
(2011) 08 PAT CK 0083

In the Patna High Court

Case No : Criminal Appeal (DB) No. 258 of 1989

Rajeshwar Singh @ Rajeshwar Prasad Singh, Sanjay Singh
and Ajay Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 30-08-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 109, 302, 324, 34

Citation : (2011) 08 PAT CK 0083

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

Bench : Division Bench

Final Decision : Allowed

Judgement

Navaniti Prasad Singh, J.—The two appeals have been filed by the Appellants against the judgment and order dated 09.06.1989 passed by the 3rd Additional Sessions Judge, Sitamarhi in Sessions Trial No. 11 of 1987. By the said judgment and order the three Appellants of Cr. Appl. (DB) No. 258 of 1989 have been variously convicted u/s 302 read with Section 34 of the Indian Penal Code thereof. The Appellant, Rajeshwar Singh @ Rajeshwar Prasad Singh has been convicted u/s 302/109 of the Indian Penal Code. The other two Appellants, namely, Sanjay Singh and Ajay Singh have been convicted u/s 302 read with Section 34 of the Indian Penal Code. All three of them have been ordered to undergo rigorous imprisonment for life. In so far as Cr. Appl. (DB) No. 310 of 1989 is concerned, it has been preferred by Anand Singh, who has in the same trial been convicted u/s 302 read with Section 324 of the Indian Penal Code, and has been sentenced to undergo rigorous imprisonment for life u/s 302 I.P.C. No separate sentence for offence u/s 324 of the Indian Penal Code has been passed.

2. In course of hearing before this Court, on behalf of the informant learned Counsel entered appearance. We permitted him to assist the learned Counsel for the State.

3. Heard the parties.

4. The prosecution case, is evident from Ext.6, the fardbeyan, which is based on alleged statement of one Surendra Mandal (the deceased) as recorded by Sri B.K. Singh, the then S.I. of Yahiyapur Police Station on 04.08.1986 about 5:15 am in Sri Krishna Medical College Hospital, Muzaffarpur. The recording of fardbeyan is witnessed by one Ram Sakal Sahani, who has also been examined as P.W.3. The fardbeyan, inter alia, states that the deponent thereof, that is, Surendra Mandal used to work as a cow hand for one Ragho Singh and the accused Rajeshwar Singh used to ask him to work for him instead. As the deponent did not agree on the fateful day, that is, on 03.08.1986 Rajeshwar Singh along with the other accused persons surrounded the deponent near the house of Ragho Singh. It is alleged that at about 7 pm Anand Singh, who was armed with spear and the other accused persons with lathi surrounded the deponent and then upon orders of Rajeshwar Singh, Anand Singh grievously injured the deponent with spear in the abdomen. P.W.2, Shatrughan Mandal happens to be the brother of the deponent, who reached there, but he was also attacked by the Anand Singh with the spear and sustained injury on the side of the body. In view of the shouting and in view of presence of large number of persons there, the accused persons alleged to have escaped thereafter.

5. As noted above, time of occurrence is 7 pm on 03.08.1986 at village Korlahiya under Runnisaidpur Police Station in the district of Sitamarhi, but the fardbeyan is being recorded at Sri Krishna Medical College Hospital, Muzaffarpur on the next morning. It appears that after the alleged injuries were sustained by Surendra Mandal and Shatrughan Mandal, as per P.W.2 they were carried in a bus to the hospital at Muzaffarpur and there they were immediately examined by doctor, that is, P.W.8, Dr. Amarendra Kumar Sinha, who prepared the injury report at about 8-8:30 pm, which are Exts.4 &4/1 on 03.08.1986 in respect of the two injured persons. At the cost of repetition, it may be noted that apparently neither the police was called nor any statement of any person was recorded at that time and the fardbeyan is recorded, as noted above, next morning in the hospital itself, that is, at 5:30 am on 04.08.1986. The deponent of the fardbeyan, that is, Surendra Mandal then died in course of treatment on 07.08.1986 at the hospital itself and the inquest report is Ext.2. Thereafter, postmortem was conducted and the postmortem report is Ext.3. The doctor who prepared the injury reports at the first instance is Dr. Amarendra Kumar Sinha, P.W.8. The doctor who performed the postmortem is Dr. Binod Kumar Mehta, P.W.7. Let it be noted that the Police Officer who recorded the fardbeyan and who prepared the inquest report have not been examined. P.W.9, Vijay Bahadur Singh, A.S.I. is the investigating officer. Apart from these, the prosecution in order to establish the charge examined Ram Ekbal Rai, P.W.1. He claims to be an eye witness though he is not named in the F.I.R. Shatrughan Mandal is the brother of the deceased and also allegedly injured and has been examined as P.W.2. He claims to be eye witness to the occurrence and is mentioned in the F.I.R. Ram Sakal Sahani is P.W.3 and is witness to the fardbeyan. Madan Mandal,

