

Aganu Sahu @ Agand Sahu and anr. Vs. State of Bihar

Aganu Sahu @ Agand Sahu and anr. Vs. State of Bihar

SooperKanoon Citation : sooperkanoon.com/123723

Court : Patna

Decided On : Dec-12-1996

Judge : Loknath Prasad and P.K. Sarkar, JJ.

Appeal No. : Criminal Appeal No. 254 of 1989 (R)

Appellant : Aganu Sahu @ Agand Sahu and anr.

Respondent : State of Bihar

Prior history : Loknath Prasad, J. 1. This appeal is directed against the judgment of conviction dated 1.8.1989 passed by Shri Chiranjee Singh, 4th Addl. Judicial Commissioner, Ranchi in S.T. No. 192/85 through which both the appellants were found guilty under Section 302/34 of the Indian Penal Code and they were sentenced to undergo R.I. for life and they were further found guilty under Section 27 of the Arms Act and sentenced to undergo R.I. for two years and it was further ordered that both the sentences w

Judgement :

Loknath Prasad, J.

1. This appeal is directed against the judgment of conviction dated 1.8.1989 passed by Shri Chiranjee Singh, 4th Addl. Judicial Commissioner, Ranchi in S.T. No. 192/85 through which both the appellants were found guilty under Section 302/34 of the Indian Penal Code and they were sentenced to undergo R.I. for life

and they were further found guilty under Section 27 of the Arms Act and sentenced to undergo R.I. for two years and it was further ordered that both the sentences will run concurrently.

2. The prosecution case is short is that on 8.9.1983 about 8 P.M the informant Baliram Sahu along with his father Manboth Sahu, brother Mahabir Sahu and Sukhdeo Sahu, who were returning from Basundhara Cinema hall and were going to the house of their relation Fagu Sahu in line tank road, P.S. Kotwali. It has been alleged that when they reached near western side of the line tank road from where they had to take a turn for going towards the house of Fagu Sahu when they had seen these two appellants, one Surendra Sahu and one unknown person coming together. It has been alleged that the moment they came near to them Aganu Sahu, first of all fired from a pipe gun on the informant which hit on the right cheek and then Surender Sahu wanted to give/ a Bhujali blow on the father of the informant but it hit the Tufa of the informant Sukhdeo Sahu on the right side of the hand and on the right chest due to that he had fallen on the ground and was seriously injured. It is also the prosecution case that other appellant Gaura Sahu was also holding a country made revolver in his right hand and a bomb on the left hand and he fired twice on Mahabir Sahu but it did not hit him and a bomb was also thrown but it did not explode. When alarm was raised Mahendra Sahu Ganju and Fagu Sahu arrived and then the accused persons escaped away but in the meantime the police party arrived in a jeep and the informant and Ors. took the injured for taking him to the hospital but on the way he died. However, they had gone to medical college and the doctor declared Sukhdeo Sahu to be dead and in the medical college itself the fardbeyan of the informant was recorded by the police officer at 10 P.M and it has been alleged that due to previous enmity the accused persons committed the murder of Sukhdeo Sahu and also wanted to kill his brother and father.

3. The police instituted this case and took up investigation and the inquest of the dead body was prepared in the R.M.C.H. itself and on the next day post mortem was held and after completing investigation chargesheet was submitted as against these appellants but during the pendency of the trial Surender Sahu was murdered so the proceeding against the accused Surender was dropped. Both the

appellants claimed themselves innocent and denied to have taken part in this occurrence and it is their defence that the informant and his brother and father actually committed the murder of the brother of the accused Surender and several criminal cases are pending and for that they have been falsely implicated. The trial court found the appellants guilty under Sections 302/34 of the IPC and findings were recorded that these appellants were sharing with the common intention with the main accused Surender Sahu for committing the murder of the deceased and thus , convicted the appellants in the manner indicated above.

4. No doubt these appellants were also charged under Section 307 of the IPC as they alleged to have made an attempt to commit the murder of informant Baliram Sahu and Mahabir Sahu and further the appellants were also charged under Section 324 of the IPC for causing hurt by fire arm to Baliram Sahu but both these appellants were acquitted under Section 307 and 324 of the IPC for the reason that these allegations had not been proved beyond reasonable doubt. Now the only question for consideration before us is if these appellants in the night of 8.9.1983 along with the main accused Surender Sahu who is now dead and one unknown sharing the common intention to commit the murder of Sukhdeo Sahu as alleged.

