

Upendra Prasad and ors. Vs. State of Bihar

Upendra Prasad and ors. Vs. State of Bihar

SooperKanoon Citation : sooperkanoon.com/131216

Court : Patna

Decided On : Feb-23-1998

Judge : R.N. Prasad and P.K. Sarkar, JJ.

Appeal No. : Criminal Appeal No. 463 of 1986

Appellant : Upendra Prasad and ors.

Respondent : State of Bihar

Disposition : Appeal Allowed

Judgement :

P.K. Sarkar, J.

1. This Criminal Appeal arises out of judgment and order dated the 10th September, 1986 passed by Sri Hari Krishna Prasad, 3rd Additional Sessions Judge, Nawadah in Sessions Trial No. 27/613 of 1986/84, whereby he found appellant Nos. 1 and 2, namely, Upendra Prasad and Kailash Prasad guilty under Section 302/34 of the Indian Penal Code (for short 'the Code') and sentenced each of them to undergo R.I for life. The learned Additional Sessions Judge also found appellant No. 3, Paras Prasad guilty under Sections 307 of the Code and 27-A of the Arms Act and sentenced him to undergo R.I. for five years and three years respectively, and also ordered that the aforesaid sentences will run concurrently. He also found the appellant No. 2 guilty under Section 147 of the Code and other

two appellants, namely, appellant Nos. 1 and 3 guilty under Section 148 of the Code, but no separate sentence was passed against them under the aforesaid Section. However, one of the accused, namely, Nilkanth Prasad, who was charged under Sections 302, 149, 379 and 426 of the Code and was also facing trial alongwith these three appellants, was found not guilty of the charges framed against him and so he was acquitted.

2. The prosecution case as appears from the Fardbeyan and other evidence on record in short is that on 2.3.1975 the informant Hari Nandan Prasad (P.W 4) alongwith other male members of his family had gone out of the village in connection with certain works and when in the evening at 5 P. M. they returned to their house, they heard from Gulabi Devi (PW.8) wife of the informant (PW 4) that the accused persons along with a large number of labourers had forcibly harvested their Tisi crops. While the aforesaid Gulabi Devi (PW 8) was narrating the earlier occurrence the accused persons armed with various weapons were seen coming along with the harvested Tisi crops bundles on the head of the labourers. The informant Hart Nandan Prasad thereafter went towards the labourers of the accused persons and asked them to keep the bundles of the Tisi crops in his Khalian and this led to altercation. In the meantime mother of the informant Jamuni Devi and his wife Gulabi Devi also arrived there. It further appears that thereafter appellant No. 3 who was armed with a gun, fired a gun shot towards the informant, but it hit Gulabi Devi (PW 8) on her forehead and nose. Thereafter appellant No. 1 gave a saif blow on the informant (PW 4), which however hit Jamuni Devi and appellant No. 2 also assaulted her by Lathi, as a result Jamuni Devi received injury and she died on the spot. The informant and his other family members went inside their house and bolted the doors. Then the accused persons went up on the tiled roof of the house from where the appellant No. 3 fired a shot from his gun and other accused persons broke the tiles of the house of the informant. When the informant and his other family members raised alarm, Phoolchand alias Phula Prasad Yadav (PW. 1), Ambika alias Ambku Prasad (PW 2), Parmeshwar Mahto (PW. 3) and Parmeshwar Mistiri (PW. 7) came there and the accused persons ran away.

