
(1991) 11 PAT CK 0015

In the Patna High Court

Case No : Criminal Appeal Nos. 159 of 1990 (R), 181 of 1990 (R) and 192 of 1990 (R)

Ramesh Dhobi, Sanjay Kedia and Sanjay Ram Verma

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 29-11-1991

Acts Referred:

Citation : (1991) 11 PAT CK 0015

Judgement

Om Prakash, J.—The three appellants have preferred these appeals against their conviction for the offence punishable u/s 302/34, IPC and sentence to undergo imprisonment for life and to pay fine of Rs. 2,000 each, in default, to undergo simple imprisonment for six months.

2. According to the prosecution, on 18th July, 1989, at about 6 p.m. informant Ashok Kumar Choubey (P.W. 1) along with Raju Sharma (the deceased), Papu Kumar Gupta (P.W. 2), Raju Ranjan Singh (P.W. 3) and Raman Singh visited tea shop of one Madan Chaiwala (P.W. 10) situated on Radium Road, Ranchi. After having tea all the five left and reached near Mahabir Hotel. It was 6.15 p.m. At that very time appellants Sanjay Kedia and Ramesh Dhobi along with an unknown person arrived there on a scooter. Stopping the scooter, they called Raju Sharma near Madan Hotel. As soon as Raju Sharama reached near them appellant Sanjay Kedia abused him and ordered for killing him. On his such order his unknown associate took out a pistol and shot at Raju Sharma, who fell down injured. The informant and his companions rushed to rescue the injured. In the meantime, those three fled away loading another cartridge in the pistol and leaving behind their scooter. Injured Raju Sharma was removed on a tempo to Bariyatu Hospital. But he never regained consciousness. Fardbeyan of Ashok Kumar Choubey was recorded by Assistant Sub-Inspector of Police, Mumtaj Ali (P.W. 11) at 10.30 p.m. on the same date in the hospital. Injured Raju Sharma succumbed to his injury at 2 a.m. on the same night.

3. According to the fordbeyan, the occurrence took place because two days

before the occurrence on 16-7-1989, Raju Sharma had kept the key of the scooter of Lakshmi Kedia, a brother of appellant Sanjay Kedia, as Lakshmi Kedia had refused to take Raju Sharma on his scooter to latter's house.

4. After completing the investigation police submitted charge-sheet against the three appellants.

5. The learned Additional Judicial Commissioner, Ranchi, framed charge u/s 302 read with Section 34, IPC against all the three appellants. Sanjay Ram Verma, appellant in Criminal Appeal No. 192/90(R), was further charged u/s 27 of the Arms Act.

6. Relying on evidence of four eye-witnesses, namely, P.Ws. 1 to 3 and P.W. 7, the learned Additional Judicial Commissioner, has convicted appellant Sanjay Kedia for the offence punishable u/s 302/34, IPC and sentenced him, as above. She has relied on the sole testimony of P.W. 7 to convict appellants Ramesh Dhobi and Sanjay Ram Verma for the offence punishable u/s 302/34, IPC and has convicted them also, as above. But she has not given any finding with regard to charge u/s 27 of the Arms Act framed against appellant Sanjay Ram Verma.

7. In their statements u/s 313, Cr. PC of the appellants has denied the allegation against him. The defense is that P.W. 7 was out of Ranchi on the date of occurrence. Father of the deceased has been examined in this connection as a defense witness.

8. Evidence of P.W. 1 Ashok Kumar Choubey is that on 18th July, 1989, at about 6.15 p.m. he along with P.W. 2 Papu Gupta, P.W. 3 Raju Ranjan Sinha, one Raman Singh and deceased Raju Sharma visited Madan's Hotel situated on Radium Road. After having their tea all the five moved to Mahabir Hotel situated 10-15 steps ahead. In the meantime, three persons arrived thereon a scooter driven by Sanjay Kedia. Ramesh Dhobi was behind him on the scooter. The third person on the scooter was an unknown one. Sanjay Kedia called Raju Sharma and as soon as Raju Sharma reached near him, Sanjay Kedia caught hold of his collar and ordered for shooting him whereupon the unknown rider of the scooter took out a pistol and shot at Raju Sharma, who fell down injured. P.W. 1 adds that he and his companions rushed to catch hold of the assailants but the shooter loaded his revolver and all the three fled away towards Kutchari Chowk leaving behind the scooter. Thereafter Raju Sharma was removed to R.M.C.H. (Ranehi Medical College Hospital) where he succumbed to his injury at 2 p.m. on the same night.

