

(1998) 11 PAT CK 0057

In the Patna High Court

Case No : Criminal Appeal No. 229 of 1986

Ram Sagun Chaudhary and Gopal Chaudhary

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 17-11-1998

Acts Referred:

Arms Act, 1959 — Section 27

Penal Code, 1860 (IPC) — Section 148, 149, 302

Citation : (1999) 1 PLJR 384

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

Bench : Division Bench

Advocate : Buxi S.R.P. Sinha and Mukul Prasad, Kamta Prasad Gupta, for the Appellant; Ram Awadhesh Singh and D.P. Srivastava for Informant, for the Respondent

Final Decision : Allowed

Judgement

R.N. Sahay and P.K. Sarkar, JJ.—By this judgment we are disposing of the three criminal appeals as they arise against the same judgment and order dated 9.5.1986 passed by the 6th Additional Sessions Judge, Arrah in Sessions Trial No. 207 of 1980, by which all the five Appellants have been convicted and sentenced to imprisonment for life u/s 302/149 of the Indian Penal Code. All the Appellants have been further convicted u/s 27 of the Arms Act and u/s 148 I.P.C. and have been sentenced to undergo R.I. for three years each under both the heads.

2. Cr. Appeal No. 229 of 1986 has been filed by Ram Sagun Chaudhary and Gopal Chaudhary. Cr. Appeal No. 285 of 1986 has been filed by Ram Narain Chaudhary and Hiramman Dusadh and Cr. Appeal No. 319 of 1986 has been filed by the sole Appellant Sheo Shankar Chaudhary.

3. The prosecution case is that in the night of 30.6.1980 an incident happened in village Kasiya, P.S. Dumraon in the district of Bhojpur, in which two persons namely, Dhadhan Singh and Raj Narain Singh, who were sleeping on the roof of the house of Sidhnath Singh (P.W (sic)) were shot dead in presence of several

witnesses including P.W. 1, (sic) was also sleeping along with the deceased. The village Kasiya is situated about 30 kms. south west from Dumraon Police station. This village appears to be divided on caste line. The prosecution party belong to Koiri caste and the Appellants are Kurmis. The village consists of 300 families of Kurmis, Koeris, Brahmans and Rajputs. About two years prior to the occurrence Bhola Nath Rai a Rajput by caste was elected as Mukhiya. The rival candidate Lai Mohan, who belonged to Kurmi caste was defeated by Bhola Nath Rai.

4. The case of the prosecution is that two murders were committed sequel to that election It must be conceded that the evidence on this point is quite vague. The First Information Report was lodged by Narad Muni Singh in the next morning on 1.7.1980 at 9 A.M. who was brother of one of the victim Dhadhan Singh. The motive for the occurrence was that the accused persons desired that the deceased persons should remain subservient to the accused persons and should do what they desired. The informant and his deceased brother kept away from these accused Appellants and that is why both the deceased persons were done to death. In the fardbeyan the informant Narad Muni Singh has stated as follows:

Mudalaya log pahale se hum logon ko apna kabja mein le kar manmani kam karna chahte the lekin hum or hamara bhai log bhi in log ke paas mein nahin rahta tha jiske lekar mud-dalay log bandook se lais hokar Sidhnath Singh ke kotha par chaharkar hamare bhai Dhachan Singh aur Raj Narain Singh ko bandook chalakar jaan mar diya....

5. The informant Narad Muni Singh thought that the people of Kurmi caste were inimical due to the Panchayat election. He has not stated about any untoward incident having taken place in between the panchayat election and this occurrence. At this stage, it will be necessary to put on record the material evidence disclosed during the trial of this case. The occurrence took place at 11.00 P.M. on 30.6.1980. The Investigating Officer Onkar Singh was informed about the occurrence by the Chowkidar of the village. His evidence was very important but he was not examined by the prosecution. This Police Officer was camping in village Mathia for maintaining law and order. The village Chowkidar met him in village Mathia at about 8.00 A.M. on 1.7.1980 and only- informed him that two persons have been murdered in Kasiya village. Thereafter the Investigating Office, proceeded to the place of occurrence along with armed force and the recorded the farabeyan (Ext.-2) of Narad Muni Singh. He commenced the investigation and prepared inquest report and recorded the statements of the eye witnesses and other witnesses and sent the dead bodies for post-mortem examination. The Investigation Officer also inspected the place of occurrence which was Baithka of Sidhnath Singh. He found there one bamboo ladder standing against wall of the said Baithka for the purpose of going on the roof. He found two cots on the ground floor. The roof measured 48 ft. east to west and 12 ft. north to south and on the said roof he found the dead bodies of Dhadhan Singh and Raj Narain Singh. He prepared a sketch map of the place of

occurrence. The story revealed in the fardbeyan of Narad Muni Singh is that he went to the Baithka at about 10.30 P.M. on 30.6.1980 and before going there he had gone in search of labourers.

