
(2020) 10 PAT CK 0014
In the Patna High Court
Case No : Govt. Appeal (Db) No. 12 Of 1997

State Of Bihar

APPELLANT

Vs

Nirmal Kumar Jha @ Niro Jha And Anr

RESPONDENT

Date of Decision : 01-10-2020

Acts Referred:

Indian Penal Code, 1860 — Section 34, 147, 148, 149, 302, 307, 323, 341
Arms Act, 1959 — Section 27
Explosive Substances Act, 1908 — Section 3, 4

Citation : (2020) 10 PAT CK 0014

Hon'ble Judges : Dinesh Kumar Singh, J;Arvind Srivastava, J

Bench : Division Bench

Advocate : Abhimanyu Sharma, Kanhaiya Pd. Singh, Pratik Mishra

Final Decision : Dismissed

Judgement

Through the present Government Appeal, the State of Bihar has challenged the judgment of acquittal dated 19.12.1996 passed in Sessions Trial No. 66 of 1995 by the learned 2nd Additional Sessions Judge, Saharsa whereby the respondent no. 1 has been acquitted of the charge under Section 302/34 of the IPC, while respondent no. 2 has been acquitted of charge under Section 302 of the IPC and Section 27 of the Arms Act.

To appreciate the issue raised by the appellant, it is necessary to have a glance at the prosecution case and the evidences adduced during trial.

The prosecution case, as per the fardbeyan of Shibendra Jha, P.W. 5, recorded by S.I. Sanjay Kumar Singh on 18.5.1993 at 7.30 A.M. at the residence of the informant situated in village Basona, is to the effect that in the intervening night of 17th and 18th May, 1993, the informant's nephew Mrityunjay Kumar Jha and co-villagers Mohan Thakur, P.W. 3, Dinesh Jha (not examined), Sunil Kumar Jha(not examined), Ashok Kumar Jha (not examined), Manoj Kumar Jha(not examined) and Sambhu Kamat(not examined), had gone to sing Kirtan (religious song) at the house of co-villager Sukharu Sharma. They were returning at 11.30

P.M. along with their musical instruments but as soon as they reached near the mill of Nawal Kishore Jha, 8-10 persons assaulted them with lathi and danda and they first used the explosives and on the explosion sound, the informant rushed to the place of occurrence and identified Nirmal Kumar alias Niro Jha and his son Guddu Jha both of village Barsona, in the flashlight but rest of the accused could not be identified by the informant P.W. 5. The informant claimed to have protested with regard to the assault, whereafter Niro Jha asked his son Guddu Jha to fire and then respondent no. 1 Guddu Jha fired at Mrityunjay Kumar Jha, as a result he died on the spot. Thereafter, the accused persons fled away. On alarm being raised, Mohan Thakur, P.W. 3, Srikant Jha and Atul Jha and others reached at the place of occurrence, whereafter the dead body of the deceased was taken to the door of the informant and since there was storm in the night, information could not be given to the police station. Next morning, the police officer came to the place of occurrence.

The genesis of the occurrence is that Niro Jha wanted to marry his daughter with Dinesh Jha, son of Kapleshwar Jha but there was some dispute when Dinesh Jha was kidnapped and marriage was performed but Dinesh Jha escaped from the confinement of Niro Jha and the deceased Mrityunjay Kumar Jha helped him to escape from the custody of Niro Jha, hence he has been killed. This occurrence led to registration of Saharsa P.S. Case No. 253 of 1993.

On conclusion of investigation, charge sheet was submitted against respondent no. 2 Nirmal Jha alias Niro Jha for the offences under Sections 147,148,149,307,323 and 341 of the IPC and Section 27 of the Arms Act and Sections 3 and 4 of the Explosive Substances Act and against respondent no. 1 Guddu Jha chargesheet was submitted for the offences under Sections 147,148,149,307,341 and 323 of the IPC and Section 27 of the Arms Act.

On commitment of the case to the Court of Sessions, charges were framed against both the respondents under Sections 302/34 and 302 of the IPC and Section 27 of the Arms Act vide order dated 4.9.1995.

The prosecution, in order to prove the case, examined nine witnesses. P.W. 1 Dr. Swatantra Kumar Singh who conducted autopsy on the dead body of deceased Mrityunjay Kumar Jha, P.W. 2 Dr. Prabhash Kumar Singh is Civil Assistant Surgeon, Saharsa who examined the injury of Manoj Kumar Jha, Sunil Kumar Jha and Ashok Kumar Jha, which has been exhibited as Ext. 2 to 2/b. P.W. 3 Mohan Thakur who was accompanying the deceased along with others and claims to be the eye witness of the occurrence. P.W. 4 Narayan Jha is a hear say witness who reached on the spot, when Shibendra Jha P.W. 5 and Mohan Thakur, P.W. 3 explained to him about the occurrence. P.W. 5 who reached on the spot along with P.W. 3 claims to have seen the occurrence to the extent of firing only. P.W. 6 is Hirendra Singh, SI of Police who submitted subsequent charge sheet. P.W. 7 Sanjay Kumr Singh is the I.O. of the case who recorded the fardbeyan, registered FIR and conducted part of investigation. P.W. 9 is Nagendra Kumar Singh who conducted part of investigation and took charge of investigation from

P.W. 7 Sanjay Kumar Singh.

