

Úy

Cr1.A.No. 603 OF 2004  
ITEM No.101(P.H.) Court No.10

SECTION IIA

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Cr1.A. No.603/2004

Birendra Rai & Ors.Appellants.

VERSUS

State of Bihar Respondent.

(With Office Report)

Date : 18/11/2004 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.P. SINGH  
HON'BLE MR. JUSTICE ARUN KUMAR

For Petitioner (s) Mr. S.B. Sinha, Sr. Adv.  
Mr. Ashok Kumar Sharma, Adv.

For Respondent (s) Mr. Krishnanad Pandeya, Adv.

Mr. Saket Singh, Adv.  
Mr. B.B. Singh, Adv.

UPON hearing counsel the Court made the following  
O R D E R

The appeal is dismissed in terms of the signed  
judgment.

(R.K. DHAWAN) (VIJAY DHAWAN)  
COURT MASTER COURT MASTER

(Signed non-reportable judgment is placed on the file)

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPEAL NO.603 OF 2004

Birendra Rai & Ors..... Appellants.

Versus

J U D G M E N T

B.P. SINGH,J

This appeal by special leave is directed against the judgment and order of the High Court of Jharkhand at Patna dated March 4, 2003 in Criminal Appeal No.366/1997 whereby the appeal preferred by the appellants was dismissed by the High Court, affirming the judgment and order

passed against them by the 5th Additional District and Sessions Judge, Rohtas at Sasaram in Session Trial No.321/1986. Appellant No.1 Birendra Rai has been sentenced to undergo rigorous imprisonment for life under Section 302 IPC and five years rigorous imprisonment under Section 27 of the Arms Act. Appellant nos. 2 to 5 have also been sentenced to undergo rigorous imprisonment for life under Section 302/149 IPC. Appellants Govind Rai and Uma Shankar Pandey have also been sentenced to undergo five

...2/-

-2-

years rigorous imprisonment under Section 27 of the Arms Act.

The occurrence is said to have taken place at about 2 p.m. on the 6th February, 1985, near a bridge on the canal, a little distance away from village Gaura. The case of the prosecution is that deceased Bhola Singh carrying a bundle of pea crop on his head came near the canal from his field when the appellants came near the bridge on a tractor trolley and fired at him. The first shot was fired by appellant Birendra Rai from his rifle causing injury on the chin of the deceased. After getting injured, he fell down, whereafter the other appellants fired indiscriminately from their respective weapons and went towards their village in the tractor trolley.

P.W.4 Ram Bachan Singh, nephew of the deceased rushed to the police station along with P.W.3 Yogendra Singh where he lodged the report, on the basis of which a first information report was drawn up and a case was registered. Police Station Dinara was at a distance of 8 kms. from the place of occurrence and the report was lodged by PW-4 at the police station at 3 p.m. Therefore, it appears that the first information report was promptly lodged.

The prosecution has examined two eye witnesses namely, Ram Bachan Singh, the informant, P.W.4 and another

...3/-

-3-

eye witness Yogendra Singh, P.W.3. While P.W.4 is nephew of the deceased, P.W.3 Yogendra Singh is not related either to

the accused persons or the deceased. P.W.2 Dr. Sudhir Kumar Singh was examined to prove the injuries suffered by the deceased, he being the doctor who conducted the post-mortem examination.

From the deposition of Dr. Sudhir Kumar Singh, P.W.2, it appears that he conducted the post-mortem examination on the body of the deceased at 7 a.m. on 7th February, 1985 and found the following injuries on his person:

(i) Wound of entrance about 2"x 2" with blackening of skin and margin are inverted over the left side of chin with fracture left mandible wound of exit about 3"x 2-1/2" over left mastoid bone (behind left ear) with a regular shape and margin are inverted and brain matters covering out from skull cavity.

(ii) Wound of entrance are multiple 1/6"x 1/8", 1/4"x1/6", 1/4"x1/8", 1/4"x1/6", over in front of left side of chest upper portion with fracture of left clavicle (collar bone) with sign of blackening of skin around the wound. Wound of exit about 1/2"x 1/2" in a regular shape and margin are inverted over back upper portion of left shoulder with fracture of left spin of scapula.

