

State of Bihar Vs. Basawan Rai and ors.

State of Bihar Vs. Basawan Rai and ors.

SooperKanoon Citation : sooperkanoon.com/124381

Court : Patna

Decided On : Apr-30-1998

Judge : Sachchidanand Jha and Pramod Kumar Sarin, JJ.

Acts : [Arms Act, 1959](#) - Sections 27; [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 148 and 302

Appeal No. : Govt. Appeal No. 30/1986 and Cri. App. Nos. 485 and 5080 of 1986

Appellant : State of Bihar

Respondent : Basawan Rai and ors.

Advocate for Def. : Hari Narain Singh, Adv.

Advocate for Pet/Ap. : Ashwini Kumar Sinha, APP

Disposition : Appeal allowed

Prior history : Pramod Kumar Sarin, J. 1. All the three appeals arise out of the same Judgment and order dated 18-9-1986 passed by 8th Additional Sessions Judge, Patna, in Sessions Trial No. 680 of 1985 whereby the accused appellants of Criminal Appeals No. 485 of 1986 and 508 of 1986 have been convicted under Section 302 read with Section 34 of the Indian Penal Code (hereinafter referred to as the Code) and have been awarded life imprisonment. They have also been convicted under Section 148 of the Code but n

Judgement :

Pramod Kumar Sarin, J.

1. All the three appeals arise out of the same Judgment and order dated 18-9-1986 passed by 8th Additional Sessions Judge, Patna, in Sessions Trial No. 680 of 1985 whereby the accused appellants of Criminal Appeals No. 485 of 1986 and 508 of 1986 have been convicted under Section 302 read with Section 34 of the Indian Penal Code (hereinafter referred to as the Code) and have been awarded life imprisonment. They have also been convicted under Section 148 of the Code but no separate sentence has been imposed for the said offence. The said accused appellants have been acquitted of the charge under Section 27 of the Arms Act Cor want of sanction. Feeling aggrieved by the order of acquittal of the accused under Section 27 of the Arms Act the State has filed Government Appeal No. 30 of 1986 while the Criminal Appeal No. 485 of 1986 has been filed by four accused and Criminal Appeal No. 508 of 1986 has been filed by two accused against their conviction and sentence. All the three appeals have been heard together and are being disposed of by this common Judgment.

2. On 11-6-1985 at about 9.25 p.m. Sri Sia Saran Prasad (CW-1) gave his fardbayan at State Dispensary Bakhtiyarpur before Sheo Chandra Prasad, a Sub-Inspector of Police of Police Station Bakhtiyarpur. In that Fardbayan (Exhibit-5) Sia Saran Prasad stated that he, Raj Kishore Prasad, Ram Sagar Rai, Darogi Rai, Sitaram Rai, Devendra Rai and Raj Kishore Rai had proceeded together for participating in a 'barat' and when they reached the river bed three-four miscreants came from the side of Chiraiya and asked as to who they were whereupon Raj Kishore told his name. It was further stated that as Raj Kishore Prasad was telling his name one of the miscreants fired a shot which hit him (Sia Saran Prasad) and he (Sia Saran Prasad) began to flee away towards east and he heard four-five more shots having been fired. It was stated that Sia Saran Prasad went to his village and told about the incident at the door of Ram Nandan Rai and villagers ran towards river Ganges. Sia Saran Prasad stated in the fardbayan that due to darkness he could not identify any miscreant. Sia Saran Prasad was taken to the Government Dispensary, Bakhtiyarpur for treatment and at that place fardbayan

was recorded and on the basis of this fardbayan a formal first information report (Exhibit-6) was registered at Bakhtiyarpur P.S. Case No. 152 of 1985.

