

(2004) 07 PAT CK 0129
In the Patna High Court
Case No : Criminal Appeal No. 579 of 1987

Ram Janam Singh	Vs	APPELLANT
The State of Bihar		RESPONDENT

Date of Decision : 20-07-2004

Acts Referred:

Arms Act, 1959 — Section 25, 27
Penal Code, 1860 (IPC) — Section 302

Citation : (2004) 4 PLJR 97

Hon'ble Judges : P.N. Yadav, J;I.P. Singh, J

Bench : Division Bench

Advocate : Krishna Prasad Singh, Manindra Kishore Singh, Arun Kumar Pandey No.1, for the Appellant; Ashwani Kumar Sinha for the State and M/s Ram Kumar Sharma, Mrigendra Kumar for the Informant, for the Respondent

Final Decision : Dismissed

Judgement

P.N. Yadav, J.—These appeals relate to one and the same judgment and order rendered by the 2nd Additional Sessions Judge, Arrah in Sessions Trial no. 156 of 1983 arising out of Shahpur P.S. Case No. 32 dated 5.3.1983 and were, therefore, heard together and they are going to be disposed of by this common judgment. The appellants alongwith the accused Ishwar Dutta Tiwary faced trial for having committed offences punishable u/s 302 of the Indian Penal Code (hereinafter to be referred to as the Code) and the appellant Ram Janam Singh and Ishwar Dutta Tiwary also stood charged u/s 27 of the Arms Act. The trial court convicted both the appellants and sentenced them to undergo rigorous imprisonment for life each u/s 302 of the Code and it further convicted the appellant Ram Janam Singh and sentenced him to undergo rigorous imprisonment for two years u/s 27 of the Arms Act, the sentences having been ordered to run concurrently, acquitting the accused Ishwar Dutta Tiwary of the charges levelled against him.

2. The prosecution case as unfolded in the first information report and the

evidence of prosecution witnesses lay within a narrow compass. The deceased Narad Rai, Sheomuni Rai (RW. 2) of village Ramdathi situated within the jurisdiction of Sahar" Police Station of Bhojpur District and Jagarnath Choudhary (RW. 3) of Chhotki Nainijor (Bhimpatti) situated within the same police station and district were going to Arrah in connection with certain court cases on 5.3.1983. When they at about 7.00 A.M. arrived near Sarna Badhar enroute to their destination the appellants Kishundeo Rai, co-villager of the deceased, Ram Janam Singh of village Isharpura and the accused Ishwar Dutta Tiwary of village Nainijor, having gun, Katta and pistol respectively all on a sudden appeared from a wheat field and on being pointed out by the appellant Kishundeo Rai the appellant Ram Janam Singh and the accused Ishwar Dutta Tiwary shot at the deceased as a result of which he sustained injuries and fell down whereafter the appellant Kishundeo Rai inflicted Katta blows on him. The deceased succumbed to the injuries on the spot. In pursuance of alarm raised by RW. 2 and RW. 3 several persons of village Sarna arrived at the scene of incident. The accused persons including the appellants started fleeing away. The people of village Sarna including Shambhunath Singh who had reached the place of occurrence from badhar chased them and they succeeded in apprehending the appellant Ram Janam Singh with a gun at village Suhiya. After a short while Krishna Rai, the Sub Inspector of Police-cum-Officer Incharge of Shahpur Police Station (RW. 7) arrived at the scene and he arrested Ram Janam Singh and recovered the gun from his possession.

3. The motive attributed behind the commission of crime is long drawn land dispute between the deceased and the appellant Kishundeo Rai.

4. Fardbeyan of Sheomuni Rai (RW. 2) was recorded at about 9.00 A.M. on the same day at Sarna Badhar by RW. 7 Krishna Rai on the basis of which formal first information report was drawn up and Shahpur RS. Case No. 32 dated 5.3.1983 was registered. RW. 7 himself took up investigation. He inspected the place of occurrence, seized blood stained earth from the place of occurrence, prepared seizure list and inquest report, recorded the statements of the witnesses, collected the postmortem examination report and after completing investigation and complying with necessary formalities submitted chargesheet against the appellants and Ishwar Dutta Tiwary and finally trial commenced after commitment. A separate case u/s 25 of the Arms Act was got registered against the appellant Ram Janam Singh by RW. 7.

5. The defence was that of total denial and false implication on account of persisting animosity emanating from long drawn land dispute between the deceased and the appellant Kishundeo Rai.

