

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.97 of 1993

Arising Out of PS.Case No. -010 Year- 1990 Thana - BODH GAYA District- GAYA

1. Birju Paswan, son of Late Ram Swarup Paswan
2. Chandradeo Paswan, son of Late Devchand Gorait
Both are residents of Village Jhahara, P.S. Bodh Gaya, District Gaya
..... Appellant/s
Versus
The State of Bihar
..... Respondent/s
With

Criminal Appeal (DB) No. 109 of 1993

Arising Out of PS.Case No. -010 Year- 1990 Thana - BODH GAYA District- GAYA

Baran Paswan, son of Chandradeo Paswan, resident of Village Jarhara, P.S. Bodh Gaya, District Gaya
..... Appellant/s
Versus
The State of Bihar
..... Respondent/s

Appearance :
For the Appellants : Mr.
For the State : Mr. A.K. Sinha, APP

CORAM: HONOURABLE MR. JUSTICE V.N. SINHA
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE V.N. SINHA)
Date: 23-06-2015

None appears for the appellants. With the assistance of the State counsel, we have, however, perused the entire records ourselves.

2. Both these appeals arise out of judgment/ order dated 23.01.1993, passed by Additional Sessions Judge-I, Gaya, in Sessions Trial No. 475/1991/ 117/1992 whereunder Accused No. 1



Baran Paswan, appellant in Cr. Appeal (DB) No. 109 of 1993 has been convicted for the offences under Section 302 of the Penal Code, Section 27 of the Arms Act and sentenced to suffer rigorous imprisonment for life, five years under both the counts. The sentences, however, have been directed to run concurrently. Accused Nos. 2, 3, appellants in Cr. Appeal (DB) No. 97 of 1993 have been convicted for the offence under Section 302/34 and sentenced to suffer rigorous imprisonment for life.

3. Prosecution case, as set out in the written report of informant Hari Charan Manjhi (P.W. 10) dated 27.01.1990, is that he is resident of Village Jarhara, P.S. Bodh Gaya in the District of Gaya. In the previous evening on 26.01.1990 around 7.30 P.M. his wife had gone to purchase flour from the grocery shop of Accused No. 1 Baran Paswan with Rs. 1.25/-, purchased ½ kg flour and handed over Rs. 1.25/- to the shopkeeper Baran Paswan. 40 p. remained due for which she promised that the same shall be paid on the following day but Baran Paswan did not accept her plea and not only followed her to the entrance of the house of the informant but also began to hurl abuse. Wife of the informant asked not to abuse her, whereafter his cousin Accused No. 2 Birju Paswan assaulted the wife of the informant with a lathi, meanwhile, Accused No. 3 Chandradeo Paswan asked Baran Paswan to shoot her with pistol. On the instruction of Accused No. 3,

Accused No. 1 Baran Paswan shot his wife in the belly from his country-made pistol causing her death at the spot. In the written report Hari Charan Manjhi named four witnesses, namely, Fagu Manjhi, Kailash Manjhi, Rosun Manjhi and Lakshan Manjhi.

4. On the basis of the written report of Hari Charan Manjhi Bodh Gaya P.S. Case No. 010/90 was registered by Sri Birendra Kumar Singh, Officer-in-Charge, Bodh Gaya Police Station on 27.01.1990 at 5.15 A.M. against the three accused persons named in the written report. After registration of the aforesaid First Information Report on 27.01.1990 the same was sent to Chief Judicial Magistrate, Gaya on the same day through special messenger but the same was seen by Chief Judicial Magistrate on 31.01.1990, as is evident from his endorsement made on the first page of the First Information Report. After registration, dispatch of the First Information Report to Chief Judicial Magistrate, Gaya Birendra Kumar Singh, Officer-in-Charge, Bodh Gaya Police Station took up the investigation of the case, came to the place of occurrence village on 27.01.1990 at 8.30 A.M., conducted inquest proceeding on the dead body of the wife of the informant in the house of the informant and found one gun shot injury in her belly. After inquest the dead body of the deceased was sent to Sadar Hospital, Gaya for post mortem where the same was received on 27.01.1990 at 5.00 P.M. Post



mortem, however, was conducted on 28.01.1990 at 10.30 A.M. by Dr. M.K. Sinha. Dr. Sinha found on her person one bullet injury and the death was within 36-48 hour. Findings recorded in the post mortem report corroborated the prosecution story as one metallic bullet was found lodged in the upper part of the belly of first lumber vertebra. During investigation Investigating Officer also recorded the further statement of the informant and the police statement of the witnesses named in the written report as also others. Further statement of the informant and the police statement of the witnesses also corroborated the prosecution story set out in the written report that wife of the informant was shot dead. In the light of the written report, further statement of the informant, police statement of the witnesses including the villagers and the contents of the inquest, post mortem report Investigating Officer submitted charge-sheet against the three accused persons put on trial. After supply of police papers case was committed to the Court of Sessions. Court of Sessions framed charge against the three accused persons under order dated 06.03.1992 to which the three accused persons pleaded not guilty and claimed to be tried.

