

(2013) 11 PAT CK 0034

In the Patna High Court

Case No : Criminal Revision No. 965 of 2002

Atal Bihari Singh, Satyendra Narayan Singh, Jitendra Narayan Singh and Sri Kunj Narayan Singh @ Kunj Bihari Singh

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 14-11-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 403
Penal Code, 1860 (IPC) — Section 307, 319, 320, 323, 34

Citation : (2013) 11 PAT CK 0034

Hon'ble Judges : Aditya Kumar Trivedi, J

Bench : Single Bench

Advocate : Md. Arif, APP, for the Respondent

Judgement

Aditya Kumar Trivedi, J.—In spite of having been allowed sufficient opportunity on account of non representation of petitioners on successive dates, they could not be heard. Moreover, Section 403 of the Cr.P.C. speaks a lot identifying the status of petitioners while availing the revisional jurisdiction wherein hearing the petitioners is not at all found to be mandatory. Hence with the assistance of learned Addl. P.P. the order impugned along with L.C. record has properly been scrutinized.

2. Petitioners Atal Bihari Singh, Satyendra Narayan Singh, Jitendra Narayan Singh, Kunj Narayan Singh @ Kunj Bihari Singh challenged the judgment dated 25.01.1997 passed by 1st Assistant Sessions Judge, Banka in Sessions Trial No. 470/88/118/1997 whereby and whereunder all the petitioners named above have been found guilty for an offence punishable under Sections 307/34 IPC and directed to undergo each of them R.I. for four years as well as petitioner, Atal Bihari Singh had separately been convicted for an offence punishable under Sections 323 IPC and directed to undergo RI for three months with a further direction to run the sentences concurrently as well as judgment dated 02.09.2002 passed by 2nd Additional Sessions Judge, Banka in Cr. Appeal No. 2

of 1997 whereby concurred with the finding as stated above made by the learned trial court.

3. Informant/injured, Brahamdeo Singh (PW-6) gave his Fardbeyan on 08.11.83 at 3:00 p.m. in an injured condition accompanied with his injured wife Meera Devi (PW-3), mother (PW-1), uncle and brother (not examined) before the Officer-in-charge alleging inter alia that for the purpose of holding a "Ashtyam", he was preparing a platform after digging earth from his own land. On the same day, at about 12:00 a.m., the accused, Kunj Bihari Singh @ Kunj Narain Singh came and forbade him on account of which an altercation took place wherein Kunj Bihari Singh was joined by Jitendra Singh who was armed with Garasa, Satyendra with Khanti Atal Bihari with Khanti. On the order of Kunj Bihari Singh they began to assault. His wife Meera Devi came in his rescue who was also assaulted by Kunj Bihari with lathi.

4. On the basis of the aforesaid Fardbeyan, Dhoraiya P.S. Case No. 51/83 was registered whereupon investigation commenced and concluded followed with the judgment of conviction and sentence which happens to be the subject matter of instant revision petition.

5. It has been pleaded on behalf of the petitioners that there was no occasion for them to assault the injured Brahamdeo Singh as well as his wife Meera Devi rather they have fallen victim of village politics. Also pleaded that, that happens to be the reason behind that subsequently during course of trial the villagers, coming to know about the caucus having formed by the enemies of the petitioners have succeeded in getting the petitioners falsely implicated in this case, disowned to support the case of the prosecution and on account thereof, PW-4 was declared hostile while PW-5 was tendered. Only family members that means to say, PW-1, Aruna, the mother, PW-2, Mukeshwar, the father, PW-3, Meera Devi, and PW-6, Brahamdeo Singh the informant stood as witnesses. They were not even supported by the uncle as well as brother of the informant who have got presence in the Fardbeyan itself. The prosecution had not explained the events of their non examination and on account thereof, the prosecution case has to be looked into with suspicious eye.

6. It has also been pleaded that there happens to be major embellishment as well as material contradiction amongst the evidence of the PWs, consequent thereupon the non examination of I.O. had seriously prejudiced the interest of petitioners because of the fact that on account of his non examination, petitioners have been deprived of from locating the so alleged place of occurrence as well as bringing material development having visualizing from the evidences of PWs.

