

Shiv Kumar Sahni Vs. the State of Bihar

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Court : Patna

Decided On : Jan-29-2014

Judge : Aditya Kumar Trivedi

Appeal No. : Criminal Appeal (SJ) No. 657 of 2013

Appellant : Shiv Kumar Sahni

Respondent : The State of Bihar

Judgement :

Oral Judgment:

1. Sole appellant Shiv Kumar Sahni who has been found guilty for an offence punishable under Section 307 of the IPC and been directed to undergo R.I. for ten years as well as also fine Rs.20,000/- in default thereof to undergo S.I. for six months additionally, under Section 27 of the Arms Act to undergo R.I. for five years as well as slapped with fine appertaining to Rs.10,000/- and in default thereof to undergo S.I. of three months additionally, with a further direction to run the sentences concurrently by 5th Additional Sessions Judge, East Champaran at Motihari in Sessions Trial No.504 of 2012/268 of 2012 challenged the same under present appeal.

2. P.W.6 Om Prakash Sahni filed written report on 26.12.2011 at about 4 P.M.(not exhibited) alleging inter-alia that there happens to be a piece of land standing in the name of his grand-father. He had gone there to see and found his co-villager

Jangbahadur Sahani, Shiv Kumar Sahani, Rajesh Sahani, Nawal Sahani, Dhanai Sahani, Munna Sahani, Madan Sahani, Nandu Sahani, Saheb Sahani, Janki Sahani, Ganesh Sahni who had engaged Amin Sahni and Mangal Sahani as for construction of house over the land. He forbade them over which Jangbahadur Sahani claimed the land and further directed him to leave otherwise, he will be murdered. He insisted, over which Jangbahadur Sahani ordered whereupon Shiv Kumar Sahani shot at causing injury to his brother Rambaboo Sahani who, after sustaining injury fell down. Thereafter, they have also taken away his Bhabhi to their house where Jangbahadur Sahani snatched away Hasuli. All of them also brick-batted on account of which all the family members had sustained injuries. So many persons have had witnessed the occurrence.

3. On the basis of the aforesaid written report, Sugauli P.S. Case No.374 of 2011 was registered under Sections 147, 148, 149, 323, 324, 307, 379 and 506 of the IPC, 27 of the Arms Act, followed with investigation and after completing the same chargesheet was submitted only against appellant Shiv Kumar Sahani along with Madan Sahani and Munna Sahani while investigation against remaining was kept pending and on the basis thereof, trial commenced and concluded vide judgment impugned, acquitting co-accused Munna Sahani and Madan Sahani while the appellant named above has been convicted in a manner as indicated above the subject matter of instant appeal.

4. The defence case as is evident from mode of cross-examination as well as the statement recorded under Section 313 of the Cr.P.C. coupled with the exhibits made on behalf of the defence is that the land under dispute happens to be purchased by them from a co-sharer Laxmi Sahani. As the aforesaid event was not applauded by the prosecution, on account thereof getting false and frivolous injury report, as well as taking into account the police in their collusion, got this case filed. In other words, those happens to be complete denial of occurrence along with plea of false implication on account of land dispute.

5. During course of trial, altogether seven P.Ws. have been examined on behalf of the prosecution. P.W.1 is Bipin Sahani, P.W.2 is Sanju Sahani, P.W.3 is Prabhu Sahani, P.W.4 is Dr. Tabrej Ajij, P.W.5 is Rambaboo Sahani(injured), P.W.6 is Om

Prakash Sahani(informant) and P.W.7 is Abhimanu Prasad(the investigating officer) as well as had also exhibited the document. At the other hand, the defence had also examined one D.W. Satyanarayan Prasad, formal in nature and had also exhibited the document.

6. From the evidence of P.W.4, Dr. Tabrej Ajj, it is evident that he had examined the injured Rambaboo Sahani on 26.12.2011 at 6.30 P.M. and found following injuries over his person:- (Ext-1) Lacerated wound with inverted margin with peripheral tattooing on left inguinal region about 1½x cavity deep, wound of entry. No wound of exit found X-Ray of the part show metallic foreign body in the area. M/1-old scar over left thumb. Age of injury-within six hours, nature of injury-grievous, caused by fire arm. Subsequently thereof, the wound was explored and metallic bullet was taken out from the body.

