
(2002) 10 PAT CK 0115

In the Patna High Court

Case No : Criminal Appeal (DB) No. 277 of 1998

Premchand Singh and Gyanchand Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 08-10-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 353(6)
Penal Code, 1860 (IPC) — Section 302, 304, 307, 34

Citation : (2003) 1 PLJR 240

Hon'ble Judges : S.N. Jha, J;A.K. Verma, J

Bench : Division Bench

Advocate : Suraj Samdarshi, Amicus Cuiariae, for the Appellant; Ganesh Prasad Jaiswal, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Jha and A.K. Verma, JJ.—The Appellants have been convicted u/s 302/34 of the Indian Penal Code and sentenced to rigorous imprisonment for life for having committed the murder of Ram Awadhesh Singh on 9.4.95 at about 6 A.M. near Village Chilharua within Dinara PS of Rohtas district.

2. The fardbeyan of the case was lodged by none else than the deceased himself in Dinara State Dispensary after about two hours of occurrence at 8 A.M. He stated that at 6 O'clock in the morning he had gone to the eastern outskirts of the village for answering the call of nature. His nephews Bir Bahadur Singh and Lalji Singh were with him. When he was returning after easing himself he was accosted by the Appellants as well as Suraju Singh, urendra Singh, Birendra Singh, Birendra Singh and Laxman Singh. All of them were armed with revolver. He tried to run away but was surrounded by them and at that point of time Appellant Gyanchand Singh hred from his revolver which hit him on his chest. Appellant Premchand Singh also fired twice which hit him on his back. He fell down crying. On hearing his cries and shouts persons assembled and the culprits fled away. Ram Awadhesh Singh disclosed that prior to the occurrence they had

been giving threats on account of dispute and for that reason with a common intention they shot him.

3. On the basis of the said fardbeyan which was recorded by the SI Damodar Singh of Dinara PS, Dinara PS Case No. 28/95 was registered u/s 307 etc. of the Penal Code. Ram Awadhesh Singh was later shifted to Patna Medical College Hospital for treatment where he breathed his last after four days on 13.4.95. After his death Section 302 IPC was added to the array of offences. Meanwhile the Officer Incharge of Barhari Police Outpost had taken up the investigation. After completing necessary formalities he submitted chargesheet and thus the Appellants and others were put on trial.

4. It may be mentioned here that on the date fixed for judgment i.e. 13.4.98 it so happened that Appellant Gyanchand Singh did not appear when his bail bond was cancelled and the judgment was delivered with respect to the accused in attendance i.e. Appellant Premchand Singh. The trial as regards Gyanchand Singh was separated and numbered as Sessions Trial No. 481A/95. After Gyanchand Singh appeared on 25.4.98 the same very judgment was pronounced against him. The order on the point of sentence was passed on 28.4.98. If we may say so, it was open to the trial court to proceed with the delivery of judgment even against Gyanchand Singh in terms-of-proviso to Sub-section (6) of Section 353 of the Code of Criminal Procedure. Be that as it may, there being two separate judgments, two separate appeals were required to be filed on behalf of the Appellants but it is futile to go into that question inasmuch as the common appeal against both the judgments was entertained by this Court and has now come up for final hearing.

5. Adverting to the trial, the prosecution examined 12 witnesses to prove its case, five out of them, namely P.Ws. 1 Lallu Singh, 2 Harihar Singh, 3 Vishwanath Singh, 4 Sadhu Singh and 7 Janardan Singh turned hostile. Three are official witnesses being P.W. 10 Dr. Indrajeet Prakash who had examined the injuries of Ram Awadhesh Singh, during his life time, P.W. 11 Basudeo Prasad, the Investigating Officer, and P.W. 12 Dr. Ashok Kumar Yadav who had held postmortem. Out of the remaining witnesses, on facts, P.Ws. 5 and 6, Bir Bahadur Singh and Lalji Kumar Singh, were examined as eye witnesses; while P.Ws. 8 and 9, Muneshwar Singh and Ayodhya Singh, were examined as hearsay witnesses. They claimed to have reached the place of occurrence after the incident. It is relevant to mention here that P.W. 8 is father of the deceased while P.W. 9 is brother of the deceased and son of P.W. 8. P.Ws. 5 and 6 are sons of P.W. 9. The Appellants did not examine any witness in their defence. At the end of trial the Court convicted and sentenced the Appellants in the manner indicated above.