6. Narad Muni Singh (P.W. 5) was Dalpati of the Panchayat at the relevant time. He used to do patrolling in the Mohalla through the volunteer of the Panchayat. Narad Muni Singh, however, did not move along with the volunteers. He used to visit the houses in the mid night. Deceased Dhadhan Singh had returned from Dumraon on the same day and was sleeping on the roof. Deceased Raj Narain Singh used to sleep there daily.

7. Site plan was prepared by the Investigating officer which is at Ext.-5. The Investigating Officer in his evidence has stated that no case was registered on the information of Chowkidar Bansropan because he had not disclosed the names of the culprits, who were involved in the occurrence. It should be presumed that the Investigating Officer must have tried to ascertain from the Chwokidar when he was informed about the occurrence and whether Sidhnath Singh and other witnesses had disclosed the names of other assailants. According to the Investigating Officer, Bansropan only stated that two persons were murdered in Kasiya Village. It is difficult to accept that the Investigating Officer would not have elicited further details from Bansropan.

8. The Investigating officer got the details after reaching Kasiya village before reaching the Baithka of Sidhnath Singh. He did not come across any villager on the way. He received no information from any villager about the names of the accused persons till he reached the place of occurrence. He learnt that the informant was an eye witness to the occurrence. At that time a large number of persons had assembled there. Informant Narad Muni Singh came forward and requested him to take his statement. Then he recorded his fardbeyan. The Investigating Officer had noticed a hole in the chest of Dhadhan Singh deceased. Deceased Raj Narain Singh had suffered a gun shot wound on the left side of his chest. Profuse bleeding was found on the roof. The Investigating officer has stated that he had recorded the statements of the witnesses Bal Kishun Singh, Bimal Singh and Vinod Kumar Singh but none of them had disclosed the names of the accused persons. Sidhnath Singh was examined as P.W. 1. He stated that after the culprits had fled away, he had talked with Narad Muni Singh, The Investigating Officer says that Sidhnath Singh had not taken the name of Narad Muni Singh in any context. He had also not stated that he had identified the accused persons in the moon light. He had not stated that the accused persons had threatened him.

9. Sidhnath Singh (P.W. 1) has deposed that he woke up on the sound of firing. He saw Appellants Gopal Choudhary and Ram Sagun Choudhary near his cot. After some time he saw Appellants Ram Narain, Sheo Shankar Choudhary and Hiranman Dusadh, who got down from the ladder which was standing just three steps from the cot on which he was sleeping and by his side Kamta" Singh was sleeping on the other cot.

10. Dhadhan Singh and Raj Narain Singh were killed by gun shot wounds cannot be in dispute. The evidence of Dr. Krishna Chandra Mishra (P.W. 7), who performed post-mortem examination of the dead bodies of two deceased persons, establishes that the death of the two deceased was homicidal. Following ante-mortem injuries were found on the dead body of Raj Narain Singh:

(i) One lacerated wound $1\frac{1}{4}$ diameter with inverted margin and charring of the surrounding tissue was found on the left chest wall on its anterior aspect at the level of the 3rd intercostal space through which lung tissue was seen protruding.

On dissection, 3rd and 4th rib on left side was found fractured and laceration of the left lung and heart were seen. Both the pleural cavity and pericardial cavity was found full of blood and blood clots pillets and wads were recovered from the substance of the lung and heart, which were sent under sealed cover to the police. The injury was caused by gun shot. Death was caused due to excess haemorrhage and shock resulting from above injury.

11. Dr. Mishra further held post-mortem examination of Dhadhan Singh and found following injuries:

(1) $3\frac{3}{4}$ " circular wound with inverted margins and charring of the adjacent skin and tissues on right side of the chest near costal margin.

(2) 1" x $3\frac{3}{4}$ " oval wound with inverted margins and charring of the adjacent tissues on right side of the chest all on anterior aspect at the level of the 6th right rib.

(3) 1- $1\frac{1}{2}$ " x $3\frac{3}{4}$ " oval wound on right side of the cheek on lower jaw.