3. In the next morning the informant Harinandan Prasad (PW. 4) accompanied by his wife Gulabi Devi (PW. 8) and others went to Sardulla Police Station along with the dead body of his mother Jamuni Devi, where the statement of the informant Harinandan Prasad (PW. 4) was recorded at the Police Station and on the basis of the aforesaid statements a formal F.I.R. was drawn up. Thereafter Sri Sheopujan Singh A.S.I. (PW. 10) prepared an inquest report of the dead body of Jamuni Devi and sent the same to Nawadah Hospital for post-mortem examination, where autopsy of the dead body was held by Dr. Ram Padarath Singh (PW. 9) who prepared post-mortem report after such examination. A requisition was also issued for examination of Gulabi Devi (PW. 8), who was examined by Dr. Nagendra Prasad (PW. 11) and an injury report was issued for the same. The police also visited the place of occurrence for investigation and recovered some blood stained earth from the place of occurrence, which was later sent to the Chemical Examiner for examination and a report was also received from there, marked as Ext. 5. Subsequently Sri Shiv Poojan Singh, A.S.I. (PW. 10) handed over charge to Sri Sitaram Singh, who ultimately submitted charge-sheet in the case against four accused persons, who were put on trial, out of whom three accused persons were convicted and sentenced in the manner as indicated above; whereas one accused person, namely, Nilkanth Prasad was acquitted from the charges framed against him.

4. As it appears from the statements of the accused persons under Section 313 Cr.P.C. and other suggestions given to the prosecution witnesses, the defence is complete denial of the occurrence and the accused appellants have contended that they have been falsely implicated in this case.

5. The prosecution in all has examined 11 witnesses in this case, out of whom PW. 4 Harinandan Prasad is the informant of this case. He has claimed himself as an eye-witness of the occurrence. P.W. 5 Krishna Ballabh Prasad is the son of the informant (P.W. 4), who has also claimed that he had seen the occurrence. PW. 6 Shiv Nandan Prasad is brother of the informant and PW Gulabi Devi is the wife of the informant and both these witnesses have also seen the occurrence. PW. 8 has seen the appellants during the occurrence. Other three witnesses, namely, Phoolchand @ Phula Prasad Yadav (PW. 1), Ambika @ Ambku Prasad (PW. 2)

and Parmeshwar Mahto (PW. 3) who had said to have arrived at the place of occurrence on the alarm raised by the informant and his family members in their earlier statement before the police did not support the prosecution case and they were declared hostile by the prosecution. Other persons also reached the place of occurrence on the alarm. P.W. 11 is Dr. Nagendra Prasad, but he has been tendered by the prosecution.

6. The informant Harinandan Prasad (PW. 4), PW. 5, the son of the informant and P.W. 6 brother of the informant have all stated in their evidence that after they returned to their house, Gulabi Devi (P.W. 8) wife of the informant was narrating the earlier occurrence in which the accused persons with the help of their labourers had harvested the Tisi crops from the field of the informant. P.W. 8 also corroborated the fact that when she was narrating the facts of removal of Tisi crops by the appellants through their labourers to her husband and son etc. and were discussing the aforesaid fact between themselves, the accused appellants along with 30 to 35 labourers reached near their house along with the bundles of Tisi crops being carried by the labourers.

The informant asked the labourers to keep the bundles of Tisi crops in his khalihan. This led to an altercation and the appellant No. 3 fired gun shot which hit Gulabi Devi (PW. 8) and the appellant No. 1 who was armed with Saif, wanted to assault the informant with his saif, but the same hit Jamuni Devi mother of the informant. The appellant No. 2 who was armed with Lathi, gave a Lathi blow on Jamuni Devi, as a result of which Jamuni Devi died on the spot. Due to fear the informant and his family members went inside their house and bolted the doors from inside. The appellants thereafter tried to enter inside the house and broke the tiles of the roof. They have also stated that in the next morning they went to the police station. P.W. 4 has further stated that his statements were recorded in the police station and read over to him and finding the same to be correct, he put his signature on the F.I.R.

7. PW. 8, Gulabi Devi has stated that she was treated and examined in the hospital. Thus all the aforesaid four witnesses have fully corroborated the statements of each other and also the prosecution.

