
(2011) 09 PAT CK 0083

In the Patna High Court

Case No : Criminal Appeal (DB) No. 552 of 1989

Bhukhi Singh and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 08-09-2011

Acts Referred:

Arms Act, 1959 — Section 27

Penal Code, 1860 (IPC) — Section 149, 302, 364

Citation : (2012) 1 PLJR 690

Hon'ble Judges : Navaniti Prasad Singh, J; Ashwani Kumar Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Navaniti Prasad Singh, J.—The five Appellants have been charged and found to be guilty for offence under Sections 302/149 of Indian Penal Code (Indian Penal Code) for which they have been sentenced to life imprisonment and further they have been found to be guilty of offence u/s 364 of Indian Penal Code and sentenced to five years rigorous imprisonment. Appellants No. 3, 4 and 5 have also been found guilty u/s 27 of Arms Act and have been sentenced to undergo rigorous imprisonment for one year. All sentences have been ordered to run concurrently by judgment and order dated 30.11.1989 passed by the Additional Sessions Judge IX, Rohtas at Sasaram in Sessions Trial No. 263 of 1987.

2. Heard Mr Shakil Ahmad Khan, learned Senior Counsel in support of the appeal and Shri J.P. Shukla, learned Senior Counsel who entered appearance on behalf of the informant in assistance to the learned Additional Public Prosecutor.

3. The prosecution case is based upon the Fardbayan (Exhibit-3) of Subash Chaubey (PW 6) as allegedly recorded by S N Pandey, Sub Inspector of Police who happens to be the Investigating Officer as well being PW 8 at about 7.30 am on 20.06.1987 at village Bhanas under Dinara Police Station of District - Rohtas. Subash Chaubey, in his Fardbayan, states that in the night of 19.06.1987, he and his brother Mahendra Chaubey had carried food from home to the agricultural

field where his son Ashok Chaubey was irrigating the paddy field. Ashok had his meal and slept while they waited there for some time. At about 1 am, the accused persons, variously armed, came, woke up Ashok Chaubey and took him away. One of the persons said that by killing Ashok, we would eliminate the entire family of Subash Chaubey as Ashok was his only son. It is further alleged that Subash Chaubey and Mahendra Chaubey being PWs 6 and 5 respectively followed the miscreants for some distance but then they returned to the village. They woke up several persons including Srikant Chaubey (PW 1), Ramprit Chaubey (PW 2), Ramashankar Chaubey (PW 3) and several others. They then went in search of the son of PW 6 when they heard a gun fire but could not ascertain the direction or the distance. It is only in the morning at about 6.30 am that they discovered the dead body of Ashok Chaubey from the adjacent agricultural field. Upon police arriving, the Fardbayan is recorded. On basis of the aforesaid Fardbayan recorded at 7.30 am, at 11.30 am on the same day, the first information report (Exhibit-4) is registered. Inquest report (Exhibit-5) is prepared by the Investigating Officer (PW 8) at 8.15 am on 20.06.1987 whereafter the dead body of Ashok Kumar Chaubey is sent for post mortem and the post mortem report is Exhibit-2. The injuries are abrasions 2"x1" at the left side of neck and there is a bullet injury as well having been fired from a very short range.

4. The prosecution, in order to establish its case, has examined eight witnesses. There is no eye witness to the offence of murder. PW 5 and PW 6, who is the informant, are witnesses to the alleged story of kidnapping. PWs 1, 2 and 4 are witnesses to prove the search and discover the dead body but PW 2 has been declared hostile. PW 7 is Dr Naresh Prasad Rai who conducted the post mortem report. We need not look to the defence and their witnesses.

5. The first and the only point for consideration is whether the statement of fact as coming from PWs 5 and 6 with regard to kidnapping can be believed or not. In other words, whether the case of kidnapping has been proved beyond reasonable doubt. For the reasons given hereunder, we are unable to accept the same.