7. It has further been pleaded that from the evidence of PW-7, Dr. Bindeshwar Panjiyar, it is evident that none of the injuries sustained by PW-6 suggests or speaks regarding intention or knowledge of the assailant to cause murder and on account thereof, application of Section 307/34 of the IPC is not at all permissible.

8. Circumscribing the evidence produced on behalf of prosecution, it has also been pleaded that they are not at all consistent. So called injured Meera Devi, PW-3 could not be accepted as she happens to be a Pardanasheen lady and on account thereof, she was unable to identify any of the petitioners. The evidence of PW-1 and 2, also could not be relied upon as they are not consistent over the place as well as manner of occurrence. Even another injured PW-6, informant failed to maintain consistency during course of evidence and on account thereof, the finding recorded by the learned successive courts are based upon unfounded surmises.

9. On the other hand, while refuting the ground taken up on behalf of petitioners has submitted that from the concurrent judgments, it is evident that the learned successive courts have minutely gone through all the relevant materials available on the record before convicting the petitioners and on account thereof, did not justify any sort of interference.

10. In ordinary course of nature, the revisional jurisdiction should be constrained to limit its tentacle over meticulous examination of the concurrent finding. However, whenever there happens to be challenge on account of non appreciation, non appraisal of the evidence having on the record while coming to a concurrent finding by the successive courts, then in that event, the barrier is found sterile for a moment and in that event, the minute examination of the material available on the record is found necessitated for.

11. Altogether 8 PWs have been examined on behalf of prosecution though, I.O. has not been examined and the relevant documents in his absence has been exhibited by PW-8, formal witness. PW-4 had already been declared hostile while PW-5 was tendered. The prosecution rests upon the evidence of PWs- 1, 2, 3, 6 and 7 along with exhibit-1, FIR, Ext-2, injury report of Brahamdeo Singh, Ext-2/1, injury report of Meera Devi, Ext-3 Formal FIR.

12. Before coming to the evidence of material witnesses, from the evidence of PW-7, the doctor, it is apparent that he had examined PW-6, Brahamdeo Singh on 8.11.83 at 3.30 p.m. on a police requisition and found following injuries:--

- (1) Incised cut 1 1/2" x 1/4" x 1/4" x on the front portion of middle of skull.
- (2) Incised cut 2" x 1/4" x 1/4" x on the left lateral side of skull.
- (3) Swelling 3" x 2" on the middle of left forearm with fracture of ulna.
- (4) Swilling 1" x 1" on the left portion of left eyebrow.
- (5) Bruise 3" x 1" on the front of left side of chest.
- (6) Bruise 6" x 1/2" on the upper portion of left shoulder
- (7) Scratch 4" x 3" on the back of left side of chest.
- (8) Swelling 1" x 1" on the right forearm.

13. He had also examined Meera Devi on the same day at about 3.40 p.m. and found following injuries:--

(1) Bruise and swelling 2" x 1" on the back of left palm

14. The doctor had found injury No. 3 sustained by PW-6 as grievous while remaining injuries were found simple. Injury No. 1 and 2 was found caused by sharp cutting weapon and rest were caused by hard and blunt substance. The doctor has further opined that all the injuries were sufficient to cause death in ordinary course of nature while the injury sustained by PW-3, Meera Devi happens to be simple in nature caused by hard and blunt substance. During cross-examination save and except suggestion that injuries may be caused on fall, nothing more happens to be.