8. The learned Counsel for the appellants, however, submitted that the aforesaid four witnesses who supported the prosecution case, are all closely related, being wife, brother and son of the informant, and three independent witnesses, namely, PW. 1, PW. 2, and PW. 3, who reached the place of occurrence on hearing alarm, did not corroborate the prosecution case. The other independent witness is PW. 7, who also reached the place of occurrence on hearing alarm, has not been tendered by the prosecution. Thus there is no independent witness to support the prosecution case. It is further submitted on behalf of the appellants that it is true that the conviction can be found even on the evidence of related witnesses, but where independent witnesses were present and have also been examined but did not support the prosecution case and were turned hostile, the evidence of the related witnesses loses much of their importance, and some corroboration in such cases appears to be necessary. It is true that only because some of the witnesses are closely related their evidence cannot be thrown out. The established principle is that their evidence should be examined with care and caution. But it is equally true that if independent witnesses were available and examined and if they did not support the prosecution story, no conviction can be based only on the basis of the evidence of such related witnesses. The submission of the learned Counsel for the appellants, to my mind, therefore, appears to be quite convincing.

9. P.W. 9 is Dr. Ram Padarath Singh, who has stated that on 4.3.1975 when he was posted in Nawadah Hospital, at about 4 pm he held postmortem examination on the dead body of Jamuni Devi and found the following ante-mortem injuries:

(a) Lacerated injury $1\frac{1}{3}$ to $1\frac{1}{4}$ skin deep in front of right knee.

(b) Lacerated wound $1\frac{1}{2}$ to $1'$ on the right side of chest. There was fracture of 3rd, 4th and 5th rib of the right side of the chest.

(c) Echymosis on the right eye-brow and face.

PW. 9 has further stated that on dis-section he found that the right lung had a lacerated injury of the size of $1\frac{1}{2}$ to $1'$ with six ounces of blood in the right thoracic cavity. In the opinion of the doctor (PW. 9) the death was caused by shock and hemorrhage which was cumulative effect of the injuries in the lung and liver. PW. 9

has further stated that the weapon used was hard and blunt substance like Lathi. He has proved Ext. 2, i.e. post-mortem examination report. In his cross-examination P.W. 9 has further stated that no incised injury was found on the person of the deceased and, therefore, no injury was caused by any sharp cutting instrument. He has further stated that Saif is also a sharp cutting weapon. Thus in the opinion of the doctor (P.W. 9) the injury was not caused by Saif. On the other hand P.Ws. 4, 5, 6 and 8 have mainly stressed that the accused-appellants tried to assault the informant with Saif which hit Jamuni Devi and she fell down and died. Thus the medical evidence is contrary to the evidence of the prosecution witnesses.

10. Similarly the informant (PW. 4) has stated that the appellant No. 3 Paras Prasad fired from his gun which hit Gulabi Devi (P.W. 8) and the appellant No. 1 Upendra Prasad also assaulted his wife with Lathi. In his cross-examination PW. 4 has also stated that appellant No. 3 fired at his wife from a distance of 4-5 Bans.

11. PW. 5, Krishna Ballabh Prasad, son of the informant in his cross-examination has also stated that the gun shot was made from a distance of 20-25 yards. Thus from the evidence of the aforesaid witnesses it is clear that the deceased was assaulted with Saif but no such injury was found by the doctor (PW. 9).

12. PW. 11 is Dr. Nagendra Prasad, who examined Gulabi Devi (PW. 8) on 3.3.1975 at 10 am. and found the following injuries on her person:

(i) One small round lacerated wound on the right side of the forehead. There was slight swelling around the wound. The wound was slight deep.

(ii) One small round lacerated wound on the nose. There was swelling around the wound. There was slight charring around the wound.

The doctor PW. 11 has further stated that both the injuries were caused by firearm. He has proved Ext. 6, i.e. injury report prepared by him. In his cross-examination PW. 11 has stated that no foreign element was found inside the injury. He has further stated that the opinion expressed by him that the injury was caused by fire-arm, but he could not give his definite opinion in this regard. He has

further stated that charring can be caused if the fire is used from a distance of 4 ft. to 6 ft. This statement when put to ocular evidence appears to be contradictory as such minor injury can also be caused from a closer distance as alleged by the informant and others.

13. The learned Counsel for the appellants, therefore, submits that the medical evidence is completely contradictory/contrary to the ocular evidence, both regarding the weapon used in assault of the deceased and also the firing made, which hit Gulabi Devi (PW. 8). It is further submitted that the doctor also found no object like pallet inside the wound.