...4/-

-4-

(iii) Wound of entrance are multiple about 1/4"x1/4", 1/6"x1/8", 1/4"x1/8" and 1/4"x1/6" over left back of scapula. Wound of exit about 1/2"x 1" with a regular shape and margin inverted over left side of abdomen.

(iv) Wound of entrance about 1"x1/2" blackening of skin and margin are inverted over left middle outer portion of forearm. Wound of exit about 2-1/2"x 1-1/2" with a regular shape with lacerated over left middle inner portion of left forearm.

On dissection of skull, the skull cavity was full of blood and blood clots with fracture of left occipital and left parital bone with damage of left posterior lobe of brain.

2. On dissection of thoraco and abdomen, the thoraco abdominal cavity was found full of blood and blood clots and three big pea size pellets were recovered from front of the sternum and big pea size pellets recovered from right iliac fossa. There was damage by pellets to both middle lobes of lungs and right chamber of heart and right lobe of liver.

3. The above injuries were ante-mortem caused by fire arm. Time of death was within 24 hours of post-mortem examination. Cause of death was due to damage to vital organs i.e. lungs, heart, liver and brain.

...5/-

-5-

The seizure witness namely, Jagannath Singh who was examined as P.W.1 was declared hostile. He admitted his signature on the seizure list but denied that anything was written on it when he was made to sign the documents. According to him he had signed on a blank sheet.

From the evidence of P.W.3 Joginder Singh, it appears that when the occurrence took place he was in a tea shop very near the bridge over the canal. According to this witness Gaura bridge is located on the National Highway running north to south over a canal which flows from east to west. The tea shop where the witness was having tea at the time of occurrence is situated on the north of the canal and to the east of the bridge. It also appears from his evidence that at the National Highway is at higher level than the canal road and according to this witness the road level is 3 to 4 feet higher than the canal. According to him while sitting in the shop of Shyam Narain he noticed the deceased coming from his field which is situated north of the canal at a distance of 20 to 25 bamboos. When the deceased reached near the canal, he noticed a tractor coming from the north on the Highway. After reaching the bridge it took a turn towards the canal and reached near the deceased Bhola Singh. He saw that Udai Rai appellant no. 5 exhorted his companions to kill the deceased. Appellant no.1

...6/-

-6-

Birendra Rai fired a shot from his rifle which hit the deceased and he fell down. Thereafter the remaining accused indiscriminately fired at the deceased from their respective guns, and while doing so proceeded towards the west in the tractor. It is not in dispute that a trolley was attached with the tractor and all the appellants were in that trolley when the occurrence took place. According to this witness Ram Bachan Singh P.W.4 and others came there. He has in particular named Lallan Singh, Suraj Bali Singh and Hardev Singh as the persons who came to the place of occurrence when alarm was raised. Thereafter he along with Ram Bachan Singh and

Lallan Singh came to the police station where Ram Bachan Singh P.W.4 lodged the report on which he had also signed. His statement was also recorded by the inspector of police. He has stated that there was a dispute between accused persons and deceased Bhola Singh. This witness admitted that his village was situated at a distance of about half a mile from the bridge. At the time of occurrence he was inside the tea shop. There were other tea shops nearby. He usually goes to this shop to take tea. Amongst the persons sitting in the shop was Ram Bachan Singh P.W.4. In cross-examination, he asserted that he saw the tractor when it was on Gaura bridge. The tractor stopped after it had come on the canal from the road. It stopped in

...7/-

-7-

front of deceased Bhola Singh. Bhola Singh had no opportunity to run away. He received the first shot while he was standing. Thereafter he fell down. The appellants fired several rounds from the trailer. He also noticed that the deceased was wearing a sweater and ganji and lungi and also carrying a chadar. He noticed a hole in the sweater of the deceased. He further stated that there was land dispute between the appellants and the deceased relating to some land in village Ghorbunch. He denied that he belonged to the family of the deceased.

Ram Bachan Singh P.W.4. informant deposed in a manner consistent with the facts narrated by him in his first information report. He has corroborated P.W.3 in all respects. The manner of occurrence deposed to by him is consistent with the statement of P.W.3. This witness has further clarified that the place of occurrence was only 5-6 steps west of the shop where he was sitting. After Bhola Singh fell down on the service road on the embankment of the canal the tractor passed by the side of Bhola Singh. There is nothing of significance worth noticing in the cross examination of these eye witnesses. Their evidence is consistent and nothing has been elicited from them in their cross examination which may render their evidence unworthy of credence.