3. It appears that subsequently at about 2.00 a.m. in the intervening night of 11/12-6-1985 Ramdeo Prasad Singh (PW-12) gave a written report (Exhibit-C) to Sri Laxman Prasad (PW-13), Officer-in-charge of Bakhtiyarpur Police Station, who was investigating the case. In the said written report Ramdeo Prasad Singh gave a different version which is as follows:

On 11-6-1985 in the evening Raj Kishore Prasad (deceased) along with Ramdeo Prasad Singh (PW-12), Devendra Rai (PW-1), Ramsagar Rai (PW-2), Daroga Rai (PW-10) and Sitaram Rai (PW-4) was proceeding to village Chiraiya to participate in a Barat and when they reached the river bed of Ganga river at about 7.30 p.m. all the accused persons (appellants of Criminal Appeals No. 485 of 1986 and No. 508 of 1986) intercepted them. Ramdeo Prasad Singh, who had torch with him, flashed the torch light and all the accused were identified in that torch light. Accused Biraj Rai, appellant No. 2, of Criminal Appeal No. 508 of 1986 was armed with Chhewani and the remaining accused appellants were armed with fire-arms. The accused Jadu Rai (appellant No. 1 of Criminal Appeal No. 485 of 1985) exclaimed that he would teach a lesson to Raj Kishore Prasad for bidding higher price for the land and he ordered accused Rajo Rai (appellant No. 1 of Criminal Appeal No. 508 of 1986) to shoot him whereupon accused Raho Rai shot at Raj Kishore Rai. The shot hit Raj Kishore Prasad and he fell down on the ground. Thereafter accused are also said to have opened fire with their fire-arms the accused Jadu Rai asked the accused Biraj Rai to cut the neck of Raj Kishore Prasad after he had fallen. Accused Biraj Rai started cutting the neck of Raj Kishore Prasad by his Chhewani. On hearing alarm the villagers started coming there whereupon the accused persons fled away opening fire with their fire-arms. Sia Saran Rai, who was coming behind is said to have been injured by the shots fired by the accused.

4. Police, after investigation, submitted charge sheet against the accused and they were tried and convicted as already noted above.

5. The defence of the accused was false implication due to enmity.

6. The prosecution examined fourteen witnesses in support of its case out of which PW-6, Jamun Rai and PW-7, Mahant Mahto, have been tendered while PW-11 Chandradeep Mahto, is witness of seizure of blood stained sand and empty cartridges by the Investigating Officer. PW-3 Jitendra Kumar, the brother of the deceased, is a witness of inquest report. PW-5, Arjun Singh, is a hotel owner who stated that Raj Kishore Prasad and Others had come to his hotel and therefrom they proceeded to participate in Barat. He is not the eye-witness of the occurrence. PW-8, Dr. Panchanand Das, had held autopsy over the dead body of the deceased and have prepared the post mortem examination report (Exhibit-4). PW-9 Dr. Amar Nath Jha, had examined the injuries of Sia Saran Prasad (C. W. 1) and had prepared his injury report (Exhibit-7). PW-13, Lakshman Prasad, the then Officer-in-charge of Bakhtiyar Police Station, had investigated the case. While, PW-14, Umesh Prasad Verma, took over the investigation subsequently. He submitted only charge sheet. PW-1, Devendra Rai, PW-2, Ram Sagar Rai, PW-4, Sitaram Rai, PW-10, Daroga Rai and PW-12, Ramdeo Prasad Singh, have figured as eye-witnesses.

7. Sia Saran Prasad, the informant, on whose fardbayan the formal first information report was registered, has been examined as Court Witness (CW-1).

8. No witness was examined on behalf of the defence.

9. Dr. Panchanand Das, (PW-8) stated that he held autopsy over the dead body of the deceased, Raj Kishore Prasad, on 12-6-1985 at 9.30 a.m. and found the following antemortem injuries on the persons of the deceased:

(i) Oval wound on the left shoulder 1/2' x 1/2' x deep cavity. Margin of wound inverted and blackened. It was wound of entry.

(ii) Lacerated round hole on the right side chest 1' lateral to right nipple 1/2 x 1/2' x deep in cavity. Margin of wound everted and echymosed. It was wound of exit.

(iii) Incised wound on the right side neck 3' x 2' x 2' x 2' 5th & 6th vertebrae.

(iv) Incised wound on the right side of neck 3' x 1/2' x deep upto the cut of trachea oesophagus and also cut of 5th & 4th vertical vertebrae.

(v) Incised wound on the left side chest 1/2' x V2'.

(vi) Incised wound left side neck 1/2' x V2'

(vii) Incised wound on the left side lip 1' x 1/2' x bone deep with fracture of iliac and sacrum bone.

