

Naresh Paswan. Vs. the State of Bihar.

Naresh Paswan. Vs. the State of Bihar.

SooperKanoon Citation : sooperkanoon.com/916381

Court : Patna

Decided On : Dec-06-2010

Judge : S.K. Sharma; Akhilesh Chandra, JJ.

Acts : Indian Penal Code (IPC) - Sections 302, 148, 34, 149

Appeal No. : CRIMINAL APPEALS No.81 & 152, 1989

Appellant : Naresh Paswan.

Respondent : The State of Bihar.

Advocate for Def. : Ms.Shashi Bala Verma, Adv.

Advocate for Pet/Ap. : M/s Shakil Ahmad Khan; Ved Prakash, Advs.

Judgement :

1. Appellants Ramchel Paswan, Dasrath Paswan, Bhudeo Paswan, Hardeo Paswan & Bidya Thakur of Cr. Appeal no. 81 of 1989 and Naresh Paswan of Cr.Appeal no.152 of 1989 have preferred the two appeals against the judgment dated 08th February, 1989 passed by learned 07th Additional Sessions Judge, Bhagalpur in Sessions Trial no. 154 of 1988 / 162 of 1988 whereby the learned Judge has convicted appellant Naresh Paswan under Section 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life whereas for offence under Section 148 of the Indian Penal Code he was sentenced to undergo rigorous imprisonment for two years. His sentences were ordered to run concurrently. Other appellants have been convicted under section 302/149 of the

Indian Penal Code and they have been sentenced to undergo rigorous imprisonment for life and these appellants have also been convicted under Section 148 of the Indian Penal Code with a sentence of rigorous imprisonment for two years but both sentences have been ordered to run concurrently.

2. The brief case of the prosecution which has resulted on the basis of Fardbayan (Exhibit-4) of Kusmi Devi (P.W.4) which was recorded by Sub- Inspector of Police Nandu Sharma (P.W.10) on 22nd September, 1986 at 10.30 A.M. at village Mohanpur was that her husband Rameshwar Mandal (deceased of the present case) and son were accused in a case of murder. In that case her husband (deceased) was enlarged on bail one year prior to the occurrence. Informant was requiring money for the litigation. Her husband (the deceased) had talked about with villager Suresh Mandal (P.W.5) for selling the land. The informant's husband set out for Bhagalpur along with the informant, Suresh Mahto (P.W.5), Babu Lal Mandal (P.W.3), Nesraj Lal Mandal (P.W.1) and Saryug Mandal (P.W.2). While they were proceeding and reached at about 5.30 A.M. south of village at Pir Asthan Talab Imli then from Arhar field accused Naresh Paswan, Ramchel Paswan, Dasrath Paswan and Bidya Thakur came out. At that time, appellant Naresh Paswan having country made double barrel gun whereas appellants Dasrath Paswan and Ramchel Paswan having country made pistols and appellant Bidya Thakur armed with Lathi surrounded the deceased and others and threatened them not to raise alarm. In the meanwhile, appellants Bhudeo Paswan and Hardeo Paswan having pistols also assembled and started dragging the informant's husband and they took the informant's husband to the east side in the field of Arhar. At that place the informant saw that Naresh Paswan put his double barrel gun upon the chest of the informant's husband and fired. The informant and others ran towards south that is towards the village. On cry the accused person escaped towards south east. When informant came and returned to the Arhar field of Chamru Yadav she found her husband dead having one fire arm injury. The motive behind the occurrence was that one and half years earlier Chaukidar Ramrup Paswan was killed and in connection with that killing the informant's husband and her two sons were suspected. The informant's husband was released on bail one year prior to the occurrence. After being released from jail he was residing in village Mamlakha. Accused Naresh Paswan was hurling constant

threat. In the morning the accused persons got opportunity and eliminated the husband of the informant (P.W.4). The first information report was registered on 22nd September, 1986 at 5.30 A.M. and case vide Jagdishpur P.S. Case no. 126 dated 22.09.1986 was registered under Section 302/34 of the Indian Penal Code and investigation was taken up. After investigation charge sheet was submitted and the case was committed to the Court of Session where charges under section 302 /149 of the Indian Penal Code were framed against Naresh Paswan, Dasrath Paswan, Bhudeo Paswan, Hardeo Paswan, Bidya Thakur and Ramchel Paswan and charge under Sections 302 and 148 of the Indian Penal Code was framed against Naresh Paswan, Dasrath Paswan, Bhudeo Paswan, Hardeo Paswan, Bidya Thakur and Ramchel Paswan. Against Naresh Paswan charge was under Section 302 of the Indian Penal Code separately.

