

Sheorati Devi Vs. State of Bihar

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Court : Patna

Decided On : Jul-20-2000

Judge : Narayan Roy and M.L. Visa, JJ.

Acts : Arms Act - Sections 27; Indian Penal Code (IPC) - Sections 109, 149, 302, 324, 337 and 436; Code of Criminal Procedure (CrPC) , 1974 - Sections 313, 464 and 464(2)

Appeal No. : Criminal Appeal Nos. 373 and 414 of 1992

Appellant : Sheorati Devi

Respondent : State of Bihar

Advocate for Def. : Lala Kailash, Addl. P.P.

Advocate for Pet/Ap. : B.P. Pandey, Sr. Adv.

Judgement :

Narayan Roy, J.

1. Both these appeals arise out of common judgment of conviction and sentence, and, therefore, they have been heard together and are being disposed off by common judgment.

2. Heard Mr. B.P. Pandey, learned senior counsel appearing on behalf of the appellants and Mr. Lala Kailash Bihari Prasad, Additional Public Prosecutor appearing on behalf of the State.

3. Appellant-Ramjee Tiwari of Criminal Appeal No. 414 of 1992 has been convicted under Section 302 of the Indian Penal Code and Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for life and for a term of five years, respectively, whereas appellant-Sheorati Devi of Criminal Appeal No. 373 of 1992 has been convicted under Sections 302/109 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life.

4. The prosecution case, briefly stated, is that on 8-3-1990 at about 4.30 p.m. the informant Ramashankar Tiwari (P.W. 7) and his younger brother Daya Shankar Tiwari (deceased) were near the hutment, adjacent north to their residential house and at that time, Ramjee Tiwari, the appellant, Balram Tiwari, Durbasa Tiwari came near them and on account of the quarrel, which had taken place on the same day at about 2.00 p.m., threatened them with dire consequences and, in the meantime, Madhu Kumari, daughter of the appellant-Ramjee Tiwari, Sheorati Devi, wife of Ramjee Tiwari and mother of Ramjee Tiwari started assaulting the female members of the family of the informant by pelting stones, etc., which was resisted by the informant and his brother deceased. This infuriated the appellant-Ramjee Tiwari and set the hutment of the informant on fire, and, in the meantime, Madhu Kumari Sheorati Devi went running to their house and came there with single barrel gun and country made pistol along with a belt of cartridges and the same was handed over to appellant-Ramjee Tiwari by Sheorati Devi, whereas Madhu Kumari handed over the country made pistol to Durbasa Tiwari and appellant-Ramjee Tiwari shot fire on Daya Shankar Tiwari, which hit him on the frontal portion of his head and, thus, he succumbed to the injuries. Durbasa Tiwari and Ramjee Tiwari had also opened indiscriminate firings, as a result of which Ram Dayal Tiwari had also sustained gun shot injury. The fardbeyan (Ext. 2) of the informant (P.W. 7) was recorded by P.W. 9 on 9-3-1990 at 17.45 hours. On the basis of the fardbeyan (Ext. 2), a formal First Information Report was drawn up and a case under Section 302 of the Indian Penal Code read with Section 27 of the Arms Act was instituted against the accused persons.

5. After due investigation, charge-sheet was submitted and the appellants along with other accused persons were sent up for trial, where these appellants were found guilty and other accused persons were acquitted. However, the defence of the appellants is plea of innocence and false implication.

6. The prosecution, in all, examined ten witnesses in support of its case. Out of them, P.W. 2 Markandey Tiwari is a formal witness and P.W. 6 Urmila Devi has been tendered. P.W. 8 Dr. Jai Shankar Mishra had held autopsy over the dead body. P.W. 9 is Assistant Sub-Inspector of Police, who recorded the fardbeyan of the informant. P.W. 10 Kameshwar Prasad Singh is the Investigating Officer of this case. P.W. 7 Ramashankar Tiwari is the informant and an eye-witness of the occurrence. P.W. 1 Baij Nath Tiwari is father of the informant (P.W. 7) and an eyewitness of the occurrence. P.W. 3 Fekan Tiwari is uncle of the informant (P.W. 7). P.W. 4 Balkeshwari Devi is the mother of the informant and P.W. 5 Madhuri Devi is the wife of the informant (P.W. 7).

