

Paglu Yadav Vs. State of Bihar

Paglu Yadav Vs. State of Bihar

SooperKanoon Citation : sooperkanoon.com/133344

Court : Patna

Decided On : Aug-24-2006

Judge : Chandramauli Kumar Prasad and Rekha Kumari, JJ.

Appellant : Paglu Yadav

Respondent : State of Bihar

Disposition : Appeal dismissed

Judgement :

1. Sole appellant was put on trial for offence under Section 302 of the Indian Penal Code and Section 27 of the Arms Act. Additional Sessions; Judge IVth, Begusarai by judgment dated 25th of January, 2002 passed in Sessions Trial No. 365 of 2000 held him guilty on both the counts and adjourned the case for hearing on the question of sentence to 28th of January, 2,002. On the said day, the learned Judge inflicted punishment of rigorous imprisonment for life under Section 302 of the Indian Penal Code and rigorous imprisonment for three years for offence under Section 27 of the Arms Act. Sentences were directed to run concurrently.

2. Aggrieved by the same, appellant has preferred this appeal.

3. Prosecution started on the basis of a fard beyan given by P.W.4 Alodhani Devi, before the Sub-Inspector of Sahebpur Kamal police station on 21-3-1998 at 12.30 p.m. According to the fard beyan, on 21-3-1998 at about 8.30 a.m. the informant was mixing maize with Khairi in the Verandah of her hut to feed the buffalo.

According to her, her eldest son, deceased Bambam Yadav, was being abused, by the appellant-Paglu Yadav, who happens to be the son of the eldest brother of her husband. Bambam Yadav protested to the abuse hurled by the appellant, at which the appellant left the place threatening to teach him a lesson, returned from his house with a pistol and fired at Bambam Yadav causing injury on his chest. Sustaining the injuries Bambam Yadav fell down in the courtyard and died. Appellant fled away towards the east along with the pistol from the place of occurrence.

4. According to the informant, the occurrence had taken place as the quarrel had taken place between the wife of the appellant and the deceased. The informant in the fard beyan had stated that her daughter P.W.2 Akali Devi, daughter-in-law i.e. the wife of the deceased P.W. 1 -Sushila Devi and other persons collected had seen the occurrence. In the fard beyan she had also stated that her husband is seriously ill.

5. On the basis of the aforesaid statement, Sahebpur Kamal P.S. Case No. 19 of . 1998 was registered under Section 302 of the Indian Penal Code, Police after investigation submitted charge-sheet and the appellant was ultimately committed to the Court of Session to face trial. Charges under Section 302 of the Indian Penal Code and Section 27 of the Arms Act were framed against him. He denied the charges and claimed to be tried.

6. Prosecution in support of its case had altogether examined six witnesses. Out of which, P.W.4 Alodhani Devi is the mother of the deceased and informant of the case. P.W.1 Sushila Devi is the wife of the deceased, whereas P.W.2 Akali Devi is the sister of the deceased and all of them claim to be the eye-witness to the occurrence. P.W.3 Bhushan Yadav is a neighbour and he also claims to be the eye-witness to the occurrence. P.W. 5 Dr. Rakesh Kumar Sinha is the Assistant Civil Surgeon, who had conducted autopsy on dead body of the deceased. P.W.6 Birendra Kumar Singh is the Investigating Officer of the case.

7. P.W.1 Sushila Devi in her evidence had stated that while she was in her house, appellant as also his wife was hurling abuses. She had also stated that her sister-in-law was cooking food and the mother-in-law was mixing maize with Khairi and

in the meanwhile, her husband deceased Bambam Yadav came. She had specifically stated that her husband was shot dead by the appellant, Paglu Yadav, In her cross-examination she had stated that while she. was in the kitchen (Bhansa ghar) she heard one sound of firing and then she along with her sister-in-law came out. She had stated that she saw her husband falling down and becoming unconscious.

8. P.W.2 Akali Devi in her deposition had stated that she had seen the appellant firing at the deceased by pistol. In her cross-examination she had stated that at the time of occurrence her mother and sister-in-law (deceased's wife) was inside the house. She had further stated that she was cooking food inside the house and P.W.1 her sister-in-law Sushila Devi was sitting there. She had also stated that when she came out she shouted and saw the deceased fallen on the ground.

