
(2012) 10 PAT CK 0034

In the Patna High Court

Case No : Govt. Appeal (SJ) No. 5 of 2000 with Criminal Revision No. 311 of 2000

The State of Bihar

APPELLANT

Vs

Chandradeo Singh, Ratnesh Kumar Singh, Braj Kumar Singh
@ Bhulan Singh and Bhishma Kumar Singh
 Nalinish
Kumar Singh Vs The State of Bihar and Others

RESPONDENT

Date of Decision : 17-10-2012

Acts Referred:

Citation : (2012) 10 PAT CK 0034

Hon'ble Judges : Mandhata Singh, J

Bench : Single Bench

Advocate : S.N. Prasad, app, for the State in G. app. SJ No. 5 of 2000 and Mr. Chandramohan Jha in Cr. Rev. No. 311 of 2000, for the Appellant; Ram Briksh Singh Pahepui, Awadhesh Kumar Singh in G. App. (SJ) No. 5 of 2000 and Cr. Rev. No. 311 of 2000, Mr. Pramod Kumar Singh in G. App. (SJ) No. 5 of 2000 and Mr. Ajay Mishra, for the State in Cr. Rev. No. 311 of 2000, for the Respondent

Final Decision : Allowed

Judgement

Mandhata Singh, J.—Heard learned counsel for the appellant-petitioner and learned counsel for the respondents-opposite parties. Prosecution case initiated on fardbeyan of one Ramdeo Singh P.W.4, in brief, is that marriage of his nephew, Nalinish Kumar Singh, P.W.5 was scheduled to be held on 06.05.1994. In that connection, he along with his above named nephew and cousin son-in-law, Gajendra Singh had gone Khaira Market for the purpose of marketing on 03.05.1994. At about 8.00 pm they reached near a mango orchard situated adjacent to the canal of Govindpur village while returning after marketing. They saw four persons there. They were Chandradeo Singh, Ratnesh Kumar Singh, Braj Kishore Singh @ Bulan Singh and Bhisham Kumar Singh. All the four surrounded them and accused Bhisham Kumar Singh caught hold of Nalinish Kumar Singh, accused Chandradeo Singh ordered to kill, thereupon accused Bulan Singh @ Braj Kishore Singh shot a firing by means of country made pistol

which hit on the abdomen of Nalinish Kumar Singh. Thereafter, accused Ratnesh Singh shot firing by means of pistol causing injury on the left side of chest of Nalinish Kumar Singh. He fell down after receiving injuries on the ground, thereafter Chandradeo Singh caused 5 injuries by means of knife on the back of above Nalinish Kumar Singh. Informant, Ramdeo Singh came in his rescue and raised alarm then accused Ratnesh Singh shot firing from his pistol causing injury on his (informant's) nose.

2. Informant's cousin son-in-law namely Gajendra Singh was threatened by accused persons not to intervene in the matter. On alarm of the informant, co-villagers Jogendra Singh and Vijay Kumar Singh, who also were returning from Khaira Bazar, arrived there and learnt about the above occurrence from the informant. By that time, accused persons had fled away from there but one motorcycle belonging to the accused persons kept in the mango orchard was left by them. The above motorcycle without any registration number was taken away by the people of Manpur village on assurance that same would be deposited at Khaira police station. Injured Nalinish Kumar Singh was carried to Sadar Hospital, Chapra from where he was referred to PMCH, Patna for better treatment.

3. Reason behind the incident is said that one year before the occurrence accused persons were involved in a case of illegal sale of liquor in Jalalpur police station and they were suspecting informant and his nephew instrumental in lodging the above case.

4. It is made clear that fardbeyan of the informant was recorded by A.S.I., Pirbahar Police Station, which only was forwarded to Officer-in-Charge, Khaira Police Station and later to Officer-in-Charge, Chapra Mufassil Police Station on 05.05.1994.

5. Trial is ended in acquittal, validity of which has been questioned through filing this appeal and revision on behalf of the State Government and the informant respectively.

6. In all, 9 witnesses are examined in the case. They are P.W.1 Vijay Kumar Singh, P.W.2 Gajendra Kumar Singh, cousin son-in-law of the informant, P.W.3 Krishna Singh, brother of the informant, P.W.4 Ramdeo Singh, informant of the case and one of the injured, P.W.5 Nalinish Kumar Singh, main injured, P.W.6 Din Dayal Pandey, I.O. of the case, P.W.7 Dr. Ram Nath Choudhary, who examined both the injured persons for the first time in Sadar Hospital, Chapra, P.W.8 Mohan Singh a formal witness and P.W.9 Dr. Prem Chandra Jha, P.M.C.H., who also examined both the injured at P.M.C.H.