5. In this case of the important witness Fagu Sahu who has figured as P.W. 1 and in whose house the informant and his father and brother along with the deceased were going to stay in the night and who came to P.O. immediately after the occurrence, had not supported the prosecution case so he was declared hostile. So the prosecution has relied upon the evidence of P.W. 2, Manbodh Sahu, P.W. 3 Baliram Sahu, the informant of this case and that of P.W. 5 Mahabir Sahu, another brother of the informant. P.W. 3 being the informant of this case is definitely the most important witness and according to this witness on 8.9.1983 at about 8 P.M he along with his father Manbodh Sahu i.e. P.W. 2 and Anr. brother Mahabir Sahu, P.W. 5 and the deceased Sukhdeo Sahu who is his Fufa, were coming together from Vasundhara Cinema after witnessing show and they were going to the house of their relative Fagu Sahu, P.W. 1 to stay in the night but on the way at about 8 P.M. when they reached on the western side of line tank road these two appellants and the main assailant Surender Sahu who is dead and one

unknown person whose description has been given came together and these appellants were also armed with fire arms and the appellant Aganu Sahu fired by country made fire arm which hit on his cheek and Surrender Sahu gave a Farsa blow on his father but it did not hit him rather it hit Sukhdeo Sahu causing serious injury on the right side of the chest and on the right hand due to that Sukhdeo fell down on the ground and the other appellant, Gaure Sahu fired from his revolver on P.W. 5, Mahabir Sahu but it did not hit him. It is also his evidence that they raised alarm then P.W. 1 and Ors. came and accused persons escaped away. In the meantime the police part, came in a jeep and they took the injured to the R.M.C.H. but on the way he died. In R.M.C.H. doctor also declared the deceased dead and at 10 P.M. his fardbeyan was recorded i.e. Ext. 4. Ext. 4 was recorded immediately after the occurrence in the R.M.C.H. and it contains all the relevant fact as stated by this witness,

6. The evidence of the informant also finds support from the evidence of P.W. 2, Manbodh Sahu and that of P.W. 5, Mahabir Sahu. These witnesses have also consistantly stated that when they were returning from Vasundhara Cinema and reached near the western side of Line tank road at about 8 P.M then these appellants along with Surrender Sahu and one unknown came and the appellant, Aganu fired from the country made fire arm which hit on the cheek of the informant and Surrender Sahu gave a Garasa blow on P.W. 2 but it hit Sukhdeo causing injury on his chest and hand and other appellant Gaura Sahu fired from his country made fire arm on Baliram Sahu but fortunately it did not hit him and immediately Sukhdeo was taken to R.M.C.H. in a police jeep but on the way he died.

7. The evidence of these three witnesses was assailed by the learned Advocate for the appellants that admittedly all these three witnesses are close relations because two witnesses are the sons of P.W. 2 and the independant witness P.W. 1 had not supported the prosecution case and admittedly these witnesses are in hostile term with the appellants because several criminal cases are pending as admitted by the P.W. 2 himself. In that view of the matter, it is unsafe to rely upon the evidence of these interested witnesses. It is true that all these three witnesses are highly interested witnesses and there is previous enmity but admittedly one of the witnesses i.e. the informant was somehow or other sustained injury in that very