On dissection pellets, wads and packings of the catridges were recovered from the Abdominal and Thoracio cavities and skull which were sent to the police under sealed cover by constable No. 274. All the injuries were caused by gun shot which led to (i) fracture of ribs, liver and disphragm, (ii) fracture of 6th rib (right) and lacerations of the right lung and heart musculature, (iii) fracture of the right side of magdible and base of skill and leceration of the jugular and internal carotid vessels, adjacent muscles, and brain matter. Other vital organs were normal but pale.

12. Learned Additional Sessions Judge in his judgment has analysed the evidence of three eye witnesses and came to the conclusion that the evidence was worthy of reliance. It would be necessary to review the evidence of these witnesses.

13. Narad Muni Singh, the star witness of the case went to the roof of Baithka of Siddha Nath Singh. He noticed three persons climbing on the roof by scaling bamboo ladder which was standing against the wall of the Baithka. He identified Ram Narain Choudhary, Sheo Shankar Choudhary and Hiranman Dusadh. It was a moonlit night and he had no difficulty in identifying the culprits. All the three culprits were armed with gun. Apart from two deceased persons, Bimal Kumar Singh, Bal Kishun Singh, Gupteshwar Singh (P.W. 3), Sheo Murat Singh (P.W. 2)

were sleeping from before his arrival. Binod Singh and Bimal Singh are sons of Sheo Murat Singh. They were also sleeping. The evidence of Narad Muni Singh is that no sooner the three aforesaid Appellants got up on the roof, Appellant Sheo Shankar Choudhary flashed torch light upon Dhadhan Singh. Appellant Ram Narain Singh first fired his gun on Dhadhan Singh. Dhadhan Singh cried on receiving gun shot wound. Ram Narain Choudhary fired second time on Dhadhan Singh. In the meantime, Hiranman Dusadh fired upon Raj Narain Singh once. During all these happenings, Narad Muni jumped from the roof and raised alarm. The accused persons fled away. He, however, does not say that he saw the accused persons climbing down from the ladder.

14. Learned Additional Sessions Judge has given full credit to this witness. He accepted the evidence that the accused persons named by him murdered Dhadhan Singh and Raj Narain Singh as testified by him. Learned trial Judge has observed that the evidence of Narad Muni Singh is amply corroborated by the evidence of Sheo Murat Singh, who gave out the sequence of assault by gun firing upon Dhadhan Singh and Raj Narain Singh. In cross-examination, he stated that firing was done from a distance of three steps and according to the learned trial Judge this is corroborated by medical evidence inasmuch as the doctor has found charring of the surrounding tissues near the lacerated wound. Both the deceased had received gun shot injury while they were lying down. According to the learned trial Judge there are some minor contradictions, in their evidence which did not matter.

15. Gupteshwar Singh (P.W. 3) is the third eye witness. He was sleeping on the roof along with his companions including Sheo Murti and Narad Muni. He woke up on the sound of gun firing. This means that he could not have seen the first firing which is attributed to Ram Narain Choudhary. He saw Hiranman Dusadh shooting Raj Narain Singh. Gupteshwar Singh is the brother of Sidhnath Singh. Dalan of Sidhnath Singh is 100 yards away from Janani Kitta. There are many houses in between the Dalan and Janani Kitta. This witness did not remember whether any person advised that the police should be informed immediately. He stated that there was some consultation between them before the arrival of police as to who should be made accused. He stated that Dhadhan Singh was shot from close range. Similar was the case with Raj Narain Singh. Chowkidar had arrived after the occurrence. Mukhiya Bhola Nath had also come. It had rained in the night just before the occurrence. This witness stated that it was a moonlit night. He asserted that he identified the culprits in the moonlit night. This witness thought that the occurrence was the result of election of Bhola Nath Mukhiya. It is suggested by this witness that the accused persons were implicated after the Mukhiya arrived at the scene and that the reason why the names were not disclosed to the Chowkidar.

16. Kamta Prasad Singh (P.W. 4) is own brother of Sidhnath Singh. He was sleeping near Siddhnath Singh on a cot. He woke up on hearing sound of firing. He noticed two persons. They were Ram Sagun Choudhary and Gopal Choudhary

holding guns. After the accused persons fled away, he went on the roof and found Dhadhan Singh and Raj Narain Singh lying dead. Narad Muni and Sheo Murat are his nephews. It is stated that it was a cloudy night. This witness has not stated that he saw three accused persons on the roof getting down. What is interesting is that this witness in his evidence has stated that after one hour of the occurrence Dhadhan's father and Narad Muni came at the Baithka of Raj Narain. This means that Narad Muni was not there and the evidence of Siddhnath that he had talk with Narad Muni cannot be accepted in view of the evidence of the I.O. that Siddhnath had never mentioned about Narad Muni Singh in this connection. It has come from the evidence of Siddhnath Singh that he categorically stated the names of the assailants as told to him by Narad Muni.