P.W.4 also claims to be an eye witness for the later part of the occurrence. It may be noted here that P.W.3 & P.W.4 have not been examined by the police and, therefore, statements under Section-161 Code of Criminal Procedure has not been recorded. They are not witnesses named in the chargesheet. Notwithstanding the aforesaid, they turned up at the stage of trial to depose. P.W.5, Bindi Mandal is the brother of the deceased but is a hearsay witness. P.W.6 is Lila Devi, the wife of the deceased and she has been tendered. P.W.10, Chandeshwar Prasad an Advocate Clerk has proved the formal F.I.R.

6. The defence has examined Dr. Rajiv Bhushan Sinha as D.W.1, who was the doctor, who was treating the deceased at the said hospital when he was brought in hospital. D.W.2 is Binod Kumar an Advocate Clerk who has proved the certain documents of defence being the bed head ticket of deceased Surendra Mandal.

7. The defence is denial and false implication.

8. In view of the facts as noted above, starting from the fardbeyan to the deposition of witnesses, this Court is required to examine the evidences establishing and proving the events as they unfold. Starting from the fardbeyan which is Ext.6, from the facts as noted above, it would be seen that the incident took place at about 7 pm on 03.08.1986. The injured persons were carried to Shri Krishna Medical College & Hospital, Muzaffarpur. The injury reports, which is Exts.4 & 4/1, were prepared at 8-8:30 pm on the same day by P.W.8, Dr. Amarendra Kumar Sinha, but the fardbeyan is recorded at about 5:15 am on the morning of 04.08.1986. Thus, the fardbeyan was recorded after about 10 hours of the occurrence and is said to be the statement of the injured, Surendra Mandal, who died after 3 days, that is, on 07.08.1986. It is recorded in the hand of Sri B.K. Singh, the then S.I. of Yahiyapur Police Station.

9. The first thing that is to be noted is that this S.I. Sri B.K. Singh has not been examined and no reasons have been given for the same. In our view, this has caused serious prejudice to the defence, inasmuch as they are unable to solicit from the said Sri B.K. Singh that, in fact, the deponent, Surendra Mandal was not in a state to make such a statement. The second thing that we would like to mention here itself is that though the injured were admitted to the hospital in the evening itself and Surendra Mandal suffered grievous injury, injury report was prepared at 8-8:30 pm noting that the injuries were caused piercing weapon and sharp cutting weapon but there was no police report of the same. The police report, that is, fardbeyan comes after 10 hours in the hospital itself. The third point that we would like to mention here is that this fardbeyan though being recorded in the hospital no hospital staff much less treating doctor has testified or endorsed it. The fardbeyan has been endorsed by Ram Sakal Sahani, P.W.3 who did not turn up for subsequent examination before the police and the statement is not recorded under Section-161 Code of Criminal Procedure and he has not been named by the prosecution as a witness in the chargesheet as filed. What is of greater importance is that D.W.1, Dr. Rajiv Bhushan Sinha the attending doctor is examined by the defence. He categorically states that having

seen the injured persons they were treated. So far as Surendra Mandal the author of the fardbeyan is concerned, he was drugged because of grievous injury and he could not even be conscious enough to make any such statement. This doctor has further said that Surendra Mandal was reacking of liquor when he was brought into the hospital in the injured state.