3. The defence of the accused persons was that the occurrence was not witnessed by any person and the story of going to Lailakh station via place of occurrence was false because of the various circumstances. People come to place of occurrence where there is a pond for the purpose of easing. In fact, Rameshwar Paswan was there for the purpose of easing. When he was killed by some unknown then the informant thought it proper to implicate her enemies. Nobody had gone to the Police Station to inform the case because nobody knew about the accused persons. In the case no independent witness has appeared on behalf of the prosecution. The story of going to Lailakh station has been concocted because the place of occurrence was east of the village and the only way to go to Bhagalpur is via Goradih which is west of the village.

4. In order to prove its case the prosecution has examined ten witnesses. They are P.W.1, Nesraj Lal Mandal, P.W.2, Saryug Mandal, P.W.3, Babulal Mandal, P.W.4, informant Kusmi Devi, P.W.5, Suresh Mandal, P.W.6, Dr. Kailash Jha, P.W.7, Parsuram Mandal, P.W.8, Ganesh Prasad Mandal, P.W.9, Umesh Prasad Sharma and P.W.10, Investigating Officer Nandu Sharma. P.Ws 1 to 5 is the material witnesses of the occurrence and they have claimed themselves as eye-witnesses. P.W.6 has conducted the post mortem examination on the dead body and prepared the post mortem examination report (Exhibit-1).

5. P.W.6, Dr. Kailash Jha, has conducted the post mortem examination of the dead body of Rameshwar Mandal which was brought by Constable Dinesh Paswan (not examined) and Chaukidar (not examined) on 23.09.1986. According to the doctor the deceased was aged about 60 years and he was having the following ante mortem injuries:-

(i) Abrasion and laceration 2" x 1" on right palm posteriori at metacarop-phalangeal joint.

(ii) Abrasions both sides of chest near nipple; the size of abrasion on right side 2" x 1" and the size of left side abrasion 1 1/2 " x 1". The abrasion on the left side was medial to nipple. (iii) Oval 1" x 3/4" fire arm wound of entry on left side chest one inch lateral to sternum and 2 1/2 " above left nipple with charred margin; upside down the projectile passed and lacerated left lung, pericardial and left auricle. Blood in chest cavity 2 pints was found. Pellets and wad of cardboard were recovered from lung posterior wall and mediastinum. There was fracture third rib anteriorly and fourth rib posteriorly near mid line left side. The heart was empty. Right lung was pale. The other viscera were also pale. Stomach and bladder were empty. Meninges and brain vessels had less of blood.

6. Injuries no. (i) and (ii) were caused by hard and blunt substance and ante-mortem injury no.(iii) was caused by fire arm.

7. The death of Rameshwar Mandal was caused by fire arm has not been challenged and the prosecution has been able to prove that Rameshwar Mandal was killed by fire arm.

8. Now it has to be judged as to whether the prosecution has been able to prove that the death of Rameshwar Mandal was caused by the appellants or not. The most important witness of the case is P.W.4, who is the informant. P.W.3 has already been disbelieved by the trial court. P.W.4, in her evidence, has stated that on one Monday morning she was proceeding with Saryug Mandal (P.W.2), Babu Lal Mandal (P.W.3), Suresh Mandal (P.W.5), Nesraj Lal Mandal (P.W.1) and her husband and they were going to Bhagalpur court. When they arrived at Pir Asthan then accused Naresh Paswan, Ramchel Paswan, Dasrath Paswan and Bidya

Thakur intercepted and encircled them. At that time Naresh Paswan was in possession of the country made gun whereas Dasrath Paswan and Ramchel Paswan were in possession of the pistol. Bidya Thakur was having a lathi. Her evidence states that her husband was caught by Ramchel Paswan and Dasrath Paswan and he was pushed to the Arhar field by Naresh Paswan and Bidya Thakur. The informant and others followed. When the informant's husband was carried to some distance in the field then from the east side Hardeo Paswan and Budeo Paswan came, they were also having pistol. All the six accused dragged the informant's husband to Arhar field. In the way Rameshwar Mandal fell down but he was dragged and inside Arhar field Naresh Paswan fired as a result thereof Rameshwar Mandal fell down and thereafter all the accused persons escaped. Thus, if the description of the occurrence by the informant is compared from the first version of the informant which was lodged there, her fardbayan make some addition. There was no mention in the fardbayan that Rameshwar mandal was caught also by Ramchel Paswan and Dasrath Paswan had caught the informant's husband and he was pushed in the Arhar field where others also arrived. That is enhancement of the version given by the informant in the fardbayan which was recorded after about five hours of the occurrence. The relationship has been described by her and she has stated that when her husband was released from the jail then he was residing at village Mamlakha. That version is mentioned in the first informantion report. But she has contradicted this version in her evidence (paragraph 5) when she says that after release her husband was not residing at Mamlakha rather her husband was residing at Mohanpur. She has denied that she has made her statement in the fardbayan that after release her husband was living in Mamlakha and the fardbayan mentions that the informant, in her fardbayan, has stated categorically that after her husband was released from Jail in the murder case then he was residing in village Mamlakha. Therefore, these two statements are quite contradictory.