6. Shri Suraj Samdarshi appearing on behalf of the Appellants submitted that the conviction is based on the evidence of the witnesses who were closely related to the deceased being either his father, brother or nephews and therefore their evidence has to be scrutinised with due care and caution. He submitted that

though P.Ws.5 and 6 claim to have witnessed the occurrence there are inconsistencies in their evidence and not much reliance can be placed on them.

7. Inasmuch as only P.Ws. 5 and 6 claim to have seen the occurrence it is appropriate to straightway come to their evidence. P.W. 5 Bir Bahadur Singh stated that about a year ago at 6 O'clock in the morning he along with his brother Lalji (P.W. 6) and Janardan Singh (P.W. 7, turned hostile) had gone to pick Mahua flowers. At that time his uncle Ram Awadhesh Singh was returning after answering the call of nature from the eastern direction. Appellant Prem Chand came near the Mahua tree and when Ram Awadhesh went past the tree Prem Chand fired on his back. Premchand fired another shot which hit Ram Awadhesh on his back. Ram Awadhesh tried to flee away in the western direction but fell down near the embankment. At that time Appellant Gyanchand Singh mockingly told Premchand as to how he has fired two shots when Ram Awadhesh was running away. Saying this, he came out of the place where he was hiding and fired two shots which hit Ram Awadhesh on his armpit. Bir Bahadur along with his brother Lalji and Janardan thereafter rushed to the village shouting.

To the same effect is the evidence of P.W. 6 Lalji Singh. He also stated that when he was picking Mahua flowers along with his brother Bir Bahadur Singh and Janardan Singh, Appellant Premchand Singh came there and when Ram Awadhesh who was returning after answering the call of nature went past them, he (Premchand) shot at him. Premchand fired another shot. His uncle Ram Awadhesh Singh ran to some distance but fell down. At that point of time Appellant Gyanchand who was hiding behind a rock mocked at Premchand as to how he had fired when Ram Awadhesh was running away and he too fired two shots which hit the armpit of Ram Awadhesh. Thereafter they (Lalji Singh, Bir Bahadur and Janardan Singh) returned to their village and informed P.W. 8 about the occurrence.

8. Both P.Ws. 5 and 6 were subjected to lengthy cross-examination but the defence could elicit nothing from them in their favour. The significant feature of their evidence is that no contradiction was pointed out to these two witnesses in their evidence and the only omission taken from them was that before the police they did not state that when they reached home they did not inform his father about the occurrence. This in our opinion can not be called a material omission on the part of the witnesses and does not create any doubt about the prosecution case regarding the witnesses running to their house and informing their family members about the occurrence. It is relevant to mention here that P.Ws. 5 and 6 were found to be 11 and 9 years" old at the time of their deposition and considering the manner in which they stuck to their version of the occurrence would exclude the possibility of any embellishment or addition.

9. P.W. 8 Maheshwar Singh, father of the deceased, stated in his evidence that about 6-7 O'clock in the morning, one year prior to his deposition, when he was proceeding towards the field he heard sound of four gun shots. On hearing them he returned to his house when his grand-sons Bir Bahadur (P.W. 5) and Lalji

Singh (P.W. 6) told him about pistols. He further stated that by that time Ram Awadhesh had been taken to Dinara for treatment. He further Stated that at the place of occurrence he found country made pistol and cartridges Which he handed over to the Investigating Officer. P.W. 9 Ayodhya Singh, brother of the deceased, stated that when he was at his house about one and half years prior to his deposition at about 7 O'clock his sons Bir Bahadur and Lalji who had gone to pick Mahua flowers came running to the house and informed him that the Appellants had shot Ram Awadhesh. As soon as he learned about the occurrence he went there. He found the Appellants there. They in fact threatened him. Ayodhya Singh went to the place (where Ram Awadhesh was lying injured) only after they left. He took Ram Awadhesh who was alive to Dinara Hospital for treatment. Statement of Ram Awadhesh was recorded by the Sub Inspector of Dinara P.S. His statement too was recorded at the Patna Medical College Hospital where Ram Awadhesh was later taken for treatment.

