

Vijay Kumar and ors. Vs. the State of Bihar

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Court : Patna

Decided On : Feb-23-1999

Judge : Narayan Roy, J.

Appeal No. : Criminal Appeal No. 377 of 1998

Appellant : Vijay Kumar and ors.

Respondent : The State of Bihar

Disposition : Appeal Dismissed

Prior history : Narayan Roy, J. 1. I have heard Counsel for the parties and also counsel for the State. 2. Appellant Nos. 1 and 3, namely, Vijay Kumar and Ajay Kumar have been convicted under Section 307 of the Indian Penal Code and Section 27 of the Arms Act and they have been sentenced to undergo rigorous imprisonment for seven years and two years, respectively, whereas appellant No. 2 Sanjay Kumar has been convicted under Section 326 of the Indian Penal Code and sentenced to undergo rigorous imprisonment f

Judgement :

Narayan Roy, J.

1. I have heard Counsel for the parties and also counsel for the State.

2. Appellant Nos. 1 and 3, namely, Vijay Kumar and Ajay Kumar have been convicted under Section 307 of the Indian Penal Code and Section 27 of the Arms Act and they have been sentenced to undergo rigorous imprisonment for seven years and two years, respectively, whereas appellant No. 2 Sanjay Kumar has been convicted under Section 326 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for three years.

3. The prosecution case, according to the fardbeyan of one Fekan Sharma, is as follows; On 20.6.1982 at about 8 A.M. one Gamalal Sharma with pipe gun in his hand, Vijay Kumar Sharma with licensed gun. Ajay Kumar Sharma with pipe gun and Sanjay Kumar Sharma with sword came to the field of Awadh Bihari Singh; Bhikhari Singh and Lalbabu Singh in village Sarasai and uprooted the Marai (hut) and demolished it. Therefore, they were getting the field ploughed by one Bankey Paswan. At 9.30 A.M., the brother of Fekan Sharma, Arun Kumar Singh, Sunil Kumar Singh, Lalbabu Singh and his cousin (Fekan's cousin) Bhulari Singh alias Harendra Singh, Ramnandan Singh, Binod Singh, Chitranjan Sharma came there and asked Gama Lai Sharma and others not to plough the land. Then, Gamalal Sharma fired thrice from pipe gun which hit Bhulan Singh as a result of which he fell down and on getting up he wanted to flee, but once again he stumbled, fell down and collapsed in the field of Jogi Barai. Vijoy Kumar Sharma fired at Lalbabu Singh with his gun. Ajay Kumar Sharma fired at Ramnand Singh. Sanjay Kumar Sharma hit Chitranjan Sharma with sword. The above occurrence was witnessed by one Surendra Singh, Dharmnath Sharma Sarpanoh, Gajendra Jha, Mukhiya, Tuna Singh, Jagarnath Singh, Ramchandra Sharma, Muneshwar Singh, Satyendra Sharma, Ashok Sharma, Dilip Sharma and others. Assailants fled away on motor cycles which they had kept hidden in a nearby orchard. Ramnandan Singh, Lalbabu Singh and Chitranjan Sharma were taken to Hajipur, Sadar Hospital for treatment. Fekan Sharma gave the aforesaid Jardbeyan before the police officer at the place of occurrence itself while he was watching the deceased Bhulan, his brother.

3. So far as the defence case is concerned, the accused persons denied the charges and through suggestions to the prosecution witnesses as also through some papers filed on their behalf took up the defence that the prosecution party

itself on the alleged date came to the field bearing C.S. Plot No. 912 corresponding to R.S. Plot No. 1124 which was in the possession of deceased Gamalal Sharma and demolished the hut on the land and on protest from the owner (Gamalal Sharma) assaulted Gamalal Sharma and his sons for which a case was filed and is pending in the Court of Shri B. Pathak, Judicial Magistrate, 1st class. Hazipur.

4. The prosecution in all examined 16 witnesses and also led documentary evidence. At the same time, the accused persons have also led oral as well as documentary evidence. While leading documentary evidence, the parties have tried to prove their defective right over the land in question appertaining to C.S. Plot No. 912 corresponding to R.S. Plot No. 1124 over which the alleged occurrence had taken place. Out of the prosecution witnesses, P.W. 16 Gopalji Singh is a formal witness who had produced the cartridges in the Court; P.W. 15 Vinod Kumar Singh has been tendered; P.W. 14 S.Z. Fahman is another formal witness who has examined D.D.B.L. gun which is alleged to have been used by the appellants; P.W. 13 Vimal Kumar Verma is the Investigating Officer of the case; P.W. 12 is Dr. Rajeshwar Nath Upadhyay who had examined the injured Lalbabu Singh, Ramnandan Singh and Chitrajan Sharma; P.W. 1 Ram Gopal Munaka is another doctor who has held autopsy over the dead body of Bhulan Singh; P.W. 10 Fekan Sharma is the informant of the case; P.W. 9 Chitranjan Sharma is one of the injured; P.W. 8 Satyendra Kumar Singh is the eye-witnesses of the occurrence whereas P.W. 7 Lalbabu Singh is another injured; P.W. 5 Ram Nandan Singh and P.W. 6 Arun Kumar Singh are alleged to be the eye-witnesses of the occurrence; P.W. 4 Dharmnath Singh is the seizure, witness; P.W. 2 Bhuneshwar Singh and P.W. 3 Fekan Prasad Singh are other eyewitnesses of the occurrence and P.W. 1 Gajendra Jha is also a formal witness.