9. P.Ws 1 to 5 is alleged eye-witnesses of the occurrence. They have come before the court to support. It was pointed out that the story that the victim and others were going to Lailakh station is not mentioned in the fardbayan. This was later on developed. But, it has been argued that for going to Bhagalpur nobody was required to go towards east of the village. P.W.1 states in his evidence that he and

others were going to Bhagalpur and when they reached near the Imli Pir Asthan then fardbayan was recorded. He stated that Goradih is west of village Mohanpur and situated two miles away and there is Pucca road. Bus and other vehicles were frequently available from Bhagalpur to Goradih. He further states in his evidence that the distance of Mohanpur to Mamlakh is four to five miles. Therefore, it was submitted that ordinary person is not required to go to Mamlakh for going to Bhagalpur. The convenient road is via Goradih which consumes lesser time in the journey. It has also been submitted that Investigating Officer has supported this fact that mode of conveyance is also available for going to Bhagalpur from Goradih (P.W.10, paragraph 17). No doubt, a person has choice to choose his way but if shorter or convenience distance is available then one will take up that way. According to the Investigating Officer the vehicle is always available for a person of Mohanpur for going to Bhagalpur from Goradih which was situated at about two miles. There appears no reason as to why the informant and others chose to go a distance of five miles for catching the train which was not frequently available. However, this is not very important aspect of the case.

10. About relationship it has come that P.Ws 1, 2, 3 and 5 belong to one family (P.W.2 paragraph 4). P.Ws 1 and 2 were convicted (Exhibit-A) which was a case of crop cutting. It has come in their evidence that Chaukidar Ramrup Paswan was associated with Goshala and he was a witness in the case which has resulted in Exhibit-A. P.Ws. 1 and 2 have denied the suggestion that they were ever convicted. (P.W.2- Paragraph 5 and P.Ws 3 and 4 paragraph-1). The copy of the judgment is on the record which shows that they were convicted though granted benefit of Section 4 of the provision of Offenders' Act. No doubt, they were convicted but their sentence was to the extent that they were released in terms of Section 4 of the provision of Offenders' Act. In the flat denial of P.Ws 1 and 2 that they were not at all convicted in any case goes to show that they were not true and genuine persons. No doubt, on this score only their evidence cannot be discredited but those two witnesses were deposing before the Court on oath. They could have stated that they were released after execution of bond but their flat denial that they were ever convicted in any other case impinges their credibility as true persons and true witnesses of the case. This creates further compounded that they had enmity with the appellants from before. The husband and sons of

informant had remained in jail in the case of crop cutting (Exhibit-A) and the accused persons were the prosecution witnesses. In this view of the matter, the evidence of P.Ws 1 and 2 are not credit worthy and it does not inspire confidence. The defence case of the prosecution is that when there was hue and cry then many villagers have assembled. This fact has been stated by almost all the witnesses who have been examined by the prosecution. If list of witnesses of the present case is scanned then it will be evident that no independent witness has been relied upon or brought by the prosecution who could have supported any part of the occurrence or any fact after the occurrence. There is specific case of the witness that the matter was reported soon after the occurrence to Sarpanch. The Sarpanch, thus, become an important witness who could have been examined but the prosecution has kept mum as to why that witness was not examined. Non-examination of any independent witness itself creates doubt as to veracity of the entire prosecution case. No doubt, the prosecution eye-witnesses are independent witnesses are not necessary in all case but if the prosecution case with a version regarding existence of independent witnesses then the onus was upon the prosecution to bring them to state the facts before the Court because in the present case the enmity has already been established. Therefore, the motive was present for implication of the accused also. Motive is a double edged weapon and the independent witnesses could have unfolded this fact that the informant and witnesses immediately after the witness has found regarding killing. Next course of the independent witness that the occurrence was immediately reported to the independent witness. It has come in evidence that Jagdishpur is at a distance of six miles from the place of occurrence, nobody has gone to the Police Station to inform about the occurrence. The Police, on its own, came on some information which resulted in Sanha diary entry no. 419 dated 22.09.1986. That Sanha entry is not on the record. The personal diary of the Investigating Officer is also not on record. The Police has come after five hours of the occurrence. Production of Sanha diary or personal diary of the Investigating Officer could have shown as to what information was received by P.W.10. Those could have shown as to when the information was received, when the Investigating Officer proceeded and when he reached. Though P.W.3 has been disbelieved but he, in paragraph 6 of his statement, has stated that Investigating Officer has come to the place of

