
(2003) 09 PAT CK 0137

In the Patna High Court

Case No : Criminal Appeal No. 443 of 1999

Krishna Murari Singh @ Sharma and Tripurari Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 05-09-2003

Acts Referred:

Citation : (2003) 09 PAT CK 0137

Final Decision : Allowed

Judgement

A.K. Sinha, J.—The Appellants, namely, Krishna Murari Singh @ Sharma and Tripurari Singh have been convicted u/s 302/34 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for life. Both of them have further been convicted u/s 27 of the Arms Act and sentenced to undergo rigorous imprisonment for three years on that count.

2. As per the fardbeyan of the informant Raj Kishore (P.W. 8), the prosecution case is that in the intervening night of 6th and 7th at about 12 O'clock while the informant and the deceased were sleeping in their mill premises, the informant heard the sound of firing and woke up. He flashed the torch light and saw that these Appellants were fleeing away from the mill premises. The informant also saw that the Appellant Tripurari Singh was armed with rifle and Appellant Krishna Murari Singh @ Sharma was armed with a pistol. Some more people were waiting outside and all of them fled away towards the east. The informant found that the miscreants had fired upon the fore-head of his father, who died instantaneously. The informant raised alarm on which the family members came. The motive for the occurrence, as alleged in the fard beyan (Exhibit-4), is that the grand-father of these Appellants, namely, Parma Singh had taken loan from the deceased which he was not returning back, so, the deceased had retained twelve bags of paddy which the Appellants had taken to the mill premises of the deceased for husking and the Appellants had given threats to the deceased and later on manhandled the deceased at Bikram Bajar. Due to the aforesaid reason the Appellants are alleged to have committed the murder of the deceased. The

fardebayan was recorded by S.I. Isharat Hussain of Bikram P.S. on 7.6.96 at 1.10 A.M. and on the same day at 2.15 A.M. F.I.R. (Exhibit-5) was lodged under Sections 302/34 of the Indian Penal Code read with 27 of the Arms Act against the Appellants. After completing the investigation the chargesheet was submitted against the Appellants under Sections 302/34 of the Indian Penal Code and 27 of the Arms Act on the basis of which cognizance was taken and the case was committed to the Court of Sessions.

3. Both the Appellants were charged under Sections 302/34 of the Indian Penal Code read with 27 of the Arms Act to which they pleaded not guilty. The defence version is that the Appellants are quite innocent and the occurrence did not take place in the manner as alleged and due to the previous grudge the Appellants have been falsely implicated in the case.

4. In order to prove the charges, the prosecution examined as many as ten witnesses out of whom P.W. 9 Dr. K.C.R Singh is the doctor who conducted post mortem examination on the dead body of the deceased. P.W. 9 has deposed that on 7.6.96 at 11.00 A.M. he performed post mortem examination on the dead body of Binda Singh (deceased) and found the following ante mortem injuries on his person.

On external examination rigor mortis present.

I. Lacerated wound on middle of fore-head with inverted margins 1-1/2" x 1" x skull cavity deep. Blackening of skin and singeing of hairs on surrounding skin about 1" found. It is wound of entry of injury No. II.

II. Lacerated wound on back of scalp in mid line 2" above, Back hair line on occipital area. Margin everted and irregular 1-1/2" x 1-1/2" x skull deep. Wound of exit of injury No. I.

III. Internal examination.-on dissection of skull fracture of frontal left parietal and occipital bone seen with a hole in frontal and occipital bone in mid line. Meninges and Brain were found lacerated. Blood and blood clot found in the cranial cavity.

IV. The bullet entered in the frontal bone from front travelled back ward and down ward and expelled from hole in occipital bone.

V. Heart : Right chamber-empty, small amount of blood was found in left chamber, lungs found pale.

VI. 3 ounce of undigested food material were found with some digested fluid materials. Small gut-gas and fluid found, Large gut-Gas and faeces found.

VII. Liver, spleen and kidney found pale, urinary bladder found empty.

In the opinion of the doctor, cause of death was haemorrhage and shock due to above fire arm injury and the time elapsed since death was within 36 hours.

5. In cross-examination, P.W. 9 has stated that rigor mortis was present all over

the limbs and so, he has opined that the time elapsed since the death till the time of his examination was within 36 hours. He further stated that rigor mortis starts within 3-4 hours and takes 12 hours to spread all over the body and it disappears after 36 hours.