6. At the trial that eventually followed the prosecution examined eight witnesses to prove its case. Out of them the material witnesses on the point of occurrence are RW. 1, Sheoshankar Rai, RW. 2, Sheomuni Rai, the informant, RW. 3, Jagarnath Choudhary @ Jag Narayan Choudhary, RW. 4, Shambhunath Singh and RW. 5, Srinath Rai. PWs. 1 to 4 claimed to be the eye witnesses to the incident

while RW. 5 allegedly saw the accused including the appellants running away with the weapons referred to above in their hands after the deceased was shot at and assaulted. The other witnesses are RW. 6, Surat Yadav, a tendered witness, RW. 7, Krishna Rai, the Investigating Officer and RW. 8, Dr. Jagdish Prasad Singh who conducted autopsy on the dead body of the deceased.

7. The court below at the end of trial on meticulous consideration and appreciation of the entire evidence brought on records negating defence and innocence of the appellants found and held the prosecution case to be true and it convicted and sentenced the appellants in the manner indicated above giving rise to these appeals.

8. The contentions raised by Shri Krishna Singh, learned counsel appearing on behalf of the appellants to assail the findings and verdict of guilt recorded by the court below may be summarized as follows: Conviction of the appellants is based on the testimony of sole witness Shambhunath Singh (RW. 4), who is not competent, trustworthy and reliable. None of the persons including Rajendra, Mahendra, Mahesh and Ram Murat of village Sarna whose names figured in the evidence of RW. 4 and who had chased and apprehended the appellant Ram Janam Singh with the gun was examined nor was examined any of the persons of village Suhiya where Ram Janam Singh was caught hold of. The gun allegedly recovered and seized from possession of Ram Janam Singh was not got examined by ballistic expert nor was the blood stained earth seized from the place of occurrence got examined by chemical analyst. The appellant Ram Janam Singh had become lame due to fracture of his leg and he used to walk limping and he could not have run away from the place of occurrence and the entire story of his fleeing away and being chased and caught is false and baseless. Medical evidence is not in consonance with eye witness account of the incident. The deceased was as a matter of fact killed in the night by some unknown miscreants and none witnessed the incident leading to the commission of murder of the deceased Narad Rai.

9. Shambhunath Singh (RW. 4) is the most competent, independent, natural and trust worthy witness and as such his evidence assumes important significance. He stated that at the relevant point of time, he had been in the field (Badhar) and hearing sound of firing rushed towards the place of occurrence and happened to see Ram Janam Singh opening fire upon the deceased Narad Rai as a result of which he sustained injury and fell down whereafter Krishnadeo Rai inflicted Katta blows on him. He stated that the two appellants were accompanied by one another miscreant but he could not identify him and on this score the accused Ishwar Dutta Tiwary was extended the benefit of doubt and was acquitted by the court below. It is in the evidence of RW. 4 that the appellants alongwith their one another associate after putting the incident to an end started fleeing away and he and others who had arrived at the scene after hearing hue and cry started chasing the miscreants, however, the appellant Ram Janam Singh entered into a house at village Suhiya with intent to hid himself.

RW. 4 added the people laid seize of the house and caught hold of Ram Janam Singh with a gun and soon thereafter RW. 7 Krishna Rai arrived there and arrested him and recovered and seized the gun from his possession. Nothing was elicited in the cross examination of the witness to discredit his statement. He is truthful and reliable witness. He has got no animosity at all with the appellants. His evidence on the point of arrest of Ram Janam Singh with the gun stands corroborated by RW. 7 who is also an independent public servant.

10. The other witnesses on the point of occurrence are PWs. 1, 2, 3 and 5. Sheomuni Rai (RW. 2) the informant stated that he alongwith the deceased and RW. 3 Jagarnath Choudhary were going to Arrah and when they at about 7.00 A.M. on the date of occurrence reached north of village Sarna near a river enroute to Arrah Ram Janam Singh, Krishnadeo Rai and Ishwar Dutta Tiwary having gun, katta and pistol respectively were seen a little away. He further stated that on being pointed out by Kishundeo Rai the deceased Narad Rai was shot at by Ram Janam Singh and Ishwar Dutta Tiwary and after he fell down he was inflicted katta blows by Kishundeo Rai and as they (P.Ws. 2 and 3) were threatened by the appellants they kept themselves a little away wherefrom they witnessed the occurrence. Identical is the witness of RW. 3. RW. 2 as mentioned in the fardbeyan is of Nainijor, however, he in his deposition has described his village as Bhimpatti. From the judgment and order passed by the court below, it would be crystal clear that RW. 2 is the person whose name figured In the first information report.

