
(1999) 04 PAT CK 0068

In the Patna High Court

Case No : Criminal Application No's. 194 and 198 of 1990 (R)

Sonu Prajapati and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 20-04-1999

Acts Referred:

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

Citation : (1999) 3 BLJR 2051 : (1999) 3 PLJR 560

Hon'ble Judges : R.A. Sharma, J;A.K. Prasad, J

Bench : Division Bench

Final Decision : Allowed

Judgement

A.K. Prasad, J.—Cr. Appeals 194 and 198 of 1990(R) which arise out of common judgment and order dated 28-7-1990 in S.T. No. 347 of 1988 passed by Sri Satyendra Singh, the then IVth Addl. Sessions Judge, Palamu, have been heard analogous and are being disposed of by this judgment.

2. Sonu Prajapati and Karmu Prajapati are the appellants in Cr. Appeal No. 194 of 1990(R). The sole appellant in Cr. Appeal No. 198 of 1990(R) is Prasad Prajapati. All the three appellants have been convicted under Sections 302 read with 34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life thereunder. Further, appellants Sonu and Karmu Prajapati have been convicted u/s 27 of the Arms Act and sentenced to undergo rigorous imprisonment for three years, each, on this count. Besides, appellant Karmu Prajapati has been convicted u/s 323 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for three months thereunder. However, all the sentences passed on the appellants have been directed to run concurrently.

3. Briefly put, the prosecution case, as made out in the first information report (Exhibit 2), is as under:

On 28-1-1988, around 8.30 p.m. the informant P.W. 3 (Bilash Prajapati) was returning home from the rice mill of Sheo Sonar situate at village Chattarpur after getting the paddy de-husked in the company of his father (Chhatu Prajapati), the deceased, his wife (Smt. Phulbasia Devi), P.W. 2, and his son (Ramswaroop Prajapati) P.W. 8 and when on the way they reached Baratillah in the field of Ramgulam Kaharir, they saw the appellants and an unknown miscreant coming from the opposite direction. Appellant Karmu Prajapati uttered that he would teach a lesson to the deceased for practising witch-craft, whereupon appellant Sonu Prajapati fired gun shot causing wound to the deceased on his left shoulder, who fell down and died instantaneously on the spot. Appellant Karmu Prajapati too fired a gun shot which hit none. Thereafter, appellant Karmu Prajapati gave a slap to the informant. The informant's wife and his son raised a hue and cry, whereupon the appellants fled, towards the western direction. Ori alarm, Munni Ram (P.W. 5), Ramjatan Ram (P.W. 6) and some other villagers arrived on the spot to whom the informant narrated the incident. The motive alleged behind the murder of the deceased is that the appellants suspected that by his witch-craft the daughter of appellant Prasad Prajapati had fallen sick and there were differences between the deceased and the appellants. The informant lodged the first information report with Chattarpur Police Station about the occurrence on the same day at about 8 30 p.m. The distance between the place of occurrence and the police station is about a kilometre.

On the basis of the first information report, the present case came to the instituted. The Police Officer (P.W. 14) visited and inspected the spot, he held inquest over the dead body of the deceased and seized bloodstained earth from the spot. After completion of investigation, charge-sheet was laid in Court against the appellants. The case was ultimately committed to the Court of Session by the Chief Judicial Magistrate, Daltonganj, on 29-6-1988.

4. The main defence is of innocence and false implication. The appellants denied their involvement/participation in the occurrence in their statement recorded u/s 313, Cr. P.C.

5. At the trial, the prosecution examined as many as 14 witnesses. Out of them, P.W. 2, P.W. 10, P.W. 12 and P.W. 13 are formal witnesses. P.W. 3 (Bilas Prajapati), the informant, P.W. 4 (Smt. Phulbasia Devi), P.W. 5 (Munni Ram) and P.W. 6 (Ramjatan Ram) have been declared hostile by the prosecution. P.W. 1 (Dr. Shyam Bihari Mahto) had held autopsy of the dead-body of the deceased. P.W. 14 (Shyam Narayan Singh) is the main Investigating Officer. P.W. 11 has made part investigation. He prepared sketch map of the place of occurrence (Exhibit 5) and submitted charge-sheet (Exhibit 4) in the case. The other P.Ws. are P.W. 8 (Ram Swarup Prajapati) and P.W. 9 (Munni Prajapati), the son of the informant, who claimed themselves to be eye-witnesses to the occurrence, and P.W. 7 (Indradeo Prajapati).

The defence, on the other hand, did not examine any witness.

6. The trial Court, on consideration of the evidence and the materials brought on record, as also mainly relying on the testimony of P.Ws. 8 and 9 as well as the medical evidence held the appellants guilty and convicted and sentenced them on different charge, as stated above.

7. The point which falls for consideration is whether the prosecution has been able to bring home the charge under Sections 302/34 and 323, I.P.C. and 27 of the Arms Act to the respective accused appellants beyond shadow of all reasonable doubt.

8. The learned Counsel for the appellants has contended, inter alia, that the informant and his wife could not identify the miscreants who participated in the occurrence ; that P.W. 9 is not a cited witness in the first information report and the evidence of P.W. 8 on the identification of the appellants at the time of the occurrence is not wholly reliable in the context of the evidence of P.Ws. 3 and 4 and in the circumstances, he has submitted that the appellants are entitled to acquittal.

