
(2007) 08 PAT CK 0137

In the Patna High Court

Case No : Criminal Appeal (DB) No. 50 of 1988

Suresh Kumar Trithani @ Balo

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 31-08-2007

Acts Referred:

Arms Act, 1959 — Section 27

Criminal Procedure Code, 1973 (CrPC) — Section 107, 144

Penal Code, 1860 (IPC) — Section 302, 307, 34

Citation : (2007) 2 BLJR 3003

Hon'ble Judges : Syed Md. Mahfooz Alam, J; Shiva Kirti Singh, J

Bench : Division Bench

Advocate : Anjana Prakash, Rakesh Kumar Sinha, Shivendra Kr. Sinha, Anuj Prakash and Juhi Kumari, for the Appellant; Ashwini Kumar Sinha, APP, for the Respondent

Final Decision : Allowed

Judgement

Shiva Kirti Singh and Syed Md. Mahfooz Alam, JJ.—This appeal is directed against judgment and order dated 21.12.1987 passed by learned 2nd Additional Sessions Judge, Gaya in Sessions Case No. 402/83/44/83 whereby appellant, Suresh Kumar Trithani @ Balo and his brother-in-law, Sadhu Ram Trithani (since dead) were convicted. Two other co-accused persons were however acquitted. Sadhu Ram Trithani was appellant No. 1 earlier in this appeal but his name has been expunged because he died during the pendency of the appeal. The remaining sole appellant, Suresh Kumar Trithani has been convicted for charges u/s 302 as well as under Sections 302/34 of the Indian Penal Act and awarded life imprisonment. He has also been convicted for the offence u/s 27 of the Arms Act and awarded RI for five years on that count.

2. The fardbeyan (Exhibit-1) of the informant Madan Gopal Roy (PW-1) was recorded by ASI, Rajendra Prasad of Gaya, Kotwali PS on 31.7.1983 at 1930 hours at Pilgrim Hospital, Gaya. On the basis of same, the formal FIR (Exhibit-7)

was drawn-up on the same date at 11:15 A.M. leading to Gaya Kotwali PS Case No. 212/83.

3. The prosecution case in brief is that on 31.7.1983 at about 8:15 A.M. the informant along with his cousin-brother Rama Shankar Rai (deceased) was sitting on a chauki in front of house of said Rama Shankar Rai situated in Bairagi Mohalla. At that time some neighbours of the same Mohalla, namely, Sadhu Ram Trithani (Appellant who died during the pendency of the appeal), Sambhan Das & Gandhi, Suresh Kumar Trithani @ Balo (appellant) and Harish Kumar proceeded from their home towards the informant and when they saw his cousin, Rama Shankar Rai, they started abusing him and on protest Sadhu Ram Trithani ordered for firing. Sambhan @ Gandhi took out a country made pistol from his waist and on seeing the same Rama Shankar Rai began to run towards his house but in the meantime the appellant fired a shot with his country made pistol which hit Rama Shankar Rai behind his right shoulder and he fell down after receiving injury. Sambhan @ Gandhi fired again but there is no allegation that the shot hit the deceased. Thereafter all the accused persons ran away. The occurrence was witnessed by Jagdamba Rai, (PW-2) and others. With the help of those persons the injured was brought to Pilgrim Hospital where he died.

4. The reason of the occurrence was enmity on account of dispute over a passage in front of their house which had led to several litigations and over a case lodged one day earlier on account of theft of a compressor installed for the purposes of crusher at Aradih hillock.

5. After ASI, Rajendra Prasad had recorded the fardbeyan and prepared inquest report of the deceased at Pilgrim Hospital, Gaya, Sub Inspector of Police, Gulshan Kumar (PW-6) reached the hospital and took up the investigation. He sent the dead body for postmortem examination and went to the place of occurrence for inspection. He has described the place of occurrence as a place north of a Pipal tree situated north-west of house of deceased Rama Shankar Rai. There he found blood in sufficient quantity at a distance of about 7 feet north of the tree. The house of the deceased was at a distance of 28 feet 4 inches from the blood spot and his crusher was at a distance of about 44 feet. On the west of house of Rama Shankar Rai he found a Goshala said to be of the deceased. He found blood stained earth on the ground at a distance of about 26 feet from the north wall of Goshala. The distance between two blood spots was 52 feet. He seized blood stained earth and prepared seizure list. He did not find anyone present in the house of deceased, Rama Shankar Rai and came to know that all the witnesses have left with the dead body of Rama Shankar Rai to his native place in Uttar Pradesh. He found materials in the records of the police station to show proceedings under Sections 107 and 144 Cr.P.C. between the parties. He received sealed bullet recovered from the body of the deceased and preserved the same as material exhibit. After recording statement of witnesses and completing investigation he submitted charge sheet against all the named accused persons. After cognizance the case was committed to the court of

sessions. The accused persons pleaded not guilty to the charges framed against them hence they were put on trial. By the judgment under appeal two of the accused persons were acquitted but the appellant and his brother-in-law were convicted. As noticed earlier the latter died during the pendency of the appeal.

6. The defence of the accused persons was quite specific that in the morning of 31.7.1983 at about 7:45 A.M. the informant of this case, deceased and some others came to the house of Sadhu Ram Trithani and started abusing him and after some verbal altercation one Akshay Lal, a brother of the informant and cousin-brother of the deceased fired at Sadhu Ram Trithani causing fire-arm injury in his neck and the same bullet caused injury to the deceased, Rama Shankar Rai. That fardbeyan has been brought on record as Exhibit-A. According to that document another shot was also fired but that hit some tree.

