

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.77 of 1994

1. Lukho Prasad Chourasia, son of Rameshwar Prasad of Pursanda, P.S. Halsi
2. Birendra Prasad Chourasia, son of Gajadhar Prasad
3. Binod Prasad Chourasia, son of Brahamdeo Prasad
4. Deep Narayan Chourasia, son of Birendra Prasad, All are resident of village Geruapur, Police Station Halsi, District Munger.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

Criminal Appeal (DB) No. 112 of 1994

Kanhai Prasad Chourasia, son of Deep Narayan Chourasia, resident of village Geruapur, Police Station Halsi, District Munger.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In Criminal Appeal (DB) No. 77 of 1994)

For the Appellant/s : Mr. Sanjay Kr. Bharti, Adv.

For the Respondent/s : Mr. Abhimanyu Sharma, APP

(In Criminal Appeal (DB) No. 112 of 1994)

For the Appellant/s : Mr. Sanjay Kr. Bharti, Adv.

For the Respondent/s : Mr. Abhimanyu Sharma, APP

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 14-11-2017

As both these appeals arise out of a judgment dated 8th of February, 1994, passed by the 12th Additional Sessions Judge, Munger in Sessions Trial No.264/92, convicting the appellants herein, namely the appellant Kanhai Prasad Chourasia for offence



under Section 302 of I.P.C. with life imprisonment and the other accused for offence under Sections 302/149 I.P.C. to life imprisonment, so also each of them for offence 27 of the Arms Act to five years' R.I., these appeals have been filed by the appellants and they are being disposed of by this common judgment.

It is the case of the prosecution that a fardbeyan was recorded by one Sundar Tanti, the informant, to the effect that he had some dispute with his agnates with regard to home land and whenever the informant used to have dispute with Shravan Tanti, the accused Kanhai Prasad Chourasia and Binod Prasad Chourasia used to take the side of Shravan Tanti and on their strength Shravan Tanti was not giving him his requisite share. It was alleged that on 6.2.1992, at 9:00 a.m., the informant and his mother had gone to their field to cut grass when all the accused persons had met them and thereafter there was some exchange of words on which the accused first abused and assaulted the informant and his mother and thereafter, threatening to kill them, they went away. In the evening at 5:00 O'clock on the same day, when the informant had gone to attend the call of nature and his mother Kaushalya Devi came to the Bathan (cattle shed) to give fodder to the cattle, accused Kanhai Prasad Chourasia, armed with a rifle and the other four co-accused persons armed with pistols came there and



enquired about the whereabouts of the informant from his mother, used filthy language and when she said that she did not know the whereabouts, accused Kanhai Prasad Chourasia fired from his rifle at her. The other accused persons also started firing with their pistols. His mother fell down on receiving the firearm injury. On hearing the sound of firearms, villagers came running there. The informant also saw it and came there, but by that time his mother had died. Based on the aforesaid, prosecution was launched and the prosecution examined the following 14 witnesses in support of their contention: P.W.1 Sukhdeo Tanti, P.W.2 Budhan Tanti, P.W.3 Babu Lal Paswan, P.W.4 Dashrath Prasad Chourasia, P.W.5 Sundar Tanti, P.W.6 Fago Barai, P.W.7 Tikam Paswan, P.W.8 Shankar Tanti, P.W.9 Ranjeet Kumar, P.W.10 Dahu Nonia, P.W.11 Thakur Om Prakash Singh, P.W.12 Baidya Nath Ram, P.W.13 Shobha Kant Mishra, P.W.14 Rajendra Patel.

