

Sugendra Sai, Vs. the State of Bihar (Now Jharkhand)

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Court : Jharkhand

Decided On : Nov-22-2006

Reported in : [2007(3)JCR108(Jhr)]

Judge : Amareshwar Sahay and; D.P. Singh, JJ.

Appellant : Sugendra Sai, ;ram Nandan Sai @ Ram Sai and Sheo Nandan Sai @ Sibu Sai

Respondent : The State of Bihar (Now Jharkhand)

Disposition : Appeal dismissed

Judgement :

Amareshwar Sahay, J.

1. Both the appeals arise out of the same impugned judgment dated 04/09/2000 passed by the Additional Judicial Commissioner, Lohardaga in Sessions Trial Nos. 390 of 1997/ 37 of 1997 and, therefore, they were taken up and heard together and are being disposed of by this common judgment.

2. The appellant Sugendra Sai, appellant in Cr. Appeal No. 404/2000 and the appellants Ram Nandan Sai @ Ram Sai and Sheo Nandan Sai @ Sibu Sai, appellants in Cr. Appeal No. 407/2000, were convicted under Sections 302/34 IPC and also under Section 27 of the Arms Act and they were sentenced to undergo

R.I. for life for the offence under Sections 302/34 IPC and were further sentenced to undergo R.I. for three years for the offence under Section 27 of the Arms Act. However, both the sentences were directed to run concurrently. Though the appellants were further charged for the offence under Sections 3, 4 and 5 of the Explosive Substance Act but they were acquitted from the said charges.

3. The case of the prosecution in short is that one Bahura Sai lodged a First Information Report by giving his fardbeyan on 22/12/1996 wherein he alleged that he alongwith his nephew Dhurwa Sai (the deceased) was going to Bhandra on bicycles. When they reached near the Railway Signal of Nagjuwa Station, these three appellants and one Sabuj Ansari came there and surrounded them and, thereafter, the appellant Ram Nandan Sai @ Ram Sai fired from his pistol upon Dhurwa Sai. Dhurwa Sai started running away from there but all the four accused persons chased him. In course of chasing, they were also hurling bombs and were firing from their pistols. Dhurwa Sai though received bomb injuries but he continued to run away but all the four accused persons caught hold of him and, thereafter, they fired shot on him as a result of which Dhurwa Sai died at the spot. In the Fardbeyan it was further alleged that there was enmity in between the deceased and the accused persons and the appellant Ram Nandan Sai. had' also attempted on his life on earlier occasions.

4. The charge sheet was submitted only against these three appellants and so far as the fourth accused Sabuj Ansari is concerned, since he was absconding, the investigation continued against him.

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

6. In course of trial altogether 10 prosecution witnesses were examined on behalf of the prosecution to establish the charges against the appellants. Out of which, PW-1 Jashoda Devi and PW-2 Photo Sai are the eyewitnesses to the occurrence. PW-3 Nandlal Sahu, PW-4 Narain Sahu, PW-6 Bhanu Pratap Sah and PW-9 Chandrika Sai had been declared hostile. PW-7 Bahura Sai is the informant. PW-5 Ram Bharat Sai is the son of the deceased. PW-8 Chandrika Devi is the second wife of the deceased and PW-10 is the Doctor, who conducted Post Mortem on the dead body of the deceased. The Investigating Officer was not examined by the

prosecution.

7 The learned trial court on the basis of the evidence convicted and sentenced the appellants as already stated in earlier paragraphs.

8. Mr. T.R. Bajaj, learned senior counsel appearing on behalf of the appellants, by challenging the conviction and sentence passed by the trial court, submitted that the whole case is based on the statements of PW-1 and PW-2, who are said to be the eyewitnesses to the occurrence but if their statements are critically examined it would be found that they are not reliable witnesses rather both of them have contradicted each other on all material points.