6. Firstly, it would be seen that as per the Fardbayan, PW 6, the informant and PW 5 disclose that they having seen the accused persons kidnapping the deceased from their vicinity, they told this fact to other villagers who then came and joined the informant in the search for his son. In the Court, both PWs 5 and 6 stick to their story that they disclosed this fact while asking for help to several villagers. The only two villagers were examined in support of this is PWs 1 and 4. Both of them, in their examination-in-chief, state that they were woken up at about 1.30 am by PW 6 who narrated to them the event of kidnapping, as noticed above, and, accordingly, they went in search and found the dead body in the morning. They were specifically questioned whether this is the statement they had given before the Police in course of investigation, they said yes. When the Investigating Officer was examined, this PW 8, in his cross-examination, clearly stated that no such statement was made by PW 1 or PW 4 to him in

course of investigation. This is a very material contradiction which the defence has been able to solicit and establish. The consequence whereof is that the whole story, as propounded by PWs 5 and 6, become highly improbable. They had set up the story of seeing the person abducting his son and later organized a search party without disclosing to the search party the names of the persons who had kidnapped. This only points one way to the fact that having discovered the dead body in the morning, a story has been spun.

7. Then we come to other evidences. All witnesses that is PWs 1, 4, 5 and 6, who are all Chaubey, depose that when they went for search at about 1.30 am outside the village, they heard a gun fire but curiously all of them say that they could not see from where it came nor could identify the direction and, as such, could not locate the place immediately. The dead body was, thus, recovered only at about 6.30 am in the morning. This is quite unnatural. In an open field, at dead of the night, if there is a single shot fired then out of large number of persons who were spread out to search, at least someone could identify the direction. None could do so even though the dead body was found about 200 yards from the village and in the adjacent agricultural field which was being watered and which belongs to the informant.

8. Then the story, as built by the prosecution, was that the fields were being irrigated to sow paddy seeds. That is the stand of PWs 5 and 6. When Investigating Officer is questioned, he clearly states that they had not pointed out any such field to him when he had prepared the inquest report. Further, witnesses state that the Investigating Officer had seized lantern and torch which were to be the means of identification of miscreants but neither the seizure list nor the material exhibits have been brought on record. It is then said that blood-stained mud was seized by the Investigating Officer. Neither the seizure list nor the material exhibit is produced in Court.

9. Even though the prosecution story is that the deceased was kidnapped at about 1 am and at about 1.30 am, they had heard a gunshot and they could not locate the deceased, no one took effort to inform the police. To the contrary, the Investigating Officer (PW 8) has categorically stated that he, being the Officer-in-charge, got an information that someone had been killed in the village, a vague information upon which he rushed to the village and found the dead body of Ashok Chaubey. Before leaving the Police Station, he made a station diary entry. Unfortunately even this has not been brought on record.

10. Thus, we are left with the story of PWs 5 and 6 who are uncle and father of the deceased respectively with little or no corroboration.

11. There are two other aspects which one may notice. If the Appellants intended to kill Ashok Chaubey, it would be against natural conduct to take away Ashok Chaubey from the company of his father and uncle and then fearlessly kill him and walk away leaving the father and uncle to testify against them. Secondly, as noted above, we have doubt about the authenticity and correctness of the

Fardbayan. This is further reinforced by the fact that though the Fardbayan is recorded at 7.30 am, the first information report is registered at 11.30 am still the inquest report which is prepared at 8.15 am has endorsement of the full case number in relation to the first information report in question. This would not have been because the case number, at best, is given after the case is registered and not prior to that. The inquest report at that time should have contained station diary entry number but instead it has the Police Station case number. Thus, it is clear that the story and the documents have been interfered with and creates a doubt on the entire prosecution case. We may also notice that though several other persons are named in the first information report, no independent witness has been examined though they were there for the search.

12. In the circumstances noted above, taking into account the material contradictions, we are of the view that it would not be safe to rely on the evidence and the story propounded by the prosecution for the purposes of upholding the conviction. We, accordingly, allow the appeal, set aside the judgment and sentence and discharge the Appellants from the liabilities of their bail bonds.

Ashwani Kumar Singh, J.

I agree.