5. On the basis of the evidence both ocular as well as documentary, the Trial Court held that the prosecution has proved the charges levelled against the appellants beyond all reasonable doubts and accordingly, the accused persons were convicted and sentenced, as indicated above.

6. Learned Counsel for the appellants submitted that this is an admitted position as per evidence of the parties that the land in question belonged to them and it was the prosecution side who had aggressed upon the same and since they were disturbing their possession, the appellants in right of private defence opened fire to scare the prosecution side as a result of which some of them had sustained injuries and one Bhulan Singh died on the spot. So far as death of Bhulan Singh is concerned, the allegation was against one Gamalal Sharma who died in course of trial. The learned trial Court on the basis of the materials and evidence on record held that the land in question was in peaceful possession of the appellants but at the same time, found them guilty as they had exceeded their right of private defence.

7. From the evidence of the doctor, it appears that Lalbabu Singh, Ram Nandan Singh and Chitranjan Sharma had sustained injuries on their persons caused by fire-arm and also by a sharp cut weapon.

8. By way of additional evidence, the appellants have filed certain documents in this Court to show that the prosecution sides were made accused in the counter-case lodged by the deceased Gamalal Sharma and persons of the prosecution were convicted in the counter-case and thereafter appeal and revision were filed which were dismissed but the sentence passed against them was maintained. Another document has also been filed by way of additional evidence that the proceeding under Section 144 of the Code of Criminal Procedure which was pending in between the parties for the land in question, as referred to above, was also decided in favour of the appellants on 26.2.1989.

9. I have scrutinised the evidence both ocular as well as documentary. No doubt, it is manifest from the evidence of the parties that at the relevant time, the appellants were in peaceful possession of the land in question and the prosecution side had aggressed upon the same. Now the question remains as to whether the appellants in exercise of right of private defence have exceeded their right or not. From the evidence of the doctor, P.W. 12, it appears that Lalbabu Singh and Ram Nandan Singh had sustained multiple pellets injuries whereas Chitranjan Sharma had sustained incised wound. From Ext. O the injury report, it appears that appellant

No. 1 Vijay Kumar had also sustained pellet injuries on his person. From the evidence, thus, it appears that there was free fighting in between the parties and both sides had opened fire. It is immaterial as to what was the magnitude of the injuries sustained by the appellants. The right of private defence is a preventive and protective right and it is not necessary that the parties exercising their right of private defence as envisaged under Section 97 of the Indian Penal Code must sustain injuries.

10. In this connection, reference can be made to the case of Deo Narain v. State of U.P. : 1973 CriLJ677 . At the same time, caution has to be exercised by the parties exercising right of private defence. Normally, it should not exceed the same. No doubt, from the evidence on record it appears that the prosecution side was the aggressor as they were also claiming semblance of right over the land in question, therefore, it must be held that the appellants exceeded in their right of private defence. Now, the question remains as to whether the conviction under Sections 307 and 326 of the Indian Penal Code is sustainable in law.

11. I have already noticed above that there was a case and counter, case and the appellants were in possession of the land in question. Seeing the injuries on the persons of the injured, Lalbabu Singh and Ram Nandan Singh, it appears that they had sustained only pellet injuries and all the injuries were not grievous and at the same time, it also appears that the appellants had opened fire as the prosecution sides were disturbing their possession. In my opinion, therefore, the ends of justice will be met by altering the conviction of appellant Nos. 1 and 3 under Section 325 of the Indian Penal Code. At the same time, seeing the injuries on the person of Chitranjan Sharma, conviction of appellant No. 2 under Section 326 of the Indian Penal Code is not sustainable in law and in my opinion, his conviction should be altered under Section 324 of the Indian Penal Code. The conviction of the appellants under Sections 307 and 326 of the Indian Penal Code is set aside and appellant Nos. 1 and 3 are convicted under Section 325, I.P.C. and appellant No. 2 is convicted under Section 324, I.P.C. However, the conviction of appellant Nos. 1 and 3 under Section 27 of the Arms Act is upheld.

12. So far as the question of sentence is concerned, it is submitted that the appellants have remained in custody for some time and they have faced mental agony right from 1982. Learned Counsel further submitted that since the appellants have already suffered, it would not be proper to send them back to jail.

13. Considering the facts and circumstances of the case, therefore, the sentence passed against the appellant Nos. 1, 2 and 3 under all counts is reduced to the period already suffered by them in addition to payment of fine of Rs. 1000/- each by appellant Nos. 1 and 3. For default in payment of fine, appellant Nos. 1 and 3 shall suffer simple imprisonment for one month. If fine is realised, the same shall be payable to the injured.

14. With the aforesaid modification in the judgment and order of conviction and sentence, this appeal is dismissed.

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