
(2010) 04 PAT CK 0107
In the Patna High Court

State of Bihar

APPELLANT

Vs

Chandeshwari Yadav and Others

RESPONDENT

Date of Decision : 12-04-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 149, 302, 307, 326

Citation : (2010) 04 PAT CK 0107

Hon'ble Judges : Dharnidhar Jha, J;Akhilesh Chandra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Dharnidhar Jha and Akhilesh Chandra, JJ.—The present Government Appeal is directed against judgment of acquittal dated 28th July, 1988 passed by Sri Rajendra Prasad Srivastava, Sessions Judge, Madhepura, in Sessions Case No. 54 of 1986. By the above judgment the learned trial Judge acquitted all the seven accused persons who were put on trial for various charges, some of which being under Sections 302/149 of the Indian Penal Code. It appears from the order passed by this Court on 18th March, 2010 that respondent No. 2, Satya Narain Biswas, and respondent No. 6, Pankaj Kumar died during the pendency of this appeal and as such the appeal now remains to question the acquittal of remaining five respondents.

2. The prosecution case, as contained in Fardbayan of P.W.5, Shatrughana Yadav, in which he alleged that he along with others had assembled at the shop of one Siwan Sonar, situated at the bank of a pond at village Barahi so as to settle the dispute which had given rise to some tense situation in the village. The informant was accompanied by Sunder Yadav (deceased), Dukhan Yadav (P.W.8), Sheo Prasad Yadav (not examined), Chhattu Kamat (not examined), Moti Yadav (not examined) for the same purpose of defusing the tension by settling the dispute. One Parwati Devi who was the grand daughter of Nunu Lal Yadav (not examined) was also standing there. The villagers of the village were also moving to and fro on the embankment of the pond which included Uttam Yadav (not examined)

Jibu Yadav, Sarpanch (not examined) Babuji Yadav (not examined), Natho Bhagat (P.W.3), Lakshmi Bhagat (not examined), Mathura Nand Biswas (P.W.4) and others.

3. The informant alleged that the reason for assembly at the embankment of the pond was that there was some dispute in between villagers, on one side, and Satya Narain Biswas (dead), on the other, in respect of the pond being settled. It was stated by the informant that the pond originally belonged to Pachgachia Raj along with land appertaining thereto which was vested in the State of Bihar. The villagers wanted that they should fish in the pond but that was resisted by respondent, Satya Narain Biswas as he had taken the settlement in respect of the fishery right relating to the pond. The villagers were deeply aggrieved by obtaining above said settlement and had filed a case before the Collector also. The respondent Satya Narain Biswas was demanding to fish into the pond which was consistently being opposed by the villagers.

4. It was alleged that the said respondent Satya Narain Biswas along with others of his group like Sahdeo Yadav, consisted of 40 45 persons, came there on the pond for getting it cleaned so as to fishing in it and as such the informant and other assembled there for defusing the tension. While the informant was pursuing in his attempt it is alleged that Satya Narain Biswas and others started raining arrows from their bows towards the house of the said Siwan Sonar and one such arrow hit the deceased Sunder Yadav near his umbilicus. The arrow was shot allegedly by Satya Narayan Biswas and after being hit the deceased Sunder Yadav fell down on the ground wreathing in pain. The arrow shot by respondent Abhay Biswas hit Sheo Prasad Yadav (not examined) and he fled away from there. Dukhan Prasad Yadav (P.W.8) was injured by the arrow shot by the deceased respondent Pankaj Kumar in his belly and he also fell down on the ground. Seeing that arrows were flying all along, Parwati Devi fled from there and in that course she was hit by the arrow shot by respondent Sahdeo Yadav. Moti Yadav (not examined) was struck by the arrow shot by respondent Ajay Kumar Biswas which hit him on his right leg below his knees. Chhatto Kamti was injured in his left rib cage by the arrow shot by respondent Sahdeo. All persons who had assembled at the pond dispersed from there on account of attack set out by the accused persons. The informant stated that he was also frightened and was about to leave when the arrow shot by respondent Satya Narain Biswas hit him in his belly at the right side and he also fell injured. Satya Narain Biswas thereafter has made to leave the place and, accordingly, they fled away from there.

5. Informant stated that the villagers came there at the place of occurrence with cots and bullock carts after the assailee people had gone away and put the injured on them and brought them to Madhepura Hospital where they were being treated.

6. Initially the case was registered on the basis of Exhibit-3, the fardbayan, under Sections 307, 326 etc. of the Indian Penal Code as may appear from

Exhibit-4, the first information report of the case. Further, the deceased appears died some times on 03rd August, 1984 and Section 302 of the Penal Code was added up in the first information report.