6. The opinion of the doctor that rigor mortis disappears after thirty six hours does not appear to be correct and I am of the view that in the month of August the climatic condition is not cold and hence, in all probability the rigor mortis will disappear within 18-20 hours. The post mortem examination was held on 7.6.96 at 11.00 A.M. i.e. within twelve hours from the alleged occurrence, so, the doctor found rigor mortis present on the dead body of the deceased. As such, the time elapsed since the death till the time of post mortem examination must be within twenty four hours. P.W. 9 has wrongly stated that rigor mortis vanishes after thirty six hours, so, he opined the time elapsed since death was within thirty six hours. It is clear from the evidence of P.W. 9 that he found wound of exit also which means that the bullet passed through the body of the deceased and in all probability the I.O. should have found the bullet in the mill premises but PW 10 Borhan Baitha, who is the I.O. of this case has stated that he did not find any bullet or empty cartridge at the place of occurrence.

7. The only eye witness in this case is P.W. 8 Raj Kishore Kumar, who claims to have seen the Appellants firing upon the deceased in the flash of the torch light. P.W. 8 has stated that he was also sleeping on a separate cot in the mill premises and at about 12 O'clock in the night he woke up on hearing the sound of firing, so, he flashed the torch light and saw both the Appellants in the light of the torch. He further stated that Appellant Tripurari Singh was holding rifle and Krishna Murari was holding a pistol and when he proceeded towards them both of them fled away along with other accomplices who were waiting outside. He further stated that when he came near his father, he noticed fire arm injury on his fore-head and then he raised alarm on which villagers and family members assembled at the place of occurrence but by that time his father had died. P.W. 8 has stated about the motive which relates to the land dispute and the monetary transaction between his father and Parma Singh, who was the grand-father of the Appellant Tripurari Singh. He has also stated that his father had retained twelve bags of paddy which the Appellant had brought for milling and had demanded his dues and both the Appellants went away giving threats to his father. This occurrence took place four months before the alleged occurrence but he did not lodge any complaint to any body in that connection. In the normal course of human conduct, when the deceased had retained the twelve bags of paddy four months ago the Appellants would have reacted at that very time and taken revenge near about the time when their paddy was retained by the deceased and there does not appear any convincing reason that why they waited for four months to take revenge from the deceased. So far the dispute regarding the monetary transaction between the deceased and the grand father of Tripurari Singh is concerned, there is no documentary proof in that regard. P.W. 8 has admitted that there were four unknown accused besides the Appellants who were

known to him and all of them were running away. The distance inter se between the accused was one or two steps while they were fleeing away and he saw them from their back. He also stated that he had shown the torch to the I.O. but he had not seized the torch. But the I.O. (P.W. 10) has stated that the informant had not shown any torch to him. learned Counsel submitted that since there was no torch with the informant he did not show the same to the I.O. and there was no question of seizure of the torch, in question. The learned Counsel appearing for the Appellants submitted that the deceased was not murdered at the mill premises and he was actually murdered somewhere else and the dead body was brought in the mill premises and kept on a cot. The head of the deceased was placed in the north direction which is usually kept after the death of a person and a false story was cooked up to implicate the Appellants. It was pointed out that the doctor found blackening of skin and singeing of hair at the site of Injury No. 1 which suggests that the deceased was shot at from a close distance of about 1 to 1-1/2 feet. According to P.W. 8, the deceased was sleeping inside the mill near the belt of the machine, so, the assailants must have entered into the mill premises and shot at the deceased from a close range and without entering into the mill premises the injury found on the person of the deceased was not possible. It was pointed out that there was a gate in the mill and several articles were kept inside the mill, so, in all probability the deceased must have locked the gate of the mill before sleeping. It is not expected that the deceased or the informant will sleep inside the mill by keeping the gate open. There is no case in the fardbeyan also that the gate of the mill was kept open. P.W. 8 has also not stated that the gate of the mill was closed and the Appellant entered into the mill premises by breaking the gate of the mill. Therefore, this circumstance also shows that the occurrence did not take in the manner alleged by the prosecution or at the place where it is said to have taken place. That apart, it was submitted that it may be a case of mistaken identity, inasmuch as, P.W. 8 saw the Appellants from their back while they were running away along with four other accused. It was also submitted that by the time P.W. 8 woke up on hearing the sound of firing and flashed the torch light, the Appellants must have come out from the mill premises and fled away having accomplished their object and in such a situation the claim of P.W. 8 to identify the Appellants from their back in the flash of the torch light falls short of brief. According to the learned Counsel, the whole prosecution story is a got up one and the story of identifying the Appellants in the flash of the torch light by seeing their back is nothing but a cock and bull story and it is this reason that when the I.O. inspected the place of occurrence P.W. 8 did not show any torch to him and P.W. 8 gave an evasive reply to the effect that he had shown the torch to the I.O., but he did not seize the same.