On dissection the doctor found the following:

1. Fracture of the head of left humerus.
2. Fracture of the 3rd and 4th left side ribs.
3. Rupture of the heart and upper part of liver.
4. Fracture of 5th and 6th of the right side ribs.
5. Lacerated injury on left and right lung.

In the opinion of the doctor injury No. 1 and 2 were caused by fire arms and rest were due to sharp cutting weapons such as 'Fasuli.'

In the opinion of the doctor the cause of death was due to above injuries leading to shock and haemorrhage. In ordinary course of nature these injuries were sufficient to cause death of a person.

10. The statement of doctor, PW-8, shows that the deceased, Raj Kishore Prasad, had received one injury by fire arm and five incised injuries and he died on account of the antemortem injuries. Thus, the homicidal death of deceased Raj Kishore Prasad is proved.

11. Now, the question to be considered is whether the accused appellants had participated in the crime. PW-12, Ramdeo Prasad Singh, stated that at the time of occurrence he along with deceased Raj Kishore Prasad, Devendra Rai (PW 1), Ram Sagar Rai (PW-2), Silaram Rai (PW-4), Darogi Rai (PW-IO) were going to

Chiraiya to participate in a Barat and when they reached the sandy part of the bed of river Ganges eightnine miscreants surrounded them. He stated that he flashed his torch and could identify present accused appellants. He stated that accused Biraj had a chhewani and remaining appellants had country made pistol. He stated that accused Jadu declared to Raj Kishore that he would teach a lesson to him for the price of the field and thereafter Jadu ordered to shoot Raj Kishore. PW-12 stated that on this order accused Rajo shot at Raj Kishore who was hit and fell down. He stated that other accused were also firing shots. The witness further stated that the accused jadua asked Biraj to sever the neck of Raj Kishore from the body and thereupon Biraj started assaulting Raj Kishore by Chhewani on his neck and head. PW-12 stated that when villagers began to assemble there on hearing alarm the accused made good their escape by firing and in that course of firing Sia Saran received injury. PW-12 stated that he and others went near Raj Kishore and found Raj Kishore to be dead and thereafter his dead body was taken to his house. He stated that when Police reached the village in the same night he gave the written report to the Sub-Inspector of Police.

12. PW-2, Ram Sagar Rai, repeated the same story as has been stated by PW-12. This witness stated that after the incident he and Daroga Rai went to Chiraiya where Police reached subsequently and he made statement before Police and returned to the village of Raj Kishore with the Police. The statement of this witness shows that only one shot had hit Raj Kishore while he was standing and thereafter he fell down and no shot was fired after he fell down. This witness had not stated before the Investigating Officer (PW-13) that Jadu ordered Biraj to sever the neck of Raj Kishore from his body and that Biraj had assaulted Raj Kishore by Chhewani at his body and other parts.

13. PW-4, Sitaram Rai and PW-10, Daroga Rai, also made similar statement as has been made by PW-12 regarding the incident. However, PW-4, Sitaram Rai stated that Biraj had Chhewani and other accused had single barrel gun. It is inconsistent with the statement of PW-12, Ramdeo Prasad Singh, who stated that the remaining five accused had pistols in their hands.

14. PW-10, Daroga Rai, stated that five of the accused had pistols and Biraj had a Fasuli and Biraj began to cut the neck of the deceased by Fasuli. It may be mentioned here that according to the statement of Dr. Panchanand Dase, PW-8, the incised wounds were caused by heavy sharp cutting weapon. He stated that sickle and Fasuli are light sharp cutting weapons. The incised injury on the left side of neck was found to have cut the fifth and fourth verticle vertebrae. The injury on neck could not have been caused by light sharp cutting weapon like Fasuli. Therefore, the statement of PW-10, Daroga Rai, that accused Biraj had Fasuli and he began to cut the neck of deceased by Fasuli is inconsistent with the medical evidence on record. PW-10, Daroga Rai, has made inconsistent statement with the statement given before the Investigating Officer. In Court he stated that Jadu had declared to Raj Kishore that he would teach a lesson to him for bidding but he had not stated so before the Investigating Officer. In Court this witness stated about Jadu asking Biraj to cut the neck of Raj Kishore but had not stated so before the Investigating Officer. He had also not stated before the Investigating Officer that on alarm villagers began to assemble and then accused fled towards west.