7. The investigation was taken up by the Police Officer, as may appear from the evidence of P.W.10, Ramdeo Singh, and S.I. Baleshwar Prasad Choudhary. The injured were treated by the doctor in Madhepura Sadar Hospital for their injuries. The witnesses were examined and after completion of the investigation the respondents were sent up for trial and were, ultimately, acquitted of the charges.

8. Sushri Shashi Bala Verma, learned Additional Public Prosecutor, appearing on behalf of the State, has taken us through some of the important evidence of the witnesses and has submitted that the place of occurrence appears on the embankment of the pond as also at the shop of Siwan Sonar and the evidence of witnesses and the Police Officer investigating the case may point out that the two were not situated far away from each other. The two places were apart only by a few steps and as such considering the assemblage of persons there is no variance in the place of occurrence as narrated by the informant and that by the Police Officer. It was contended that the evidence of doctor, P.W.12, when considered in the light of evidence of eight witnesses who came to support the prosecution charges leads to one conclusion that the manner of occurrence was the same as was alleged by the prosecution. It was contended further that the accused persons were variously armed as may appear from the evidence of witnesses and as deadly projectile as an arrow was used to cause injuries not only to the deceased but also to at least four other witnesses. It was contended that the learned trial Judge erroneously appreciated the evidence and acquitted the respondents.

9. The learned Counsel appearing for the respondents has referred to some of the evidence available to us and some of the findings recorded by the learned trial Judge and has submitted that the view which was taken by the learned trial Judge appeared a reasonable view in the facts of the case and the judgment of acquittal was correctly passed.

10. In support of the charges eight witnesses were examined and while P.W.3 did not give the full details as to whose arrow had injured, the other witnesses and the deceased had given almost the similar detail as was given by the informant in his fardbayan. When considered from one angle of consistency in the evidence of witnesses one could find that the witnesses appeared consistently deposed as to how the occurrence had generated and who were the accused persons who had shot arrows at different injured either to kill Sunder Yadav, the deceased, or to injure other injured persons. Some of the injured persons like Chhattoo Biswas (P.W.7), Dukhan Prasad Yadav (P.W.8), Satrughna Yadav (P.W.5), the informant, have supported the manner of assault and have also named their individual assailants besides the assailant of the deceased but what we find is that the story as regards the deceased being hit at belly subsequently by the injury inflicted to him it was confined only to respondent Satya Narain Biswas. In the

initial prosecution story the informant alleged that it was respondent Satya Narain Biswas who had shot a single arrow which hit him around his umbilical cord as a result of which he was injured. In his evidence P.W.5, the informant, as may appear from paragraph 4 of his evidence, stuck to the same story that a single arrow was shot by respondent Satya Narain Biswas so as to causing a single injury to the deceased. However, P.W.1, Kapileshwar Yadav, has stated that respondent Satya Narain Biswas has fired two arrows and the two hit him on his belly and also in his umbilicus. Thus, he has attempted to adopt the story of single arrow being shot. Story of another arrow also being shot by respondent Satya Narain Biswas, one could very well be pondering over this improvement by P.W.1 and find that there was some strong reason for adding of the story of one further arrow being shot. We feel that the prosecution could develop the story only when it was confronted with the evidence of the doctor which was recorded by him in his report. On a better appreciation on the even point we would like to point out that the doctor (P.W.12) found the following injuries on the dead body of Sunder Yadav.

- (1) Incised surgical wound stitched on the left lower para medicum 5 inches in length.
- (2) Incised wound stitched 2 long in continuation with injury No. 1, horizontal 2 above the mid incision line.

P.W.12 further noted that on opening the abdomen by removing the stitches from the skin, rectus sheath and peritoneum the following injuries were found:

- (1) Left iliac fosse was full of blood.
- (2) Left femoral artery was tied with thread at two ends.
- (3) In small intestine at two places dissection and anastomosis were done.
- (4) Other viscera were pale. Right chamber was full of blood.

In the opinion of P.W.12, the cause of death was shock and hemorrhage due to cutting of femoral artery and injury No. 2 may have been caused by a weapon which penetrated the abdomen like an arrow.

