ANJANI CHAUDHARY

v.

STATE OF BIHAR

(Criminal Appeal No. 140 of 2004 etc.)

OCTOBER 26, 2010

[HARJIT SINGH BEDI AND CHANDRAMAULI KR. PRASAD, JJ.]

Penal Code, 1860 – s.302 – Parricide – Dispute over landed property – A-1 was allegedly armed with a pistol and a 'lathi'; A-2 with a 'farsa' and A-3 with a 'bhala' – Victim assaulted and killed on the spot – Conviction by courts below u/s.302 on the basis of evidence of eye-witnesses – Appeals by A-1 and A-3 – Held: Since the instant matter involves close relatives belonging to farming families with deep set animosities, some evidence beyond the ocular evidence is also required to be looked at – Medical evidence corroborated the presence of A-2 and A-3 as they were armed with a 'farsa' and a 'bhala' which could have caused the incised and penetrating wounds found on the dead body – The medical evidence, however, did not support the presence of A-1 as there was no injury with a pistol or a 'lathi' on the body of the deceased – Appeal of A-3 dismissed while appeal of A-1 allowed.

Evidence – Chance witness – Reliability – Held: On facts, reliable as he gave a very cogent explanation for his presence at the time of the murder.

According to the prosecution, the three accused assaulted PW-2's brother with pistol, 'lathi', 'farsa' and 'bhala' and killed him on the spot. The motive for the murder was stated to be dispute between brothers (and their family members) over landed property. The trial court held that the ocular evidence was corroborated by the

A medical evidence; and further observing that there was no delay in the lodging of the FIR, convicted all the three accused under Section 302 IPC. The order of conviction was affirmed by the High Court.

B A-1 and A-3 filed the instant appeals contending that PWs. 4 and 5 had not supported the prosecution and that the High Court had found that PW-14 (the wife of the deceased) was not an eye-witness as claimed by her, whereas PW-1 was a chance witness who belonged to a village situated at a distance of about 8 miles from the C place of the incident; the entire prosecution story rested upon PW-2's statement and as he admittedly had grave animosity with the appellants on account of the land dispute, his evidence could not be relied upon. It was further contended that the medical evidence did not D support the presence of A-1 as he was allegedly armed with a 'lathi' while no injury with a 'lathi' had been found on the deceased.

Allowing the appeal of A-1 and dismissing the appeal E of A-3, the Court

HELD: This is a case of parricide. It is clear that the incident was sparked off by a dispute between brothers and their family members pertaining to the land which had been gifted by mother of PW-2 to his wife which was F resisted by the accused as they too had laid claim to the said land. This is apparent from the depositions of PW-1 and PW-2. PW-1 has also given a very cogent explanation for his presence at the time of the murder. In this view of the matter that PWs-4 and 5, who were related to both the G parties, had turned hostile is not surprising. However, in a matter which involves close relatives belonging to farming families with deep set animosities some evidence beyond the ocular evidence should also be looked for. In this case the medical evidence corroborates the

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presence of A-2 and A-3 as they were armed with a 'farsa' and a 'bhala' which could have caused the incised and penetrating wounds found on the dead body. The medical evidence, however, does not support the presence of A-1 as there was no injury with a pistol or a 'lathi' on the body of the deceased. A-1 is directed to be acquitted. [Paras 7, 9] [232-C-G; 233-B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 140 of 2004.

From the Judgment & Order dated 25.04.2003 of the High Court of Patna in Criminal Appeal No. 120 of 1998 (D.B.)

WITH

Crl. Appeal No. 1739 of 2010.

S.C. Patel, Jai Prakash Narayan Gupta, Pankaj Kr. Singh for the Appellant.

Chandan Kumar (for Gopal Singh) for the Respondent.

The Judgment of the Court was delivered by

HARJIT SINGH BEDI, J.

These appeals by way of special leave arise out of the following facts :

1. On 6th February, 1989 at about 2:45 p.m., the first informant Ram Pukar Chaudhary (PW-2), had gone to ease himself when he heard some sounds coming from outside his house. On returning, he saw his nephews Anjani Chaudhary armed with a pistol and a lathi, Bhimsen Chaudhary armed with a farsa and KinKin Chaudhary armed with a bhala assaulting his brother Prem Kumar Chaudhary, killing him on the spot. PW-2 raised an alarm, whereafter Satyadeo Chaudhary (PW-1), Madan Chaudhary (PW-5) and Ahsarfi Chaudhary (PW-4) also

A reached the site and saw part of the alleged occurrence. The motive for the murder was that the family property had been partitioned amongst the four brothers and their mother, and the mother had started living with the deceased Prem Kumar Chaudhary and had also executed a gift-deed in respect of her
B land in favour of PW-2's wife on which PW-2's brothers Mukti Chaudhary and Ram Pukar Chaudhary as well as the appellants had raised a dispute. On receiving information about the incident, a police party reached the village and recorded the statement of PW-2 and on that basis and after due investigation
C a charge-sheet was submitted against the appellants under Section 302/34 of the Indian Penal Code, to which they pleaded not guilty and were brought to trial.