On the other hand, the learned A.P.P. appearing on behalf of the respondent has supported the impugned order.

9. The factum of the murder of the deceased is not disputed by the defence.

10. The doctor (P.W. 1) has testified to the effect that on 29-1-1988 at about 11.30 a.m., he performed post-mortem examination on the dead-body of the deceased and he found an ante-mortem lacerated wound 1" x 1" x cavity deep in the arm and left side of the chest. On dissection, there was a big hole in the left shoulder with fracture of the head of left humerus and the upper lobe of left lung was found badly lacerated and torn into pieces. According to him, the injury was caused by tire-arm, like gun and it was sufficient in ordinary course of nature to cause death. He has further opined that the time elapsed since the death was between 6-36 hours of the post-mortem examination. The medical evidence fully supports the prosecution case that the deceased died of gun shot injury.

Now the crucial point which arises for consideration is whether the appellants were instrumental in the murder of the deceased.

11. At the trial, four eye-witnesses, namely, P.Ws. 3, 4, 8 and 9 were examined in support of the prosecution case. We may now proceed to discuss and analyse their evidence. P.W. 3 (Bilas Prajapati), the informant, has testified to the effect in chief-examination that while he was returning in the company of the deceased, his wife (P.W. 4) and his son (P.W. 8) on the fateful day at about 8.30 p.m. and had reached the field of Ramgulum Kahanr, four culprits shot dead his father, but he could not identify the assailants or any one of them. He has further stated that he was also slapped by them. He has been declared hostile by the prosecution. It has come in his cross-examination by the defence that the culprits had covered their faces with Galmucha and so he could not identify them. P.W. 4 (Phulbasia Devi), the informant's wife, has stated that while she

and her companions were returning and had reached the field of Ramgulam Kahanr, the four miscreants who had covered their faces with cloth came armed with guns and shot the deceased to death. She has further stated that she could not identify the assailants of the deceased. No doubt, she has stated that out of the four miscreants, three resembled the appellants. She has supported the occurrence. Her evidence on participation of the appellants is a guess work. She too has been declared hostile by the prosecution. She has not identified the appellants in Court among the culprits involved in the incident. Thus, no reliance can be placed on her evidence regarding active involvement of the appellants in the occurrence.

P.W. 8 (Ramswarup Prajapati), son of the informant claims that at the time of the occurrence he was accompanying the deceased and when they reached near the field of Ramgulam Kahanr, four miscreants came and he identified the appellants amongst them and appellant Karmu Prajapati uttered that the deceased was practising witch-craft, whereafter appellant Sonu Prajapati fired, hitting the deceased on the left chest and another shot, fired by appellant Karmu Prajapati, had hit the ground.

12. P.W. 9 (Munni Prajapati), the other son of the informant, who was aged 10-11 years at the time of the occurrence, has in substance testified on the same line. He is a child witness. His name is not cited in the first information report as one who was returning in the company of the deceased and the informant or one who had witnessed the occurrence. No plausible explanation has been given for the omission of his name in the first information report. The informant (P.W. 3) has not whispered in his evidence that he was returning in their company when the occurrence took place. P.W. 7 (Indradeo Prajapati), the full-brother of the deceased, has stated that he lives in front of the house of the deceased and on hearing sound of two shots, as soon as he came out of his house he met Munni Prajapati (P.W. 9). This shows that Munni Prajapati (P.W. 9) was not present on the spot at the time of the occurrence. The occurrence had taken place not at the house of the informant, but at some distance from his house in a field. Hence, no reliance can be placed on the testimony of P.W. 9 that he had witnessed the occurrence and identified the appellants among the participants. When his evidence is excluded, there remains the solitary testimony of P.W. 8 on the identification and participation of the appellants in the incident. P.Ws. 3 and 4, his parents, could not identify the miscreants involved in the incident. It is in their evidence that the miscreants had covered their faces, so it is improbable that P.W. 8 could have identified the culprits on the spot. In such a situation, his solitary testimony on identification cannot be termed as wholly reliable to sustain the conviction of the appellants. The evidence of P.W. 8 is not corroborated by any independent source.

13. It is said that the appellants attributed sickness of the daughter of appellant Prasad Prajapati to the witch-craft practised by the deceased. This is the motive ascribed to the appellants for the murder of the deceased.

It has come in the evidence of P.W. 4 that as the deceased was an Ojha, he had too many enemies and all the villagers were against him. Under the circumstance, the motive alleged against the appellants is weakened. There is possibility that the deceased might have been done to death by some one else for such reason.

14. In view of the discussions made above, I find and hold that the prosecution has failed to establish the charge against the respective accused appellants. So the impugned order of conviction and sentence cannot be sustained.

15. In the result, both the appeals are allowed and the impugned judgment and orders of conviction and sentence passed by the Court below against the appellants are set aside. The appellants are acquitted of the respective charge. Appellant No. 1 (Sonu Prajapati) who is in jail is directed to be released from custody forthwith, if not required in any other Case/cases. Appellant Nos. 2 and 3 (Karmu Prajapath and Prasad Prajapati respectively) are on bail. They are discharged from the liability of their bail-bond.