

(2021) 12 PAT CK 0045

Patna High Court

Case No: Criminal Appeal (DB) No. 7, 54 Of 1996

Ram Kishun Dubey

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision: Dec. 16, 2021**Acts Referred:**

- Code Of Criminal Procedure, 1973 - Section 432, 433, 433A
- Indian Penal Code, 1860 - Section 34, 201, 302
- Arms Act, 1959 - Section 27

Hon'ble Judges: A. M. Badar, J; Sunil Kumar Panwar, J**Bench:** Division Bench**Advocate:** Prince Kumar Mishra, Rajesh Kumar, Vinod Kumar Seth, Rajesh Kumar Singh, S.N.Prasad, D.K. Sinha**Final Decision:** Dismissed

Judgement

1. Heard the parties.

2. It would be relevant to mention here that vide order dated 09.12.2021, Cr. Appeal(DB) No. 7 of 1996 stands abated in respect of appellant No. 2

namely Vijay Bahadur Singh since appellant No. 2 has already died. However, this appeal is proceeded in respect of appellant No. 1 namely Ram

Kishun Dubey.

3. The appellant Ram Kishun Dubey in Cr. Appeal (DB) No. 7 of 1996 and appellant Rama Shanker Dubey in Cr. Appeal (DB) No. 54 of 1996 have

challenged the judgment of conviction and order of sentence dated 21st of December, 1995 passed by learned 3rd Additional Sessions Judge, Kaimur

at Bhabhua in Sessions Trial No. 557/206 of 1993 arising out of Chand P.S. Case No. 20 of 1993.

4. By the aforesaid judgment, the appellants have been convicted for the offences punishable under Sections 302/34 and 201 of the Indian Penal Code.

The appellant Rama Shankar Dubey was further convicted under Section 27 of the Arms Act and appellant Ram Kishun Dubey was also been convicted under Section 114 read with Section 302 of the Indian Penal Code.

5. After hearing the convicts on the point of sentence, vide consequential order, the Trial Court sentenced the appellants to undergo rigorous

imprisonment for life under Sections 302/34 and 201 of the Indian Penal Code. It would be proper to mention here that no separate sentence had been

passed against appellants Rama Shankar Dubey under Section 27 of the Arms Act and Ram Kishun Dubey under Section 114 read with Section 302

of the Indian Penal Code.

6. The prosecution case recapitulated as hereunder is based on the fardbeyan (Ext-5) as given by Kesh Nath Dubey, the informant(P.W.-8) of

Village-Sehan, P.S.-Chand is to the effect that on 3rd July, 1993, the appellant Ram Kishun Dubey was constructing his wall by encroaching over the

land of the informant (P.W.-8) and when the informant along with his father namely Ram Surat Dubey(deceased) went to protest against the

construction of the said wall in the land of the deceased, there appears to be a hot exchange of words between appellant Ram Kishun Dubey and

Ram Surat Dubey (deceased). It is alleged that appellant Ram Kishun Dubey called Rama Shankar Dubey (appellant) and his nephew Vijay Bahadur

Dubey (appellant) who came with country made single barrel gun. Thereafter, on the order of Ram Kishun Dubey (appellant), Rama Shanker Dubey

(appellant) fired from his pistol on Ram Surat Dubey (deceased), as a result of which, he fell down in the field and died. It is further alleged that Vijay

Bahadur Dubey (appellant) also chased the informant Kesh Nath Dubey but he managed to flee away from the place of occurrence and concealed

himself in the house of one Lalita Dubey. Thereafter, all the three accused persons lifted the dead body of Ram Surat Dubey and brought the dead

body to the house of Vijay Bahadur Dubey (appellant) where the dead body was concealed. The informant also raised alarm but the villagers did not

turn up at the place of occurrence due to fear. However, brother of the informant namely Shambhu Nath Dubey (P.W.-7) came running at the place

of occurrence. The motive behind the occurrence is said to be the old enmity with Ram Kishun Dubey (appellant).

7. Mr. R.K. Singh, S.I. of P.S.-Chand, on the same day at about 20:30 P.M of Village-Sehan recorded the fardbeyan of the informant Kesh Nath

Dubey. Thereafter, a formal F.I.R was recorded at Chand P.S and investigation was accordingly initiated.