7. Of witnesses, P.Ws. 4 and 5 are injured of the case, P.W.2 is brother-in-law of P.W.5, who was accompanying P.Ws. 4 and 5. P.W.1 is a witness to state that he came after hearing the sound of firing, P.W.3 is brother of P.W.5, he also came to the place of occurrence after taking place of incident.

8. Thus, it is clear that P.Ws. 2, 4 and 5 are only the real eye witness of the whole occurrence. Of them, P.Ws. 4 and 5 are uncle and nephew and P.W.2 their relation. In their statement, they categorically state about taking place of the incident from the beginning about appearance of accused respondents at the place of occurrence which is near Mango orchard adjacent to canal of Gobindpur village variously armed with different weapons, catching hold of Nalinish Kumar Singh, causing injuries by firing shots and repeating blows of knife which are corroborated by P.Ws. 7 and 9 by issuance of injury reports, but prosecution case has been doubted on the grounds that there is contradiction among the statements of P.Ws. 2, 4 and 5 on the point of assailants and further contradiction in injury reports and statements of P.Ws. 7 and 9.

9. It is submitted on behalf of the State that there is no contradiction in injury reports and statements of P.Ws. 7 and 9 and contradiction appeared in statement of P.Ws. 2, 4 and 5 are not vital to disbelieve or doubt the prosecution case.

10. First, as submitted, injury reports of the victims and statement of P.Ws. 7 and 9 are taken into consideration to scrutinize if really there is any contradiction. It is case of the prosecution that after receiving injury, both the victims namely P.Ws. 4 and 5 were taken or came to Sadar Hospital, Chapra and examined by P.W.7 who issued injury reports vide Exhibit 3 and 3/1. Further, victims were admitted in the hospital, Exhibit- 4 and 4/1 are bed head tickets. Thereafter, both were referred to P.M.C.H. from where exhibits-7, 8 and 9 are issued. Exhibits- 8 and 9 are doubted on the point that they were not original and further contradiction was there among exhibits-7, 8 and 9. Exhibit-7 is original injury report in hand writing of P.W.9, but depending on detail observation of P.W.7, the doctor first examined victims. No doubt, exhibits-8 and 9 are Photostat copies of O.S.D. Book and bed head tickets may not be believed but exhibit-7 including exhibits 3, 3/1, 4 and 4/1 are admissible documents as being original. Exhibits 5 and 5/1 are also not original rather true copy may not be taken in evidence. After excluding exhibits 5, 5/1, 8 and 9 there remains exhibits 3, 3/1, 4, 4/1 and 7.

11. On the point of contradiction, I am taking even all the exhibits namely exhibits 3, 3/1, 4, 4/1, 5, 5/1, 7, 8 and 9. Allegation is that shots of firing hit Nalinish Kumar Singh on his stomach and chest. Multiple injuries were on his back by means of knife. For Ramdeo Singh, allegation is about receiving of injury on his nose. For Nalinish Kumar Singh, part of body is taken first i.e. stomach, chest and back. Exhibit-3 mentions about multiple wounds on back of chest that is clarified in exhibit-4 that is on chest and back though has been penned through. Stomach is clarified in exhibit-3 itself by Epigastrium above umbilicus that is repeated in exhibits-5, 7 and 8. Observation made in exhibit-4 could be ignored but prosecution case is that the injured Nalinish Kumar Singh was examined by P.W.7, admitted for his treatment and both the documents are in his hand writing, so any observation or clarification given in exhibit-4 is acceptable. Apart from this, exhibit-3 also mentions laceration on stomach like

Exhibit-4. Further, there can be no sense in mentioning back of chest. This multiple injury on chest and back has been further explained in exhibits-7 and 8 only by giving number in place of multiple and some injuries on fingers of minor nature easily ignorable. Reference can be made of a case reported in Prahalad Patel Vs. State of Madhya Pradesh, in Criminal Appeal No. 1209 of 2007, Prahalad Patel V. State of Madhya Pradesh. Deceased of that case was first examined while was injured only thereafter postmortem was conducted on his death. Number of injuries was different though not main injury, as in the instant case.

12. Doctor, P.W.7 has been declared hostile, though not discussed by the Trial Court but raised on behalf of the accused respondents for exhibits-5 and 5/1 only which were true copy. The Doctor can be relied for his unshaken part of examination. Reliance can be placed on a case reported in AIR 2010 Supreme Court 2259 in which Doctor was declared hostile only on the point of his opinion regarding one injury but was relied.