15. PW-4, Sitaram Rai, in his statement before the Investigating Officer had not named accused Raj Kishore and Rarndeo nor he stated before the Investigating Officer that Jadu had declared to teach a lesson to Raj Kishore for bidding. He had not stated before the Investigating Officer about Biraj being asked to cut the neck of Raj Kishore.

16. It is significant to note that PW-1, Devendra Rai, although admitted that Sia Saran had received gun shot injury but denied that Sai Saran was hit at the place of occurrence. Thus, he had denied the presence of Sia Saran at the time of incident. PW-2, Ram Sagar Rai PW-4, Sitaram Rai, PW-10, Daroga Rai, had not slated about the presence of Sia Saran Prasad as the time of occurrence of injury being received by Sia Saran.

17. The presence of Sia Saran at the time of incident cannot be doubted as he appears to have received gun shot injury and his fardbayan was recorded at about 9.25 p.m. at Bakhtiyarpur Government Dispensary in injured State. PW-9. Dr. Amar Nath Jha, had examined the injuries of Sia Saran Prasad (C.W.I) on 11-6-

1985 and found multiple small rounded wounds of 1/8' diameter on the left shoulder joint muscle skin deep. He had also sent four pellets along with glass vial to the Police. In the opinion of Dr. Jha the injuries were caused by fire arm and it was superficial in nature. The doctor further stated that as there was no arrangement for X-ray at the hospital at Bakhtiyarpur hence the injured was referred to Patna Medical College Hospital for X-ray and any further treatment. Thus, the statement of Dr. Amar Nath Jha proves that Sia Saran had received gun shot injury.

18. Sia Saran Prasad, on whose fardbayan the first information report was registered, was not examined by prosecution. He has been examined by the trial Court as C. W. 1. Sia Saran Prasad has stated that on 11-6-1985 at about 8.00 p.m. he along with Ram Sagar Rai, Sitaram Rai, Daroga Rai, Devendra Rai and Raj Kishore Prasad (deceased) was going to Chiraiya to participate in a Barat and when they reached on the sands of river bed of Ganga three-four persons who were coming from the side of Chiraiya enquired their names whereupon Raj Kishore told his name and thereafter one of those three-four persons fired a shot which hit him (Sia Saran) and he fled to the house of Ram Nandan at Ghoswari Toh. He stated that from the house of Ram Nandan he was taken to Manila Hotel at Champapur where a Sub-Inspector of Police was there who sent him to Bakhtiyarpur where his fardbayan was recorded at Government Dispensary. He stated that he did not see deceased Raj Kishore being hit by gun shot. He stated that he did not see as to who were firing. He explained that in his fardbayan the factum of murder of Raj Kishore by gun shot and catting of neck was narrated on the basis of information given to him by nephew Rajeshwar Prasad before he made statement at Bakhtiyarpur Hospital.

19, It has been contended on behalf of the accused appellants that the case was instituted on the fardbayan of Sia Saran (C.W.I), who had himself received gun shot injuries and he had not named any of the accused appellant in his fardbayan rather he. stated that it was dark night and he could not identify any miscreant. It is contended that Ramdeo Rai, after consultation, gave written report at about 2.00 a.m. to the Investigating Officer naming the present appellants and this was done after due deliberations in order to implicate the accused appellants due to enmity.