10. In our view, these facts as noted above, lead us to doubt the very authenticity and genuiness of the fardbeyan.

11. Now, we must see if independent of the fardbeyan, can the prosecution case stand. The first prosecution witness is Ram Ekbal Rai, P.W.1. As noted earlier, in the F.I.R. names of various persons are given, Ram Sakal Sahani becomes a witness to the fardbeyan but name of P.W.1 is not mentioned there. P.W.1 is a chance witness and claims himself to be an eye witness. When we examine his deposition we find that he states that on the fateful evening there was a cattle fair in the village where over two thousand cattle were there with a large number of about 50-100 trucks parked on the road. He was in the cattle fair where he heard sounds of commotion. He admits in his cross-examination that he did not know what the commotion was for but he chose to rush towards the house of Ragho Babu from where the noise was coming. He alleges that he saw the accused persons surrounding the deceased Surendra Mandal and alleges that Rajeshwar Singh ordered Anand Singh to kill the deceased and when the brother of the deceased Shatrughan Mandal, P.W.2 tried to intervene he was also injured. He admits in the cross-examination that there were large number of people assembled there but no one tried to stop the accused persons or prevent the incident. He gives an excuse that the accused persons armed with one spear and lathi threatened people not to interfere. In his cross-examination, he admits that while hearing the commotion he could not make out what the commotion was for and it was the Mela day but why he ran to the place of occurrence he could not explain in his cross-examination. He states that after the two persons were injured they were brought to the road and loaded on a bus and taken to Sri Krishna Medical College & Hospital, Muzaffarpur. He did not accompany them for treatment.

12. In our view, P.W.1 is a chance witness. He has admitted that he is well acquainted with the deceased. He is not named in the F.I.R. even though he states that he had carried the deceased. He was all along with the deceased when the occurrence took place and saw the whole events clearly from the time Rajeshwar Singh is said to have ordered Anand Singh to kill Surendra Mandal to the time Surendra Mandal and Shatrughan Mandal were put on a bus for being taken to the Sri Krishna Medical College & Hospital at Muzaffarpur for treatment but was not named in the fardbeyan. He does not state that the two injured persons, that is, Surendra Mandal and Shatrughan Mandal were first taken to a Line Hotel (way side hotel) and then after sometime they were taken by bus to Muzaffarpur. We do not consider him to be a reliable witness much less for the whole of the occurrence. He does not inspire confidence.

13. We then come to P.W.2, the brother of the deceased and injured himself. His name is mentioned in the fardbeyan. He is said to have been injured when he tried to save his brother Surendra Mandal. The injury inflicted on Surendra Mandal and Shatrughan Mandal is alleged to be by the spear which was inflicted by Anand Singh.

14. When we come to the evidence of Madan Mandal, P.W.4, who is also said to be an eye witness, he has stated that upon orders of Rajeshwar Prasad Singh, Anand Singh inflicted the spear injury on the abdomen of Surendra Mandal. Madan Mandal's statement is that when he reached the spot he found a spear embedded in Surendra Mandal and he states that it was Ram Sakal Sahani, P.W.3 who extracted the spear from the abdomen. The Court wonders that if the spear was left in the abdomen of the Surendra Mandal then the implication of the Appellant, Anand Singh by Surendra Mandal that then with the same spear he caused injury to Shatrughan Mandal is falsified. The two are contradictory. The two cannot stand together. Thus, it is apparent that the prosecution is trying to introduce a story which does not show the true event. It may be mentioned here that Madan Mandal though claims to be an eye witness but he is not named in the F.I.R. nor he is examined by the police in course of investigation nor is he mentioned as chargesheet witness. He is suddenly produced in course of trial.

