
(2010) 01 PAT CK 0031
In the Patna High Court

Ram Chandra Singh and Others and Nagendra Singh @
Wakeel Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 11-01-2010

Acts Referred:

Citation : (2010) 01 PAT CK 0031

Final Decision : Allowed

Judgement

Dharnidhar Jha and Rakesh Kumar, JJ.—The two appeals arise out of the judgment passed by the learned Additional Sessions Judge, 4th Curt, Gaya, on 19.11.2003 in Sessions Trial No. 246 of 2001/96 of 2002 by which the nine appellants of the two appeals were found guilty and convicted of the charges under Sections 148, 302/149 of the Penal Code. The solitary appellant of Cr. Appeal No. 57 of 2004, namely, Nagenra Singh alias Wakeel Singh was convicted also u/s 302 of the Penal Code and Section 27 of the Arms Act. By the order of sentence dated 20.11.2003, all the appellants, were directed to suffer rigorous imprisonment for two years u/s 148 of the Indian Penal Code and rigorous imprisonment for life u/s 302/149 of the Penal code as also to pay a fine of Rs. 4,000/- . In default of payment of the fine, each of them was directed to suffer a further period.of rigorous imprisonment for two years. Appellant Nagendra Singh alias Wakeel Singh was not sentenced under Sections 302/149 of the Penal Code as he was directed to suffer rigorous imprisonment for life u/s 302 of the Indian Penal Code and was also directed to pay a fine of Rs. 5,000/-, else, to suffer rigorous imprisonment for further term of three years. For his conviction u/s 27 of the Arms Act, appellant Nagendra Singh alias Wakeel Singh had to suffer rigorous imprisonment for three years and also to pay a fine of Rs. 2,000/-else, to suffer rigorous imprisonment for six months more. The nine appellants have challenged the vires of the above findings and sentences.

2. The case is based on Ext.3, the fardbeyan of P.W. 4 Gopal Singh who happened to be the full brother of the deceased Janardan Singh. It was alleged that the two brothers, P.W. 4 and the deceased, had gone to attend to the call of

nature towards the field described as Dularbadh. When Janardan Singh was returning home all the accused persons named in the F.I.R., the appellants herein, surrounded the deceased and stated hurling abuses upon him. The appellants were armed with lathi at that time. It was alleged that at orders of appellant Jamuna Singh, appellant Nagendra Singh alias Wakeel Singh fired a shot from his country made gun in the back of the deceased who fell down and died there instantaneously. It was alleged that the appellants attempted to take away the dead body but P.W. 4 raised a hulla which attracted Dharmendra Singh (not examined) and others as a result of which the accused persons ran away towards east. The informant brought the deceased to his Baithaka and after some time the police came and recorded Ext. 3.

3. As regards the motive for committing the offence, the informant alleged that one Sonpati Devi had gifted certain properties of her share and there had been a litigation for the same property and a Title Suit was also filed which was decreed in favour of the prosecution party. The whole area gifted by the said Sonpati Devi was 17.19 acres and the accused persons were demanding their share in the said properties and, as such, they had committed the offence.

4. On the basis of Ext.3, the F.I.R. of the case Ext. 4 was drawn up in Wazirganj Police Station and the investigation was taken up by P.W.7, A.S.I. Ramnandan Singh who went to the place of occurrence, recorded Ext.3, and prepared the inquest report(Ext.5). He thereafter took the statements of different witnesses and also inspected the place of occurrence which was a field situated in village Kanwa which has been described by P.W.7 as Dulalrbadh Khet in his evidence(P.W.7, Paragraph 6). He sent the dead body for post-mortem examination and at a particular stage of the investigation handed over the charge to P.W.6 who recorded statements of two witnesses and submitted charge sheet. This is how, the appellants were put on trial and convicted by the learned Judge by the impugned judgment.

5. The defence of the appellants is that they have falsely been implicated on account of pendency of the suit as admitted in the fardbeyan as also on account of land dispute which is also admitted. The next defence was that the deceased Janardan Singh was in the hit list of the terrorists and they had killed him in the cover of darkness and the villagers brought the dead body to the house of the informant who due to enmity falsely implicated the appellants.

6. The prosecution examined seven witnesses in proof of the charges, while the defence did not produce any witness or document to probabalise its plea and considering the evidence the appellants were convicted and sentenced, as indicated above.