occurrence in the after-noon that is at about 2.00 P.M. If this part of the evidence is considered then it makes the entire implication suspicious.

11. Another fact which has come on record that the fardbayan shows that Kusum Devi gave her fardbayan at village Mohanpur and not in any Bahiar or near the dead body. P.W.4, who is the informant, in paragraph 3, has stated that when she was going after the occurrence towards the villagers along with P.W.2 then she has given her fardbayan. She denied in her evidence that her fardbayan was recorded at Mohanpur rather she has stated that her fardbayan was recorded at some other place that is at Pir Asthan. The Investigating Officer has stated that he has recorded fardbayan at Mohanpur and not at any other place. Therefore, place where fardbayan was recorded has remained vague. It is not the definite place where fardbayan was recorded.

12. Another reason of prosecution doubted by the defence is that the murder was years earlier. With a lapse of time could have diminished the enmity. The occurrence had taken place four years earlier. Rameshwar Mandal was on bail since one year. Nothing has happened though witnesses had stated that accused persons was threatening Rameshwar Mandal but nothing is on the record as to why this matter was not reported to the Police when he was being threatened by the accused persons. The defence has cross-examined the informant, P.W. 4, as to whether she has ever informed about the threatening to the Sarpanch or any other person then she answered in negative. Exhibit-5, that is inquest report, show that underwear was present near the place of occurrence. This has been mentioned in the inquest report. If a person was being dragged in the field later on he was killed, then there was a possibility that his underwear might have taken out.

From presence of Dhoti, which he was wearing, shows that the underwear was not taken from Rameshwar Mandal because his Dhoti was intact. This is taken from the seizure list. It gave credence to the defence version that the deceased might have gone to ease because in the early morning persons use to go for easing and in that manner he might have been killed. The existence of the underwear is not in conformity with the prosecution version that the victim was taken towards Arhar

field where he was killed. The alleged occurrence was witnessed by a number of persons but nobody has even uttered that underwear of Rameshwar Mandal was taken out from him. It shows that actual occurrence has not been witnessed by any of the witnesses though there are five witnesses but they have not explained as to why this underwear was available. The existence of underwear shows something fishy and the inference from that goes that the prosecution is not coming with true version of the occurrence.

13. Learned counsel for the appellants has submitted that in view of the fact that P.Ws 1 and 2 have lied before the court. Their evidence is not fit to be relied upon. Not only that all the material witnesses of the case are interested witness and they have come to falsely implicate the appellants and also there is fatal contradiction in materially true and the prosecution case is fit to be dismissed. On the other hand, learned counsel for the State submitted that the prosecution has been able to prove the charge that killing was by the appellants. We have perused the evidence and related papers and we have heard the submissions. We fail to understand as to why independent witnesses have been left though their presence has been stated by the Police. P.Ws. 1 and 2 cannot be relied because they have not come with true version. The place of fardbayan has also not been explained. There was no motive at all to carry a person to some distance and there he was killed. There is nothing mentioned that any associate was there at the place where Rameshwar Mandal was going and at that time there was no obstruction and he might have been killed there itself. Therefore, there is no explanation as to why he was carried to some distance. Another fatal defect in the prosecution case is registration of the first information report on 22nd September, 1986 but it was sent to the court on 24th September, 1986. This delay itself lends credence to the defence version that, in fact, the occurrence was in different manner and the fardbayan was given after due deliberation. Considering the facts and circumstances, we are of the view that the prosecution has not been able to prove the charges beyond reasonable doubt. Where doubt is created then the benefit goes in favour of the defence, namely, the appellants.

14. In the result, the judgment of conviction is set aside. The appeals are allowed. The appellants are discharged from the liabilities of their bail bonds.