8. After completing the investigation, charge-sheet has been submitted against all the three accused persons after finding the case true against them.

Thereafter, the case was committed to the Court of Sessions for trial and disposal. The charges were read over and explained to the accused persons

to which they pleaded not guilty and claimed to be tried. Their defence is that they have been falsely implicated in this case and the murder did not

take place in the manner as alleged by the prosecution.

9. To substantiate the charges levelled against the accused persons, altogether nine witnesses have been examined on behalf of the prosecution.

10. P.W.1 Sheo Pujan Pandey, P.W. 2 Ram Ashray Paswan and P.W. 3 Ravindra Kumar Pandey are the formal witnesses. P.W. 4 is Dr. Ranjeet

Kumar who has held the postmortem on the dead body of the deceased. P.W. 5 Narad Prasad and P.W. 6 Janardan Prasad Dwivedi claim to be the

eye witnesses of the case before the police but they had been declared hostile before the Court. P.W. 9 Raj Kumar Singh is the Investigating Officer

of this case.

11. P.W. 7 Shambhu Nath Dubey claims to be an eye witness of the occurrence in part and is also son of the deceased. He has supported the

prosecution version that he was in his house when he heard two shots of gun firing and when he came out from his house he saw that the dead body

of his father was being taken to the house of Vijay Bahadur Dubey. The Investigating Officer (P.W. 9) has also recovered the dead body of his father

from the house of Vijay Bahadur Dubey. This witness supported this fact that the dead body of Ram Surat Dubey had been taken by the accused

persons from the place of occurrence.

12. P.W. 8 Kesh Nath Dubey, the informant and star witness of this case has stated about the place of occurrence, manner of occurrence and time of occurrence. He deposed that on 03.07.1993 at about 5:00 P.M, Ram Kishun Dubey was constructing a wall by encroaching over his land, hence, his father Ram Surat Dubey pushed to the wall, resulting in removal of few stones block from the wall. In the meantime, Ram Kishun Dubey called Rama Shankar Dubey and Vijay Bahadur Dubey and told that Ram Surat Dubey (deceased) was not allowing the wall to be constructed. The accused Rama Shankar Dubey and Vijay Bahadur Dubey came armed with double barrel gun, upon which Ram Kishun Dubey gave order for assault whereupon Rama Shankar Dubey fired from his country made pistol on Ram Surat Dubey, as a result of which he fell down in the field. The informant fled away apprehending danger to his life. However, Vijay Bahadur Dubey fired on him from back which did not hit him. All the three accused persons lifted the dead body of Ram Surat Dubey and took into the house of Vijay Bahadur Dubey. On raising alarm, his brother namely Shambhu Nath Dubey(P.W. 7) came there. This witness stated to him that accused persons lifted the dead body of his father. P.W. 5 Narad Prasad and P.W. 6 Janardan Prasad Dwivedi had seen this occurrence by standing at their doors. This witness has also stated and narrated the story of assault on the person of his father to his brother. The accused persons also took the dead body of his father into the house of Vijay Bahadur Dubey. This witness also deposed that there is a dispute between this witness and the accused persons for the last 13 years. His fardbeyan was recorded by the Investigating Officer and signature of this witness is Exhibit-3 on the fardbeyan. This witness also deposed that inquest of the dead body of his father was prepared in presence of Narad Gorh and Janardan Dwivedi and both took their signatures on the inquest report. In his cross examination, this witness subjected in respect of place of occurrence and demolition of construction of wall and boundary in respect of place of occurrence in detail. This witness stood firmly and nothing surfaced by the defence which disbelieved to this witness.

13. P.W. 9 Raj Kumar Singh is the Investigating Officer of this case who found the blood on the place of occurrence which is the site where a new

wall was being constructed by the accused Ram Kishun Dubey. This witness has also found the blood trail from the site of construction of wall till the house of Vijay Bahadur Dubey. This fact supports the prosecution version that the dead body of Ram Surat Dubey was removed from the site of construction of the boundary to the house of Vijay Bahadur Dubey.