...8/-

-8-

However, Shri K.B. Sinha, learned senior counsel appearing on behalf of the appellants submitted that having regard to the facts and circumstances of the case and the manner of occurrence, it was doubtful if the injuries could have been caused in the manner alleged. According to him

im the appellants were standing on a higher level and the deceased was standing on the road at a lower level. Therefore, in normal course the wounds would have a downward trajectory but the report disclosed otherwise. We have earlier noticed the injuries found on the person of the deceased. The prosecution case is consistent that after receiving the first injury on the chin the deceased fell down. The other injuries were suffered by him while he was lying on the ground. We do not attach much significance to the fact that some of the wounds showed an upward trajectory. A bullet may possibly be deflected if it hits a hard surface. The fact remains that all the shots fired have caused wound of entry and as well as exit wound, and from the description of the wounds given by the doctor it appears that the firing was done from very close range. The evidence of the witnesses is to the same effect. They have clearly stated that they came near the deceased after firing took place. There was indiscriminate firing at the deceased who fell down after receiving the first injury. One cannot

...9/-

-9-

assume that the deceased was lying still in one posture after falling on the ground. He must have been wreathing in pain when several shots were fired at him, and in that process several injuries were caused to him. So viewed, we find no inconsistency between the ocular evidence and medical evidence on record.

It was submitted that the deceased was wearing a sweater, ganji and carrying a chadar and therefore blackening of skin around the wound was not possible. If one closely scrutinises the injuries found on the person of the deceased, it will be seen that the blackening of the skin was found only on the margin of the wounds, that is on the skin around the wound. In a case of this nature where firing from fire arms took place from a close range, blackening of the margin of the wounds appears to be only normal.

Learned counsel also doubted the truthfulness of the prosecution case as regards the place of occurrence. It was submitted that if several shots were fired, some pellets would have been found at the place of occurrence. It is the case of the prosecution that no pellets were found.

For this reason alone we cannot discard the case of the prosecution. If pellets were found at the place of occurrence it would have further strengthened the case of

...10/-

-10-

the prosecution, but in the absence of such evidence one has to rely upon the ocular evidence which if found reliable, may be acted upon. Unfortunately, in this case, despite the efforts of the prosecution, the investigating officer could not be examined as a witness. The seizure witness has also been declared hostile. There is really no corroborative evidence, except the circumstantial evidence to corroborate the version given by the witnesses. However, we find the eye witnesses to be straight forward and reliable. Being rustic villagers, there is no effort on their part to improve the case of the prosecution on the basis of imaginary facts. They have deposed in a straight forward manner, and there is a ring of truth in their testimony. We find them to be implicitly reliable.

It is then argued that several persons were named in the first information report, as also by the witnesses, who were present in the nearby shops when the occurrence took place but none of them has been examined. Mere failure to examine all the witnesses who may have witnessed the occurrence will not result in outright rejection of the prosecution case if the witnesses examined by the prosecution are found to be truthful and reliable. Moreover, we cannot ignore the reality that many eye witnesses shy away from giving evidence for obvious reasons.

...11/-

-11-

It was then submitted that the investigating officer was not examined in this case and that has resulted in prejudice to the accused. Having gone through the evidence of witnesses and other material on record, we do not find that any prejudice has been caused to the defence by non-examination of the investigating officer. The mere fact that according to the seizure list a stick with blood stains and pellet marks was seized from the place of occurrence, would not advance this argument any further. The seizures have not been proved in this case because the investigating officer was not examined, and the seizure witness has turned hostile. We, therefore, ignore the seizures made and base our decision on the other evidence and the evidence of two eye witnesses, who have impressed us as truthful.

Both the courts below have relied upon the evidence of the eye-witnesses and we find no reason to take a different view.

We, therefore, see no merit in this appeal and the same is accordingly dismissed.

.....J  
(B.P. SINGH)

.....J  
(ARUN KUMAR)  
NEW DELHI;  
NOVEMBER 18, 2004.