

(2003) 03 PAT CK 0031

In the Patna High Court

Case No : Criminal Appeal (DB) No. 161 of 1998

Ashok Kumar @ Ashok Singh and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 07-03-2003

Acts Referred:

Arms Act, 1959 — Section 27

Penal Code, 1860 (IPC) — Section 149, 302, 396

Citation : (2003) 4 PLJR 816

Hon'ble Judges : Prahat Kumar Sinha, J; Braj Nandan Prasad Singh, J

Bench : Division Bench

Advocate : P.N. Pandey, Ram Sumiran Singh and Binit Kumar, for the Appellant;
G.P. Jaiswal and Awadhesh Kumar Singh, for Informant, for the Respondent

Final Decision : Allowed

Judgement

Prahat Kumar Sinha, J.—Appellants Ram Snehi Singh @ Ramsnehi @ Benga Singh, Uday Shankar Sharma @ Uday Shankar @ Pravesh Singh and Vinod Kumar @ Mintu Singh were also found guilty of having committed the offences punishable under Sections 396 and 302-of the Indian Penal Code ("the Code" in short), but on the ground of the claim that they were juveniles at the time of the occurrence and in view of a judgment of this Court in that regard the learned trial court made them over to the Chief Judicial Magistrate, Nawadah, the designated court, for proceeding against them under the provisions of the Juvenile Justice Act, 1986. Out of other Appellants, Ashok Kumar @ Ashok Singh was convicted under Sections 302 and 396 of the Code having been sentenced to imprisonment for life for both the offences as also to pay a fine of rupees twenty thousand u/s 302 of the Code whereas no separate sentence was recorded for his conviction u/s 27 of the Arms Act. The other Appellants have been convicted u/s 302 of the Code read with Section 149 of the Code as well u/s 396 of the Code and sentenced to imprisonment for life, as also a fine of rupees ten thousand for having committed the former offence. The sentences were ordered to run concurrently.

2. Shorn of the details, the prosecution story as coming out of the fardbayan (Exhibit-1), recorded by Bachhu Singh (P.W. 10) in his village is that on 12.10.1998 at about 7.00 P.M. the Appellants with some unknown came and Appellant Ashok Kumar @ Ashok Singh demanded the keys but on being informed that the keys were with the daughter-in-law, they started assaulting the family members, took away ornaments, clothes etc. whereafter they enquired about the stair-case and on being shown that, three persons went to the roof and entered into the house of Chandrika Singh and opened the door. Family members of the informant were locked in a room but the, informant was taken to the house of Chandrika Singh whereafter Ashok Singh fired a shot in the chest of Nageshwar Singh and they also assaulted the family, members besides looting the household goods. When they came out of the room of Nageshwar, Ram Chariter Singh asked Appellant Ashok Singh to verify as to whether Nageshwar had died whereafter Ashok Singh came inside again and fired a shot in the mouth of Nageshwar and Laxmi Singh gave a Saif (sharp cutting weapon) blow to the deceased Nageshwar Singh and they fled away. It was claimed that the accused were identified in the light of lantern and earthen lamp (Dia).

3. From the trend of cross-examination and materials on record the defence will appear to be that the deceased himself was leader of a gang of dacoits and was killed by the dacoits but the Appellants were implicated because of old enmity. Out of the witnesses examined, P.Ws. 1 and 14 are formal witnesses whereas P.W. 3, son of Chandrika Singh (P.W.2), in whose house dacoity was also committed and P.W. 9, Meena Devi were tendered for cross-examination and have told nothing of any significance. P.W. 2, Chandrika Singh, as per his admission, was not present in his house when the occurrence took place. He admitted that he had reached his house the next day at about 12.00 noon. He also had admitted that his village consisted of fifteen to thirty houses and also told as to which co-villagers lived near his house. He also admitted that Appellant Ashok Singh was an employee working in the Post Office at Ranchi. He also admitted that he as well the deceased were accused in the case of murder of Rameshwar Singh, and that accused Ram Snehi Singh and Ashok Singh were sons of Rameshwar Singh. He also admitted that a criminal case was going on in between him and Rameshwar Singh prior to the instant occurrence.