17. Narad Muni had not asked the Chowkidar to go to the Pulice Station. The names of the assailants were told to Bansropan the Chowkidar but Bansropan has not been examined. As stated earlier, the I.O. has categorically stated that Bansropan had not revealed the names of the culprits.

18. Learned Counsel for the informant has submitted that the names of the Appellants must have been known to the Chowkidar, since he did not want to side with any party, he kept silent. This may be plausible but in absence of any explanation from the material witnesses we cannot accept this argument that Chowkidar knowing the names of the assailants as disclosed by the witnesses concealed the names from the I.O. He must have at least got to the entire details from the Chowkidar who is a responsible officer. Appellant Ram Sagun Choudhary was at that time Gram Sewak. This witness denied the suggestion that Ram Sagun Choudhary was away from the village on that night. He denied the suggestion that the accused persons were implicated at the instance of Bhola Nath Mukhiya.

19. Appellant Ram Sagun Choudhary had taken a plea of alibi. He was Gram Sewak of the Block. His defence was that on the date of occurrence he was in the Dumraon Block to participate in a meeting. He had deposited rent collected by him to Nazir and halted in the night in the Dumraon Block to participate in a meeting. Learned trial Judge did not accept the evidence of Kameshwar Singh (D.W.1) who deposed that Ram Sagun Choudhary had stayed in the night in the Dumraon Block. Learned Trial Judge has accepted the explanation submitted by the prosecution regarding delay in informing the police.

20. Considering the submissions of the learned Counsel for the Appellants, we propose to record the summary of the evidence in its essential aspects:

(i) The deceased, witnesses and the accused persons are all residents of village Kasia P.S. Dumraon. The deceased Dhadhan Singh and Raj Narain Singh were sleeping on the roof of Baithka of Sidhnath Singh, where Binod Kumar Singh, Bal Kishun Singh, Vimal Prasad Singh, Gupteshwar Singh, Sheo Murti Singh and Narad Muni Singh were also sleeping. Sidhnath Singh and Kamta Singh were sleeping in the Sahan below Sidhnath, and Kamta Singh noticed somebody

standing near them. Then there was sound of firing on the top of the roof. None of the two persons sleeping in the Sahan have stated that there was sound of three firing. They woke up and saw Gopai Choudhary and Ram Sagun Choudhary standing with guns in their hands. They identified them in the moonlit night. These two witnesses were threatened and asked to stay in the Baithka. Some sound was heard on the roof. Then Ram Narain Choudhary, Sheo Shankar Choudhary and Hiranman Dusadh were seen getting down from the roof.

(ii) Sidhnath Singh had a talk with Narad Muni Singh. They went on the roof and found Dhadhan Singh and Raj Narain Singh lying dead. Sidhnath Singh does not say that Narad Muni told him anything about what had happened on the roof. Kamta Singh has not even mentioned the name of Narad Muni Singh as noticed earlier. Surprisingly Narad Muni nowhere figures in the evidence of this witness. Narad Muni is nephew of this witness. According to this witness, it was Vimal Singh, who told him that Ram Narain Choudhary, Sheo Shankar Choudhary and Hiranman Dusadh had shot dead Dhadhan Singh and Raj Narain Singh. Vimal Kumar Singh has not been examined. Kamta Singh has stated in para-6 of his evidence that Narad Muni came after the occurrence along with his father.

(iii) Narad Muni Singh claimed to be the main witness of the case. He only stated that Ram Narain Choudhary, Sheo Shankar Choudhary and Hiranman Dusadh had fired as soon as he got up on the roof. He does not say whether firing was done from close range or from distance. The informant whose brother was killed did not make any effort to send information to the police. He has not stated that Chowkidar had visited the place of occurrence. Same is the case with Sidhnath Singh, Kamta Singh, Sheo Murat Singh and Gupteshwar Singh. None of them have said that Chowkidar was informed or Chowkidar was sent to police station. Gupteshwar Singh said that he remained at the place of occurrence till the arrival of the police. He does not remember that any information was sent to the police station.