7. In order to substantiate its case the prosecution has examined altogether eight witnesses out of whom only PW-1, Madan Gopal Rai (informant) and PW-2, Jagdamba Rai have deposed as the eyewitnesses of the alleged occurrence. PWs-3, 4, 5 and 8 namely, Ram Pravesh Prasad, Sachchida Nand Upadhyay, Raj Nandan Singh and Ram Nandan Prasad have been examined as formal witnesses to bring on record certain documents in order to substantiate the allegation that there was land dispute and other disputes between the parties from before. PW-6, Gulshan Kumar is the Investigating Officer and PW-7, Dr. Vijay Kumar held autopsy on the dead body of the deceased, Rama Shankar Rai. He has proved the postmortem report as Exhibit-9.

8. On behalf of defence altogether five witnesses have been examined. DW-1, Sadhu Ram Trithani being an accused deposed as a witness to prove counter case lodged by his brother-in-law, Suresh Kumar Trithani @ Balo, the appellant. DW-2, Pawan Kumar Sinha, DW-3, Baldeo Singh and DW-4, Devendra Prasad are formal witnesses who have proved certain documents in connection with earlier land dispute or to show enmity between the parties. DV-5, Dr. Basant Kumar Sinha was posted as a doctor at Piligram Hospital, Gaya on 31.7.1983 when he had examined accused Sadhu Ram Trithani and found a fire arm injury on his neck which had a wound of entry from the back side below back of ear 1 1/2"x1" with clean cut margin, achemosis and blackening of skin around the wound. The wound of exit was just in front of right sterno mastoid muscle 4 1/2"x2" into muscle deep communicating with the wound of entry. Since there was no injury to any bone, hence he has opined the injury to be simple in nature but further stated that the neck is a vital part of the body and death was possible by injury to spinal cord vital vessels and wind pipe. He has proved the initial injury report as well as final injury report as Exhibits- G and G/1. It appears these original exhibits were sent in connection with trial of the counter case but those reports are fully noted and discussed in Paragraph-10 of the judgment under appeal.

9. On behalf of the appellants it has been submitted that the prosecution has not come forward with clean hands and has given no explanation for a very serious fire arm injury on the neck of accused Sadhu Ram Trithani, who was one of the

appellants in this appeal but is now dead. It has been submitted that the said accused, as admitted by the Investigating Officer PW-6 was admitted in the Pilgrim Hospital, Gaya where the deceased was also taken for treatment and the I.O. found out that he had been sent to the Operation Theatre for an urgent operation. At a subsequent time he found that the said accused was unconscious and therefore he was not in a position to make statement. The I.O. has further deposed that on a subsequent date he found that accused to be not clear in his speech and on the orders of Superintendent of Police he made arrangements for recording the dying declaration of the said accused. Deposing as DW-1, Sadhu Ram Trithani has claimed that his statement was recorded in hospital by a Magistrate because at that time his condition was critical. Such claim has not been challenged by the prosecution.

10. On the basis of aforesaid materials it has to be held that accused Sadhu Ram Trithani had received a fire arm injury in his neck at about the same time and at a place where present occurrence is alleged to have taken place, although it is the case of the defence that Sadhu received injuries about half an hour earlier i.e. at 7:45 A.M. The exact time given by the witnesses in a serious case where a person has received fire arm injury on a vital part of the body and was rushed for operation may not be taken as accurate but in the facts of the case the prosecution was required to explain the injury on the person of accused, Sadhu Ram Trithani by disclosing the entire facts and circumstances. On this issue, on a perusal of evidence of the alleged eyewitnesses PW-1 and 2 it is found that none of them has given any explanation although in cross-examination they have admitted that a counter-case in respect of injury to Sadhu Ram Trithani has been filed.

11. In course of arguments learned Counsel for the appellant has placed on record a certified copy of judgment and order dated 21.12.1987 passed by the same court i.e. 2nd Additional Sessions Judge, Gaya in Sessions Case No. 127/84/48/84 whereby the informant Madan Gopal Rai and one Akshay Lal were convicted u/s 307 read with Section 34 of the Indian Penal Code and accused Akshay Lal was further convicted u/s 27 of the Arms Act in respect of causing injury on the neck of Sadhu Ram Trithani by fire arm.

12. We are also of the opinion that accused Sadhu Ram Trithani did receive fire arm injury on his neck on the date of the alleged occurrence near about the same time and place. The I.O. has clarified that the blood spots at some distance from each other were on the same kuchcha road. The trial court has considered the materials and come to a finding that the defence case that the bullet which hit the neck of accused. Sadhu Ram Trithani could not have caused the fatal injury to deceased Rama Shankar Rai. The said finding does not require any interference and to that extent the defence case may not be fully true but even then the serious injury on the neck of Sadhu Ram Trithani caused in course of some transaction was required to be explained by the prosecution in order to succeed in proving the charge u/s 302 read with other Sections of the Indian

Penal Code against the appellant. The prosecution witnesses were fully aware of the fact that Sadhu Ram Trithani was in serious condition admitted in the same Piligram Hospital and his critical condition required recording of dying declaration. He was hospitalized for a long period of about 23 days and in such circumstances failure to give any explanation for such serious injury to one of the accused creates reasonable and bona fide doubt in respect of prosecution case. We are of the opinion that prosecution has not come forward with clean hands and has not disclosed the true version of the occurrence in absence of which the appellant deserves benefit of doubt.

13. Accordingly, We acquit the appellant by extending to him benefit of doubt. The appeal stands allowed. The appellant shall stand discharged from the liabilities of the bail bonds.