14. The appellant Vijay Bahadur Dubey had also filed a petition before the learned Chief Judicial Magistrate, Bhabhua from the jail premises which has been marked as Exhibit-A in this case. In this petition, by way of defence, Vijay Bahadur Dubey had attempted to make out a case that Ram Surat Dubey(deceased), Kesh Nath Dubey (informant) and Shambhu Nath Dubey (PW 7) went to the place where a wall was being constructed in the land of Ram Kishun Dubey and Ram Surat Dubey (deceased) gave a push to the wall, as a result of which, a few pieces of stones of that wall collapsed and it is also alleged that Ram Surat Dubey (deceased), Kesh Nath Dubey (informant) and Shambhu Nath Dubey (P.W 7) chased the appellant Vijay Bahadur Dubey and he entered into his house where Shambhu Nath Dubey (P.W. 7) fired on Vijay Bahadur Dubey but unfortunately the firing hit Ram Surat Dubey (deceased) and he fell down in the courtyard of Vijay Bahadur Dubey and subsequently died.

15. By way of this defence, it is tried to make out a case that Vijay Bahadur Dubey went to Chand Police Station to lodge the F.I.R but the Officer-in-charge did not lodge his case and went to the Village Sehan and when he returned from the village, he arrested Vijay Bahadur Dubey and sent to the jail custody.

16. From perusal of the prosecution evidence adduced by the P.W. 7 Shambhu Nath Dubey and the Investigating Officer (P.W. 9) of this case, the story of defence appears to be imaginary and cannot be accepted regarding death of Ram Surat Dubey. The Investigating Officer did not find any blood mark in the house of Vijay Bahadur Dubey nor any sign of firing which shows that the murder had not taken place in the house of Vijay Bahadur Dubey. However, the prosecution story is true in this regard that Ram Surat Dubey was murdered at the site where boundary wall was being constructed in the field of Kesh Nath Dubey (informant).

17. The Investigating Officer (P.W 9) in his evidence has asserted that he has found the blood on the place of occurrence which is the site where a new wall was being constructed by the accused Ram Kishun Dubey. He has also found the blood trails from the site of construction of wall till the house of Vijay Bahadur Dubey.

18. D.W. 2 Basawan Yadav has stated in his statement that he found blood in the house of Vijay Bahadur Dubey but Baswan Yadav was present in the house of Vijay Bahadur Dubey along with the Investigating Officer and at that time this D.W. 2 had not stated this version before the Investigating Officer. So, the evidence of this D.W. 2 has not made any scope for its acceptance.

19. The defence argued that they have been falsely implicated in this case and the murder did not take place in the manner as alleged by the prosecution.

20. We find no force in this contention because of the evidences of P.W. 7 and P.W. 8, who are the eye witnesses of this case and have supported that the deceased succumbed to his injuries by shot firing by the accused Rama Shankar Dubey on the order of accused Ram Kishun Dubey. The deceased fell on the ground after receiving gunshot injury.

21. The Investigating Officer (P.W. 9) has explicitly deposed that he has found the blood at the place of occurrence which is the site where a new wall was being constructed by the accused Ram Kishun Dubey. The I.O. has also found the blood trails from the site of construction of wall till the house of Vijay Bahadur Dubey. P.W. 1 and P.W. 3 corroborated the evidence and deposed that Darogaji collected and seized the blood stained earth from the place of occurrence i.e. where the wall was constructed.

22. From bare reading of the written application (Ext-A) which is alleged to be given by the accused Vijay Bahadur Dubey before the Court below, this fact is admitted by the accused that deceased Ram Surat Dubey and Kesh Nath Dubey went to a place where a wall was being constructed. The deceased Ram Surat Dubey gave a push to the wall, as a result of which, few pieces of stones of that wall collapsed. In this petition, it is not mentioned that informant's side were armed with lethal weapon or fire arm. So, this fact of the defence is not trustworthy that death of Ram

Surat Dubey occurred mistakenly at the house of Vijay Bahadur Dubey by shot firing at the hand of his own son Shambhu Nath Dubey (P.W 7).

23. A plea of alibi has been taken by appellant Rama Shankar Dubey that at the time of alleged occurrence, he was present at the school of Village

Saraian from 10:30 A.M. to 4:30 P.M. The Headmaster of the said school namely Ram Kunwar Singh (D.W 3) had been examined to prove the alibi.

This witness has proved the attendance register produced before the Court and the attendance has been marked as Ext-B.