11. The learned trial Judge had found that the doctor found more than one injuries. We may not be upholding that finding but the other finding of the learned trial Judge, which is based on the evidence of P.W.10, appears very difficult to unsettle. The learned trial Judge has recorded in paragraph 17 of the judgment that the Investigating Officer had found four injuries on the person of the deceased. This finding appears recorded by the learned trial Judge in the light of the evidence of P.W.10 in paragraph 7 of his evidence. P.W.10 has stated that he had inspected the person of Sunder Yadav in the hospital and he found cut wound on his head on its frontal part. He further found a cut wound on the right side of the frontal part of the head. He found the third wound on the left arm of the deceased and it was found bleeding and then he found fourth wound

near the umbilicus to which an arrow was found stuck up. Thus, the story stated by the witnesses that only one arrow or a maximum of two arrows were shot by Satya Narain Biswas appears contradicted by the evidence of P.W.10 and his finding as regards to the injuries appear on the person of the injured. The learned trial Judge has reached a conclusion that the variance in the evidence of P.W.10, the Investigating Officer of the case, as also the evidence of witnesses is sufficient to indicate that the witnesses had not really seen the occurrence and were making out statements out of their imagination or on account of being tutored. We find substantial merit in the above finding which was recorded by the learned trial court.

12. What we further find from the record of the case is that Satya Narain Biswas, the respondent, was said to be the order giver as also the assailant of the deceased who shot the first arrow upon the deceased. P.W.11, Chandra Bhusan Rastogi, was the Executive Magistrate, posted in Madhepura on 31st July, 1984 and he has stated in his evidence that he received an order from Subdivisional Magistrate, Madhepura, contained in his letter No. 557 dated 31st July, 1984 to record the dying declaration of deceased Sunder Yadav and, accordingly, he went there in the hospital, recorded the statement in triplicate by carbon process. That record has been marked Exhibit-5 by the learned trial Judge and a copy of the same appears at page 106 of the paper book. We find that in the statement recorded by P.W.11, Sri Chandra Bhusan Rastogi, the deceased has stated that respondent Satya Narain Biswas had ordered to shoot arrows but he has not further divulged as to whose arrow hit him to injure him. Thus, it is very difficult for us to say that it could be respondent Satya Narain Biswas, who could have shot the arrow and injured Sunder Yadav, the deceased.

13. In cross-examination of P.W.5 the informant of the case was done in quite detail and as may appear from the fardbayan as also from his evidence recorded by the Court, the villagers were aggrieved by the order of settlement in favour of respondent Satya Narain Biswas in respect of the pond which earlier belonged to Pach Gachi Panchayat but later on changed into the State of Bihar. There was some litigation as may appear from the evidence of P.W.5 in paragraphs 9, 10 and 11. The villagers appeared challenging the order of settlement in favour of respondent Satya Narain Biswas but that challenge was negated by the Additional Collector and it appears 144 Cr.P.C. proceeding, so as to taking care of the prevailing apprehension of the breach of peace, was also initiated, as may appear from the Exhibit-5, the dying declaration of the deceased, on that particular day also at about 8.00 A.M. there had been some quarrel between the villagers and the respondents in respect of the possession or probability to resist exercise of right of possession on the part of the respondent Satya Narain Biswas, who was the owner. We are convinced from the sufficiency of the evidence that respondent Satya Narain Biswas was armed with an order of settlement in his favour and from the evidence of P.W.5 itself that he had committed some acts of possession over the pond by cleaning it of the worts which were floating on water. It appears that the respondent Satya Narain Biswas

was admitted to make operation of fish collector so as to care fish in the pond. The villagers were resisting that, which appears from the fardbayan also. This is apparent from the fardbayan that there was a confrontation between the two parties. If Satya Narain Biswas, the respondent, was favorably having a settlement order in his favour and if he had taken possession of the pond, we do not see any reason for the respondents to intermeddle with the possession of the pond which was created by valid procedure of law. It appears that there was some melee in which there was free fight between the parties and the real fight under which the deceased was hit and killed and other persons were injured appears suppressed by the informant probably to save his own skin. The informant appears arrogating himself the role of a Panch which really was never and if at all the settlee was resisting the attempt of the villagers to unsettle his possession and if the accused persons were using some force and repent with acquisition, we do not see any reason that the act could be said to be a criminal act.

14. After having considered the evidence on record what we find that there were many circumstances appearing from the prosecution evidence which raised a doubt about the veracity of its story. We find that the prosecution was guilty of suppressing the two facts. This could be reason that there was some variance in the earlier testimony of the medical evidence. In the light of the above reasons we find that the acquittal of the respondents by the learned trial Judge could not be said to be perverse.

15. In the result, the appeal appears to be without merit and is dismissed.

16. After the death of respondents Satya Narain Biswas and Pankaj Kumar, the other respondents of the case, namely, Chandeshwari Yadav, Ajoy Kumar Biswas, Chakardhar Yadav, Sahdeo Yadav and Abhay Kumar, who are on bail, are ordered to be discharged from the liabilities of their bond which were executed by them as sureties in the light of the order passed by this Court on 10th October, 1996.