4. P.W. 4, Savitri Devi, sister of the deceased, P.W. 5 Sobha Devi, wife of the deceased, P.W. 7, Radha Devi mother of the deceased, P.W. 8, Sita Devi, wife of Bachhu Singh in whose house allegedly dacoity was committed first and P.W. 11, Renu Devi, daughter-in-law of Bachhu Singh are all relatives. P.W. 12, Nageshwar Singh, the cousin of the deceased, is a witness of the seizure of an empty cartridge and blood stained soil. Though not an eye-witness, his evidence has been taken help of by the defence since he claimed that he was the one who, though he went to the village of occurrence next morning, had thereafter gone to the Police Station and had brought the Investigating Officer with him. This aspect of his evidence I will revert to later.

5. First a glance over the evidences of the eye-witnesses. P.W. 4 has said that at the time of occurrence he had heard sound of cries from the house of Bachhu Singh when dacoits had started assaulting them. She said that the deceased had gone on the roof to read "Ramayan". She said that when the dacoits came the deceased also came down to the ground floor and, alongwith this witness, P.W. 5 and P.W. 7, he entered into a room followed by three dacoits who had entered into her house through the roof. Out of the dacoits she identified twelve in the light of lantern and the torch of the dacoits. Chariter Singh took out the deceased from inside the cot and Ashok Singh fired a shot, killing him. She also said about taking of the goods, also saying that on asking of co-accused Chariter, Ashok Singh came back and fired another shot in the mouth of the deceased, and Laxmi Singh assaulted him with Saif.

6. P.W. 5 was present in the house of the occurrence and said that three dacoits had jumped at the roof and had come down to the inner courtyard when her husband also had come down from the roof. She said that two ladies and her husband entered into a room. Out of the dacoits she had identified ten including the Appellants, in the light of the lantern. According to her evidence only Ashok, Chariter and Raja Ram Singh had entered into the room of their hiding and her husband was dragged from under the cot and fired upon by Ashok Singh in his chest. She also said about the looting of household goods, also supporting that on asking of Chariter Singh, Ashok had also fired in the mouth of the deceased whereas Laxmi Singh had assaulted with garasa. She made one difference by claiming that Laxmi Singh had hit her husband with garasa, not Saif.

7. P.W. 7 said that on the fateful night the deceased had asked her to go to the roof where he would read her Ramayana at which she went there. On hearing hulla of dacoits from the house of Bachhu Singh she came down and as soon they came down, on their back three persons, namely, Asutosh Singh, Ram Snehi Singh and Mintu Singh also came down.

8. When the door was opened by Snehi Singh fifteen to sixteen dacoits came inside out of whom she identified six, in the light of the lantern. She also said as to how the deceased and three other witnesses had entered into the room and how three of the accused, namely, Ashok Singh, Chariter Singh and Ram Snehi Singh came inside and when deceased was dragged from under the cot how Ashok Singh had fired in his chest. She also supported the taking away of the goods. She also supported that while going back, on asking of Chariter to see as to whether Nageshwar had died, Ashok came back and fired in his mouth whereafter Laxmi Singh assaulted the deceased with Saif.

9. This witness had named one Asutosh Singh and not Ashok Singh who had come down from the roof. She also said that Nageshwar was fired upon in the chest after making him to lie down. She also claimed that she had shown the Police Officer the lantern in which light she had identified the dacoits, also admitting that Ashok and Snehi were her nephews (Jaut).

10. P.W. 8, Sita Devi also claimed to have identified the dacoits, naming seven of them, in the light of lantern and earthen lamp. She is wife of the informant. She said that after committing dacoity in the house the dacoits had entered into the house of Nageshwar Singh. She also admitted that her husband was an accused in the case of murder of Rameshwar Singh. She also said that the dacoits, out of whom she had identified Ashok Singh, Ram Snehi, Dukhi Singh and Laxmi Narain Singh, had all concealed their faces by tying towels on their faces.