24. From perusal of the evidence of this witness, we find that village Saraian where accused Rama Shankar Dubey was allegedly working as a

teacher is only at a distance of 10 K.M from the place of occurrence. The time of occurrence is 5:00 P.M and it is very easy for the accused Rama

Shankar Dubey to be present at the time of the alleged occurrence. So, the plea of alibi taken by the accused Rama Shankar Dubey is not of any help.

It is a well settled principle that plea of alibi must be proved with absolute certainty so as to completely explicit the possibility of presence of person

concerned at the place of occurrence. The general principle of criminal jurisprudence that the prosecution has to prove its case beyond reasonable

doubt, the reasonable doubt is one which occurs to a prudent and reasonable man.

25. P.W. 4, Ranjeet Kumar is the doctor who has conducted the postmortem report on the dead body of the deceased Ram Surat Dubey on

04.07.1993 and found the following injuries on the person of the deceased.

(I) Inverted margin about 3/4" in diameter. Pellet injuries over right side of abdomen(Hepatic region)prove directing to upward and right to left in

abdominal cavity which is the wound of entrance.

(ii) Inverted margin about 3/4" in diameter pellet injuries over right side of abdomen about 2" below injury no. 1 prove directing to abdominal cavity.

It is the wound of entrance.

(iii) Inverted margin pellet injury of about 3/4" in diameter over palmer aspect of left ring finger with fracture of middle phalanx. It is the wound of

entrance. One pellet recovered from the injuries.

(iv) Inverted margin pellet injury above 3/4" in diameter over medial aspect of left thigh. It is the wound of entrance.

(v) Exit wound inverted margin of left thigh lateral aspect above 1/2" in diameter, Injury no. 4 and 5 are communicated to each other.

26. The evidence of the doctor (P.W. 4) further supports and corroborates the prosecution case and the doctor found gunshot injury on the person of the deceased Ram Surat Dubey and stated that injury Nos. 1 and 2 were sufficient to prove the cause of death. The time of death given by the doctor also corroborates with the time of the alleged occurrence.

27. We find no force on the submissions raised on behalf of the appellants that the ocular evidence has not corroborated with the medical evidence.

This submission is devoid of merit.

28. It is contended by learned counsel for the appellants that all the prosecution witnesses are highly interested and they are in relation to the informant and the deceased.

29. In our view, it is an admitted fact that P.W.s are related and interested witnesses. It is settled principle of law that evidence of related witnesses should be scrutinized with care and caution but that by itself will not suffer from any infirmity. Once that approach is made, the Court is satisfied that evidence of such witnesses can be relied upon. In this respect, on close scrutiny of the evidence of the eye witnesses, it is established that there is consistency in the evidence of the witnesses with respect to the place of occurrence, time and manner of occurrence and except minor contradictions, nothing major surfaced to discard their evidences. Minor contradictions are natural upon situation from where occurrence could be seen by them.

Parrot like version would have made their evidence doubtful.

30. We are of the view, in the light of the discussions as above, it can be safely concluded that death of Ram Surat Dubey is due to the injuries caused by fire arm which is likely possible for the injuries to have been caused with the fire arm weapon with which and in manner they are alleged to have been caused.

31. After scrutinizing the entire evidence adduced by the prosecution, we affirmed that the credibility of testimony of the prosecution witnesses create and inspire confidence in our mind. These evidences are free from major contradictions and discrepancies. It is also candid that the prosecution

witnesses P.W.s 7 and 8 had personal knowledge and they were present at the scene and they had paid attention at the scene and their evidences are

trustworthy. However, minor contradictions in consistencies over improvement of trivial points which do not effect the prosecution case could not be

made a ground on which the evidence can be rejected in its entirety.

32. In view of the evidence on record as discussed above, we see no merits in these appeals. The appeals are dismissed.

33. Mr. Prince Kumar Mishra, learned advocate was appointed as Amicus Curiae to represent the appellants/accused. We put on record the words of

appreciation for able assistance rendered by him in arriving this Court at the proper conclusion in deciding the instant appeals. The Patna High Court

Legal Services Committee is, hereby, directed to pay Rs. 5,000/-(rupees five thousands) to Mr. Prince Kumar Mishra, Advocate.