7. P.W. 1 Baij Nath Tiwari in his evidence has stated that at the relevant time of the date of occurrence, he was at his hutment and Madhu Kumari, Sheorati Devi, Vidya and Deodhar came there and started pelting stones and bricks, which he protested and thereafter Baliram, Ramjee and Durbasa Tiwari came there after sometime and asked Sheorati Devi to bring gun and cartridges, and, accordingly, Sheorati Devi and Madhu Kumari brought gun and pistol, respectively, Sheorati Devi handed over the gun to appellant-Ramjee Tiwari, whereas pistol was handed over to Durbasa Tiwari. He has further stated that appellant-Ramjee Tiwari set the hutment of the informant on fire by sprinkling kerosene oil and thereafter Ramjee Tiwari opened fire at Daya Shankar, who was present there, as a result of which, Daya Shankar fell down on the Chaukhat of the house and subsequently, succumbed to the injuries.

8. P.W. 3 Fekan Tiwari has also deposed on the same line as deposed by P.W. 1. Likewise, P.Ws. 4 and 5, mother and wife of the informant for their evidence supported the prosecution version of the case and have stated that on the date of occurrence at about 8.00 a.m. paddy was spread on the floor towards north of the darwaj a over which quarrel took place in between the prosecution side and the

defence side, which, ultimately resulted in pelting of stones, etc. by the appellants side and there had been some altercation, and, ultimately, appellant-Sheorati Devi and Madhu Kumari brought out gun and pistol, respectively, on demand made by appellant-Ramjee Tiwari and appellant-Ramjee Tiwari opened fire, which hit Daya Shankar Tiwari on his head, as a result of which he succumbed to the injuries. These two witnesses have been cross-examined at length but they stood the test of cross-examination.

9. P.W. 7 Ramashankar Tiwari is the informant of this case. He has also supported the prosecution version of the case, as disclosed in the fardbeyan (Ext. 2). This witness has given clear picture of the occurrence, whereas stones were pelted upon the prosecution side by the accused persons and the hutment was set on fire and firings were opened by appellant-Ramjee Tiwari hitting Daya Shankar on his head. This witness has given first account of the occurrence that the occurrence started with pelting of stones, and, ultimately, it resulted into burning of the hutment and appellant-Ramjee Tiwari asked his wife Sheorati Devi to bring gun, which was brought by appellant-Sheorati Devi and handed over to appellant-Ramjee Tiwari, upon which appellant-Ramjee Tiwari immediately opened fire on them hitting Daya Shankar on his head, as a result of which he succumbed to the injuries.

10. Learned counsel appearing on behalf of the appellants has tried to show from the evidence of P.W. 7 that at the relevant time, he was not present at the place of occurrence and he was cutting grass. On reading of the evidence of P.W. 7 as a whole, it appears that prior to this occurrence, he had gone to cut grass, but on hearing hulla he came at his darwaja and in his presence appellant-Ramjee Tiwari opened fire from his gun hitting at the deceased. This witness, as it appears from his evidence, had seen the occurrence and he appears to be a reliable witness. P.W. 1, father of the informant, is one of the injured witnesses and he has fully supported the prosecution version of the case in his evidence.

11. P.W. 8, the doctor, who held autopsy over the dead body of the deceased, has found three ante-mortem injuries on the person of the deceased. Injury Nos. 1 and 2 are gun shot injuries, whereas injury No. 3 is injury on the knee of the deceased.

In the evidence of the doctor injuries 1 and 2 in ordinary course of nature were sufficient to cause death.