15. Whether nature of injury is sine qua non for the application of Section- 307 of the IPC, the same is found properly explained in the case of State of M.P. Vs. Mohan and Others, under paragraphs- 15, 16 which are follows:--

15. High Court, in our view, while reducing the sentence, has not properly appreciated the scope of Section 307, IPC under which the respondents were found guilty. The relevant portion of Section 307 reads as follows:

307. Attempt to murder.--Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned....

16. High Court was of opinion that injuries has not been caused on vital parts of the body. In order to attract Section 307, the injury need not be on the vital parts of the body. In order to attract Section 307, causing of hurt is sufficient. If anybody does any act with intention or knowledge that by his act he might cause death and hurt is caused, that is sufficient to attract life imprisonment. Section 307 uses the word "hurt" which has been explained in Section 319, IPC and not "grievous hurt" within the meaning of Section 320, IPC. Therefore, in order to attract Section 307, the injury need not be on the vital part of the body. A gun shot, as in the present case, may miss the vital part of the body, may result in a lacerated wound, that itself is sufficient to attract Section 307. High Court is, therefore, in error in reducing the sentence, holding that the injury was not on the vital part of the body. Period undergone by way of sentence also in our view is not commensurate with the guilt established.

16. Therefore, their Lordships held that the nature of injury is not a guiding factor for application of Section 307 of the IPC rather it happens to be the act of the accused which could expose the intention or knowledge, whichever may be, during commission of the crime and that could be the sole factor alone for

application of Section- 307 of the IPC.

17. Now coming to the evidence, PW-3 and PW-6 are the injured witnesses. PW-3 had stated that on the alleged date and time of occurrence while her husband was preparing platform at her Darwaja, Kunj Bihari Singh forbade him over which an altercation took place and during course thereof, as exhorted by Kunj Bihari Singh, Satyendra, Jitendra and Atal brutally assaulted him. At that very time, Jitendra was armed with Garasa, Satyendra with Khanti and Atal with Khanti while Kunj Bihari Singh with lathi. She came in his rescue over which she was also assaulted by Kunj Bihari Singh. She further stated that her mother-in-law, father-in-law came in their rescue on account of which accused persons left the scene. Thereafter her husband was taken to P.S. and therefrom, he was referred to hospital and then to Bhagalpur. During cross-examination, she was confined over her status being a Pardanasheen lady. The surprising feature as was expected from a rustic female folk, who on cross-examination, had stated she had not seen face of any stranger since after her marriage. Apart from this, she was not at all cross-examined on the point of identification of the accused whom she identified in dock as well as with regard to the occurrence. Therefore, nothing substantial is found from her evidence to crisp the prosecution version.

18. PW-6 is the informant/injured who had stated that on the alleged date and time of occurrence, while he was preparing platform for the purpose of "Ashtyam", Kunj Bihari Singh came and forbade him from cutting earth over which he resisted and then Kunj Bihari Singh was joined by Jitendra who was armed with Garasa while Satyendra and Atal were armed with Lathi having enclosed with Khanti. As exhorted by Kunj Bihari Singh all of them began to assault. The Garasa inflicted by Jitendra had caused injury over his head. His hand was broken. His wife came in rescue who was also assaulted by Kunj Bihari Singh with Lathi. His mother, father, uncle and other co-villagers came in his rescue and on account thereof, the accused persons left the scene. Then thereafter, he was taken to PS and therefrom to hospital and wherefrom to Bhagalpur. He had further stated that he had given first information report at PS itself. During cross-examination, it is evident that though some sort of attention was drawn towards his previous statement but in real sense that did not happen to be contradiction after going through the First Information Report wherein the allegation is found. He had further faced the cross-examination regarding occurrence wherein he had stated that the occurrence took place for an hour during course of which the accused persons used their weapon indiscriminately. He also disclosed the location. He had further stated that first blow was given by Jitendra. He fell down, got up and tried to escape therefrom but was assaulted by all of them indiscriminately. He had further stated that he regained sense at hospital at about 2.00 a.m.. At that very time, his mother and wife were present along with his father and cousin brother, Randhir. His other family members were not present. On the following day, he met with the police at his house while he was going to Bhagalpur. He had gone to Bhagalpur.

19. So from his evidence, it is apparent that no cross-examination was made over place of occurrence. The manner of assault had properly been explained. Some sort of lapses regarding regaining of sense is not going to affect the sanctity of the First Information Report as this PW is not at all cross-examined or suggested challenging the genuineness/authenticity of the FIR.