9. Further evidence of P.W. 1 is that two days before the date of occurrence, at about 8 p.m., Lakshmi Kedia, a brother of appellant Sanjay Kedia, did not agree to take Raju Sharma to latter's residence on his scooter whereupon Raju Sharma had taken key of the scooter from Lakshmi Kedia. The shooting took place on account of such snatching of the key of the scooter.

10. P.W. 1 has identified appellant Sanjay Kedia in the dock. But looking at the

other two appellants, namely, Sanjay Ram Verma and Ramesh Dhobi, P.W. 1 has said that they are not those persons who had arrived with Sanjay Kedia on the scooter at the place of the occurrence. Further evidence of P.W. 1 is that he does not identify Ramesh Dhobi. He learnt name of Ramesh Dhobi from the persons assembled at the place of occurrence. He was never called upon to identify any body at any T.I. parade.

11. Evidence of P.W. 2 Papu Gupta and P.W. 3 Rajiv Ranjan both named in the F.I.R., is substantially similar" to that of P.W. 1. They have corroborated P.W. 1 in material particulars. Both name and identify appellant Sanjay Kedia. But none of them names or identifies appellants Ramesh Dhobi and Sanjay Ram Verma as the associates of Sanjay Kedia who arrived at the place of occurrence. On his scooter. Their evidence is that the two associates of Sanjay Kedia were unknown to them.

12. P.W. 7, Keshav Prasad Sharma, a junior engineer in P.W. D. Ranehi, claims to have seen the occurrence while going for a walk. He claims to have seen Sanjay Kedia catching hold of the collar of Raju Sharma and ordering for shooting him. He says that upon such order by Sanjay Kedia, Sanjay Ram Verma open fire at Raj Kumar Sharma by revolver. Rameshwar Dhobi was holding hand of Raj Kumar at that time. Receiving the fire arm. injury Raj Kumar Sharma fell down. He along with others removed the injured to R.M.C.H. where he succumbed to his injury. He identifies each of Sanjay Kedia, Sanjay Ram Verma and Rameshwar Dhobi standing in the dock as the culprits. But P.W. 1 Ashok Kumar Choubey, the informant, having a look at Ramesh Dhobi and Sanjay Ram standing in the dock has said in plain words that they are not the persons who had arrived at the place of occurrence with Sanjay Kedia on the scooter. Thus P.W. 7 stands contradicted by the informant himself on such a vital point of identification.

13. It is significant to note that neither P.W. 7 Keshav Prasad Sharma has been named in the fardbeyan, Ext. 4, nor any of P. Ws. 1 to 3 has named him in his evidence in any connection. None of them says that P.W. 7 Keshav Prasad Sharma was also one of those who removed the injured to hospital on a tempo or he accompanied them on the tempo to hospital. Had P.W. 7 Keshav Prasad Sharma been present at the place of occurrence or removed the injured to hospital in company of P. Ws. 1 to 3 on the tempo in all probabilities some one; of them at least would have named P.W. 7 Keshav Prasad Sharma.

14. Further evidence of P.W. 7 is that the police i.e., Investigating Officer arrived in the hospital and recorded fardbeyan of P.W. 1, Ashok Kumar Choubey. The Investigating Officer made enquiries from him also in the hospital. But his statement was not recorded there. Later on, the Investigating Officer visited Katchari Chowk and searched for him, but he could not meet the Investigating Officer. He visited police station and met the Investigating Officer, who told him that he would record his statement at his residence. But evidence of the Investigating Officer, P.W. 11 Mumtaj Ali, is that he saw P.W. 7 Keshav Prasad Sharma on 1-3-1989 for the first time.