7. During cross-examination, it is evident that nothing substantial has been explicated from him and on account thereof, sustaining of injuries by means of fire arm is not at all found controverted. However, presence of tattooing mark, clearly suggests firing from close range approximately within 2-3 feet.

8. Now coming to the score of material evidence, from the written report, it is evident that the injured had sustained when on an order of Jangbahadur Sahani, Shiv Kumar Sahani had shot at informant, P.W.6 at the plot, having in the name of grand-father of informant. However, during course of evidence the prosecution not only had shifted the place of occurrence rather manner of occurrence also from the aforesaid field by disclosing that they have gone to the Darwaja of Prabhu Sahani from the field as the accused persons began to brick-bat where Shiv Kumar Sahani fired from roof of Saheb Sahani causing injury to Rambaboo Sahani which could be seen from the evidence of PWs respectively.

9. P.W.6, the informant during his examination-in-chief had stated that on the alleged date and time of occurrence while the accused persons were putting structure over the land recorded in the name of his great grand-father, Rajaram Sahani, he along with Rambaboo Sahani, Bipin Lal Sahani, Achchelal Sahani gone there and forbid them over which the accused persons flatly refused claiming the land. They also abused and then began to pelt stone. Two firings were also

made in air on account of which they escaped therefrom and came at the Darwaja of Prabhu Sahani. All the accused persons gone over the roof where Jangbahadur Sahani ordered as a result of which Shiv Kumar Sahani fired causing injury to Rambaboo Sahani at the lower part of his stomach. Rambaboo Sahani fell down. Then thereafter they have telephonically informed the police who directed him to carry the injured to hospital and accordingly, was taken to Sugauli. The accused persons also dragged his Bhabhi Ashiya Devi snatched away Hasauli. Then thereafter villagers have gone there and rescued his Bhabhi. He had put his signature over the written report which was scribed by one of the police staff. Police had also taken written application from Rambaboo Sahani and so, he had exhibited the same. During cross-examination at para-11, he had admitted that Deolal Sahani, an accused has got his residential house over southern flank of the disputed land. He had further stated that total area of land happens to be 4.10 katha out of which the house is standing over 14-15 dhurs while rest land is open one. He had given the boundary of open land north his house, south Jangbahadur Sahani house, east Devilal Sahani, west land of Ujagir Sahani. Then had disclosed location of house of Prabhu Sahani lying one plot away at western wide. In para-13, he had further admitted that Laxmi Sahani who was brother of his granted-father had sold away 11 dhur land from the aforesaid disputed plot to Jangbahadur Sahani. In para-15, he had also admitted that accused persons have got their residential house over 2 kathas of land out of 4 kathas, the disputed one. In para-18, he had further stated that Shiv Kumar Sahani had gone to his roof along with 10-12 persons. In para-20, he had further stated that when they have gone over disputed plot, at that very time accused persons were unarmed. In para-21, he had stated that first of all, there was brick-batting due to which Ramchandra Sahani had sustained injury. In para-22, he had disclosed that the house of Prabhu Sahani lies 60-70 feet west to the land under dispute while the house of accused lies 100 feet south. He had disclosed that Rambaboo Sahani had sustained injury two fingers above his waist. At that very time, he was standing south front. In para-30, there happens to be material contradiction and the same is found corroborated from the evidence of P.W.7 para-13.

10. P.W.5 is the injured. He in his examination-in-chief stated that on the alleged date and time of occurrence while he was at his house, accused persons were

erecting thatched house over the land having in their possession being recorded in the name of his great grand-father Rajaram Sahani. They have gone there and forbidden them over which accused persons began to pelt stones. They escaped therefrom. During midst thereof, Shiv Kumar Sahani gone over roof of Saheb Sahani and on an order of Jangbahadur Sahani, Shiv Kumar Sahani shot at causing injury over his stomach. He became unconscious. He found himself admitted at Rahman hospital after regaining sense where police took his statement. During cross-examination at para-5, he had admitted that the share of Laxmi Sahani in the disputed land. In para-6, he had admitted that Laxmi Sahani had sold away 11 dhurs land therefrom to Brahmdeo Sahani, grand-father of accused Jangbahadur Sahani. He had further admitted that his house lies over the same. In para-7, he had admitted possession of Jangbahadur Sahani over half portion of 4 kathas land and had further disclosed that he is illegally claiming the same. In para-10, he had further conceded that he had not made statement before the I.O. In para-14, he had stated that he was aimed at. Firing was not made over the informant. In para-15, he had further stated that he had received injury after 2-3 minutes leaving from the disputed land. House of Saheb Sahani lies after two houses from the place where he had sustained injury. At that very time, he was standing facing south.