8. It was next pointed out that according to P.W. 8, the I.O. came at the place of occurrence on being informed by the Chaukidar. P.W. 3 Raj Kumar, who is the own brother of P.W. 8 has stated that Ram Chandra Rai, the Chaukidar of the village came in the night hours and he informed at the police station but the

prosecution has not examined the Chaukidar nor the writer of the fard beyan, namely, S.I. Isharat Hussain has been examined. Apart from non examination of the above named two witnesses who were the most important witnesses in the case, learned Counsel pointed out that according to I.O. (P.W. 10) he visited the place of occurrence on hearing the sound of firing while he was on patrolling duty and the Officer in charge recorded the fardbeyan (Exhibit-4) of the informant at 1.10 A.M. The I.O. has further stated that the Officer in charge entrusted the investigation to him, so, he sent the fardbeyan to the Police Station for lodging the F.I.R. (Exhibit-5). He took up the investigation in the case in right earnest at the place of occurrence itself and recorded the further statement of the informant and prepared the inquest report (Exhibit-6). P.W. 10 has further stated that he inspected the place of occurrence which according to him is the mill premises of the deceased facing east. He found two cots inside the mill premises and also found copious blood under the cot which he seized in presence of the witnesses. He has proved the seizure list (Exhibit-7).

9. In cross-examination, P.W. 10 has admitted that in column No. 1 of the inquest report he had mentioned the P.S. Case No., but he could not say how he got the P.S. case No. learned Counsel submitted that there is clear interpolation in the time noted in the inquest report, inasmuch, as the time noted in the column No. 1 of the inquest was mentioned as 1.20 hours but later on 5 was superscribed on it and it was made 5.20 hours.

10. P.W. 6 Chandra Kumar Sharma, who is a witness on the inquest report, has stated that the inquest report was prepared at 1.20 A.M. and no paper was scribed in his presence at 5.20 A.M. He also admitted that some interpolation has been made in the inquest report where the time has been mentioned but it was not made in his presence.

11. P.W. 7 Sudhir Kumar, who is another witness on the inquest report, has stated that the police came in the morning hours in his presence when he went to the place of occurrence and prepared the inquest report on which he signed as a witness. It would, thus, appear that both the witnesses of the inquest report have given different version regarding the timing of the preparation of the inquest report since P.W. 6 states that it was prepared at 1.20 A.M., whereas, P.W. 7 has stated that it was prepared in the morning hours. No satisfactory explanation has been given by the prosecution regarding the interpolation made in the time noted on the inquest report. As such, I have no doubt to say that the inquest report is ante-timed and it was not prepared at 1.20 A.M.

12. So far other witnesses are concerned, P.W. 1 Sudarshan Singh is the own step brother of the deceased, P.W. 2 Maheshwar Sharma is the own cousin brother and P.W. 3 Raj Kumar is the own brother of the informant. All of them are closely related. P.W. 4 Pramod Kumar Singh and P.W. 5 Jai Kumar Sharma are the village witnesses but they have turned hostile and did not support the prosecution version. P.W. 6 and P.W. 7 are the witnesses on the inquest report and they have not stated any thing about the occurrence nor they have stated

that when they went at the place of occurrence any body informed them that the deceased was murdered by these Appellants.

13. P.W. 1 is not an eye witness to the alleged occurrence but he has stated that when he went to the place of occurrence the villagers had also reached there and he saw the deceased lying dead on a cot with fire arm injury on his fore-head. He has stated that Raj Kishore Kumar (P.W. 8) told him that these Appellants had fired and fled away but P.W. 8 has not stated that he had disclosed about the assailants to P.W. 1 nor there is any statement in the fard beyan to the effect that the informant had disclosed about the assailants to any body much less P.W. 1.