9. P.W.3 Bhushan Yadav is a neighbour and had stated in his evidence that he was milking cow at his Darwaja and heard quarrel between the appellant and the deceased. Thereafter according to this witness, appellant shot dead the deceased, According to this witness when he reached near the deceased he found his mother and her sister lying over his dead body. In his cross-examination he had stated that in between his house and the land and the place of occurrence, only a road exists. He had stated that west to the place where the dead body of the deceased was lying situated his house. According to his evidence, the house of the deceased was east facing whereas that of the appellant was south facing. In paragraphs 34 and 35 of the cross-examination he had stated that when he reached the place of occurrence he found Bambam dead and had also not seen any empty cartridge at the place of occurrence.

10. P.W.4 Alodhani Devi is the mother of the deceased and the informant of the case. She had stated in her evidence that she was mixing maize with Khairi for feeding the buffalo and at that time her son deceased Bambam came. She had stated that altercation was going on between the wife of the deceased and the appellant and the deceased protested to the abuses hurled by the appellant. At this appellant came out and threatened to teach him the lesson. According to this witness, thereafter the appellant fired on the deceased and sustaining the injuries

he fell down. In paragraph 20 of her cross-examination she has stated that when she heard the sound of firing she was outside the house in the courtyard and seen the occurrence. She had described the deceased as his son and that of the appellant also as his son. In paragraph 28 of the cross-examination she had stated that courtyard is surrounded by Tatti. She had explained that the area outside the house is called the courtyard.

11. In paragraph 38 of the cross-examination this witness had stated that the statement of her daughter-in-law Sushila Devi was taken at the first instance by the police and she had also given her thumb impression. In paragraph 4,6 of the cross-examination she had stated that west to the court-yard is her room and north to the courtyard is the room of appellant. She had stated that east to the courtyard is the road. She had denied the suggestion that quarrel had taken place between the deceased and somebody-else and in order to grab the property, at the instance of her husband she has lodged the false case.

12. P.W, 3 Dr. Rakesh Kumar Sinha, at the relevant time was posted as the Assistant Civil Surgeon at Sadar Hospital, Begusarai, According to his evidence on 21st of March, 1998 at 4.30 p.m. he performed the postmortem examination on the dead body of the deceased Bambam Yadav and found following injuries on his person:

(i) Lacerated circular wound 1/2' in diameter x thoracic cavity deep with margins of the wound inverted and charred over the left chest 2' below the left clavicle close to its lateral end, that is the wound of entry.

(ii) Lacerated wound 1' x 1/2' thoracic cavity deep 2' below the inferior angle of the right scapulla. margins of the wound everted, that is the wound of exit.

According to this doctor, on probing injurie Nos. (i) and (ii) were found communicating to each other.

13. In the opinion of the doctor, death had taken place due to shock and haemorrhage as a result of the injuries aforesaid. The doctor further opined that injuries were caused by some fire arm, such as pistol and were sufficient in

ordinary course of nature to cause death. In the opinion of the doctor, the death had taken place within 24 hours of the postmortem examination. In paragraph 14 of the cross-examination he has stated that rigor mortis remains present on the dead body from 24 hours to 36 hours.

14. P.W.6 Birendra Kumar Singh at the relevant time was posted as Sub-Inspector of Sahebpur Kamal police station. In his deposition he had stated that at about 11 a.m. he had heard rumour that at village Pratarpur some unpleasant incident had taken place. According to this witness, he entered the said information in the Station diary and proceeded towards the village along with other police personnel. According to him when he reached village Pratarpur at 12.30 p.m. he recorded the statement (Ext-3) of the informant Alodhani Devi. He had also prepared the Inquest report Ext-4). In paragraph 13 of his examination-in-chief he had described the place of occurrence. He had stated that north to the courtyard the house of the appellant is situated and in front thereof the dead body was found in the courtyard. He had found blood stains in the courtyard. In his cross-examination he had stated that he had not extracted the blood stained earth as its quantity was very small. He had also stated that no other material was found at the place of occurrence worth seizure,

15. The learned Judge placing reliance on the evidence of the eye-witnesses, the doctor and the Investigating Officer, held the appellant guilty and sentenced him as above,