occurrence and though these witnesses are highly interested witnesses, but we examined their evidence with great care and caution and it is quite possible that due to enmity also these appellants were having grudge with the members of the prosecution side. Moreover evidence of these witnesses also find Sorroboration from the evidence of P.W. 4, Dr. Mrs. Renu Bala who held post mortem examination on the body of the deceased on 9.9.1983 at about 11 hours and found stab wound on the right side of the chest even cutting addominal well and right kidney and this injury was found to be fatal. Another injury was found on the right elbow and according to the doctor these injuries were ante mortem and caused by sharp cutting weapons may be Bhujali and death of the deceased took place within 6 to 18 hours that means sometime in the night of 8.9.1983. So the evidence of the doctor also clearly indicates that two Bhujali blows were given to the deceased in the night of 8.9.1983 with clear intention to commit his murder Thus, from the evidence of the eye witnesses, as discussed above, this much can be said and also this much is well proved that these appellants were also holding fire arms at the time of occurrence and Surender Sahu was holding Bhujali and he first of all wanted to give blow to P.W. 2, Mahabodh Sahu but he escaped and it hit the deceased Sukhdeo. No doubt there is also allegation that the appellant. Aganu Sahu fired from the fire arm which hit on the cheek of the informant and the other appellant fired on Mahabir, brother of the informant but it did not hit him. But all these allegations were not accepted by the trial court and so these appellants were acquitted from the charges under Section 307 of the IPC mainly for the reason that the Investigating officer could not be examined and the informant though claimed that he sustained injury by fire arm on his right cheek but the doctor, namely, Dr. Harideo Tripathy, P.W. 7 found injury to be a lacerated wound caused by hard and blunt substance but the evidence of these witnesses is clear on the point that these two appellants also chased the prosecution party and the main assailant Surender Sahu first of all wanted to hit Mahabodh, P.W. 2 but he warded off the attempt and Bhujali hit Sukhdeo causing his death. So actually the main accused only gave blow by Bhujali to the deceased and these appellants have not caused any hurt to the deceased nor made any attempt on him.

8. In view of the evidence as discussed above, learned Counsel for the appellants submitted that actually these appellants were not sharing any common intention to

commit the murder of the deceased, Sukhdeo because neither they caused any hurt nor made any attempt to cause any hurt to him and even the evidence on the record indicates that the main accused, Surender Sahu wanted to cause injury or death of Manbodh but the blow he had given to Manbodh actually hit the deceased Sukhdeo, to these appellants were not sharing common intention to commit the murder of the deceased and as such they are liable to be acquitted from the charges under Section 302/34 of the IPC In support of the contention learned Advocate for the appellants relied upon an authority of the Supreme Court reported in A.I.R. 1995 1988 Dharampal and Ors. v. State of U.P.. In this case one of the accused was holding lathi , but no injury of any lathi blow was found on the deceased rather the accused holding lathi simply assaulted the informant causing grievous injury so it was held by the Apex Court that Sections 302/34 of the IPC is not attracted against that very accused who has not caused any hurt to the deceased rather he was simply found guilty under Section 325 of the IPC for causing hurt to the informant. In another case reported in : 1994 CriLJ1209 Jaddu Yadav and Ors. v. State of Bihar though there was allegation that all the accused persons chased the deceased and some of them fired by fire arm and some of them caused injury by sharp cutting weapon and on the dead body of the deceased incised injuries were found. In that view of the matter, accused persons who were holding lathi and alleged to have given lathi blow to the deceased, were not found guilty under Section 302, 149 of the IPC and they were acquitted. In the instant case also the appellants were holding country made fire arm and admittedly they had not caused any injury to the deceased nor made any attempt to cause any injury to him rather the simply chase the prosecution side and the allegation is also on behalf of prosecution that these appellants fired not to the deceased but to the witnesses. In that view of the matter, it can be said that these appellants were not sharing with common intention to commit the murder of the deceased and as they were holding country made fire arm so at best it can be said that they had the intention to cause grievous hurt to the deceased or to the members of the prosecution side.

9. Accordingly, the appellants are definitely not guilty under Section 302/34 of the IPC but definitely they are guilty under Section 326/34 of the I.P.C and also under Section 27 of the Arms Act. Accordingly, the conviction of the appellants under

Section 302/34 of the IPC is hereby modified and converted to that of Section 326/34 of the IPC and they are sentenced to undergo R.I. for three years each and further they are definitely found guilty under Section 27 of the Arms Act and conviction and sentence as recorded by the trial court against the appellant under this count does not require any interference but both the sentences will run concurrently.

10. In the result, this appeal is allowed in part with modification in sentence as indicated above and the bail bonds of both the appellants are hereby cancelled and they are directed to surrender before the trial court for undergoing the remaining part of their imprisonment and the period of their detention during investigation, trial and appeal will be set off towards the period of imprisonment.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com