7. Learned Counsel appearing for the appellants has submitted that out of seven witnesses, P.Ws. 1 to 4 are the witnesses on facts whereas P. W. 5 Dr. Arvind Prasad had held post-mortem examination on the dead body of Janardan Singh and had prepared the post-mortem examination report. The remaining two

witnesses, P.Ws. 6 and 7 had investigated the case in part. It was contended that as regards P.Ws. 2 and 3, they are not the eye witnesses on their own showing whereas P.W. 1 Dhaneshwar Bhuiyan stated that he did not see any part of the occurrence and on hearing about the murder being committed he came to the place of occurrence and found that Master Saheb(Janardan Singh) had been murdered. The solitary support comes from the evidence of the informant, P.W. 4. It was contended that even P.W. 4 has made some improvements in his statement by deposing to the dying declaration of the deceased by stating that Janardan Singh had stated to him that Nagendra Singh had shot and killed him and had thus achieved what he had intended to achieve. It was contended that similarly P.W. 2 Kapildeo Singh who is also a full brother of the deceased made such a statement which is contrary to the prosecution story contained in Ext. 3. The contention further was that as regards other appellants than Nagendra Singh, the F.I.R. contains an allegation against appellant Jamuna Singh that he ordered and upon that Nagendra Singh fired the fatal shot but in his evidence P.W. 4 has not stated the above facts and thus appears giving no evidence as regards complicity of appellant Jamuna Singh. As regards other appellants, it was contended that their conviction under Sections 302/149 of the I.P.C. was not fit to be sustained inasmuch as there is a complete lack of evidence that they had come sharing the common object and that the appellants had acted in prosecution of the common object.

8. In his usual fairness, learned Additional Public Prosecutor has submitted that the conviction of other appellants than Nagendra Singh under Sections 302/149 of the Indian Penal Code does not appear sustainable in law inasmuch as there is not even a whisper from P.W. 4 that any of the remaining eight appellants had committed any overt act. Their mere presence could not be sufficient to hold that they had formed an unlawful assembly with common object and that murder of Janardan Singh was committed in prosecution of that common object. However, Shri Sinha has submitted that as regards the conviction of Nagendra Singh the evidence of P.W. 2 appears blemishless and is fit to be accepted. Even in the background of enmity of the parties there does not appear any artificiality in his evidence and it appears trustworthy and fit to be.

9. The evidence of P.W. 1 Dhaneshwar Bhuiyan may not be important but his evidence is not worthless. He has stated some facts in his evidence that the occurrence took place at 6 A.M., which is the time stated by P.W. 4 in Ext. 3 and also in his evidence, that there was a hulla about the commission of murder of Master Saheb (Janardan Singh) and that he had reached the place of occurrence and found that Master Saheb had been killed. These three aspects of the evidence of P.W.1 clearly go to support the material parts of the prosecution case that an occurrence of murder of Janardan Singh had taken place at the place of occurrence at 6 A.M. P.W. 4 has also stated the above facts that his brother Janardan Singh who had gone out to ease and who was returning home was murdered at 6 A.M. by gun shot. P.W. 1 also states that many more persons had reached there. Thus, the evidence of P.W. 1 supports the prosecution charge that

the murder of Janardan Singh was committed at or around the time of occurrence and at the place of occurrence.

10. As regards the evidence of P.W. 2, Kapildeo Singh and P.W. 3 Muni Paswan, their own evidence indicates that they had started for the place of occurrence after having heard the sound of gun shot. P.W.2 stated that when he came, he found the injured lying on the ground who stated to him that appellant Nagendra Singh had killed him P.W. 3 Muni Paswan does not state that he was told anything as stated by P.W.2 by the deceased. Thus, it becomes doubtful that the deceased was in such a state of health as to making statement to the witnesses. P.W. 4 has also stated the above fact that the deceased named Nagendra Singh as his killer. The criticism of the evidence of P.W. 4 is on this score alone that he had made vital improvement in his evidence and as such his evidence should be rejected.