15. Further evidence of P.W. 7 shows that even on 1-8-1989 when he produced shirt of the deceased at the police station, his statement was not recorded by the Investigating Officer. Then he filed an application before the Senior Superintendent of Police saying that he is an eye-witness but the Investigating Officer was not recording his statement. Evidence of Investigating Officer is that he never examined P.W. 7 Keshav Prasad Sharma. He simply copied the application which he had filed before the Senior Superintendent of Police.

16. From the above it appears that P.W. 7 was never examined by the Investigating Officer. He presented an application not before the 13th day of the occupancy before the Senior Superintendent of Police claiming to be an eye-witness of the occurrence and complaining that the Investigating Officer was not recording his statement. There is no explanation as to why he did not claim to be an eye-witness before the Senior Superintendent of Police soon after the occurrence when his statement was not recorded and why he wasted 12 or 13 intervening days in making such a complain before the Senior Superintendent of Police.

In view of the above, I am of considered opinion that no reliance can safely and reasonably be placed on his evidence on the above ground alone.

17. In the case of Balakrushna Swain Vs. State of Orissa, , P.W. 5 was not examined till after 10 or 11 days of the incident for no reason. Then it was held that unjustified and unexplained long delay on the part of the Investigating Officer in recording statement of a material eyewitness during investigation of murder case will render evidence of such evidence unreliable.

18. There is no reliable evidence of record to show that P.W. 7 ever disclosed the name of any of the appellants before any body as a murderer of Raju Sharma. Had he seen any of the three appellants committing murder of an employee of his department Raju Sharma, as an average person of ordinary prudence, P.W. 7 would have surely named them before any of his colleagues, officers or employees of his department. But he never did so. It strongly suggests that he did not see the appellants committing murder of Raju Sharma in furtherance of their common intention to do so. It seriously effects his credibility.

19. It has been held in the case of State of Orissa Vs. Mr. Brahmananda Nanda, , that where a person claiming to be an eye-witness did not disclose the name of the assailants for a day and a half, after the incident and the explanation offered for non-disclosure was unbelievable such non-disclosure was a serious infirmity which destroys the credibility of the evidence of such witness.

20. Evidence of DW 1, Mohanlal Uniyal, father of the deceased and an employee of P.W.D., i.e. a co-worker of P.W. 7, is that he visited hospital on 18-7-89. P.W. 7, Keshav Prasad Sharma did not visit the hospital on such date. He (P.W. 7) had gone to his native village one month before the occurrence. It was he (D.W. 1) who had sent information to him. He arrived in Ranchi several days after the occurrence.

21. In view of the above discussion, I am of the opinion that it is not reasonably safe to consider P.W. 7 to be reliable and trustworthy. He is the sole P.W. on whom the learned trial Court has relied upon to find Ramesh Dhobi and Sanjay Ram Verma guilty. Undoubtedly, conviction can be based on the sole testimony of a single prosecution witness. In that case, he must be a wholly reliable witness. But in the instant case, P.W. 7 is not at all a wholly reliable witness. He is not even a partly reliable witness. I reject his evidence for the reason recorded above. I am, therefore, of the opinion that none of Ramesh Dhobi and Sanjay Ram Verma can reasonably and safely be found guilty on the evidence of P.W. 7.

22. Evidence of P.W. 13, Dr. Niranjana Minj, who held post-mortem examination on the dead body of Raju Sharma, shows that he found anti-mortem firearm injury on the chest of the dead body which was sufficient to cause death in the ordinary course of nature. Time since death was within 6 to 24 hours. His post-mortem examination report, Ext. 10, is to the same effect. Thus the objective findings of the medical expert corroborate P. Ws. 1 to 3 on the point.