The defence has examined only one witness D.W. 1 Umakant Jha to prove that there was some dispute between Niro Jha and Dhaneshwar, construction of toilet by Dhaneshwar Jha over the land of Niro Jha and in that background the occurrence took place.

Considering the evidence on record and disbelieving the evidence of P.Ws 3 and 5, the learned trial court has come to a conclusion that the prosecution has failed to prove its case beyond reasonable doubt. The learned trial Court has given specific finding that the deceased Mrityunjay was returning along with Mohan Thakur, Dinesh Jha, Sushil Kumar Jha, Ashok Kumar Jha, Manoj Kumar Jha and Shambhu Kamat but out of them only Mohan Thakur has been examined, as P.W. 3.

The deceased along with the above named persons went to the house of Sukharu Sharma to sing the religious song but Sukharu has also not been examined. P.Ws 3 and 5 have failed to explain the injury of three injured persons which considerably impeached the credibility of P.Ws 3 and 5. Hence, the judgment of acquittal has been recorded by the learned trial court.

Mr. Abhimanyu Sharma, learned counsel for the appellant submits that the evidence on record has not been properly analyzed. The evidence of P.Ws 3 and 5 proved the case of prosecution beyond the shadow of reasonable doubt. I.O. has found blood on the place of occurrence. The evidence of P.Ws 3 and 5 is being corroborated by injuries found during postmortem (ext. 1). Three injured could not be examined since they were scared of the accused side. It is further submitted that in a criminal case, each and every witness cannot reproduce the manner of occurrence exactly in the similar manner as it happened.

Mr. Kanhaiya Prasad Singh, learned Senior counsel appearing for the respondents submits that it is surprising that the deceased was coming in the company of six persons but except P.W. 3 Mohan Thakur, none came forward to support the prosecution case. Three persons received injuries but the injured have also not come to support the case. The evidence of P.W. 3 does not inspire confidence, since he has initially claimed to be left behind his companions as he had to ease out and thereafter, he does not explain how others received injuries. The conduct of P.W. 3 of not informing the police and taking the dead body to the house further impeaches his credibility. Admittedly, P.W. 5 Shibendra Jha, the informant reached on the spot after hearing the sound of explosion and hence, his being witness to the actual occurrence appears to be absolutely doubtful, particularly when P.W. 3 has claimed to have been accompanying the deceased hence, P.W. 5 being the informant of the case does not inspire confidence. There is no doubt that the occurrence took place at 11.30 in the night and there was no source of identification except the flash light, with the aid of which P.Ws 3 and 5 claimed to have identified but that has not been seized nor it has been exhibited. It is further submitted that the place of occurrence has not been proved and the I.O.

has not found any sign of explosion at the place of occurrence.

Considering the rival submissions of the parties, it appears that it is the specific case of the informant P.W. 5, in the FIR that Mohan Thakur, Dinesh Jha, Sushil Kumar Jha, Ashok Kumar Jha, Manoj Kumar Jha and Shambhu Kamat were returning along with the deceased Mrityunjay, but none except Mohan Thakur, PW 3, has been examined which clouds the prosecution case and it has not been at all reasoned out and explained as to what circumstance, the eye witnesses have been withheld by the prosecution.

The claim of P.W. 3 is that he was coming with the deceased and others, but he was left behind as he had to ease out but on explosion sound he reached on the spot and asked Niro Jha not to assault and saw that on the order of Niro Jha, Guddu Jha fired at Mrityunjay Kumar Jha causing injury on abdomen, causing the death of Mrityunjay Kumar Jha on the spot. The evidence of P.W. 3 does not explain as to how Sushil Kumar Jha, Ashok Kumar Jha, Manoj Kumar Jha received injuries, as the injuries have been examined by P.W. 2 Dr. Prabhash Kumar Singh and their injuries have been exhibited, but they have not come forward in support of the prosecution case and such withholding of injured persons, further does not lend any credence to the conduct of the prosecution case.

Specific case of the informant P.W. 5 is that he raised alarm whereupon, Mohan Thakur, Srikant Jha and Atul Jha and many others came on the spot. The evidence of P.W. 5 creates doubt about the presence of Mohan Thakur (P.W. 3) on the spot and again the material witness who reached on the spot immediately on hearing the sound of gun shot, have also been withheld by the prosecution which clouds the prosecution case.

