

Md. Bhutto and Another Vs. the State of Bihar

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Court : Patna

Decided On : Oct-21-2011

Judge : Gopal Prasad

Appeal No. : CRIMINAL APPEAL (SJ) NO. 207 WITH 229 OF 1999

Appellant : Md. Bhutto and Another

Respondent : The State of Bihar

Judgement :

Gopal Prasad, J.

1. Heard learned counsel for the appellants and the State.
2. These two appeals have been heard together and are being disposed off by this common judgment as both arise out of the same judgment.
3. Appellant no. 2 of Cr. Appeal (S.J.) No. 229 of 1999, Md. Rafe, has been convicted under Section 307 of the Penal Code and sentenced to undergo rigorous imprisonment for ten years, appellant no. 1 of Cr. Appeal (S.J.) No. 229 of 1999, Md. Safe, has been convicted under 307 read with Section 34 of the Penal Code and sentenced to undergo rigorous imprisonment for seven years and has, further, been convicted under Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for three years. Appellants of Cr. Appeal (S.J.) No. 207 of 1999, Md. Bhutto @ Zulfikar Ali @ Zulfequar Ali Bhutto and Md. Aley, have

been convicted under Section 307/34 of the Penal Code and sentenced to undergo rigorous imprisonment for seven years. The appellants have, further, been convicted under Section 341 of the Penal Code and sentenced to undergo simple imprisonment for one month. However, it has been ordered that all the sentences shall run concurrently.

4. The prosecution case, as alleged by the informant, Jafiffudin @ Jahiruddin, son of Fakhruddin that on 04.01.1987 at about 02.30 p.m. while he was irrigating his field along with the labourers, in the meantime , Md. Safe and his brother, Md. Rafe, came there armed with fasuli and Md. Alay armed with Chaper, Md. Butto armed with khanti abused the informant. Md. Aley protested the irrigation of the land. The, further, allegation is that Safe took out pistol and fired on the informant, but, informant was not hurt and started fleeing away. The, further, case is that Aley chased, caught hold of him and fell him down. It is, further alleged that Rafe gave a fasuli blow on the neck causing injury of his left eye. It is, further, alleged that Bhutto caught hold of the leg of the informant and Rafe gave another fasuli blow causing injury on the panjara and when the labourers came to the rescue they were threatened by the country made pistol and on hulla the villagers and other came and the accused persons fled away.

5. On the fardbeyan, the first information report lodged. The fardbeyan was recorded on 05.01.1987 for offence under Sections 341, 324 and 307/34 of the Penal Code and 27 of the Arms Act.

6. The police after investigation submitted the charge sheet. During the trial eight witnesses were examined on behalf of the prosecution.

7. The trial Court, taking into consideration the evidence of the informant witnesses as well as other witnesses who supported the prosecution case about the assault as well as the firing. The evidence of the doctor, P.W. 6, proved the injury and the injury report has been marked as Exhibit 1. The doctor, P.W. 6, found six injuries on the person of the informant, Md. Zahiruddin, son of Fakhruddin. The doctor, P.W. 6, opined that injuries (ii) to (v) are simple in nature and injury (i) is grievous. However, in cross examination, the doctor stated that he had not mentioned the condition of the injured and since the injured was admitted

so certificate was granted later on. The trial Court convicted and sentenced the appellants, as mentioned above.

8. The learned counsel for the appellants, however, contends that the occurrence alleged at the time when the informant was irrigating the land, however, there is no motive has been assigned for the occurrence. It has, further, been contended that the investigating officer has not been examined to ascertain about the place of occurrence and to confirm the allegation of firing. There is no injury of fire arm and though it is stated that other accused person persons were armed with deadly weapons, but, except Rafe none has been assigned the role of assaulting the informant. It is stated that Rafe was armed with pistol and other appellants were also armed with deadly weapons. Had there been intention to kill then the appellants may have shot the victim to death. It has, further, been contended that though injuries (ii) to (v) were simple in nature and injury (i) is stated to be grievous. The finding about the injury has been given without any x-ray report. Neither the x-ray has been suggested nor done to show that the injury was grievous. It has, further, been contended that the occurrence alleged to have been taken place on 04.01.1987, it shows that the examination of the victim was recorded in the register on 13.01.1987, hence, the injury report casts a serious doubt. It has, further, been contended that the occurrence is of the year 1987 and, hence, the appellants suffered the protracted litigation and a lenient view is required to be taken as the appellants have suffered lot.