11. We do not act upon the principles of falsus in Uno falsus in omnibus. We recognize it as a matter of prudence to act upon the evidence of P.W. 4 who might have made some important improvement after making that part of the main statement and by explaining the real truth by picking up the grain from the chaff. It is true that P. 4 has not made such statement in Ext. 3 which was lodged by himself immediately after the occurrence, to be precise, in an hour of it. If the deceased had stated any fact like that to P.W. 4 it was expected of him that he could not have omitted to mention such a fact in his report. The very absence of that particular fact from Ext.3 makes this part of evidence of P.W. 4 not acceptable and, as such, we refuse to accept it as words of the deceased. We hold that this is a vital improvement which appears intentionally made by P.Ws. 2 and 4 who are the full brothers of the deceased, probably to heighten the importance of their evidence which tendency is most often found in the statements of the witness. It is in such cases that the truth has to be scanned and picked out of the mixture of falsehood and truth.

12. The other part of the evidence of P.W. 4 does not suffer from any infirmity. Whole of his cross examination does not indicate that he had improved on any other part of the prosecution evidence. He has named the accused persons correctly. He has assigned the role of assault to the man who had been named in that capacity in Ext. 3 and he has not concealed any truth about the difference between the parties. The forthrightness of P.W. 4 appears as a hallmark of his truthfulness making his evidence fit to be accepted.

13. The evidence of P.W.5, the Doctor, leaves no manner of doubt that the deceased was gunned down which was the cause of death of Janardan Singh. The evidence of P.W.4 and that of P.W.1 convinces us that there had been an occurrence in the manner as alleged by P.W.4 and, as such, we are inclined to accept that appellant Nagendra Singh alias Wakeel Singh had fired a shot and had killed Janardan Singh.

14. This brings us to consider as to whether the conviction of the remaining

appellants under Sections 148 and 302/149 of the Indian Penal Code could be upheld. As in the F.I.R. so in the evidence of P.W. 4, none of the appellants except appellants Jamuna Singh and Nagendra Singh were assigned any role. Appellant Jamuna Singh was alleged to be an order giver upon whose remonstrance appellant Nagendra Singh dealt the fatal shot to Janardan Singh. In his evidence in court P.W. 4 has given a go by to that part of the story which ranks Jamuna Singh as an order giver, thus, leaving him without any allegation. This Court finds as regards other appellants that there was no allegation except of hurling abuses. For upholding their conviction, could abuses be sufficient to indicate that they had formed an unlawful assembly with a common object and that common object was to commit murder of Janardah Singh? It is well known that an inference about acting in prosecution of the common object has also to be raised by reading the allegation on overt acts of different accused persons. Evidence has to be read also for discerning that the accused persons had shared the common object after having formed an unlawful assembly for the purpose. It has also to be searched from the evidence, whether the common object was the same which was the ultimate act. This could be had from the views of the Supreme Court which could be found reported in the case of Ranbir Yadav v. State of Bihar (1995) S.C.C. 392 , in which reference has been made to the cases of Baladin and Others Vs. State of Uttar Pradesh, and Masalti Vs. State of U.P., .

15. As pointed out the evidence shows merely the presence of other appellants at the scene of occurrence without assigning any act to them. Except that there is no evidence indicating that the appellant had assembled at the scene of occurrence with any object to commit any offence. They did not appear committing any act. In the evidence of P.W.4, there is a complete lack of evidence that they had done any act so as to indicating that they had formed an unlawful assembly with a common object to murder the deceased. It appears to us a case in which it could be inferred that the remaining eight appellants except appellant Nagendra Singh were not knowing from before as to what act was to be committed by one of them or by all of them. In that view, we find ourselves inclined to hold that the conviction of the remaining appellants, except appellant Nagendra Singh, under Sections 148 and 302/149 of the Indian Penal Code was not properly recorded.

16. In the result, the conviction of all the appellants in Cr. Appeal No. 516 of 2003 is hereby set aside and they are acquitted of the charges.

17 As regards appellant Nagendra Singh, we have already discussed about the role assigned to him and we hold that his conviction u/s 27 of the Arms Act was also properly recorded. As regards his conviction u/s 148 and 302/149 of the Indian Penal Code, the same is set aside and he is acquitted of the charges under those particular heads while upholding his conviction u/s 302 of the Indian Penal Code.

18. With the above modification in sentence of appellant Nagendra Singh, Cr.

Appeal No. 57 of 2004 is dismissed.

19. As regards Cr. Appeal of the remaining eight appellants, i.e., Cr. Appeal No. 516 of 2003, the same is allowed and they stand discharged from the liabilities of their bail bonds.