
(2012) 11 PAT CK 0044

Patna High Court

Case No: Govt. Appeal (DB) No. 49 of 1990

State of Bihar

APPELLANT

Vs

Bangali Sahni and Others

RESPONDENT

Date of Decision: Nov. 29, 2012

Acts Referred:

- Arms Act, 1959 - Section 27
- Penal Code, 1860 (IPC) - Section 148, 149, 302, 307, 324

Citation: (2013) CriLJ 1434

Hon'ble Judges: Shyam Kishore Sharma, J; Amaresh Kumar Lal, J

Bench: Division Bench

Advocate: S.C. Mishra, app, for the Appellant;

Judgement

Shyam Kishore Sharma, J.

Both the above Govt. Appeal and Cr. Revision have been filed against one judgment which has been passed by learned Second Additional Sessions Judge, Munger on 11.06.1990 in Sessions Trial No. 340 of 1988 whereby the respondents in both the cases namely, Bangali Sahni, Suresh Sahni, Garho Sahni, Suresh Sahni, Ino Sahni, Madan Sahni, Anup Sahni, Suraj Sahni, Upendra Sahni, Anil Sahni, Sikandra Sahni, Raghunandan Sahni, Ramdeo Sahni, Nepali Sahni, Kamli Sahni and Laxmi Sahni have been acquitted of the charges under Sections 302 /149 of the Indian Penal Code and 27 of the Arms Act. Sessions trial was off-shoot of the case with regard to an occurrence dated 22.10.1986 at 5.30 p.m. The fardbeyan was given by Naresh Kumar Sahni (P.W. 5) that at 4.30 p.m. on the date of occurrence alleging that his father Bishundeo Sahni was going to his Saw machine at village Chukti Fish Arhat at Manshi Bazar and as soon as he reached near Railway Gumti one of the accused Bishundeo Sahni started assaulting and when the informant's father wanted to return to his Saw machine by raising alarm, he could not succeed in view of the fact that his leg was defective. Thereafter accused Laxmi Sahni fired from his country made pistol which hit back side of his head and when he fell down, other accused

namely, Garho Sahni, Suresh Sahni, Ino Sahni and Nepali Sahni also fired their country made pistols. Thereafter informant, Hateshwar Sahni (P.W. 3), Gajendra Sahni (P.W. 2), Krishnadeo Sahni, Chandradeo Sahni of village Chauthanand, Narain Mandal (P.W. 4) and Kamal Kishore Singh, Railway Gate Keeper came and saw the occurrence. The informant's father was found dead and his dead body was brought at Manshi police station on a rickshaw and a case under Sections 148, 149, 324, 326, 307 and 302 of the Indian Penal Code was registered. The motive of the occurrence was that as the informant's brother Hateshwar Sahni (P.W. 3) was the Secretary of Chauthan Fisherman's Co-operative Society and there was some differences with regard to settlement of Jalkar with the accused persons and they had abused and threatened the informant's father also. The matter was investigated into and after completion of investigation, charge-sheet was submitted. Cognizance was taken, and the case was committed to the court of Sessions where charges were framed and explained to the accused persons to which they pleaded innocence. Hence trial proceeded.

2. In order to prove its case the prosecution has examined 8 witnesses. P.Ws. 1 to 5 were the eye-witnesses. P.W. 6 was a witness of circumstance, P.W. 7 is the doctor who held autopsy over the dead body of the deceased and P.W. 8 is the Investigating Officer of the case.

3. The grievance of the informant and the learned APP is that though the witnesses have supported the prosecution case but the trial court has not appreciated the evidence of the prosecution which resulted in acquittal of the accused persons.

4. We have perused the judgment which discusses the evidence of the witnesses. The trial court has noted various inconsistencies which could not give resemblance. The doctor who held post mortem over the dead body of the deceased had found only one injury upon the neck though the evidence was otherwise and this is one of the grounds for disbelieving the witnesses. The trial court also found that the witnesses were interested and were not the eye-witnesses. P.W. 6 has stated that there was quarters around the hut from which the accused persons came out saulted and around the hut there was water and mud. The Investigating Officer has stated that he has not written about the water and mud around the hut in the case diary. The Investigating Officer has stated that he did not find any trampling mark near the hut. This witness has also stated that he did not enter into the hut. The Investigating Officer had seized blood stained soil but the same was not sent to any laboratory for chemical examination which has been stated in paragraph 9 of his deposition.

5. The grounds for disbelieving the prosecution witnesses were sound. The prosecution has to establish its case at its own. Penal jurisprudence does not allow the prosecution to rely upon the sketchy witnesses rather the case has to be proved by the prosecution beyond the shadow of all reasonable doubts. If any doubt is found in the prosecution version, then it can be said that the accused are entitled to

get the benefit of it. Bare analysis of the judgment of the trial court shows that it has rightly considered the evidences and passed the order of acquittal. According to our opinion, the judgment under appeal is neither perverse nor absurd. We see no reason to interfere with the finding of acquittal. In the result, Govt. Appeal and Criminal Revision both are held to be without merit and they are dismissed.