11. P.W.1 is Bipin Sahani who had stated that on the alleged date and time of occurrence while he was at his house, the accused persons indulged in erecting house over the land being in the name of his grand-father over which he along with Vyas Sahani, Baboo Lal Sahani, Rambaboo Sahani have gone to protest over which the accused persons began to pelt stones. They have also fired two rounds. Then thereafter they came at the Darwaja of Arjun Sahani where Jangbahadur Sahani ordered and Shiv Kumar Sahani after going over roof of Saheb Sahani, fired causing injury over lower part of stomach of Rambaboo Sahani. Rambaboo Sahani shifted to Sugauli hospital and thereafter he was forwarded to Motihari. During course of cross-examination at para-4, it is evident that both the parties are descendent of common ancestor Rajaram Sahani as is evident from genealogical table furnished by him. In para-7, he had also admitted that Laxmi Sahani, his uncle had already sold away 11 dhurs of land in favour of accused. He had further stated that there happens to be no dispute with regard to aforesaid land. He had

also disclosed that he is unable to disclose the plot number of the land regarding which there happens to be dispute amongst the parties. In para-12, he had given location of house of Saheb Sahani 90 feet away from the disputed land. He also identified the place where Rambaboo Sahani had sustained gun shot injury as north Laxmi Sahani, Krit Sahani, south road Sambhoo Sahani, Hira Sahani, east open land, Dolan Sahani, west Prabhu Sahani which happens to be 100 feet away from the disputed plot. In para-13, he had further disclosed that when he reached at the disputed land, he saw all the accused persons armed with lathi. In para-15, he had further stated that after hearing firing sound they have gone to the house of Prabhu Sahani. In para-16, he had stated that he along with others have also sustained injury at the first place of occurrence but he is unable to disclose names of other. In para-17, he had further stated that accused Shiv Kumar Sahani had fired in air at a distance of 7 feet at the first place of occurrence while at the second place of occurrence Shiv Kumar Sahani had fired from a distance of 90 feet which caused injury to Rambaboo Sahani. At that very time rest accused persons were at the roof of Saheb Sahani. In para-11, there happens to be material contradiction and the same is found corroborated from P.W.7 para-11.

12. P.W.2 is Sanju Sahan. He had stated that on the alleged date and time of occurrence while he was at his house he rushed to the place where the injured had sustained gun shot injury. He found Shiv Kumar Sahani moving on roof having armed with katta. On an order of Jangbahadur Sahani, Shiv Kumar Sahani fired on account of which Rambaboo Sahani sustained injury just below umbilicus. Thereafter, he was lifted to hospital. During cross-examination he admitted land dispute amongst the parties under para-4. In para-6, he had stated that after hearing hulla, he rushed and stayed one laggi north to the house of Prabhu Sahani. At that very time 3-4-5 persons were present at the house of Prabhu Sahani. He had seen 5-6 persons including Shiv Kumar Sahani. Shiv Kumar Sahani was armed with gun. He had further stated that the distance in between 80-90 feet. In para-79, he had stated that Rambaboo Sahani was standing south face while Shiv Kumar Sahani had fired from eastern side. In para-10, he had also stated that blood had oozen out from the injury and had fallen on the ground.

13. P.W.3 happens to be Prabhu Sahani who had stated that after hearing hue and cry, he had rushed and gone in front of house of Bipin Sahani where he found Jangbahadur Sahani and Shiv Kumar Sahani engaged in erecting house with the help of labourers. He had also seen Bipin Sahani, Om Prakash Sahani, Rambaboo Sahani, Vyas Sahani forbidding them. At that very time, Shiv Kumar Sahani, Munna Sahani, Rajesh Sahani, Madan Sahani and Saheb Sahani all 12-14 persons came raising alarm and further said while they are forbidding them over which Bipin Sahani had stated that after Panchayati work be made, over which, all of them began to brick bat. Thereafter, Shiv Kumar Sahani had fired. Vyas Sahani, Rambriksh Sahani, Omprakash Sahani came at his Darwaja over which accused persons gone over their roof and Shiv Kumar Sahani fired from roof with pipegun causing injury over stomach of Rambaboo Sahani. When Rambaboo Sahani fell down all the accused persons flee from the roof. Rambaboo Sahani was lifted to hospital. He happens to be outsider and his Sasural lies in the family of prosecution as well as accused as is evident from para-8 of his cross-examination. In para-13 there happens to be material contradiction. In para-15, he had stated that he heard two rounds of firing but even then he had not gone to the place of occurrence rather he remained at his Darwaja as is evident from para-16. In para-17, he had further disclosed that injured had sustained injury at his Darwaja. He had further disclosed that he had seen the gun having 9-10 inch length from a distance of 50-60 yards. His contradiction is found corroborated from the evidence of P.W.7 para-12.