23. Evidence of P.W. 11, Mumtaz Ali, the Investigating Officer, shows that the place of occurrence is on the eastern flank of the Radium Road in front of the tea shop of Madan Singh at a distance of about 200 yards from Katchari Chowk. There he seized one empty cartridge of 315 bore produced by one R. S. Choubey at 11.15 hours on 19-7-89. He also seized blood-stained mud from the place of occurrence and prepared seizure list (Ext. 7). He also seized a green colored Bajaj Super Scooter No. BPY 5956 from the house of appellant Sanjay Kedia situated near the place of occurrence and prepared seizure list (Ext. 8). Further evidence of the Investigating Officer shows that 315 cartridges are used by criminal in country-made revolver.

24. From the above discussion, I came to the conclusion that it is satisfactorily proved by cogent and reliable evidence beyond reasonable doubt that appellant Sanjay Kedia along with two other unknown persons arrived at the place of occurrence on his scooter and on his order, one of his such two unknown associates opened fire at Raju Sharma injuring him and the injured died on account of such firearm injury in the small hours of the following date. P. Ws. 1 to 3 are natural and competent witnesses worthy of trust. But the identity of any of those two unknown persons has not been firmly established by cogent and reliable evidence.

25. True, evidence of P.W.s 1 to 3 shows that before ordering for killing Raju Sharma, Sanjay Kedia had caught Raju collar and such a fact is not mentioned in the F.I.R. This appears to be an improvement made in course of evidence to tightly fasten liability on Sanjay Kedia for the offence u/s 302/34, IPC. Hence I overlook and reject such part of their evidence. But it does not absolve Sanjay Kedia of such liability. Evidence on record satisfactorily proves that it was he who had brought the unknown scooter (with another unknown person) on his scooter at the place of occurrence and it was he who ordered for killing of Raju Sharma before he was shot by one of his unknown associates. It satisfactorily proves

prior meeting of their minds, their common purpose.

26. As it is satisfactorily proved and established firmly beyond reasonable doubt that the murder of Raju Sharma was committed by an unknown associate of Sanjay Kedia in furtherance of their common intention to murder Raju Sharma, I am of the opinion that Sanjay Kedia has committed offence punishable under Sections 302/34, IPC and he has been rightly convicted for such offence. Failure of charge against Ramesh Dhobi and Sanjay Ram Verma does not affect such conviction of Sanjay Kedia because it is firmly established cogent and reliable evidence beyond reasonable doubt that three persons, Sanjay Kedia and his two unknown associates, arrived on a scooter to commit murder, acted in furtherance of their common intention to do so and committed the murder. When it is firmly established that two or more persons have participated in the murder in furtherance of their common intention to do so, even one of them can reasonably and legally be convicted for the offence punishable u/s 302 read with Section 34, IPC even though his unknown associates are acquitted because their identity could not be fully and firmly established.

27. In the case of H.P. Thakore v. State of Gujarat 1977 SCC (Cri) 26, it has been held that even if some out of several accused are acquitted, but the participating presence of plurality of assailants is proved the conjoint culpability for the crime is inescapable. Not that the story of more than one person having attacked the victim is false, but that the identity of the absolved accused is not firmly fixed as criminal participants. Therefore, it follows that such of them, even if the number dwindled to one, as are shown by sure evidence to have knifed the deceased, deserve to be convicted for the principal offence read with the constructive provision.

28. In the result, Criminal Appeal No. 181 of 1990 (R) preferred by Sanjay Kedia is dismissed and the order of his conviction and sentence passed against him is affirmed and upheld. He appears to be in custody. However, if he is not in custody he must surrender immediately, failing which the trial Court shall take all coercive measures for his arrest.

29. Criminal Appeal No. 159 of 1990 (R) preferred by Ramesh Dhobi and Criminal Appeal No. 192 of 1990 (R) preferred by Sanjay Ram Verma are allowed. The order of their conviction and sentences is hereby set aside and both of them are hereby acquitted. Both are in custody. They be set at liberty forthwith if not required in any other case.

L.P.N. Shahdeo, J.

30. I agree.