16. Mr. Ajay Kumar Ambastha, appearing on behalf of the appellant submits that the claim made by P.W. 1 Sushila Devi, P.W.2 Akali Devi, P.W.3 Bhushan Das and P.W.4 Alodhani Devi to be the eye-witnesses to the occurrence is absolutely false and, as such their evidence is fit to be discarded. In this connection Mr. Ambastha has drawn our attention to the evidence of P.W. 1 Sushila Devi in her cross-examination that she was in the kitchen (Bhansa) along with her sister-in-law P.W.2 Akali Devi and heard the sound of firing and then she and her sister-in-law came out and found the deceased fallen on the ground unconscious. Similarly he has drawn our attention to the evidence of P.W.2 Akali Devi in paragraph 11 of her cross-examination wherein she has stated that she was inside the house along

with her mother P.W.4 and sister-in-law P.W.1. Our attention has also been drawn to her statement in paragraph 13 of her cross-examination that she was cooking food inside the house and P.W. 1 Sushila Devi was sitting there. Our attention has also been drawn to her statement in paragraph 15 in which she has stated that she had seen the deceased fallen on the ground. From the aforesaid, Mr. Ambastha submits that the claim made by P.W. 1, 2 and 4 that they are eye-witnesses to the occurrence is not tenable.

17. Mr. Lala Kailash Bihari Prasad, Additional Public Prosecutor, appearing on behalf of the State, however, submits that the kitchen (Bhansa) where the witnesses are alleged to be sitting is not far of from the courtyard. He points out that the place of occurrence is the courtyard surrounded by huts belonging to the appellant as also the deceased. He highlights that the deceased as also the appellant possessed huts adjoining the courtyard and, as such when the witnesses say that they were inside the kitchen (Bhansa) it cannot be said that they have not seen the occurrence.

18. Having appreciated the rival submission. We do not find any substance In the submission of Mr. Ambastha. It has come in the evidence of the witnesses that' the courtyard and the rooms are adjoining to each other and in fact the rooms were nothing but huts. The Bhanaa (kitchen) was not like a regular room in a house. Not only this, P.W. 1 Sushila Devi is the wife of the deceased whereas P.W.2 Akall Devi is his sister, P.W.4 Alodhani Devi is the mother of the deceased and they are natural witnesses to the occurrence, The pain of P.W.4 Alodhani Devi in her deposition is writ large while stating the truth when she had stated that the deceased was also her son and so is the appellant. It is unlikely that these witnesses, who are so closely related to the deceased, will spare the real culprit and rope the appellant falsely.

19. It is relevant here to state that the occurrence had taken place at 8.30 a.m. on 21-3-1998 and the fard beyan was recorded at 12.30 the same day and the formal first information report was recorded at 2.30 p.m. on the same day. This prompt reporting of first information report gives credence to the case of the prosecution.

20. Mr. Ambastha, then submits that the occurrence had not taken place in the court-yard as suggested by the prosecution. In this connection he has drawn our attention to the evidence of P.W.6 Birendra Kumar Sinha, the Investigating Officer of the case and submits that only small quantity of blood was found at the place of occurrence. Mr. Prasad, however, submits that there is nothing on record to show that the injuries sustained by the deceased had led to profuse bleeding and, as such it was necessary to have large quantity of blood at the place of occurrence.

21. Having considered the rival submission, we do not find any substance in this submission of Mr. Ambastha also. The Investigating Officer had found blood stains at the place of occurrence and in answer to the question as to why he had not extract the blood stained earth, he has explained that its quantity was less. The Medical Officer who had conducted the postmortem examination had not stated that the injuries caused on the deceased had led to profuse bleeding. In our opinion in the face of evidence on record, absence of huge quantity of blood at the place of occurrence itself shall not discredit the case of the prosecution.

22. Mr. Ambastha, then submits that according to the prosecution the deceased was shot dead but no cartridge was recovered from the place of occurrence. In this connection our attention has been drawn to the evidence of the Investigating Officer (P.W.6) wherein he has admitted that he had not found any article worth seizure. Our attention has also been drawn to the evidence of P.W.3 Bhushan Yadav who had also stated that no empty cartridge was found at the place of occurrence. As stated earlier P.W.1, P.W.2 and P.W.4 are natural witnesses and we have found their evidence to be reliable. P.W.3 Bhushan Yadav is a neighbour and had also supported the case of prosecution. In the face of aforesaid, mere non recovery of empty cartridge from the place of occurrence shall itself not create any doubt in the veracity of the prosecution case.