10. It was submitted on behalf of the Appellants that P.W. 10 who had examined the injuries on the deceased found two stab injuries on the body of the deceased but as there is no mention of any stab injury in the evidence of P.Ws. 5 and 6, their claim to have seen the occurrence becomes doubtful. Counsel however agreed that the doctor found, besides stab wounds, lacerated wound on the body of Ram Awadhesh Singh on the left part of the chest measuring 3 c.m. x 1/2 c.m. x 1 cm. with blackening and burning around the the wound apparently by gun shot. So far as the existence of stab wounds is concerned it is true that P.Ws. 5 and 6 in their evidence did not state about the Appellants or any other person stabbing the deceased. However the evidence of P.W. 5 gives an indication that his attention was drawn to the occurrence when he heard sound of gun shot. When he looked in that direction, he found Ram Awadhesh running away in the western direction and blood was oozing from the wound on the back. It may be recalled that as per his evidence Premchand fired two shots first and thereafter Gyanchand fired. The possibility of one or other of them giving knife blow to the deceased before firing shots cannot be ruled out. It is to be kept in mind that alongwith the Appellants four more persons were put on trial. It is another mattar that they have been acquitted by the trial Court. Thus even if it be assumed that neither of the two Appellants inflicted any stab wound to the deceased, the prosecution case of their firing on the deceased does not become doubtful in view of the finding of P.W. 10 who found lacerated wound with blackening and burning around. Unfortunately P.W. 12 who held the postmortem merely stated about the existence of three stitched wounds on the deceased and no far as internal "injuries are concerned all that he stated was that on opening thoreco abdominal cavity both lungs were found lacerated. If the doctor had made more detailed and indepth examination of the internal injuries, perhaps, it would have thrown further light on the point. Be that as it may, it is well settled that where there is any conflict between the medical evidence and ocular evidence, the Court may prefer on the ocular evidence provided it is trustworthy. Coming as they did from the mouth of two child witnesses who gave a consistent

account of the occurrence both before the police and the Court, where they ably stood the test of cross-examination, the prosecution case about the Appellants firing on the deceased does not appear to be doubtful. The evidence of the eye witnesses finds corroboration from the evidence of P.Ws. 8 and 9. It is to be kept in mind that country made pistol and cartridges were found at the place of occurrence which were delivered to the Investigating Officer.

11. It is also to be kept in mind that the FIR was lodged within two hours of the occurrence. Considering that the distance between Dinara and the place of occurrence is about 10 Kms. lodging of the case within two hours would completely exclude the possibility of any concoction. In the cross-examination of the witnesses, the defence put questions suggesting that the deceased had criminal antecedents and he had been released from custody only two days prior to the occurrence. The possibility of the Appellants who were admittedly on inimical terms with the members of the prosecution party seizing the opportunity and killing him cannot be ruled out. Thus, having considered the evidence as a whole we are satisfied, in agreement with the trial court, that the prosecution has proved its case beyond all reasonable doubts.

12. However while the complicity of the Appellants is established beyond doubt, in the facts and circumstances we are of the view that their conviction u/s 302 of the Penal Code was not according to law. P.W. 12 stated in no uncertain terms that the deceased died as a result of Septicemia. On opening the abdominal cavity he found the lungs were filled with pus. In the circumstances, counsel for the State also agreed that the conviction of the Appellants could be altered to Section 304 Part I of the Penal Code.

13. We accordingly set aside the conviction of the Appellants u/s 302 of the Penal Code and, instead, convict him u/s 304 Part I of the Penal Code and sentence them to rigorous imprisonment for five years.

14. With this modification in the conviction and sentence the appeal is dismissed.

15. Let the first and last page of this judgment be handed over to Sri Suraj Samdarshi so that he may be paid his fees by the Patna High Court Legal Aid Committee.