
(1999) 11 PAT CK 0110
In the Patna High Court
Case No : Criminal Appeal No. 51 of 1986

Madan Singh and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 19-11-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144

Citation : (2001) 3 PLJR 154

Hon'ble Judges : R.N. Sahay, J;P.K. Sarkar, J

Bench : Division Bench

Advocate : Braj Kishore Prasad, Devendra Prasad Sharma, Ram Anugrah Prasad Singh and Devendra Prasad Singh, for the Appellant; Kamta Prasad Gupta and Nawal Kishore Singh, for Informant, for the Respondent

Final Decision : Allowed

Judgement

R.N. Sahay, J.—There are as many as 13 Appellants in this appeal, who are all residents of village Koachgaon, P.S. Warsaliganj in the district of Nawadah. On 9.2.1979 in the evening Braj Nandan Singh of village Koachgaon was brutally murdered near his village while he was returning from Warsaliganj Railway Station in the company of Shyam Kishore Singh, Balmiki Singh and. Baso Singh. The murder took place in village Peela Manjhi which is close to the village of the deceased and the witnesses examined in this case.

2. Tanik Prasad Singh, a relation of the deceased submitted first information report of the occurrence to the Officer-in charge of Warsaliganj Police Station on 9.2.1979 at 22.30 hours. Tanik Prasad Singh was himself not an eye witness to the occurrence. He was a teacher. He had gone to Warsaliganj Bazar. He was returning to his village late in the evening. On the way he met Ram Sanehi Singh, who disclosed that Braj Nandan Singh has been murdered and that the Appellants were responsible for the occurrence. Ram Sanehi Singh his own brother of Tanik Prasad Singh. Ram Sanehi Singh is also not witness to the occurrence. Tanik Prasad Singh without going to the place of occurrence asked

Ram Sanehi Singh to return to his village and he himself went to the Police Station and gave written report. Then he came along with the Officer-in-Charge at the place where the dead body of Braj Nandan Singh was lying.

3. Bachcha Singh, a co-villager of the deceased had got down from train at 7.30 P.M. at Warsaliganj Railway Station. He met the deceased Braj Nandan Singh, Shyam Kishore Singh, Bhaso Singh and Balmiki Singh on the platform and all the five persons proceeded to the village Koachgaon. On the way they reached a Canal. Bachcha Singh had urged to urinate and he stopped. Bhaso Singh proceeded ahead. The remaining three persons kept standing at the place where Bachcha Singh was urinating. Thereafter, they reached at Peela Manjhi. Road at that place was Kachcha. On the culvert, he saw three persons sitting. They were Jugal Kishore Singh, Ram Shekhar Singh and Shyam Singh. Jugal Singh caught Shyam Kishore Singh by his collar and beat him with fists and slaps. Jugal Kishore Singh was armed with sail. In the meantime, Appellant Shyam Sundar Singh "emerged" with pistol in his hand and gave Lalkar to kill Braj Nandan Singh. Thereupon, Appellant accused Jhunjhun Singh, Parsuram Singh, Devendra Singh, Madan Singh and Kanti Singh also reached there armed with Garasa. Moghal Singh, Upendra Singh, Rajniti Singh @ Toha Singh, Sudama Singh, Gauri Singh and Bilayati Singh also arrived there with Saif.

4. On investigation of Shyam Sundar Singh, all the above named Appellants attached Braj Nandan Singh, who fell down injured. Bachcha Singh fled towards his village. When he reached at the embankment of pond, he raised alarm shouting the names of all the Appellants that they had killed Braj Nandan Singh. On his bulla, the villagers came running and they all went to the place of occurrence. Braj Nandan Singh was found dead with his injuries. Bachcha Singh has stated that Appellant Shyam Sundar Singh had master-minded the murder of Braj Nandan Singh on account of dispute with regard to land of school of village in respect of which 144 Code of Criminal Procedure proceeding was also initiated. Shyam Sundar Singh had grown Sugar Cane on the said land and when he was taking away the crop the villagers and Braj Nandan Singh stopped him. Shyam Sundar Singh became inimical on this account and threatened that he would teach lesson within 10-15 days. The second cause of the murder, according to this witness, was that there was a Gair Mazarua land of Thakurbari which was amalgamated by Madan Singh with his Bunglow. Braj Nandan Singh stopped him to do so. He had also given threat. This witness is uncle of the deceased by village relation.

5. Appellant Shyam Sundar Singh had been elected to the Assembly in the year 1977 and was local Mukhiya of the Panchayat since its inception. He also established College in Warsaliganj. Bachcha Singh had deposed for Jwala Singh in a case against Appellant Shyam Sundar Singh. This witness had also contested" the election of Mukhiya against Shyam Sundar Singh. This witness had returned from Nawadah and got down at Warsaliganj Railway Station. There is a way going to village from Warsaliganj via Station but in the night other road

by which the deceased and the witnesses had gone was more convenient.