14. P.W. 2 Maheshwar Sharma is a witness on the seizure list who has deposed that the I.O. had seized the blood stained earth in his presence on 7.6.96 at 5.30 A.M. and had prepared the seizure list on which he put his signature (Exhibit-1). P.W. 3 Raj Kumar is another seizure list witness who has also deposed that the I.O. had seized the blood stained earth from the P.O. at 5.30 A.M. It may be pointed out that the time of seizure as noted in the seizure list (Exhibit-7) is also 5.30 A.M. but it appears that the time has been written in a different ink which goes to show that it has been ante timed. The I.O. has admitted that he did not send the blood stained earth for chemical examination so as to ascertain that whether the blood seized by him from the place of occurrence was human blood or not. It may be pointed out that P.W. 8 has stated that I.O. had not collected the blood from the place situated west to the belt of the machine which is the place of occurrence of this case. He has further stated that the cot was made of straw on which blood had fallen and the I.O. had seized the same but the seizure list does not indicate that the I.O. had seized the cot or the blood spread on the cot. The I.O. has also not stated about that. The I.O. has also admitted that the informant had not shown to him the exact place from where he saw the Appellants nor he had shown the exact place where he saw the Appellants.

15. It was strenuously argued on behalf of the Appellants that the fardbeyan and the F.I.R. has been ante timed, inasmuch as, the fard beyan indicates that it was recorded by S.I. Ishrat Hussain at 1.10 A.M. on 7.6.96 and soon thereafter the investigation started and the I.O. prepared the inquest report at 1.20 A.M. The F.I.R. was lodged at 2.15 A.M. but P.W. 2, P.W. 3, P.W. 6 and P.W. 7 have stated that the I.O. came at the place of occurrence at 5.30 A.M. on 7.6.96 and thereafter started investigation. It was also pointed but that the F.I.R. was lodged on 7.6.96 at 2.15 A.M. but it was received in the Court on 9.6.96 and no satisfactory explanation has been given regarding the delayed receipt of the F.I.R. in the Court and this is also a doubtful circumstance. The writer of the fard beyan S.I. Ishrat Hussain, who recorded the fard beyan has not been examined and to crown all the Chaukidar who gave information at the Police Station has also not been examined. The information given by the Chaukidar at the Police Station has also been purposely withheld to withhold the truth. If the Chaukidar would have been examined, he would have disclosed the true version of the

occurrence. It was, therefore, submitted that the occurrence did not take place in the manner alleged by the prosecution and a false story was cooked up by bringing the police in collusion that is why, the I.O. made interpolations in the inquest report, seizure list etc. and the F.I.R. was received in Court on 9.6.96. It was, therefore, submitted that the entire prosecution case is false and got up one. The learned Counsel relied upon a decision reorted in Suresh Chaudhary etc. Vs. State of Bihar, in support of his contention.

16. Having considered all the facts and circumstances of the case and the materials available on the record, as discussed above, I find that there are serious infirmities in the prosecution case which renders the prosecution version as highly doubtful. The evidence on record goes to show that the F.I.R., inquest report, and the seizure list have been ante timed with interpolation made by the I.O. whose conduct in the investigation of the case is shrouded with grave doubts. The claim of the identification made by the informant also does not inspire confidence to believe and the contradictory statements made by the witnesses in course of their evidence not only throws doubt on the prosecution version, rather, it reflects that the occurrence had not taken place in the manner alleged in the F.I.R. and the possibility can not be ruled out that the informant implicated the Appellants due to old enmity with them. I am, therefore, of the view that the prosecution had not proved its case beyond all reasonable doubts and the learned Court below was not justified in convicting the Appellants. Accordingly, the order of conviction and sentence recorded by the trial Court is hereby set aside and the Appellants are held not guilty to the charges levelled against them and are acquitted of the same.

17. In the result, this appeal is allowed. The Appellants namely, 1. Krishna Murari Singh @ Sharma and 2. Tripurari Singh, who are in custody, are directed to be set at liberty forthwith if not wanted in any other case.

Bal Krishna Jha, J.

18. I agree.