The evidence of P.W. 2 suggests that Manoj Kumar Jha received injury by hard and blunt substance, whereas Sunil Kumar Jha received injury by fire arm but the evidence of PWs 3 and 5 do not explain how three persons received injuries, particularly, when only one shot was fired, how Sunil Kumar Jha received gun shot injury.

The specific case of P.Ws 3 and 5 is that explosive was used initially but the I.O. has not found any sign of explosion at the place of occurrence, particularly, splinters, which impeaches the credibility of the prosecution, as the chargesheet submitted by P.W. 8 Satendra Singh did not find any mention of the provisions of Explosives Substances Act. The same suggests that there was no sign of explosion at the place of occurrence.

P.W. 5 Shibendra Jha's claim is that he heard the sound of bomb explosion near the mill of Nawal Kishore Jha, upon which he reached the place of occurrence and saw Niro Jha and Guddu Jha (respondents) resorting to firing and causing injury to Mrityunjay (the deceased), but his evidence also does not explain the injuries received by other injured and in his evidence he has been inconsistent, while deposing to the effect that Dinesh Jha, Sushil Kumar Jha, Ashok Kumar Jha

and Manoj Jha received injury, but in cross-examination, he has admitted that these persons are residing in the village.

P.W. 7 Sanjay Kumar Singh, in his evidence has clearly stated that he neither found any blood on the place of occurrence as suggested by the prosecution nor any evidence to suggest the explosion.

The evidence of P.Ws 3 and 5 has also been disbelieved by the learned trial Court since they are related to the deceased Mrityunjay Kumar Jha. P.W. 5 in his evidence has stated that after fardbeyan, his statement was not recorded by the police. Admittedly, P.W. 4 Narayan Jha is a hear say witness and he has stated that when he reached on the spot, then Mohan Thakur and Shibendra, P.Ws 3 and 5, respectively, told him that murder was committed by respondent no. 1 Guddu Jha when he resorted to fire causing fire arm injury.

So far as the genesis of occurrence is concerned, the forcible marriage of Dinesh Jha with the daughter of Niro Jha and his kidnapping and subsequent release at the behest of the deceased Mrityunjay Kumar Jha, has not been proved by the prosecution. Hence, the prosecution has failed to prove the case beyond the shadow of reasonable doubt.

The cardinal principle of criminal jurisprudence pertaining to burden of proof is that the same is on the prosecution. The guilt of accused must be proved beyond reasonable doubt. However, the burden on the prosecution is only to establish its case beyond reasonable doubt and not all doubts. The reasonable doubt has been defined by the Hon'ble Supreme Court in the case of State of U.P. Vs. Krishna Gopal and Anr., reported in (1988) 4 SCC 302. Paragraph 25 of the judgment reads as follows:

"25. A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt. Though this standard is a higher standard, there is, however, no absolute standard. What degree of probability amounts to "proof" is an exercise particular to each case. Referring to the interdependence of evidence and the confirmation of one piece of evidence by another a learned Author says [See: "The Mathematics of Proof-II" : Glanville Williams: Criminal Law Review, 1979, by Sweet and Maxwell, p. 340 (342)] :

"The simple multiplication rule does not apply if the separate pieces of evidence are dependent. Two events are dependent when they tend to occur together, and the evidence of such events may also be said to be dependent. In a criminal case, different pieces of evidence directed to establishing that the defendant did the prohibited act with the specified state of mind are generally dependent. A juror may feel doubt whether to credit an alleged confession, and doubt whether to infer guilt from the fact that the defendant fled from justice. But since it is generally guilty rather than innocent people who make confessions, and guilty rather than innocent people who run away, the two doubts are not to be multiplied together. The one piece of evidence may confirm the other."

Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an over-emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused person arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.

26. The concepts of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately, on the trained intuitions of the Judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimisation of trivialities would make a mockery of administration of criminal justice."

Withholding of the eye witnesses by the prosecution, non-lodging of the FIR by P.W. 3 Mohan Thakur, who claims to be accompanying the deceased and inconsistencies in the evidence of P.Ws 3 and 5 inter se, non-finding of blood and sign of explosion at the place of occurrence, not only impeaches the credibility of so called eye witnesses P.Ws 3 and 5, but it suggests that the witnesses have deliberately tried not to disclose the true version of the occurrence nor they have been able to prove the motive.

In view of the discussions made above, we do not find any infirmity in the judgment of acquittal recorded by the learned trial Court. It is well settled principle that acquittal of an accused after full-fledged contested trial, re-enforces presumption of his innocence.

Accordingly, this appeal fails and is dismissed, however, without costs.