13. For Ramdeo Singh allegation is about causing of firing on his nose. Same Doctor (P.W.7) has also examined him. Exhibit 3/1 is his injury report and 4/1 bed head ticket in hand writing of the same doctor. Nature of the injury "lacerated" is given in both the documents. There is no contradiction in any of the exhibits namely Exts. 3/1, 4/1 even 5/1. So, ext. 3/1 should be taken as admissible document which is exhibited (proved) by P.W.7 himself by examining himself. No doubt, there is no opinion of P.W.7 in Ext. 3/1 but nature of the injury is given laceration without gravity like Ext. 4/1 sufficient to make definite opinion. P.W.7 in Court in para-3 of his examination has rightly expressed his opinion as of fire arm also for injuries of exts. 3 and 4. It is made clear that laceration is possible by fire arm injury or hard blunt substance as per medical jurisprudence, so by firearm is to be accepted as stated by witnesses in corroboration to prosecution case.

14. According to the Court below, exhibits-5, 5/1, 8 and 9 are not admissible and contradictory. As discussed there is no contradiction, then only recourse before the trial Court was to ignore these documents and base its opinion after taking into consideration exhibits 3, 3/1, 4, 4/1 and 7. In absence of "X" Ray report or any other observation nature of the injuries for determining them simple or grievous lacks only. Charring or blacken appears only when firing is shot from certain close range which is not discussed. In such case, absence of charring or blacking cannot be made ground for disbelieving firearm injury. Once it appears that firings were shot for causing injuries, intention is clear to kill if part of body is considered.

15. Witnesses have been found contradictory by the trial Court. Eye witnesses namely PWs. 2, 4 and 5 are to be discussed only for any contradiction but all the three are constant on the point that they were returning from market, reached near Mango Orchard, all the four accused respondents appeared there, Bhasham Kumar Singh caught hold of Nalinish Kumar Singh, P.W.5 and accused

Chandradeo Singh ordered to kill, Braj Kishore Singh @ Bhulan Singh wrongly written in Judgment Bulan Singh shot firing on P.W.5 which hit his abdomen and Chandradeo Singh repeated knife blow. Contradiction is on the point that next firing was shot either by Bhisham Kumar Singh or by Ratnesh Kumar Singh. PWs. 2 and 5 in corroboration of the F.I.R. are constant that second firing to P.W.5 and to P.W.4 was shot by Ratnesh Kumar Singh. P.W.4 only states about these firing by Bhisam Kumar Singh.

16. In my view, in no case that can be doubted for injuries caused by Braj Kishore Singh @ Bhulan Singh and Chandradeo Singh. Further, that can not be taken to doubt the injury caused by Ratnesh Kumar Singh also. On this point, reference can be made of a case reported in *Atmaram and Others Vs. State of Madhya Pradesh*, in which case eye witnesses were inconstant on the point of assailant that the deceased was assaulted by one or more but both the witness were believed. In the instant case also discussed contradiction in statement of P.W.4 can never be made ground for disbelieving all the prosecution witnesses. So finding/observation of the trial Court is mistaken on this point also.

17. Some other points are also taken by the trial Court to disbelieve the prosecution case. I think, they are not relevant at all. They are no investigation on the points of black Rajdoot Motorcycle found on the place of occurrence, non-examination of independent witnesses, no document for marriage, non examination of any one from the family where the marriage of Nalinesh was settled. There is no role played by the motorcycle. It was found kept near the place of occurrence. There is no need of examination of independent witnesses in all cases when injured and eye witnesses are examined. Incident took place at 8.00 pm. and at that time, P.Ws. 2, 4 and 5 only were present. PWs. 1 and 3 came to hear the alarm are also examined. All the witnesses are constant on the point that marriage was settled on the next day, certainly could not solemnize as accused Nalinish Kumar Singh was taken to Sadar Hospital, Chapra then to P.M.C.H. So, at any corner observation on the point of acquittal, disbelieving and doubting the prosecution case in discussed circumstances is not liable to sustain. In the result, this Government Appeal and Criminal Revision are allowed. The Judgment and order of acquittal dated 14.03.2000 passed by the Ist Additional Sessions Judge, Saran in Sessions Trial No. 1824 of 1994 is set aside and the case is remitted back to the trial Court to decide the same afresh in accordance with law keeping in mind the observations made above by this Court.