(iv) Narad Muni Singh had admitted that he did not make any effort to inform the Mukhiya. He is silent in his examination-in-chief and in the cross-examination that he sent Chowkidar. He did not say that he disclosed the names of the assailants to the Chowkidar. In absence of any corroboration from other witnesses, there is no scope for the conclusion that there is evidence that Chowkidar was sent to the Police Station by the informant or any of the witnesses. Even the I.O. has stated that nobody told him that the Appellants were involved in the occurrence when he reached in the village.

(v) Now about the manner of occurrence the eye-witness has only stated as to who fired and at whom. According to the post-mortem report, both the victims were shot dead in sleeping position, which means that they were shot from very close range, as it appears from the evidence of the doctor. The evidence of Narad Muni Singh and Gupteshwar Singh is otherwise, who said that firing was done from a distance of about 2-3 feet. There was charring around the wound. All the pellets had converged at the point of entry of wound.

(vi) As observed by Gupta in Law and Principles of Forensic Ballistics". 4th Edition, at page-271, when shot has been fired at close quarters there is usually some definite evidence of this revealed on the target. It is often possible to determine, with a fair degree of accuracy, the distance from the muzzle of the gun to the target at the time of firing. The firing at close quarters is indicated by (a) presence of wad in the wound, (b) if small shots had been fired they would have entered the body target and not in a scattered manner, (c) skin and hair around the entrance wound is singed and blackened by powder, unburnt bits of which are ingrained in the tissue locally, (d) wound of entrance is large.

(vii) None of the eye-witnesses has stated that the accused persons who had shot the deceased persons went near them, identified them, and then fired at them.

21. Mr. Buxi S.R.P. Sinha, learned Counsel for the Appellants in the light of these drawbacks in the evidence has vehemently argued that the prime witness Narad Muni Singh is not a reliable witness and it is extremely doubtful that he had witnessed the occurrence at all as deposed by him. There are various circumstances to show that he came later. Learned Counsel submitted that the third injury on Dhadhan Singh is not explained. Narad Muni Singh and other witnesses have said that Raj Narayan Singh shot twice at Dhadhan Singh.

22. There is no explanation of the third injury by the doctor. Learned Counsel submitted that if the evidence of Narad Muni Singh is rejected, then the evidence of Gupteshwar Singh and Sidhnath Singh is not sufficient to prove the case. Learned Counsel vehemently argued that it is admitted by the witnesses that it was a cloudy night. There had been rain, hence inspite of night being moonlit it was difficult for the witnesses to identify the assailants. Learned Counsel submitted that the conduct of this witness is highly suspicious. He did not contact the police, nor chowkidar, nor the Mukhiya. Both the brothers were killed. It was his duty to inform the police at once. Learned Counsel submitted that identification in moonlight is weak evidence.

23. Kamta Singh (P.W. 4) in para-4 of his evidence has stated that it was a cloudy night. Learned Counsel submitted that in this situation moonlight was insufficient. Learned Counsel submitted that the I.O. could not gather the motive of the crime, and the names of the assailants were not disclosed till 9.00 a.m. of the next day.

24. Learned Counsel for the informant on the other hand submitted that R. is impossible in the situation like this to concoct a false case. Two persons were shot dead on the roof of the house. The Appellants must have got down from the stairs. The persons, who were sleeping in the Sahan, had no difficulty in identifying them. Learned Counsel argued that chowkidar had in fact gone to the police station in the morning but he did not disclose the names of the assailants, as disclosed by the witnesses only because he did not like to side with any of the parties. It is difficult to accept this argument.

25. In our view there is inordinate delay in sending the information to the police station. The informant and other material witnesses did not inform the Mukhiya or the chowkidar. That accounts for the delay. This was a serious lapse, which cannot be condoned. The brother of Narad Muni Singh was killed. He would have been the first person to inform the police. The evidence is silent that chowkidar was contacted by the informant or any of the witnesses. There are several drawbacks in the evidence. The evidence of the I.O. is not corroborated with the medical evidence. Chowkidar, who had informed the police, was not examined.

26. Having given our anxious consideration to all the aspects of the case, we are unable to agree with the findings of the trial court that the case against the Appellants is proved beyond reasonable doubt. The case is full of doubts. The evidence is not upto mark and suffers from a number of infirmities as indicated above.

27. In the result, these three appeals are allowed. Conviction of the Appellants is set aside and they are acquitted of the charges giving them benefit of reasonable doubt. All the Appellants are on bail. They are discharged from the liabilities of their bail bonds.