23. Mr. Ambastha, submits that the prosecution has not brought on record the earliest version of the occurrence. In this connection, he has drawn our attention to the evidence of the informant P.W.4 Alodhani Devi in paragraph 38 of the cross-examination, wherein she had stated that the police had recorded the statement of her daughter-in-law at the first instance. He points out that this Information, in fact,

is the first information report to the occurrence and the same has not been brought on record. P.W.4 Alodhani Devi is a rustic villager. To us what she meant to say was that after she gave the fard beyan, the statement of her daughter-in-law was taken at the first instance in course of the investigation. If we take the evidence of this witness in the manner we have found, her statement cannot be said to be the first Information report. Further no such question was put to the Investigating Officer of the case. In that view of the matter, we are of the opinion that this in no way discredits the case of the prosecution.

24. Mr. Ambastha, lastly submits that the occurrence had taken place without any premeditation and in spur of moment and, as such offence under Section 302 of the Indian Penal Code is made out. He submits that the allegations utmost constitute offence under Section 304, Part II of the Indian Penal Code. He points out that the appellant had already remained in jail for more than seven years and that will meet the ends of justice. In support of his submission, he has placed reliance on a Division Bench judgment of this Court in the case of Lal Babu Singh v. The State of Bihar 2006 (1) PLJR 81 and our attention has been given to the following passage from the said judgment:

At best it can be said that they wanted to intimidate the deceased on account of the incident of the previous day. Then, though the evidence of the doctor shows that knife blow was given to the deceased with considerable force and the injury sustained was sufficient in ordinary course to cause death, in view of the circumstances mentioned above, it is difficult to hold that the appellant Radha Singh actually intended to inflict that kind of injury which was found by the doctor attracting clause 'thirdly' of Section 300 of the Indian Penal Code. Hence, in my opinion appellant Radha Singh should be held guilty under Section 304, Part II of the Indian Penal Code. As regards the other appellants, though they had gone with appellant Radha Singh armed with lathi, as they did not use their lathis and no other overt act is proved against them it appears that they did not share the common intention with appellant Radha Singh in causing the culpable homicide. They, therefore, cannot be held guilty either for the offence under Section 302 or for the offence under Section 304 of the Indian Penal Code with the aid of Section 34 of the Indian Penal Code.

25. We do not find any substance in this submission of Mr. Ambastha also and the decision relied on is clearly distinguishable. Here is case, in which the appellant and his wife were quarrelling and the deceased in no way had played any role in that. In fact he asked the appellant not to hurl abuses and on that account he lost his life.

26. Now reverting to the authority of this Court in the case of Lal Babu Singh (supra) the weapon used in the said case was knife and in the background of the facts of the said case, this Court held that the accused of the said case did not had intention to cause death. Here in the present case, the intention of the appellant is writ large from the fact that he leaves the place, comes with fire arm and thereafter fired at the deceased. This conduct of the appellant clearly shows that he intended to cause death of the deceased and, therefore, the offence clearly comes within the mischief of Section 302 of the Indian Penal Code.

27. P.W. 1 Sushila Devi, P.W.2 Akali Devi and P.W.4 Alodhani Devi have consistently stated in their evidence that it was the appellant, who shot dead the deceased. P.W.3 Bhushan Yadav is a neighbour and had arrived at the place of occurrence and has also seen the appellant causing fire arm to the deceased. P.W.5 Dr. Rakesh Kumar Sindha, who had conducted the postmortem examination, had found wound of entry as also of exit and had clearly stated that the injuries caused on the deceased were by fire arm. As observed earlier, P.W.1, P.W.2 and P.W.4 are natural witnesses to the occurrence and their evidence has been corroborated by the doctor P.W.5 as also another eye-witness P.W.3 Bhushan Yadav. Occurrence had taken place at 8.30 a.m. and the fard beyan was given at 12.30. The formal first information report was recorded at 2.30 p.m. and was forwarded to the learned Magistrate, the very next day. This quick reporting of the incident also lends support to the case of the prosecution.

28. From what we found above, we are of the opinion that the prosecution has been able to prove its case beyond all reasonable doubts and the trial Court has rightly convicted and sentenced the appellant as above.

29. We do not find any merit in the appeal and it is dismissed accordingly.