12. P.W. 9 has proved the fardbeyan (Ext.2) and inquest report (Ext. 6). P.W. 10, who is the Investigating Officer of the case, in his evidence has stated that on 8-3-1990 he was posted as officer-in-charge, Sonhan Police Station and on receiving information that somebody had been killed in village Ashachi, he recorded a sanha entry and proceeded for Bhabhua with police force and on reaching Bhabhua he came to know that the dead body after inquest made by P.W. 9 was sent for post-mortem examination in the hospital he recorded the statement of Ramashankar Tiwari, the informant (P.W. 7) and thereafter, went to the place of occurrence and inspected the same. This witness has stated in his evidence that he found sufficient blood at the darwaja and also on the Chaukhat of the house and trail marks of the blood were also found up to the chapakat. This witness has further stated that he had found the roof of the hutment burnt. This witness has further stated that he examined the injured Braj Nath Tiwari (P.W. 1), Ramashankar Tiwari, Ramsakal Bimal and prepared the injury report and sent them for medical examination. The prosecution version of the case as disclosed by P.Ws. 1, 3,4, 5 and 7 has fully been corroborated by the evidence of the Investigating Officer (P.W. 10).

13. We have scrutinised the evidence of the prosecution witnesses with all objectivity and it appears to us that the prosecution has proved the charges levelled against the appellants.

14. Learned counsel appearing on behalf of the appellants submitted that though appellant-Sheorati Devi has been convicted under Sections 302/109 of the Indian Penal Code, there is no separate charge for abetment of offence under Section 109 of the Indian Penal Code, against her, and, therefore, her conviction and sentence under Sections 302/109 of the Indian Penal Code is not sustainable in law. Learned counsel further submitted that in this case, injured witnesses, namely, Ram Dayal Tiwari and Ram Sakal Bind, have not been examined by the prosecution and by not examining them the prosecution has suppressed material facts. Coming to this submission of learned counsel appearing on behalf of the

appellants, it appears that these two injured have not been examined and the learned trial Court has, therefore, acquitted the other accused persons for an offence under Sections 302/149 and 337 of the Indian Penal Code and at the same time held appellant-Ramjee Tiwari not guilty for the offence under Sections 324 and 436 of the Indian Penal Code.

15. So far question of framing of charge under Sections 302/109 of the Indian Penal Code against Sheorati Devi is concerned, it appears that no distinct charge has been framed and appellant-Sheorati Devi has been charged along with other accused persons, who have been acquitted under Sections 302/149 of the Indian Penal Code. From the statement of the appellant-Sheorati Devi, under Section 313 of the Code of Criminal Procedure (hereinafter to be referred to as 'Code'), it also does not appear that any question was put to her for the charge of abetment under Section 109 of the Indian Penal Code. She was only asked to the effect that she along with other accused persons jointly came at the place of occurrence and committed murder of the deceased in furtherance of common object. The charge under Section 302/109 of the Indian Penal Code thus could not be proved by the prosecution. Section 464 of the Code provides what is to be done in cases where a charge is not framed or there is any error, omission or irregularity in framing of the charge. From the terms of this section it can be stated that a finding, sentence or order could be set aside only in those cases, where the facts are such that no valid charge could be preferred against the accused in respect of the facts proved. Secondly, if the facts are such that a charge could be framed and yet it is not framed, but no failure of justice has, in fact, been occasioned thereby, the finding, sentence or order of the Court of competent jurisdiction is not to be set aside on that ground. Thirdly, if there is failure of justice occasioned by not framing of the charge or in case of an error, omission or irregularity in the charge, retrial of the case is to be directed under Sub-section (2). Non-framing of the charge would not vitiate the conviction if no prejudice is caused thereby to the accused.

16. It appears that no question was put to appellant-Sheorati Devi under Section 313 of the Code about the charge of abetment. Since it was not done in my opinion, prejudice has been caused to the appellant, as she could not defend herself properly for this charge of abetment and therefore, the trial of this appellant

for an offence under Section 302/109 of the Indian Penal Code vitiated. In this connection, reference may be made to the case of Madan Raj Bhandari v. State of Rajasthan AIR 1970 SC 436 : (1970 Cri LJ 519).

17. For the reasons and discussions aforementioned, Criminal Appeal No. 373 of 1992 is allowed and the judgment and order of conviction and sentence passed against appellant-Sheorati Devi is hereby set aside and she is acquitted of the charge levelled against her. This appellant is on bail, therefore, she is discharged from the liabilities of her bail bond.

So far appellant-Ramjee Tiwari of Criminal Appeal No. 414 of 1992 is concerned, I find sufficient evidence to sustain the conviction and sentence of this appellant. This appeal is, therefore, dismissed.

M.L. Visa, J.

18. I agree.

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