20. PW-1 is the mother who had stated that on the alleged date at about 8.00 a.m. while her son was preparing platform, Kunj Bihari Singh came and forbade him which was resisted by her son and on account thereof, they had assaulted her son. At that time, Jitendra was armed with Garasa, Satyendra was armed with Khanti, Atal with Khanti and Kunj Bihari with lathi. When wife of Brahamdeo had gone in rescue, she was also assaulted by Kunj Bihari. Her son was taken to the P.S. and was treated at hospital. She had stated that after assaulting her son and daughter-in-law, the accused persons fled away. Mukeshwar, Randhir, Dilip and other co-villagers had taken away his son. Then she had stated that when she had gone there, she found her son in a pool of blood.

21. PW-2 is the father. He had stated that on the alleged date and time of occurrence while his son was preparing platform, Kunj Bihari Singh, Jitendra, Satyendra, Atal came out of whom Kunj Bihari forbade his son from preparing platform which was resisted by his son. At that very time Jitendra was armed with Garasa, Satyendra, Atal with Khanti, Kunj Bihari with Lathi. On the order of Kunj Bihari Jitendra gave a Garasa blow over the head of his son. When wife of Brahamdeo gone in rescue she was also assaulted by Kunj Bihari with lathi. The witnesses came and rescued them. During cross-examination, he had stated that both the parties are on inimical terms. He had further stated that there was hue and cry which continued for an hour during course of commission of occurrence. He had further stated that so many persons had assembled at the time of occurrence and out of them he had named, Pappu, Guneshwar, Randhir.

22. Looking aback on the deficiencies persisting in the prosecution case, the first one relate with non examination of I.O.. Although, from the evidence as referred above, neither there happens to be any sort of controversy over place of occurrence nor material contradiction is found in the evidence of the PWs.

23. Whether non examination of I.O. could be treated as a severe lacuna in the prosecution case, that has been taken into account in Lahu Kamlakar Patil and Another Vs. State of Maharashtra, . The relevant para-18.

18. ...It is an accepted principle that non-examination of the Investigating Officer is not fatal to the prosecution case. In Behari Prasad etc. etc. Vs. State of Bihar, this Court has stated that non-examination of the Investigating Officer is not fatal to the prosecution case, especially, when no prejudice is likely to be suffered by the accused. In Bahadur Naik v. State of Bihar [(2009) 9 SCC 153], it has been opined that when no material contradictions have been brought out, then non-examination of the Investigating Officer as a witness for the prosecution is of no consequence and under such circumstances, no prejudice is

caused to the accused. It is worthy to note that neither the trial judge nor the High Court has delved into the issue of non-examination of the Investigating Officer. On a perusal of the entire material brought on record, we find that no explanation has been offered. The present case is one where we are inclined to think so especially when the informant has stated that the signature was taken while he was in a drunken state, the panch witness had turned hostile and some of the evidence adduced in the court did not find place in the statement recorded u/s 161 of the Code. Thus, this Court in *Arvind Singh Vs. State of Bihar*, *Rattanlal Vs. State of Jammu and Kashmir*, and *Ravishwar Manjhi and Others Vs. State of Jharkhand*, has explained certain circumstances where the examination of Investigating Officer becomes vital. We are disposed to think that the present case is one where the Investigating Officer should have been examined and his non-examination creates a lacuna in the case of the prosecution.

24. Only being the relatives, the evidence of those witnesses should not be subject to discard save and except having close and minute scrutiny during course of analyzing the evidence. Moreover, it is not expected that in stead of naming the real culprit the witness will falsely implicate some body else.