9. However, the prosecution case is that the occurrence took place while irrigating the land and witnesses though have supported the prosecution case. The role attributed to Safe that he fired, but, it did not hit any one. It has, further, been asserted that Safe gave fasuli blow. The allegation about assault is attributed to Safe. The other appellants have not been attributed any role of assault. The learned counsel for the appellants pointed out some contradictions, but, the contradictions, pointed out, is minor in nature. The Exhibit "A" has been shown requires by the investigating officer to see that the informant was unconscious, but, the injury report does not show that the informant was unconscious. P.W. 5 is the doctor who has come to prove the injury, but, the doctor in his evidence has stated that he has not mentioned the condition of the injured in the injury report.

Hence, it casts a serious doubt that the informant was unconscious. The first information report was lodged on 05.01.1987, after about 21 hours and, hence, the delay in lodging the first information report has not been properly explained. Moreover, the doctor has proved the injury report and has stated about the six injuries on the person of the informant, however, injuries (ii) (v) have been stated to be simple in nature and injury (i) shown to be grievous as it is an incised wound 8" x 1" x 1(1/2)" at the left side of chest wall cutting deep to bone of the 7th rib. However, it is strange that no x-ray has been suggested. Moreover, the injury has been recorded in registered, which has been proved as Exhibit "1", which is in carbon process, however, the original report has not been brought on record though it is true that if the original prepared in same carbon process also deemed to be original, but, it is strange that the said injury was dated 13.01.1987. However, no reason has been assigned why the injury in the registered recorded on 13.01.1987 when it is stated that the victim was examined on 04.01.1987 at 03.45 p.m. Hence, it casts the serious doubt about the injury proved by the doctor.

10. Hence, I find that defect in the injury report as it does not mention that the informant was unconscious and, further, the injury, dated 04.01.1987, has been recorded on 13.01.1987 and there is no explanation for the same, further, though injury (i) has been stated to be grievous and dangerous to life as the injury has been shown to be cutting deep though bone, but, it has not been mentioned that the bone got cut or not and no x-ray has been proved, hence, the injury report by the doctor, P.W. 6 does not inspire confidence. However, the witnesses have though supported the prosecution case, but, it is alleged that Safe was armed with pistol and he fired, but, neither there is any allegation that it caused any injury nor the investigating officer has been examined to find out any sign of firing and, hence, has caused prejudice to the accused. Had there been intention to kill the informant, Safe may have shot the informant to dead at a point blank range and there was no opportunity of miss firing and, hence, taking into consideration the entire facts and circumstances, I find and hold that the prosecution has not been able to prove the charge under Section 307 of the Penal Code and, more over, no role of assault assigned to the other appellants except Safe and, hence, even if the evidence of the witnesses believed it is a case of simple assault by Safe, hence, I find and hold that offence under Section 307 of the Penal Code is not

made out.

11. Hence, the order of conviction, recorded under Section 307/34 of the Penal Code is hereby set aside and substituted by Section 324 of the Penal Code against the appellant, Safe (Cr. Appeal (S.J.) No. 229 of 1999). However, having regard to the facts and circumstances that the appellant, Safe, had been in jail during the trial as well as after conviction till grant of bail by the Hon'ble High Court and the occurrence is of the year 1987 with regard to the irrigation of the land and, hence, end of justice shall serve by sentencing the appellant Safe for the period already undergone and other appellants having not been attributed any role, then order of conviction and sentence is hereby **set aside**.

12. Hence, the appeal is **allowed in part**.

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