11. As per version of RW. 1 his brother, the deceased left his home for Arrah in connection with certain court cases but by mistake he could not take money with him and as such his mother gave money to him and he rushed with the money to hand over the same to his brother, the deceased and no sooner had he reached Sarna Badhar than he saw the appellants and Ishwar Dutta Tiwary surrounding the deceased and he out of fear hid himself a little away in a wheat field wherefrom he clandestinely saw the incident. RW. 1 gave eye witness account of the manner in which the appellants and Ishwar Dutta Tiwary committed gruesome and dastardly murder of the deceased. His statement is exactly like that made by P.Ws. 2, 3 and 4. There is nothing un-natural and improbable in his evidence. It is quite possible that he rushed to give money to his brother who had already left home and covered some distance and as he was to catch the deceased he must have travelled as fast as he could have and he in the process reached the place of occurrence in the nick of time.

12. The court below did not accept the evidence of RW. 1 and rejected the same solely on the ground that his name did not find mentioned in the first information report. According to the trial court had RW. 1 been present at the time and place of occurrence, his name would have figured in the first information report. It would not be correct proposition of law to lay down that evidence of a witness not named in the first information report cannot be looked into and the same must be rejected. It is true that the evidence of witnesses named in the first

information report or those who are injured is to be attached significance but it would be hazardous and detrimental to the interest of justice to discard outright the evidence of a witness not named in the first information report. The first information report is not the encyclopaedia containing every minute detail. As P.Ws. 2 and 3 did not produce any paper in regard to their work in connection with which they were going to Arrah and RW. 2 was cousin of the deceased and P.W. 3 and P.W. 1, brother of the deceased had relation in the house of one Baikunth Tiwary of village Sheopur their evidence was discarded by the trial court. The two witnesses (P.Ws. 2 and 3) were present at the place of occurrence when RW. 7 visited the same and their statements were recorded at the place of occurrence itself. Evidence of P.Ws. 1 and 2 cannot be rejected on account of their being related to the deceased. The law as laid down in various decisions of the High Courts and the Apex Court is that evidence of relatives and interested witnesses can well be accepted if it is found to be above board and wholly acceptable. The test prescribed is satisfied in the case at hand. There is no justification at all for discarding the evidence of P.Ws. 1, 2 and 3.

13. Medical evidence is consistent with eye witness account of the incident leading to commission of murder of the deceased. Dr. Jagdish Prasad Singh (RW. 8) who conducted autopsy on the dead body of the deceased found (i) gun shot injury of diameter of 1" on the shoulder (ii) gun shot injury of diameter of 1" on the left side of the chest below the axilla besides six cut injuries on the head of the deceased having lengths of 4", 3", 4", 3", 2" and 3". Pilllets embedded were taken out by the doctor. In the opinion of the doctor, the death was due to shock and haemorrhage caused by gun shot injuries referred to above.

14. The findings and the opinion of the doctor in regard to the stomach of the deceased containing digested food particles and the time elapsed since death being within 48 hours were highlighted before the trial court as well as this Court. Shri Singh learned counsel has assailed the judgment and order of conviction and sentence recorded against the appellants by contending that the findings and the opinion of the doctor do not lend assurance to the incident taking place at 7.00 A.M. on 5.3.1998. The court below has very lucidly and elaborately discussed this point and has negatived the same by advancing cogent and convincing reasons. We see no reason for taking a different view.

15. The objective findings made by the Investigating Officer {RW. 7) too is inconsonance with the time, place and manner of occurrence. The appellant Ram Janam Singh was apprehended by RW. 4 and others at village Suhiya and soon thereafter P.W. 7 reached there and arrested him and recovered and seized the gun from his possession for which he caused a separate case to be registered. inspected the place of occurrence and gave a vivid description of the same. The deceased after sustaining injuries had fallen down in a wheat field. RW. 7 found wheat crops trampled there. He also found huge quantity of blood at the place of occurrence. He seized blood stained earth and prepared the seizure list. Non-examination of blood stained earth and the gun referred to above by experts

cannot instil any suspicion in the prosecution case nor can on that score alone the evidence and the findings of the Investigating Officer be discarded. The settled principle of law is that negligence and mistake committed by the Investigating Officer in course of investigation cannot pave the ground for upsetting the judgment and order rendered by a competent court.

16. RW. 5, Srinath Rai. father of the deceased was not present at his house at the time of incident. He claimed to have witnessed the appellants and the accused Ishwar Dutta Tiwary fleeing away from the place of occurrence while returning home from Brahmpur where he had gone a day prior to the occurrence to perform worship in a temple there. He is a chance witness. Besides he being the father of the deceased is highly interested witness and moreover, he did not stand the test of cross examination. His evidence was rightly rejected by the court below.