25. In *Kanhaiya Lal and Others Vs. State of Rajasthan*, at para-23 and 25.

23. The next limb of argument of Mr. Jain, learned counsel for the appellants, is that all the alleged eye witnesses are closely related to the deceased Purshottam and the prosecution has chosen not to examine any independent witness despite number of houses situate in the close vicinity of the house of Purshottam and that itself creates a dent in the version of the prosecution. When relatives, who are alleged to be interested witnesses, are cited by the prosecution, it is the obligation of the court to scrutinize their evidence with care, caution and circumspection. In the case at hand, the entire occurrence took place in and around the house of Purshottam. Five people had been done to death. In such a circumstance, it is totally unexpected that other villagers would come forward to give their statements and depose in the court. It is to be borne in mind that Ram Narayan, Sarpanch of the village, solely on the basis of suspicion, had seen to it that five persons meet their end. Such a situation compels one not to get oneself involved and common sense give consent to such an attitude. Thus, no exception can be taken to the fact that no independent witness was examined. As far as the relatives are concerned, Radhey Shyam, PW-1, is the brother of the deceased, Ram Lal, PW-2, is the brother of Radhey Shyam, Panna Bai, PW- 3, is the mother of Purshottam and Nirmala Bai, PW-5, is his wife, and Anita, PW-5, Badribai, PW-8, Manisha, PW-9 and Kaushalya, PW-10, are also close relatives and these witnesses have been cited as eye witnesses.

25. In *Kartik Malhar Vs. State of Bihar*, this Court has stated that a close relative who is a natural witness cannot be regarded as an interested witness, for the term "interested" postulates that the witness must have some interest in having the accused, somehow or the other, convicted for some animus or for some other reason.

26. With regard to veracity of the evidence of injured witnesses, in *Mano Dutt and Another Vs. State of U.P.*,

30. Salik Ram was examined as PW2 and his statement is cogent, coherent, reliable and fully supports the case of the prosecution. However, the other injured witness, Nankoo, was not examined. In our view, non-examination of Nankoo, to which the accused raised the objection, would not materially affect the case of the prosecution. Normally, an injured witness would enjoy greater credibility because he is the sufferer himself and thus, there will be no occasion for such a person to state an incorrect version of the occurrence, or to involve anybody falsely and in the bargain, protect the real culprit. We need not discuss more elaborately the weightage that should be attached by the Court to the testimony of an injured witness. In fact, this aspect of criminal jurisprudence is no more *res integra*, as has been consistently stated by this Court in uniform language.

31. We may merely refer to the case of *Abdul Sayeed Vs. State of Madhya Pradesh*, , where this Court held as under:

28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness." [Vide *Ramlagan Singh and Others Vs. State of Bihar*, *Malkhan Singh and Another Vs. State of U.P.*, *Machhi Singh and Others Vs. State of Punjab*, *Appabhai and Another Vs. State of Gujarat*, *Bonkya Alias Bharat Shivaji Mane and others Vs. State of Maharashtra*, *Bhag Singh and Others Vs. State of Punjab*,), *Dinesh Kumar Vs. State of Rajasthan*, *Anna Reddy Sambasiva Reddy and Others Vs. State of Andhra Pradesh*, and *Balraje @ Trimbak Vs. State of Maharashtra*,

27. Now coming to the propriety of the sentence inflicted by the learned trial court in *State of M.P. v. Mohan (Supra)* the aforesaid question is found properly dealt with under para-17

17. We also have to remind ourselves the object and purpose of imposing adequate sentence. Reference may be made to the judgment of this Court in *State of Madhya Pradesh Vs. Saleem @ Chamaru and Another*,

8. The object should be to protect the society and to deter the criminal in achieving the avowed object of law by imposing appropriate sentence. It is expected that the Courts would operate the sentencing system so as to impose "such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be.

9. Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime, e.g. where it relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude -or moral delinquency which have great impact on social order, and public interest, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meager sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result-wise counter productive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.

10. The Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society"s cry for justice against the criminal.

28. Thus, I do not see any cogent reason to interfere with the concurrent finding arrived at by the learned trial court as well as by the appellate court. Consequent thereupon, the instant petition is dismissed. Petitioners are on bail, hence their bail bonds are cancelled with a direction to surrender before the learned trial court to serve out the remaining sentences.