2. The prosecution, in support of its case, examined inter alia:
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PW-3 Ramadhaar Chaudhary who proved the F.I.R (Exhibit-2), CW-2 Sikan Shahani proved the gift deed dated 15th December, 1987 executed between Suhagwati in favour of Dharamsheela Devi and several other formal witnesses who
E proved the animosity and prolonged litigation between the warring brothers. PW-4- Ahsarfi Chaudhary and PW-5 Madan Chaudhary who had been named as eye-witnesses, however, turned hostile and did not support the prosecution. The prosecution, accordingly, fell back on the eye-witnesses; PW-
F 1 Satyadeo Chaudhary, PW-2 Ram Pukar Prakash Chaudhary, PW-13-Ram Padarath Chaudhary and PW-14 Tarawati Devi, the wife of deceased.

3. The Trial Court held that the evidence of PW-14 could not be believed as her presence had not been noted in the FIR.
G The court then went into the eye-witness account of Satyadeo Chaudhary PW-1 and observed that though he belonged to a village at a distance of about eight miles from the place of incident, his presence was proved on record as the wife of the deceased was his sister and on the day in question he had
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been present to participate in a religious ceremony in her house. The court also found that as the statement of this witness had been recorded by the police at about 5:00 p.m. that is within half an hour of the recording of the F.I.R, his presence was proved on record for this additional reason. Likewise, the Trial court examined the evidence of PW-2 Ram Pukar Chaudhary, the brother of deceased, who deposed that as his mother had gifted her share of the land in favour of his wife, the other members of the family were annoyed on that account. He further stated that Bhimsen Chaudhary had been armed with a farsa, Kinkin Chaudhary with a Bhala and Anjani Chaudhary with a lathi and they had inflicted injuries to the deceased with their weapons. The court also found that the ocular evidence was corroborated by the medical evidence as there were thirteen (13) injuries on the deceased, out of which twelve (12) injuries were incised and injury No.5 was a penetrating wound which could have been caused by a Bhala. It was, however, noted that there was no injury with a lathi on the deceased. The court further observed that there was absolutely no delay in the lodging of the FIR. The Trial Court accordingly convicted all the accused under Section 302 of the Indian Penal Code and awarded a sentence of rigorous imprisonment for life and a fine of Rs.15,000/- with a default sentence as well.

4. An appeal was, thereafter, taken to the High Court which has, by the impugned judgment, dismissed the appeal.

5. During the course of hearing, the learned counsel for the appellants has raised several arguments before us. It has been submitted that in the light of the fact that PW's 4 and 5, who were alleged to be the eye-witnesses to the incident, had not supported the prosecution and that the High Court had found that the PW-14 was not an eye-witness as claimed by her, whereas PW-1 was a chance witness who belonged to a village situated at a distance of about 8 miles from the place of the incident, the entire prosecution story rested upon PW-

A 2's statement and as he admittedly had grave animosity with the appellants on account of the land dispute, his evidence could not be relied upon. It has also been submitted that the medical evidence did not support the presence of Anjani Chaudhary who is said to have been armed with a lathi and no
B injury with a lathi had been found on the deceased.

6. The learned counsel for the State of Bihar has, however, supported the judgment of the High Court and Trial Court. He has pointed out that in the light of the fact that the Trial Court and the High Court had given concurrent findings on the
C evidence, no interference was called for in this matter.

7. We have considered the arguments advanced by the learned counsel for the parties. This is a case of parricide. It is clear that the incident was sparked off by a dispute between
D brothers and their family members pertaining to the land which had been gifted by Suhagwati, mother of PW-2 to his wife Dharamsheela Devi which was resisted by the accused as they too had laid claim to the said land. This is apparent from the depositions of PW-1 and PW-2. PW-1 has also given a very
E cogent explanation for his presence at the time of the murder. In this view of the matter that PWs.-4 and 5, who were related to both the parties, had turned hostile is not surprising. We must however keep in sight that in a matter which involves close relatives belonging to farming families with deep set
F animosities some evidence beyond the ocular evidence should also be looked for. In this case the medical evidence corroborates the presence of Bhimsen Chaudhary and Kinkin Chaudhary as they were armed with a farsa and a bhala which could have caused the incised and penetrating wounds found
G on the dead body. The medical evidence, however, does not support the presence of Anjani Chaudhary as there was no injury with a pistol or a lathi on the body of the deceased.

8. It is also apparent from the record that Bhim Sen Chaudhary has not filed an appeal in this court. Criminal Appeal
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No. 140 of 2004 has been filed by Anjani Chaudhari and Criminal Appeal No.1739 of 2010 (arising out of special leave to appeal (Crl.) No.5187 of 2003) by Kinkin Chaudhary and both are being disposed of by this judgment. A

9. In view of what has been stated above, we dismiss the appeal of Kinkin Chaudhary but allow Criminal Appeal No.140 of 2004 filed by Anjani Chaudhary and order his acquittal. He shall be released forthwith if not required in any other case. B

B.B.B. Appeals disposed of.