6. The other material witness is Bhaso Singh of the same village. This witness had gone to Warsaliganj in the evening. From there he went to Railway Station where he met Shyam Kishore Singh, Balmiki Singh and Braj Nandan Singh. He also saw Bachcha Singh getting down from train. They all proceeded for the village. This witness in his evidence in court has exactly narrated the same facts as stated by Bachcha Singh. This witness is silent about his activity after he saw the occurrence. He does not say that he saw Bachcha Singh running towards his village. This witness does not remember as to after how many days he gave statement before the Investigating Officer. He did not remember when the Investigating Officer had come in the village. He also does not remember whether the S.P. had visited the village. He does not exactly remember whether he had mentioned the names of Mangal Singh, Toha Singh, Sudama Singh, Gauri Singh and Kanti Singh as the accused.

7. Deepak Singh (P.W.5) had heard hulla of Bachcha Singh. He went to the place of occurrence. He went to Peela Manjhi with Bachcha Singh where he found the dead body of Braj Nandan Singh. Bachcha Singh told him about the occurrence. Peela Manjhi is half kilometer from Pokhar.

8. Two alleged eye witnesses, namely, Shyam Kishore Singh (P.W.1) and Balmiki Singh (P.W.2) claims to be present along with Bachcha Singh at the time of occurrence.

9. According to the post-mortem Report and the medical evidence, as many as eight injuries all incised wound were caused by self and Garasa.

10. Learned trial Judge accepting the testimony of the two eye witnesses found all the Appellants guilty for the murder of Braj Nandan Singh and sentenced them to imprisonment for life.

11. The defence has examined witnesses to show enmity between the accused persons and the witnesses. Learned Counsel for the Appellants has assailed the judgment of the trial court as very doubtful. He submitted that two eye witnesses have not supported the informant's version at the trial. It is submitted that Bachcha Singh (P.W. 3) is not named as eye witness in the F.I.R. Ram Sanehi Singh (P.W.7), the brother of the informant claimed that Bachcha Singh had disclosed the name of the Appellants to him.

When he heard the hulla and proceeded to the place of occurrence, then Bachcha Singh told him the names of the Appellants. This witness had recited whatever he heard from Bachcha Singh to his brother. Bachcha Singh did not say that he met Ram Sanehi Singh. Deepak Singh P.W.5), who claims to have met Bachcha Singh is not named in the F.I.R.

12. Learned Counsel for the Appellants further submitted that five persons, namely, Parsuram Singh, Bilayati Singh, Shyam Sundar Singh and Shyam Singh are not named in the written First Information Report. The informant Tanik Singh

is a teacher. He had drafted the First Information Report carefully and he did not name Bachcha Singh as a witness. Learned Counsel for the Appellants pointed out interesting fact that in his evidence Deepak Singh stated that he went to the place of occurrence and found the informant sitting by the side of the dead body of Braj Nandan Singh. It is submitted that it is surprising that the name of Shyam Sundar Singh, who was an M.L.A. and Mukhiya of the village, was first left out in the written First Information Report but the witnesses in court tried to implicate him. Similarly, the first informant as well as his brother Ram Sanehi Singh failed to name other Appellants in the earlier statement before the Investigating Officer. Ram Sanehi Singh contrary to the statement in court had stated before the Police that he had not heard the names of the assailants of the deceased and he did not support the version that Bachcha Singh (P.W.3) had disclosed the names of the assailants of Braj Nandan Singh and he in turn had given the names to his brother Tanik Singh.

13. Para-21 of the evidence of the Investigating Officer shows that Ram Sanehi Singh in his statement before the Investigating Officer had revealed that he had not heard the names of the assailants of the deceased and he had not stated that Bachcha Singh had disclosed the names of the accused persons.

14. Having considered the submission of the learned Counsel for the Appellants and gone through the record, I am of the view that the case against the Appellants is not free from doubt since it is clear that Ram Sanehi Singh, who had disclosed the names of the Appellants to Tanik Singh, had not stated before the Investigating Officer that Bachcha Singh had told him the names of the Appellants. There is vital contradiction in the written statement before the Investigating Officer and his evidence in court. Some of the accused are not named in the First Information Report.

15. In the result, I hold that the case against the Appellants is not proved beyond all reasonable doubt and they are entitled for acquittal. This appeal is accordingly allowed, conviction of the Appellants is set aside and all the Appellants are acquitted of the charges giving them benefit of doubt. All the Appellants are on bail. They are discharged from the liability of their bail bonds.

P.K. Sarkar, J.

16. I agree.