A perusal of the written report (Exhibit-C) given by Ramdeo Prasad (PW-12) would show that it is not in the hand-writing of Ramdeo Prasad. The contents of the written report have been very neatly scribed and it gives an impression (but it was scribed at ease. It is significant to note that according to the statement of PW- 12, Ramdeo Prasad Singh, he had shown the place of occurrence to the Investigating Officer in the same night and, thereafter, Investigating Officer went to Chiraiya. The Investigating Officer, Sri Lakshman Prasad, PW-13, has stated that after holding inquest immediately on reaching the village he inspected the place of occurrence and, thereafter, he went to Chiraiya and when he returned from Chiraiya to village Goswari Toh and recorded the statements of witnesses and Ramdeo Rai (PW-12) gave him written report. If Ramdeo Rai (PW-12) was present at the time of inspection of place of occurrence by the Investigating Officer there was no reason why he would not have given written report to him at that time or would not have disclosed the names of the assailants if he had actually seen the occurrence. It is also to be noted that the Investigating Officer (PW-13) stated that he remained in village Goswari Toh since 10.00 p.m. to 12.15 a.m. in the same night and had inspected the place of occurrence during this period at the instance of Jitendra (PW-3) and also recorded the statements of Jitendra, Jamun, Manner and Chandradip. He stated that during that period witnesses Ramdeo (PW-12), Devendra (PW-1) and Sitaram (PW-4) had not presented themselves before him as such he did not record their statement at that time PW-13 further stated that when he returned from village Chiraiya to Goswari Toh at about 2.00 a.m. then for the first time Ramdeo (PW-12) met him and gave his written report. He stated that after said written report was given by Ramdeo, witnesses Devendra Rai, Daroga Rai, Ram Sagar, Sitaram and Arjun Rai gave their statements before him. It shows that Ramdeo Prasad (PW-12) and other witnesses Devendra Rai, Daroga Rai, Ramsagar and Sitaram avoided to appear before Police and they appeared only when the written report (Exhibit-C) was prepared. Ramdeo Prasad (PW-12) or Jitendra Kumar, another brother of deceased Raj Kishore, did not go to Police Station to lodge the report of the incident and they remained in the village. They had not known that a case was already registered on the faridbayan of Sia Saran. In these circumstances, the natural conduct of Ramdeo Prasad or other eye-witnesses would have been to have gone to the Police Station to lodge the

report first, but it was not done so. Even when Investigating Officer arrived in the village Ramdeo Prasad did not meet him at the time of inquest or inspection of place of occurrence and he appeared, for the first time, before the Investigating Officer at 2.00 a.m. and gave a written report (Exhibit-C). This conduct itself indicates that Ramdeo Prasad, in order to implicate the accused appellants in crime, created another version of the incident in which he described himself as one of the eye-witnesses to the occurrence and for such creation of version there was sufficient time with him and this new version was given after Investigating Officer returned from Chiraiya. It is also to be noted that Sia Saran Prasad had given the names of Devendra Rai (PW-1), Sitaram Rai (PW-4) and Daroga Rai (PW-10) as the persons who also accompanied him and Raj Kishore Prasad at the time of occurrence. He did not name Ramdeo Prasad as one of the persons who were in the company of the deceased at that time. The fardbayan was given by Sia Saran Prasad at 9.25 p.m. immediately about one and half hour of the incident. There was no reason for Sia Saran Prasad to have not given the name of Ramdeo Prasad in his fardbayan if he was actually there at the time of incident. The presence of Ramdeo Prasad (PW-12), in these circumstances, at the time of incident appears to be doubtful. If his presence is excluded then the source of light of torch also goes and the statement of eye-witnesses about identification of the accused appellants in torch light appears to be doubtful.

20. The post mortem examination report (Exhibit-2) of Dr. Panchanand (PW-8) show that the wound of entry of the gun shot injury was on the left shoulder and wound of exit was on the right side of chest 1' lateral to the right nipple. It shows that the direction of the gun shot was from upward to downward. According to the eyewitnesses, examined by the prosecution, the gun shot which hit the deceased was fired when the deceased was standing and he fell down after receiving that gun shot. PW-2, Ram Sagar Rai, has stated that no shot was fired at the deceased after he fell down. It appears to be highly doubtful that the gun shot received by the deceased in standing position would have entered the shoulder and would have caused wound of exit downward near the nipple. It is also significant to note that the wound of entry is on the left shoulder while the wound of exit is on the right side of the chest. It shows that the bullet or pellets travelled from left side downward to right side. Injury of this nature could be possible when

the deceased had been shot while he had fallen down or he was at a lower level than the assailant. Nowhere it has come in the prosecution evidence that deceased was at a lower level than the assailants. This circumstance also goes to show that the manner of occurrence, as has been described by eyewitnesses, is doubtful and the statement of Sia Saran Prasad (CW-1) that when the miscreants fired all the persons accompanying deceased ran hither and thither appears to be worth credence.