11. P.W. 10, the informant has supported the allegations as made in the first information report claiming to have identified the dacoits in the light of lantern. He also told as to how dacoity was committed in his house and as to how the family members were assaulted whereafter the accused enquired about the staircase and came on the roof from where they jumped to the house of his brother, Chandrika Singh. He also claimed that rest of the dacoits caught hold of him and took him to the house of Chandrika Singh. He also claimed that Chariter Singh had dragged the deceased out who was hiding beneath the cot whereafter Ashok fired in his chest.

He also supported that on asking of Chariter Singh, Ashok Singh again fired in the mouth of Nageshwar, whereas Laxmi Singh also assaulted the deceased, in his face, by Sail. He admitted that Ashok and Ram Snehi were his nephews and that Ashok was working as Post-master in the Post Office at Mander, Ranchi. He also admitted that the night of occurrence was dark. He also claimed that in the night no one from the village had come to the place of occurrence, nor the Chaukidar was informed. He claimed that Nageshwar Singh (RW. 12) of village Sundri had gone to the Police Station when he came to the village in next morning on his own when was told about the occurrence by him.

12. P.W. 11 also has supported the prosecution case identifying twelve of the accused as also about loot in her house and assaulted upon her father-in-law, the informant. She said that three dacoits through the roof entered into the house of Chandrika Singh and the rest entered through the main door and later she heard about murder of Nageshwar Singh. She claimed that dacoits had "Pagris" but had not used "galmocha". She also said about causing of injuries to other family members and that next day she was also taken to the hospital for treatment. She also admitted that from before the occurrence litigation was going on in between the accused persons and her family.

13. Sri P.N. Pandey, the learned Counsel appearing on behalf of the Appellants has assailed the prosecution evidence submitting that there were several such points which alone could make the prosecution case unworthy of reliance. learned Counsel submitted that the informant himself had admitted that Nageshwar Singh, another relative, had reached the village on his own in the morning whom he had intimated the facts about the occurrence whereafter he went to the Police Station. P.W. 12, had also admitted that he had reached the village at about 6.00 A.M. in the morning on receipt of the information whereafter he went to the Police Station and called the Police Official. He also is a

witness to the inquest report and to the seizure list. He said that the Police Officer had not recorded his statement at the Police Station.

14. It was pointed out that P.W. 13, the Investigating Officer, however, claimed that he had proceeded for the village Brindaband on hearing some rumours about the occurrence for which he had recorded Sanha. He could not say as to who had given that information. learned Counsel, thus, argued that in the backdrop of clear case of the Appellants that the deceased was killed, which killing was not disputed, at about 7.00 P.M. on 12.10.1988 but till P.W. 12 reached there next morning, and learning about the incident when he went to the Police Station, the informant side had not decided as to whom to implicate and how, which was the reason, though P.W. 12 was told about the entire occurrence, why it has not come on the record that he had told about the occurrence including the names of the assailants to the Police Officer at the Police Station which would have been the most natural thing for him to do. But by the time the Police came and recorded the fardbayan at 11.00 A.M. in the village, the informant side had decided to implicate the Appellants with whom they had previous enmity, as admitted by many of the prosecution witnesses. Obviously, on record the Sanha entry was not brought which, according to the Investigating Officer was not recorded on the statement of P.W. 12. The force in this argument cannot be denied. Sri Pandey has argued that it was strange, as coming into evidence, that for the whole night of the occurrence and in the morning, none from the village had come. It was argued that in this case the persons supporting the prosecution case are those who belong to the families which were inimical to the accused persons. It was also submitted that the co-villagers were totally excluded because they would not have supported the prosecution case as against the Appellants had they been produced as witnesses. The Investigating Officer, on the other hand, said that he had also recorded statements of independent witnesses who had supported the occurrence, but their names were not given in the charge sheet as witnesses. It was argued that an occurrence of dacoity indeed had taken place in the house of the deceased which must have been supported by independent witnesses, but their absence en block from the list of witnesses was only on account of the fact that they would not have supported the prosecution case so far implication of accused persons was concerned.