14. P.W.7 is the I.O. From his evidence, it is apparent that he had inspected the place of occurrence as pointed out by the informant Om Prakash Sahani which happens to be plot number 363 over which both the parties were putting their claim. The second place of occurrence happens to be an east to the first place of occurrence identified by boundary north soling road, south soling road, east platform of Laxmi Sahani and west house of Prabhu Sahani. During cross-examination at para-5, he had admitted that injured Rambaboo Sahani had not appeared before him to give his statement.

15. After having analytical approach to the evidence so adduced on behalf of prosecution, it is evident that no sign was found by the I.O., P.W.7 regarding

construction of house over the survey plot number 363. That means to say the genesis of occurrence, as going over aforesaid plot by the accused is completely found nullified. Apart from having the witnesses inconsistent with regard to second place of occurrence, whether it happens to be Darwaja of Prabhu Sahani or the Darwaja of Arjun Sahani, the I.O. could not be able to perceive the second place of occurrence either of the two. Moreover, the written report is found completely silent. Not only this, the written report is also silent over rushing of prosecution party from the P.O. land to the second place of occurrence where Rambaboo Sahani had sustained injury.

16. Apart from this, the prosecution shifted from its initial version by deposing that accused persons have gone over roof of Saheb Sahani and from there appellant Shiv Kumar Shani had fired on an order of Jangbahadur Sahani is also found improbable in the background of the fact that as per evidence of P.W.1 the distance in between happens to be 90 feet as is evident from the evidence of P.W.1 at para-17 then in such circumstance presence of totting injury over the person of injured as is evident from the evidence of P.W.4, the doctor completely rules out the prosecution version with regard to manner of occurrence. Not only this, although no cross-examination is on behalf of the appellant on the score of height of the roof as well as with regard to location of the injury having over the person of P.W.5, injured, Rambaboo Sahani, but the fact remains with the consistent version of the prosecution that firing was made from the roof of Saheb Sahani from a distance of 90 feet then in that circumstance the injury should have been over person of P.W.5, the injured projecting downward, which, the P.W.4 did not suggest.

17. Apart from this, there happens to be material development in the evidence of respective prosecution witnesses and same is found exposed by the evidence of P.W.7, the I.O. and on account thereof, it has got a bearing over the prosecution version.

18. In *Shyamal Ghosh v. State of West Bengal* reported in (2012) 7 SCC page 646 at para-68, the impact of material contradiction has been taken into account in following way:-

œ68. From the above discussion, it precipitates that the discrepancies or the omissions have to be material ones and then alone, they may amount to contradiction of some serious consequence. Every omission cannot take the place of a contradiction in law and therefore, be the foundation for doubting the case of the prosecution. Minor contradictions, inconsistencies or embellishments of trivial nature which do not affect the core of the prosecution case should not be taken to be a ground to reject the prosecution evidence in its entirety. It is only when such omissions amount to a contradiction creating a serious doubt about the truthfulness or creditworthiness of the witness and other witnesses also make material improvements or contradictions before the court in order to render the evidence unacceptable, that the courts may not be in a position to safely rely upon such evidence. Serious contradictions and omissions which materially affect the case of the prosecution have to be understood in clear contradiction to mere marginal variations in the statement of the witnesses. The prior may have effect in law upon the evidentiary value of the prosecution case; however, the latter would not adversely affect the case of the prosecution.?

19. Thus, after having my anxious look to the prosecution version in consonance with the infirmities persisting thereupon, I do not see the judgment of the learned Lower Court sustainable. On account thereof, the same is set aside. Appeal is allowed. Appellant is under custody, hence he is directed to be released forthwith, if not wanted in any other case.

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