21. The prosecution witnesses appears to be related to each other, PW- 1, Devendra Rai, who is son of Jamun Rai, has stated that deceased Raj Kishore was his cousin and Ramdeo Prasad (PW-12) is his (PW-1) father's cousin. PW-2, Ram Sagar Rai, has admitted that Jasram Rai was real brother of his grand father. Pratap Rai and witnesses Ramdeo Prasad, Jamun Rai, Devendra, Jitendra Rai and deceased, Raj Kishore, are descendants of Jasram Rai. Daroga Rai, PW-10, has stated that Ram Sagar happens to be his brother due to being co-villager and he was on visiting terms with Ram sagar. PW-4, Sitaram Rai, is also co-villager of Ram Sagar (PW-2). Thus, it is apparent that the alleged eye-witnesses are either inter-related or are on visiting and family terms with each other. Although it is well settled that the testimony of the interested or related witnesses have not to be discarded if otherwise it is found to be reliable after close scrutiny. In the present case, on close scrutiny of the statements of the eye-witnesses examined by the prosecution it appears highly doubtful that these witnesses would have been in a position to identify the assailants of Raj Kishore Prasad. Presence of PW-12, Ramdeo Prasad, at the place of occurrence is highly doubtful. It was dark night and no other source of light except the torch light flashed by PW-12, Ramdeo Prasad, whose presence itself is doubtful at the place of occurrence, was there. Therefore, PWs 1,2,4 and 10's statement regarding identification of the accused appellants at the time of occurrence does not appear to be worth reliance.

22. It may also be noted that PW-1 has stated that accused Biraj had cut the neck of the deceased by chhewani and rest of the accused had fired arms. He does not state any other sharp cutting weapon with any other accused. PW-2, Ram Sagar Rai, has also stated that only Biraj had chhewani and other appellants had country made pistols and that Biraj assaulted the deceased by chhewani on his neck and

other parts of the body. However, he had not stated about assault by chhewani on other parts of the body before the Investigating Officer. PW-4, Sitaram Rai, has made it clear that the chhewani, which Biraj was holding, was a Hasuli (sickle). He stated that Biraj had cut half neck of Raj Kishore. He does not state assault by chhewani on other parts of the body of the deceased. PW-10, Daroga Rai, stated that accused Biraj started cutting the neck of deceased by Fasuli. He also does not state about assault on other parts of the body of the deceased by Fasuli. The statement of Dr. Panchanand (PW-8) read with post mortem examination report (Exhibit-2) shows that as many as five incised wounds were found on the person of the deceased out of which three were on the neck and one was on chest and the other incised wound was on left side of hip which was bone deep with fracture of the iliac scame bone. Fracture of third and fourth left side ribs and fifth and sixth of the right side ribs were also found. PW-8 stated that the assault with heavy sharp cutting weapon caused incised injury with fracture of underlying bones. He stated that sickle and fasuli are light sharp cutting weapons. Thus, the statement of PW-8 shows that the incised injuries could not have been caused by sickle or fasuli but could have been caused by heavy sharp cutting weapon like garasa and sword. It also shows that the witnesses, who have deposed about assault having been made by accused Biraj by chhewani or fasuli have actually not seen the injuries having been caused by sharp cutting weapon. It also creates doubt about the statements of eye witnesses that they had seen the assault on the deceased.

23. Considering the entire evidence, facts and circumstances of the case, the testimony of the eye-witnesses does not appear to be worth reliance. In my opinion, prosecution has failed to prove the charges against the accused appellants beyond all reasonable doubt. The trial Court has erred in convicting the accused appellants. They are entitled to be acquitted.

24. As regards Government Appeal No. 30 of 1986, it is against the acquittal of the accused appellants under Section 27 of the Arms Act. In view of my findings above, the prosecution has failed to prove the charge of murder and rioting against the appellants, no occasion arises for the conviction of the appellants under Section 27 of the Arms Act. Therefore, the Government Appeal must fail.

25. In the result, the conviction of the appellants under Section 302/34 of the Code and the sentence awarded for the same and also the conviction of the appellants under Section 148 of the Code are set aside. The appellants are acquitted of the said charges. The Criminal Appeals No. 485 of 1986 and 508 of 1986 are allowed accordingly. The Government Appeal No. 30 of 1986 is dismissed.

Sachchidanand Jha, J.

26. I agree.

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