15. The story as propounded by the informant was also argued to be absurd. The informant said that after occurrence in his house the dacoits had asked about the situation of the stair case. This, it was argued, would not have been necessary if some close relatives of the informant, who were made accused, were also present. It was also argued that there was no sense in sparing the informant and killing Nageshwar Singh particularly when the informant, as per evidence on record including that of his wife, P.W. 8, was an accused in the case of murder of the father of Ashok Singh. It was more absurd to drag him to the house of the deceased from his own house and to keep him alive as that could not have served any purpose of the accused, unless the Appellants wished him to watch

the occurrence and become a witness against them. It was pointed out that though this witness had claimed that in the house of the deceased he was kept in the corner of the store room and had never gone inside the room where murder was committed, yet he has given full account as to how murder was committed. These arguments could not be satisfactorily replied to by the prosecution.

16. The clear case of the prosecution was that the deceased was fired upon twice by Ashok Singh whereafter Laxmi Narain Singh had hit him with Saif on, according to the evidence, the face of the deceased. The doctor, P.W. 5, found following injuries on the person of the deceased in autopsy.

(i) One circular lacerated wound with blackened skin 2" x 1" x 1/4" on the left cheek.

(ii) Lacerated wound semi-circular 4" x 2" x 1" on the right cheek, the mandible of right side of the face being broken.

(iii) Lacerated wound with charred skin 1" and 1/2" x 1/2" x 1/2" on upper part of left side chest.

(iv) Lacerated wound 6" x 3" x 2" on the right side of back below the lower part of scapula.

(v) Three ribs on the right side of the chest broken. The doctor also found right lung to be damaged, and collapsed.

17. learned Counsel pointed out that as per evidence of eye-witnesses two firearms injuries were caused, but P.W. 5 has found three such injuries, neither he nor the prosecution claiming that injuries No. (i) and (ii) were the wounds of entry and exit as it has not come if any of these two wounds had everted margins. It was also pointed out that though the evidence was that Laxmi Narain Singh had assaulted by a sharp cutting weapon on the face, the fourth injury was a lacerated one 6" x 3" x 2" on the right side of back. This, obviously, was an injury caused by hard and blunt substance and not on face. It appears obvious that injury No. (iv) must have caused injuries in No. (v) in which three ribs were found broken, which must have been broken because of use of much force. The ribs on the right side of the chest could not have been broken because of the fire-arm injury which was found on the left side of the chest. There fore, the ocular account of witnesses that one accused had hit the deceased with Saif was not substantiated whereas no explanation was forthcoming for the injuries at Nos. (iv) and (v), besides the doctor finding three fire-arm injuries, injury No. 2 basically connected with injury in mandible, and injury No. 1 being in the left cheek. Therefore, the ocular evidence on the manner of assault upon the deceased merges with doubts in view of the findings of the doctor witness.

18. It was also argued that as per evidence when the deceased had gone down from the roof, he was followed by three of the accused, therefore it does not appeal to common sense that those three who had come on the back of the deceased, would have waited till the deceased entered into a room and hid

himself beneath a cot and only then they went inside the room, took him out of the cot and killed him.

19. It was also argued that the main contention of the Appellants, the night being a dark one as per evidence, was that they had identified the dacoits mainly in the light of lantern and earthen lamp that were burning in the two houses. The Investigating Officer in his evidence admitted that he was not shown any lantern nor there is anything in his evidence to reveal that he either was shown any Dia, or he by himself noticed any of the two at the places of occurrence.

