
(2011) 01 PAT CK 0090
In the Patna High Court
Case No : Govt. Appeal (DB) No. 25 of 2010

The State of Bihar

APPELLANT

Vs

Anil Singh, Mathura Singh and Bigan Singh

RESPONDENT

Date of Decision : 12-01-2011

Acts Referred:

Arms Act, 1959 — Section 27

Penal Code, 1860 (IPC) — Section 106, 302, 307, 34, 364

Citation : (2011) 59 BLJR 2232

Hon'ble Judges : Mridula Mishra, J; Dharnidhar Jha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mridula Mishra, J.—State has filed this appeal against the judgment dated 23.11.2009 passed by X Ith Additional Sessions Judge, Saran at Chapra in Sessions Trial No. 454 of 1994, acquitting Respondent Nos. 1, 2, and 3 of charges u/s 302/34, 307 of the Indian Penal Code and 27 of the Arms Act. The appeal has been preferred on the ground that the trial Court without considering the case of prosecution as well as the evidences collected during trial has acquitted the accused persons of charges framed against them.

2. Sessions Trial No. 454 of 1994 arises out of Chapra Muffasil (Khaira) P.S. case No. 20 of 1993 instituted on the basis of the fardbeyan of the informant Vijay Kumar Singh (P.W.5) recorded on 26.12.1993 at about 7.30 A.M. at Sadar Hospital, Chapra. The fardbeyan of the informant discloses that in between the informant and Mathura Singh (Respondent No. 2), there was a land dispute but it was settled through a Panchyati. The land was allotted in the share of the informant and his uncle had grown wheat crops in it. Subsequently Anil Singh (Respondent No. 1), Mathura Singh (Respondent No. 2) and Bigan Singh (Respondent No. 3) amalgamated their land with the land of the informant by removing the ridge. This caused heated discussion in between the parties but the same was pacified and settled with the intervention of the co-villagers. On

26.12.1993 at 7.30 A.M. Satya Narayan Singh (deceased) while going to attend call of nature, was surrounded by accused persons, namely, Anil Singh, Mathura Singh and Bigan Singh near the school. The accused persons were armed with gun. Hearing alarm raised by his uncle informant went at the place of occurrence. He saw Anil Singh firing from his gun causing injury to his uncle Satya Narayan Singh. Satya Narayan Singh fell down on the ground sustaining injuries. Mathura Singh and Bigan Singh also opened fire which caused injury to the informant Vijay Kumar Singh, Ajay Kumar Singh, Arbind Kr. Singh and Shankar Singh. All injured were brought to Sadar Hospital for the treatment. Uncle of the informant Satya Narayan Singh was declared dead by the doctor. Other injured were getting treatment at Hospital. The formal First Information Report was instituted for offences punishable u/s 302/34, 307 of the Indian Penal Code and 27 of the Arms Act against three named accused persons. In respect of the same occurrence, a complaint case was instituted by Respondent No. 2 Mathura Singh before Chief Judicial Magistrate, Saran at Chapra on 22.1.1994 for offences u/s 307/364/511 of the Indian Penal Code and 27 of the Arms Act. The complaint case was instituted by Mathura Singh, since the Officer In-charge of the Police Station refused to institute a case on his information, on account of restrain order being passed by the Deputy Superintendent of Police. In the complaint case it was stated that Vijay Kumar Singh and Satya Narayan Singh are co-sharers and members of the same family. On 25.12.1993 accused persons had exploded three bombs near the house of the complainant, in order to frighten the family members of the complainant. The village Dafadar Banarasi Prasad came at the house of the complainant, hearing the sound of explosion, the complainant narrated the incident before him and sent Sudhir Kumar Singh along with the Dafadar to Police Station to inform the police but no case was instituted by the Sub-Inspector of Police. On the next day, the accused persons attacked over the house of accused Mathura Singh with deadly weapon. They brick batted and also opened fire upon Anil Singh, Bigan Singh, causing serious apprehension to the complainant Mathura Singh that the accused persons will kill his son and nephew. Mathura Singh took out his licency gun and opened fire in the air. The daughter of the complainant Pushpa Kumari, raised alarm, on which Satya Narayan Singh ordered to lift Pushpa Kumari. Complainant realizing danger to the life of his minor unmarried daughter, opened fire with his licency gun towards the accused persons. Accused persons started fleeing away but one of them received gun shot injury and subsequently died.

