

Uma Rai and ors. Vs. State of Bihar

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Court : Patna

Decided On : Mar-02-2000

Judge : R.N. Prasad and S.N. Pathak, JJ.

Appeal No. : Criminal Appeal (D.B.) Nos. 194, 198 and 248 of 1987

Appellant : Uma Rai and ors.

Respondent : State of Bihar

Disposition : Appeal Allowed

Prior history : R.N. Prasad, J. 1. All the three appeals arise out of the judgment and order dated 5.5.1987 passed by 4th Addl. Sessions Judge, Chapra in S.T. No. 42/78. They have been heard together and are being disposed of by this judgment. The appellants in Cr. Appeal No. 194/87 and Cr. Appeal No. 198/87 have been convicted for the offence under Section 302/149 of the Indian Penal Code and sentenced to undergo imprisonment for life. The appellant in Cr. Appeal No. 248/87 has been convicted for the offence

Judgement :

R.N. Prasad, J.

1. All the three appeals arise out of the judgment and order dated 5.5.1987 passed by 4th Addl. Sessions Judge, Chapra in S.T. No. 42/78. They have been heard

together and are being disposed of by this judgment. The appellants in Cr. Appeal No. 194/87 and Cr. Appeal No. 198/87 have been convicted for the offence under Section 302/149 of the Indian Penal Code and sentenced to undergo imprisonment for life. The appellant in Cr. Appeal No. 248/87 has been convicted for the offence under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life. Appellant Nos. 1 & 4 in Cr. Appeal No. 194/87 and appellant in Cr. Appeal No. 248/87 and Cr. Appeal No. 198/87 have further been convicted for the offence under Section 148 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for two years. The rest of the appellants in Cr. Appeal No. 194/87 have been convicted for the offence under Section 147 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for one year. The appellants in all the three appeals have further been convicted for the offence under Section 379 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for three years.

2. The prosecution case is that on 18.11.1973 at about 11.30 a.m. Ravindra Tiwary went to the Police Station along with the dead body of one Mangal Tiwary and gave fardbeyan that at about 10 a.m. he was at his house. Paddy crop over 1 bigha 12 katha land situated at village Mander was ripe for harvesting. He saw about 200 persons variously armed assembled in the paddy field. He along with Phulan Tiwary, Jogendra Tiwary, Nagendra Tiwary and Mangal Tiwary proceeded to protest. The, miscreants fired three rounds in the air. They further proceeded and saw that, some of the persons were harvesting paddy crops and some of them were standing, out of whom he identified 11 persons. Ram Bahadur Rai ordered to kill and fired which hit the chest of Mangal Tiwary who fell down on the ground and died. Phulan Tiwary tried to lift him but he was assaulted by Hira Mahto with bhala on the left side of his chest. Sikandar Rai fired pistol causing injury on his right hand. The other persons also assaulted him with lathi. In the occurrence, accused Chotu Rai and Jamadar Rai also sustained injury. On alarm raised, Junarbi Rai and others came and saw the occurrence.

3. On the aforesaid fardbeyan Ext. 3, a formal First Information Report, Ext. 4, was drawn. Investigation was taken up and on completion of investigation charge-sheet was submitted against 11 persons. On receipt of charge-sheet cognizance was

taken and the case was committed to the Court of Session. During the pendency of the trial three persons, namely, Chandradeo, Hira Mahto and Nawal Singh died and as such only 8 persons were put on trial. The trial Court convicted the appellants as indicated above.

4. The defence of the appellants was that they were innocent. They have falsely been implicated in the case due to the grudge that Ram Bahadur Rai was teacher in Mander H.E. School. The informant was student in that school but he was not sent up and as such he was aggrieved. Their case was also that no occurrence in the manner as alleged had taken place.

5. The prosecution in support of its case examined 9 witnesses, out of whom P.Ws. 1, 5 & 6 were declared hostile. P.W. 7 is Compounder and has proved writing of the post-mortem report, P.W. 8 has proved the writing of fardbeyan and formal First Information Report. P.W 9 has proved the case diary. P.Ws. 2, 3 & 4 have claimed to be eye-witnesses to the occurrence. The Investigating Office and the Doctor have not been examined as they died during pendency of the trial.

6. It is evident from the material on record that P.Ws. 2, 3 & 4 are own brothers. P.W. 1 was own brother of the deceased Mangal Tiwary. P.W. 4 is the informant who gave his fardbeyan. P.W. 8 is witness to the fardbeyan, P.W. 8 stated in his evidence that fardbeyan was recorded on the statement of another person whom he did not identify. Ravindra Tiwary, P.W. 4, had only signed the fardbeyan. According to the learned Counsel for the appellants, in such a situation, it creates doubt.