The defence examined two witnesses, D.W.1 and D.W. 2 Nawal Kishore Singh and D.W.2 Baleshwar Paswan. The informant, P.W.5 Sundar Tanti, is also an eye-witness to the entire incident and he has narrated the story as put forth by him in the fardbeyan. The post mortem report is available on record and the injuries sustained by the deceased is also proved from the statement of the doctor who examined the injured. P.W.11 Thakur



Om Prakash Singh is the doctor who had conducted the post mortem examination and supported the report, Ext.9, and from the nature of injuries, it is clear that the deceased died because of a bullet fired from a rifle. Her mouth was completely swollen since she had sustained the injuries as are indicated therein. That apart, P.W.5, Sundar Tanti has narrated the story and from his evidence it can be seen that he had seen the incident from near to the Bathan and he narrates the story, as is reproduced in the fardbeyan. Apart from the statement of P.W.5, which is nothing but an eye-witness's account of the entire event, P.W.1 Shukdeo Tanti, the father of the informant and husband of the deceased and he speaks about rushing to the place of occurrence on hearing the sound of firearm and he also speaks about seeing accused Kanhai Prasad Chourasia with a rifle and the other four accused persons, namely Binod Prasad Chourasia, Deep Narayan Chourasia, Birendra Prasad Chourasia and Lukho Prasad Chourasia, armed with pistols fleeing away towards northern side and while fleeing away, to scare the villagers who had assembled, they were firing in the air. P.W.3 and P.W.4 Babu Lal Paswan and Dashrath Prasad Chaurasia were also present near the place of occurrence and they also speak about seeing Kanhai Prasad Chourasia armed with a rifle, Binod Prasad Chaurasia, Birendra Prasad Chaurasia and Lakhu Prasad Chaurasia



armed with a pistol coming to the Bathan and on their enquiring from the deceased the whereabouts of her son and thereafter firing at her.

On a meticulous analysis of the statement of P.W.1, 3, 4 and 5, the entire case of the prosecution is established. That apart, from the statement of P.W.9 Ranjeet Kumar, P.W.6 Phago Barai and other witnesses, presence of the appellants on the spot and their fleeing away with the rifle, pistols and firing while doing so is also established. The defence of the appellants was that even though Kaushalya Devi had died on the very date of occurrence, but the incident happened in a lane near the house of Mistry Tanti wherein various other persons like Banke Prasad Chourasia, Baso Chaurasia, Hari Mohan etc. attacked one Ambika Prasad with a lathi and in the firing that took place Kaushalya Devi sustained the firearm injury. However, surprisingly, for this incident which is said to have taken place, no F.I.R. is registered and the injured Ambika Prasad, who was allegedly being assaulted in this incident, is also not examined. It was alleged that after this incident Ambika Prasad was removed for treatment to P.M.C.H., Patna where he was unconscious for 10 days. For this also, F.I.R. was lodged in Halkhi Police Station, but, surprisingly, that was not established and even the complainant in the said case Ambika Prasad was



neither summoned nor examined as a defence witness. This itself belies the story of the defence and after considering the totality of the materials and evidence available on record, trial court has rejected the story and we also see no reason to take a different view than the one taken by the learned trial court.

Even though learned counsel for the appellants by taking us through the evidence tried to point out minor contradictions in the same, but we find that considering the complete reading of the evidence, the story as is narrated by the witnesses and as it is recorded in the fardbeyan by P.W.5 Sundar Tanti is proved. It is a case where the appellants after the incident that took place in the morning, with an intention to commit the crime, armed with rifles and pistols came to the spot, committed the offence and while fleeing away, to threaten the villagers who had assembled there, firing in the air ran away. It is a case where they formed an unlawful assembly, committed the offence and, therefore, conviction under Section 302 and 302/149 of I.P.C. is proper and as the entire conviction is based on the evidence that came on record, we see no reason to interfere into the matter and allow this appeal. The prosecution has proved its case and the conviction, in our considered view, does not suffer from any infirmity.



Accordingly, we see no reason to interfere into the matter. The appeals being devoid of merit are dismissed. The appellants are on bail. Their bail-bonds are cancelled. They are directed to be arrested and taken into custody for undergoing the remaining part of their sentence.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

K.C.Jha/-

AFR/NAFR	NAFR
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