. There is sufficient material to show that both the appellants had common intention to commit the offence. In such a situation, the prosecution cannot be blamed for the non-examination of the independent witness or corroboration of the evidence by the independent person. The ocular evidence has been found corroborated by the medical evidence of the doctors P.Ws. 8 and 11.

19. Considering the facts and circumstances noted above, we do not find any ground to interfere with the impugned judgment. The appeals have got no merit, accordingly, they are dismissed.

20. The bail bonds of accused are cancelled. They are directed to surrender before the trial court to serve out the sentence as imposed by the learned trial court. In case, the appellants do not surrender within one month, the learned

trial court will take steps for their appearance to serve out the sentence.

Dharnidhar Jha, J.

I agree.