3. The trial Court had discussed the evidence of prosecution witnesses as well as the evidence adduced by the defence, to prove that the accused persons in exercise of the right of private defence under Sections 96 to 106 of the Indian Penal Code, opened fire and Satyanarayan Singh receiving injury died. The trial Court considering the evidence of the Investigating Office (P.W.13) came to this conviction that place of occurrence is the door of accused Mathura Singh as evidence of brick batting, mark of firing was found at this place. This was also confirmed by the seizure list. The case of the defence was that severe brick-

batting had been done by the Informant party towards the house of the accused. As per the seizure list pieces of bricks were seized from the place near the house of Mathura Singh. The trial Court finally concluded that the prosecution has not come out with a clean hand. They have suppressed the real story. The evidence of prosecution and defence on comparison indicates that the circumstances were such in which Respondent No. 2 Mathura Singh being in apprehension of the death of his son and nephew as well as life and safety of his own unmarried daughter opened firing in exercise of right of private defence. The circumstances as discussed in the trial Court judgment indicate that prosecution has not come out with clean hand. Circumstances indicated in trial Court judgment are as follows:

(i) The place of occurrence disclosed in the prosecution story is said to be the campus of the school but the evidence of I.O. (P.W.13) indicates that the place of occurrence is the door of accused Mathura Singh. He found pieces of bricks on the ground as well as firing marks on the wall of Mathura Singh's house.

(ii) The prosecution case is that Satya Narayan Singh had gone to attend call of nature when the accused persons surrounded him and the occurrence took place. The deposition of the I.O. is that there was no reason for Satya Narayan Singh for going towards the house of Mathura Singh, for attending call of nature, since in his own house there was provision for latrine.

(iii) The evidence of I.O. also indicates that accused Mathura Singh surrendered his gun along with live cartridges, which was seized and a seizure list was prepared i.e., Ext.7/2 and for maintaining peace, Chaukidar and Dafadar were deputed.

(iv) The evidence of I.O. also indicates that as per the information received Dafadar, he instituted Sanha No. 414 and proceeded towards Gopalpur from the police Station at 5.30 A.M. He met Satya Narayan Singh on way coming in injured condition and he made a query from him but at that time he did not name the assailant and proceeded towards the Hospital for treatment.

(v) The evidence of the I.O. also shows that Mathura Singh, while surrendering his gun, made a statement which made out a cognizable offence against the informant and others but due to the order of Dy. S.P. no case was registered. (vi) The prosecution party has concealed the fact regarding injury on the person of the accused Anil Singh and Bigan Singh.

(vii) P.W.8 and P.W.9 the Dafadar and Chowkidar had deposed that at the time of occurrence Satya Naryan Singh was armed with revolver. Other persons was also armed with lathi and brick-bats. Satya Narayan Singh was firing aiming to the house of Mathura Singh and also pelting brick-bats due to which Anil Singh and Bigan Singh received injury.

(viii) P.W. 8 and P.W.9 had also deposed that daughter of Mathura Singh, namely, Pushpa Kumari came there raising alarm and after seeing her, Satya Narain

Singh uttered to his men to carry her and tried to enter into the house of Mathura Singh from the western wall. On this Mathura Singh started firing and due to firing accused persons fled away from there. Mathura Singh gave his statement when Daroga Ji came.

4. P.Ws. 2, 3,4,5 and 6 have denied in their deposition that Mathura Singh has any daughter, namely, Pushpa Kumari, they rather said that they had no knowledge about existence of any daughter of Mathura Singh. Pushpa Kumari daughter of Mathura Singh has deposed in Sessions Trial No. 496 of 1994 arising out of Complaint case instituted by Mathura Singh. P.W.10 and I.O. confirmed the version of the defence. P.W.1 is the doctor, who examined the injured persons, namely, Arbind Kumar Singh, Shankar Singh, Ajay Kumar Singh but he has denied that injury report Ext. 1/3 was prepared by him. In this way, the injury on the person of informant or other persons has not been proved. The prosecution had tried to conceal the reality of occurrence. The evidence of I.O. (P.W.13) and Dafadar (P.W.10) supports the case of the defence and also that the defence had came for exercising right to private defence, commanding the manner in which occurrence took place.

5. Considering those evidence, the trial Court come to the conclusion that the death of Satya Narayan Singh occurred on account of firing made by Respondent No. 2 Mathura Singh in exercise of his right of private defence. The discussion in the impugned judgment indicates that judgment of acquittal has been passed in accordance with law. We do not find any infirmity in that judgment under challenge in this appeal.

6. Accordingly the Government appeal is dismissed. (Mridula Mishra,J.)