17. Much stress was laid by the learned counsel for the appellants with persuasiveness that the trial court rejected the evidence of all other material and eye witnesses excepting that of RW. 4 and it convicted the appellants on the basis of un-corroborated testimony of the solitary witness (P.W. 4). As already observed, the evidence of other eye witnesses (P.Ws, 1, 2 and 3) cannot be brushed aside. The court below was not justified in holding that P.Ws, 1, 2 and 3 could not be accepted as eye witnesses and their evidence must be rejected. Their evidence having been accepted as worthy of credence and reliable the testimony of RW. 4 did not remain uncorroborated. Even if testimony of RW. 4, according to the trial court, lacked corroboration conviction could well be based thereon. The settled principle of law is that conviction can be based on testimony of sole witness, if it is above board and wholly reliable. The plea that testimony of RW. 4 is doubtful and conviction ought not to have been made on the basis of evidence of the solitary witness, that is, RW. 4 lacks substance and essence. Similar view was taken by the Apex Court in the case of Chittar Lal vs. State of Rajasthan, AIR 2003 Supreme Court 3590. In the case at hand RW. 4 is independent, competent, trust worthy and reliable witness and his evidence is wholly reliable and as such conviction can be based even on his un-corroborated testimony, though, as observed earlier, his evidence stood corroborated by the evidence of P.Ws. 1, 2 and 3.

18. The appellants placed reliance on the cases of Kathi Odhabhai Bhimabhai and others Vs. State of Gujarat, and Alil Mollah and Another Vs. State of West Bengal, . In the former case conviction of the accused was set aside by the Apex Court as the sole witness was not wholly reliable and his evidence was not consistent with medical evidence. In the latter case referred to above, the sole witness saw commission of murder of his employer (Master). He did not raise alarm nor did he go to his employer even after assailants had fled away to see his condition and he fled away to his house. He neither at his home nor in the village disclosed what he had seen nor did he inform the police nor did he appear before the Investigating Officer even though he was camping in the village

throughout night and his statement could be recorded on the next day. The witness was obviously not wholly reliable. The facts and circumstances of the two cases cited at the bar are entirely different from those of the case we are in seisin of and as such they cannot come to the rescue of the appellants.

19. The contentions that the appellant Ram Janam Singh had fractured leg and he used to walk limping and he could not have run away from the place of occurrence and as such question of his being chased and arrested did not arise and that there had been land dispute between the deceased and the appellant Kishundeo Rai and the latter has been falsely implicated out of sheer enmity are devoid of merit and force and the same were rightly rejected by the trial court.

20. It would appear that P.W. 4 stated that he alongwith others including Rajendra, Mahesh, Mahendra and Ram Murat chased and apprehended the appellant Ram Janam Singh but they were not examined by the prosecution. It is not incumbent upon the part of the prosecution to examine all the witnesses who are conversant with the facts of the case. What matters and assumes significance is the quality of evidence and not quantity thereof or number of the witnesses. Besides it is a matter of common experience that in villages where murders are committed on account of feud and faction existing among the villagers independent witnesses seldom come forward to depose in a criminal case for fear that giving evidence would invite the wrath of the assailants and they might be exposed to very serious risks. Non-examination of the villagers referred to above in the present case is of no consequence nor can their non-examination instil even the slightest doubt in the prosecution case.

21. The occurrence took place at 7.00 A.M. The appellant Ram Janam Singh was caught with the gun he used in the commission of crime after a hot chase. RW. 7 getting information swung into action and he rushed to the village Suhiya where RW. 4 and others had apprehended the appellant Ram Janam Singh and he arrested him and recovered and seized the gun from his possession there and thereafter he went to the place of incident and recorded the fardbeyan of RW. 2 at 9.00 A.M. and took up investigation. There is no delay at all in lodging the information with the police. There is no chance of concoction of case and false implication of the appellants after deliberation nor is there any embellishment.

22. The court below has undertaken a critical scrutiny of the evidence. We have also read the entire evidence with the help of counsel for the parties. As already stated, there is no material on records to cast doubt on the truthfulness of the witnesses save and except RW. 5. Certain defect or error may be said to have been committed by the Investigating Officer in making investigation but that cannot demolish the entire prosecution case. Defective investigation by itself cannot be made a ground for acquittal vide the case of Lehna Vs. State of Haryana, . There is no reason or ground for making interference with the impugned judgment and order of conviction and sentence recorded against the appellants.

23. The learned counsel for the appellants could not persuade us to accept the case of defence that no such incident took place and the deceased was murdered by some unknown miscreants in the night preceding the date of occurrence and none witnessed commission of crime. There is no material on records to support and probabalize the defence version. In the result, both the appeals are dismissed. The appellants, namely, Ram Janam Singh and Kishundeo Rai are on bail. Their bail bonds are cancelled and they are directed to surrender in the court below to serve out the remainder of sentences failing which the trial court shall take coercive steps for their arrest.

I.P. Singh, J.

I agree.