20. Serious omissions and contradictions were put to the witnesses and verified from the Investigating Officer. The Investigating Officer admitted that P.W. 4 did not tell him that her brother was dragged from beneath the cot and similarly P.W. 5 had not named Snehi Singh, Raja Ram Singh, McIntu Singh, Parvesh Singh, Indradeo Singh, Dukhi Singh and Binda Singh before him. She also had not told the Police Officer about the accused having torches in their hands nor she had told that her husband had hid himself beneath a cot or that Chariter Singh had dragged him out from there or that her husband was assaulted with a garasa. As already noticed, this witness had said in examination-in-chief that Laxmi Singh has assaulted her husband with garasa though others had said about Saif. Likewise the Investigating Officer admitted that P.W. 7 had not told that Chariter had dragged her son out or that three of the accused had come down chasing them, nor she had said that she herself and the deceased earlier had gone to the roof. She also had not said that she had identified the accused in the light of lantern.

21. Simply because the witnesses supporting the prosecution case are interested witnesses or inimical to the Appellants is not sufficient to discard their evidence altogether. Such evidences may form basis of conviction if those inspire confidence and appear to be trustworthy. To find that, the evidence of such a witness, as is settled law has to be evaluated with utmost care and caution so as to exclude the possibility of innocence of the accused. When evaluated on this touchstone the evidences of the witnesses supporting prosecution case, as already seen, would not appear to be unblemished. The evidences, and the circumstances put forward by the witnesses, create serious doubts on the trustworthiness of the prosecution case as placed.

22. In this case three witnesses have been examined as defence witnesses. As already seen, it was Ashok Singh who is said to have fired twice upon Nageshwar Singh. He, therefore, is the main assailant, allegation against Laxmi Narain Singh being doubtful in view of the evidence on record particularly that of the doctor. As has been admitted by prosecution witnesses, Appellant Ashok Singh was working in a post office at Ranchi.

23. D.W. 1 is Benjamin Kujur who, on the relevant date, was Sub-postmaster of post-office at Mander, Ranchi, during which period" Appellant Ashok Kumar was also posted under him as Postal Assistant. This witness said that from 19.9.1988

to the pre-noon hours of 11.10.1988 Ashok Kumar was on leave and had joined there in the afternoon on 11.10.1988 whereafter he worked continuously for the whole month. This witness said that duty hours were 9.00 A.M. to 5.00 P.M. He also said about attendance register on which the employees signed, giving also times of arrival and departure. As per this witness, on joining on 11.10.1988 Ashok Kumar had signed his attendance and on subsequent three dates also he had worked from 9.00 A.M. to 5.00 P.M. He said that on date of joining Ashok Kumar had taken over charge from Sia Saran Paswan (D.W. 2) who had come there on deputation. This witness proved the charge report which is Exhibit-B. This also notes taking over charge of tickets worth Rs. 150/-. This endorsement is Exhibit-C. According to this witness, on 12.10.1988, the date of occurrence, the money order remittance receipt Nos. 1410 to 1415 were issued in the signature of Ashok Kumar, the carbon copy of which, attached to the receipt book, are Exhibits-D to D/5. These receipts also bear the seal of the post office. Likewise the next receipt was also issued by Ashok Kumar on 13.10.1988 as per this witness. This witness said that on 12.10.1988 Ashok Kumar had handed over to him a sum of Rs. 608.70, of the sale-account which was acknowledged by granting a receipt by this witness (Exhibit-E). Likewise on 13.10.1988 Ashok Kumar had handed him over a sum of Rs. 6350/- of which also receipt was granted (Exhibit-E/1). This witness said that the Investigating Officer had gone to him to whom also he and other employees had given their statements and had shown all the papers.

24. Before proceeding further evidence in this regard of P.W. 13 may be seen. This witness said that to verify the alibi of Ashok Kumar he had gone to Mander Post Office on 13.4.1989 and had taken statements of D.W. 1 and had also perused the register. At that time he had found the signature of this Appellant in the attendance register, dated 11.10.1988. D.W. 1 had told him that Ashok Singh was on leave from 19.9.1988 to 10.10.1988 and had joined as above. He also had taken statements of D.W. 2 and D.W. 3 who had supported the presence of Appellant Ashok Kumar Singh in the post office.