14. I have carefully gone through the submissions of the learned counsel. It appears that there are apparent contradictions in the ocular and medical evidence. Moreover there are contradictions in the ocular evidence and that of the independent witnesses who have not supported the evidence of the related witnesses and in this view of the matter complete reliance cannot be placed on the evidence of the four witnesses, who are closely related to each other.

15. PW. 10, Shiv Poojan Singh is the Investigating Officer in this case, who has proved Ext. 1, i.e. F.I.R. and also the signature of the informant. He has also stated that he prepared the inquest report of the dead body of Jamuni Devi. PW. 10 has also proved Ext. 3, i.e. inquest report and Ext. 4, i.e. requisition for examination of the injured Gulabi Devi (P.W. 8). He has further stated that he sent the dead body of Jamuni Devi to Nawadah Hospital for post-mortem examination. PW. 10 also stated that he visited the place of occurrence and found some blood there and he seized the aforesaid blood stained earth in presence of the witnesses and prepared a seizure list and he has proved Ext. 1, i.e. the aforesaid blood stained earth. He has further stated that in course of investigation he found some tiles of the roof of the house of the informant broken. He has also stated that on 24.2.1978 he handed over the charge of investigation to the Officer Incharge Sri Sitaram Singh, who submitted charge-sheet in this case. The attention of this witness (PW. 10) was also drawn towards the earlier statements of PW. & 1, 2 and 3 (who have been declared hostile) recorded by him which he has corroborated. In his cross-examination PW. 10 has stated that the informant (PW. 4) did not show

him the bundles of the Tisi crops nor he found any bundle scattered in the house of the informant. In course of the investigation he also did not see the field where Tisi was grown.

16. The learned Counsel for the appellants, therefore, submits that from the aforesaid statements of the I.O. it appears that he did not visit the field where Tisi was grown nor he found any Tisi crops harvested which is the genesis of the occurrence. It is further submitted that on the same set of evidence the lower Court has acquitted one co-accused Nilkanth Prasad who also faced trial along with these appellants. The learned Counsel for the appellants has submitted that admittedly land disputes are going on between the parties who are also Gotias. He has further submitted that there was delay in filing of the F.I.R. The occurrence happened on 2.3.1975 at 5 pm but the case was reported on 3.3.1975 at 7 a.m. The distance of the Police Station is only 7 miles from the p.o. village.

17. The learned Counsel for the State tried to justify the delay, stating that due to fear the informant could not take the dead body to the Police Station nor could file the F.I.R. However, the explanation does not inspire confidence and the delay does not appear to have been properly explained.

18. From the facts and the evidence stated above, it appears that Jamuni Devi, mother of the informant died on the day of the occurrence. The death also appears to be homicide. However, the prosecution has not been able to establish the fact by cogent and reliable evidence that the accused persons committed murder of Jamuni Devi and also injured Gulabi Devi (P.W. 8) in the manner as alleged by the prosecution. There is damaging discrepancy in the evidence of P.Ws. 4, 5, 6 and 8 coupled with the fact that the independent witnesses i.e. P.Ws. 1, 2 and 3 did not support the occurrence and one of the independent witnesses, i.e. PW. 7 was not tendered. It, therefore, appears that though the independent witnesses were available and examined, they did not support the alleged occurrence. Thus not only the evidence of the witnesses who corroborate the occurrence are inconsistent but also no conviction can be based on the evidence of the relative witnesses when independent witnesses were available and they did not support the prosecution story. Thus a reasonable suspicion arises in the entire case, and I

feel that the accused-appellants deserve benefit of doubt.

19. Accordingly, I am unable to agree with the findings of the learned Court below and find that the impugned order of conviction and sentence of the appellants cannot be sustained. This criminal appeal is, therefore, allowed. All these three appellants are acquitted from their respective charges. The impugned judgment and order of conviction and sentence passed against these appellants are hereby set aside. All the appellants are on bail. Hence they are discharged from the liability of their bail bonds.

R.N. Prasad, J.

I agree.

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