15. Now, coming back to P.W.2, Shatrughan Mandal, the brother of the deceased and who was himself injured.

16. Apart from what has been noted above, which falsified the injury, as caused by Anand Singh for the reasons noted above, one must also notice that the two injured persons were taken to the Sri Krishna Medical College & Hospital at Muzaffarpur. They were examined and injury report was prepared at about 8-8:30 pm on 03.08.1986. In course of examination P.W.8, Dr. Amarendra Kumar Sinha, who prepared the injury report, admits in his cross examination that though the injury report is said to have been prepared at about 8-8:30 pm on 03.08.1986, it was issued to the prosecution side on 14.08.1986, that is, after more than 11 days. At this moment, we may also note that the doctor, P.W.8 also opined that the two injuries on the two persons were caused by different weapons. These facts, in our opinion, show that there is much contradiction as between the various prosecution witnesses as to the manner of occurrence. There are material contradictions because if one prosecution witness is accepted as speaking the truth we find that the other prosecution witness becomes inconsistent with the same.

17. Now, we come to the Investigating Officer. Here, we would like to note that the S.I. who recorded the fardbeyan has not been examined and no reason has been given for his non-examination. Coming to the examination of the Investigating Officer, we find that in his cross-examination he has categorically stated that on the place of occurrence he found no blood stains and no person gave him the blood stained cloths. He states that Ram Sakal Sahani, P.W.3 had never been examined or examined in course of investigation. Ram Sakal Sahani,

P.W.3 is alleged to be witness to the fardbeyan who had accompanied the injured right from the place of occurrence to the hospital and was supposed to be there till the deceased died. What is most damaging is that the I.O. admits that the weapon used, that is, spear was never produced before him or given to the police by any person. Thus, it would be seen that the deposition of the Investigating Officer even creates serious doubt about the place of occurrence and the manner of occurrence.

18. We may also notice that the P.W.2, Shatrughan Mandal in his deposition stated that while he was at Muzaffarpur attending to his brother he came to know that in the night there had been rain in his village, but the I.O. was confronted with this in his cross-examination he clearly denied any such information.

19. It may also be noticed here that in the deposition of P.W.3, Ram Sakal Sahani & P.W.4, Madan Mandal, who as noted above are not even witnesses mentioned in the chargesheet, in their deposition had stated that the injured persons were carried to a Line Hotel and from there on a bus were taken to Muzaffarpur. The Investigating Officer inspected the Line Hotel as well and found no trace of blood there. At this place, it may also be noted that P.W.1, Ram Ekbal Rai has not mentioned about the injured being taken to the Line Hotel rather his deposition is that they were carried to the road side and then by bus to the Muzaffarpur.

20. Learned Counsel for the informant has ventured to argue that we must look at deposition of P.W.2, Shatrughan Mandal, the brother of the deceased, whose name is also mentioned in the F.I.R and is an eye witness and, if his evidence is taken and read together with the injury report and the postmortem report, the prosecution story stands established for conviction. We are unable to accede to the said submission. The reason is simple. We are cognizant of the fact that even a single eye witness account which remains unshaken in cross-examination may be sufficient for conviction because it is well settled that it is not the number of witnesses but quality of witness that decides the case. What learned Counsel for the informant wants us to do is that we should shut our eyes to all other witnesses for the prosecution and forget them. That we certainly cannot do. It was for the prosecution to choose its witnesses. It chose to lead 10 witnesses and they are all bundle of contradictions.

21. If we see all the witnesses together we find that neither the place of occurrence stands formally established nor the manner of occurrence nor with regard to the weapon, which is supposed to have been left by the accused persons when they fled from spot.

22. In that view of the matter, we hold that the prosecution has failed to establish its case beyond reasonable doubt. That being so, the benefit of doubt has to be given to the accused persons. When we have doubted the prosecution version in totality, then there is no gain saying that the accused persons could not be charged either u/s 302 of the Indian Penal Code or separately under

Section-109 or for that matter u/s 34 of the Indian Penal Code.

23. The result is that both these appeals are allowed. The judgment under appeal is set aside. The four Appellants of the two appeals, who are on bail, are discharged of their bail bonds consequent to their acquittal.