9. In order to test the submission of Mr. Bajaj, let us scrutinize the evidence of the prosecution witnesses. PW-1 Jashoda Devi the widow of the deceased Dhurwa Sai, in her examination-in-chief has stated that on the date and time of occurrence she had come to Nagjuwa Station alongwith her husband. After her husband made her to sit at Nagjuwa Station and then proceeded ahead but soon thereafter she heard the sound of explosion of bomb and also of firing and then she saw that the appellants Sugendra Sai, Shibu and Sabuj Ansari and his friends hurled bombs on his husband and also shot him from their firearms, due to which her husband fell down and died at the spot. She identified the accused persons in the dock. In paragraph-7 of her evidence, i.e. in her cross-examination, she further stated that her husband had started from his house on a bicycle with Bahura Sai (the informant) and she walked down to the station. In paragraph-11 of her cross-examination, she further stated that only from a distance of 10 steps she heard the sound of firing and of explosion pf bombs.

10. PW-2 Photo Sai, the other eyewitness in his examination-in-chief, in paragraph- 2, stated that he was standing at Nagjuwa Station and there at the relevant time he saw that these three appellants and one Sabuj Ansari hurled bombs on his brother Dhurwa Sai (the deceased). Dhurwa Sai ran towards the Verandah of Narayan Sahu and there he fell down and, thereafter, the appellants Ram Nandan Sai and Sheo Nandan Sai fired four shots on his brother due to which his brother died then and there. In his cross-examination he has again reiterated that his brother Durwa Sai after having received the bomb injuries

caused by the accused persons, ran towards the Verandah of Narayan Sahu and there he fell down and, thereafter, the appellants Ram Nandan Sai and Shew Nandan Sai fired four shots on him due to which he died at the spot. In para-13 he has stated that at the station his brother Dhurwa Sai was with Bahura Sai (the informant). Though the informant PW-7 has been declared hostile but it appears from his evidence that at least he has admitted that he has lodged the FIR and further that his brother was killed at Nagjuwa Station by some miscreants caused by bombs and firearms injuries.

11. From the evidence of PWs 1 and 2, it appears that the deceased had enmity with Manoj and these appellants. Manoj is none else than the son of the informant Bahura Sai. Therefore, the reason for the informant to resile from his statement made in the FIR appears to be not without any reason. From the evidence of PWs 1 and 2 it does not appear that they have contradicted each other on any material points rather both of them have clearly stated that they saw these appellants hurling bombs on the deceased and, thereafter, killing him by firearms. Their statements are fully corroborated by the evidence of PW-10 Dr. Murli Manohar Sengupta, who found the following antemortem injuries on the person of the deceased :

(i) One abrasion on right cheek 1' long.

(ii) One wound of entry present 1' in front of left ear, oval size 1' x 1/2' x deep to exterior. Blood coagulated. Burning of surrounding skin and hair. Swell of gas present. Cranial cavity full of blood.

(iii) One wound of exit present behind the right ear, size 2' x 1' irregular shape, irregular fracture of right parietal and occipital bones. Blood and brain matter seen from the exit wound.

(iv) One wound of entry present on left side of upper abdomen, elliptical shape, margarine burn, hair singed, blood was oozing, one bullet was lodged in the liver, causing its tear. One bullet was preserved and sealed and handed over to Havildar Jawahar Pathak.

(v) Multiple small wounds of entry, about 3 mms. in different present on left upper arm, round shape and burnt skin. Right arm cloth burnt irregularly. Blackening of left forearm.

Therefore, the evidence of PW-1 and PW-2 are fully corroborated by the evidence of the Doctor PW-10.

12. Though it was not necessary for the prosecution to prove the motive but from the evidence of the prosecution itself it appears that the deceased was on inimical terms with these appellants and the litigation was going on between them and, therefore, the motive for the occurrence was also there.

13. There is no reason for disbelieving or discarding the evidences of the eyewitnesses, i.e. PW-1 and PW-2, who are found to be trustworthy.

14. In view of the discussions and findings above, I am of the view that the learned trial court has rightly convicted and sentenced the appellants for the charges against them. Accordingly, having found no merit, both these two appeals are dismissed and the conviction and sentence passed by the trial court against all the three appellants are hereby affirmed.