7. In the fardbeyan, it has been stated that Phulan Tiwary, P.W. 1 when tried to lift Mangal Tiwary he was assaulted with bhala by Hira Mahto causing injury on the left side of his chest and Sikandar Rai fired pistol causing injury on his right hand. Other, persons also assaulted him with lathi. The assault on P.W. 1 was also stated by P.W4 in his evidence. P.W. 2 stated in his evidence that P.W. 1 received injury of bhala and lathi. He further stated that he was treated in the hospital. P.W. 3 also stated that Hira Mahto had assaulted P.W. 1 with bhala and 2 or 3 other persons had assaulted with lathi. P.W. 1, no doubt, has been declared hostile but surprisingly the injury report has not been brought on the record. The argument of

learned Counsel for the State is that since P.W. 1 has been declared hostile, therefore, it loses its force but submission of learned Counsel for the State is not fit to be accepted as although he has been declared hostile but there was no hurdle in bringing on record the injury report. If at all he was injured the injury report should have been called for and brought on the record to establish the prosecution case beyond all reasonable doubts but the prosecution has failed to do so.

8. The alleged eye-witnesses, i.e. P.Ws. 2, 3 & 4 have categorically stated in their evidence that Ram Bahadur Rai fired causing death of Mangal Tiwary. P.W. 2 stated in his evidence that firing was made from a distance of 2-3 laggis. He explained that 1 laggi is equal to 6 cubits i.e. 9 feet. Therefore, firing was made atleast from a distance of 18 feet; P.W. 3 stated in his evidence that firing was made from a distance of 100 yards and subsequently stated that it was made from a distance of 15 to 20 yards, P.W. 4 also stated that firing was made from a distance of 12-13 laggi. Therefore, it is evident that firing was made not from less than 18 feet. The Doctor who held post-mortem has not been examined in this case but the post-mortem report has been proved as Ext. 2 wherefrom it appears that fire-arm injury was found on the person of the deceased. The injury was charring at the entrance but according to Medical Jurisprudence in such a situation charring at the entrance of the injury is riot possible. Charring is possible only when muzzle of the arm is close to the body of the injured/ deceased. No doubt law has already been settled that if the oral evidence of the witness is reliable then medical evidence can be ignored. In the instant case, from the discussion made above, it appears that oral evidence adduced by the parties is not free from doubt. In such a situation, it is not possible to ignore the medical evidence. The medical evidence brought on the record falsifies the prosecution case with regard to firing as has been alleged by the witnesses. Furthermore, it appears from the post-mortem report, Ext. 2, that the Doctor has found one post-mortem injury on the person of the deceased, i.e., lacerated wound $3/4'$ x $1/2'$ x muscle deep. There is nothing on the record to show as to how post-mortem injury was found on the person of the deceased. Learned Counsel for. the State tried to argue that this injury is possible by fall but learned Counsel has failed to appreciate that even if it is accepted that injury was caused by fall then it could not have been post-mortem injury rather it could have been ante-mortem injury.

9. The eye-witnesses have categorically stated in their evidence that P.W. 1 and the deceased were assaulted earlier in which they were made accused and they were convicted. However, they were acquitted in appeal. Therefore, it is evident that there was enmity between the deceased, P.W. 1 on one hand and on the other, P.Ws. 2, 3 & 4. Learned Counsel for the State tried to say that there is no date of acquittal and it cannot be said that once there was enmity that was subsisting but the argument of the learned Counsel cannot be accepted in view of the fact that P.W. 1 stated in the cross-examination that enmity was persisting. Therefore, on analysis of the evidence, it appears that it is not possible that P.W. 1 and the deceased would have accompanied P.Ws. 2 & 3 while going to protest for harvesting. Moreover, it is an admitted position that crop was of the informant and none of the appellants were claiming the land or the paddy crop over the land in question.

10. Therefore, prosecution evidence brought on the record, in our view, is not free from doubt. Furthermore, in the First Information Report 11 persons have been made accused but the eye-witnesses, P.Ws. 2, 3 & 4 named only Ram Bahadur Rai. They did not name other accused-persons. Furthermore, it has been stated that appellant Jamadar Rai and also received injury in the occurrence but there is nothing on the record to show as to how he received injury. Moreover, eye-witnesses are own brothers. Junarbi Rai, P.W. 6, whose name has been mentioned as witness in the First Information Report did not support the prosecution case.

11. Therefore, on consideration as discussed above, we find that the prosecution has failed to establish its case beyond all reasonable doubts. Accordingly, all the three appeals are allowed. The judgment and order of conviction and sentence are hereby set aside. The appellants are discharged from the liability of the bail-bonds.