5. In support of the prosecution case, prosecution party examined as many as 15 witnesses. P.W. 10 Hari Charan Manjhi is the informant and husband of the deceased. P.Ws. 1, 12 Phagu



Manjhi, Lakshan Manjhi are the co-villagers of the informant. They are not only eye-witnesses of the occurrence but also witness to the inquest. P.Ws. 2, 7, 8, 9 Kailash Manjhi, Dasarath Manjhi, Tetari Manjhi, Piyaria Devi are the co-villagers of the informant. They have seen the occurrence as also identified the accused persons at the place of occurrence. P.Ws. 3, 5, 6 Roshan Manjhi, Bigan Singh, Nagina Singh are the co-villagers of the informant and are said to be the eye-witnesses of the occurrence. P.W. 6A Radha Singh has been tendered. P.W. 11 Mithilesh Kumar Sinha conducted post mortem on the dead body of Bindiya Devi. P.W. 13 Bishwanath Singh is the second Investigating Officer of the case. P.W. 14 Surendra Nath Singh is an Advocate's Clerk and formal witness, who proved the handwriting of the first Investigating Officer on the written report and the First Information Report.

6. From the contents of the written report (Exhibit-2) and the evidence of the informant (P.W. 10), it is quite evident that wife of the informant had gone to the grocery shop of Accused No. 3 to purchase flour in the evening of 26.01.1990 around 7.30 P.M. with Rs.1.25/- She purchased $\frac{1}{2}$ kg flour and paid Rs.1.25/- to the shopkeeper Accused No. 1 Baran Paswan and 40 p. remained due. She promised him that she will pay the balance amount on the following day. In order to realize the arrears Accused No. 1 followed



the wife of the informant to her residence and on her failure to pay the remaining amount began to abuse her. Wife of the informant protested but was assaulted by lathi by Accused No. 2 Birju Paswan and then under the orders of Accused No. 3 Chandradeo Paswan, Accused No. 1 Baran Paswan shot in the upper part of her belly by pistol causing her death on the spot.

7. Evidence of the informant that his wife has been shot dead by Accused No. 1 has also been corroborated by the other villagers, namely, P.Ws. 1, 2, 7, 8, 9, 12. Informant and the aforesaid witnesses also asserted in their evidence that Accused No. 2 Birju Paswan assaulted Bindiya Devi with lathi but such assertion of the informant and the witnesses does not appear to be corroborated from the medical evidence, as would appear from the post mortem report (Exhibit-1) and the evidence of P.W. 11, the doctor who conducted post mortem on the dead body of the deceased, as both from the post mortem report and the evidence of P.W. 11 it is established that the deceased suffered only one pistol injury in her belly. No other injury having been found on her person the story, as set out in the written report as also in the evidence that assault by pistol was preceded by assault from lathi, does not appear to be correct.

8. The other part of the prosecution story that it was Accused No. 3 Chandradeo Paswan on whose instruction his son

Accused No. 1 Baran Paswan shot at the deceased also appears to be exaggeration with a view to implicate the entire family, as it was Baran Paswan who received 40 p. less towards price of flour came following Bindiya Devi, the wife of the informant to her house and began to abuse her. He did not require any instruction from his father to shoot her, which was his independent act.

9. From the evidence discussed above, we are satisfied that the prosecution has proven its case that it was Accused No. 1 Baran Paswan who shot the wife of the informant on 26.01.1990 around 7.30 P.M. after she protested and asked him not to abuse her. In the circumstances, appeal filed by Accused No. 1 Baran Paswan i.e. Cr. Appeal (DB) No. 109 of 1993 is dismissed. He is on bail in the light of order no. 9 dated 13.08.1999, passed in Cr. Appeal (DB) No. 109 of 1993, wherefrom it appears that he has remained in jail custody with effect from 04.04.1990 until the date of his release pursuant to order dated 13.08.1999 and thereby served sentence as under trial, convict for more than nine years. He is directed to surrender in the court below forthwith and serve out the remaining part of his sentence.

10. So far appellants Birju Paswan and Chandradeo Paswan, appellants in Cr. Appeal (DB) No. 97 of 1993 are concerned, they are required to be granted benefit of doubt in view of our finding recorded in

paragraphs 7, 8 above. Accordingly, they are acquitted of the charge levelled against them. They being on bail are discharged from the liability of their respective bail bonds. Cr. Appeal (DB) No. 97 of 1993 is, accordingly, allowed.

(V.N. Sinha, J.)

(Nilu Agrawal, J.)

Rajesh/N.A.F.R.

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