25. D.W. 2, Sia Saran Paswan said that he had handed over charge to this Appellant on 11.10.1988 and identified the charge report. He also admitted that money that was received (during the day) was given to the Post Master.

26. D.W. 3, an Assistant in the same Post Office also supported that this Appellant was on leave during September and October but after coming back he had taken over charge from D.W. 2. He said that Nawadah (the district of occurrence) was 350 Kilometres away from Ranchi and it took seven and half hours for coming to Nawadah by Bus.

27. The learned Additional Public Prosecutor has argued that all these documents were manufactured and the witnesses gave such statements only to save the skin of their colleague. It was pointed out that so far attendance register was concerned, page numbers were not marked nor there was any certificate about the number of pages. He said that D.W. 1 had admitted that, and also had

admitted that Appellant had gone on leave for two days on 19.9.1988 but had continued on leave till 10.10.1988. This witness, as pointed out, also admitted that money orders were received in the office till 3.00 P.M.

28. While discussing this aspect of the matter the learned trial court in the judgment has observed, though there is no such evidence on the record, that the distance of Ranchi from Nawadah was 250 Kilometres or even less. The only evidence is that this distance was 350 Kilometres and this statement of D.W. 3 was not even challenged. I do not think that all those documents could have been manufactured and every one in the office, all government servants, would have conspired to manufacture the documents illegally. The money order receipts are attached to the receipt book and the receipts issued before or afterwards, are all in continuation. Therefore, the argument that the documents were manufactured cannot be accepted.

29. There is no evidence on the record, that on the date of occurrence the Appellant had left his office before closing hours, rather the evidence is that on that day also he had handed over the money received at the counter to D.W.1 who had granted receipt to him. The next day also the first money order receipt was issued by the Appellant, as has come in the evidence.

30. The occurrence had taken place at about 7.00 P.M. on 12.10.1988. Even if the distance between Ranchi and Nawadah was around 250 kilometres it was almost impossible to traverse this distance, within two hours for reaching Nawadah, and then reach the village concerned where the offence was committed.

31. If the evidence of prosecution witnesses appear to the court to be trustworthy and if by that evidence it is proved that a particular accused had committed a particular crime at a particular time, then the defence of alibi, if there be slightest doubt about that, can hardly come to the rescue to the accused. On the other hand, a witness of defence has to be given the same importance as a witness of prosecution. In this case in which all the defence witnesses had given their statements to the Investigating Officer when he had gone to verify the alibi and, admittedly, he had found Ashok Singh present there as per attendance register, I do not find any ground to disbelieve the testimonies of the defence witnesses. This, coupled with the evidence of prosecution witnesses and the circumstances of the case as discussed beforehand, make the case against the Appellants, particularly against Ashok Kumar @ Ashok Singh to be doubtful. If the prosecution has failed to prove the allegations against Ashok Singh beyond reasonable doubts, he being the main assailant, the case against other Appellants automatically weakens. The allegations of dacoity and murder are so interlinked in view of the definite allegations, that the failure of one would also cast doom for the other. There appears to be force in the arguments on behalf of the Appellants that a dacoity had been committed in the two houses, though the Investigating Officer had not described the first place of occurrence, but participation in that, and in the killing of Nageshwar Singh, by the Appellants

is not free from serious doubts.

32. Therefore, I do not find that the prosecution has proved its charges against the Appellants beyond reasonable doubts. That being so, this appeal is allowed and the order of convictions and of the sentences as recorded by the learned trial court are hereby set aside. The Appellants are acquitted of the charges. Appellant Ashok Kumar @ Ashok Singh, who is in custody is ordered to be released forthwith, if not required to be detained in connection with any other case. Other Appellants are released from the liabilities of their bail bonds.

Braj Nandan Prasad Singh, J.

I agree.