
(1999) 09 PAT CK 0059

In the Patna High Court

Case No : Criminal Appeal (DB) 155 of 1987

Ramesh Singh @ Katuk Lal Singh and Umesh Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 10-09-1999

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2000) 1 PLJR 371

Hon'ble Judges : R.N. Prasad, J;M.L. Visa, J

Bench : Division Bench

Advocate : Mirtunjay Kumar Jha, for the Appellant; Ashwani Kumar Sinha, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Prasad, J.—The appellants have preferred this appeal against the judgment and order dated 30.3.1987 passed by 3rd Addl. Sessions Judge, Begusarai in S.T No. 91/83 whereby the appellants have been convicted for the offence u/s 302/34 of the Indian Penal Code and have been sentenced to undergo imprisonment for life. The prosecution case is that on 1.11.1982 at 10.15 A.M. fardbeyan of Ashok Kumar Singh was recorded by A.S.I. of Mokama Police Station at Nazarat Hospital Mokama wherein the informant alleged that at about 6.30 A.M. Deepak Kumar @ Pappu was coming from his Dera to his house, Ramesh Singh with spade, Umesh Singh, Jagdish Singh and Anil Singh with dagger in their hands were sitting near the Post Office. Deepak Kumar when reached near the Post Office all the above named four persons surrounded him and asked him to execute a document with respect to 14 bighas land which he was holding in excess. Deepak Kumar refused to execute document on which accused persons assaulted him with Chhura. When Deepak tried to run away Umesh Singh caught him and threw him on the ground and told his associates that Deepak should not survive on which accused persons again assaulted with dagger. The occurrence was witnessed by Dinesh Singh, Mahendra Prasad Singh,

Ranjit Singh and Shyam Deo Singh. After assault the accused persons ran away towards west. The injured Deepak Kumar was brought to Nazarat Hospital, Mokama but he died after an hour.

2. On the aforesaid fardbeyan formal First Information Report was drawn and the investigation was taken up. On completion of investigation charge sheet was submitted against all the four persons showing Jagdish Singh and Anil Kumar Singh as absconders. On receipt of charge-sheet in the court cognizance was taken and the case was committed to the court of Sessions for trial.

3. The defence of the appellants was that the informant used to go to the house of the deceased and the deceased used to protest against his action. The informant himself was responsible for murder of Deepak. They are innocent and have falsely been implicated in this case.

4. The prosecution in support of its case examined 12 witnesses, out of whom P.W.1, P.W.2, P.W.3 and P.W.4 are eye witnesses to the occurrence. P.W.9 is the informant and is also eye witness to the occurrence P.Ws. 5 & 8 are witnesses to the seizure of blood stained clothes. P.Ws. 6 & 7 are witnesses to the seizure of Muffler, Plastic slipper of the deceased and blood stained earth from the place of occurrence. P.W.10 is the doctor who held postmortem over the dead body. P.W.11 is the Investigating Officer and P.W.12 is A.S.I. of Mokama Police Station who recorded the fardbeyan of informant at Nazarat Hospital Mokama and also prepared inquest report.

5. P.Ws. 1, 3 & 4 were going to case themselves at the relevant time. When they reached near the post office they saw the occurrence. P.W.2 was at the house of Ram Sagar Singh and on hearing hulla he went to the place of occurrence. They in their evidence supported the prosecution case and stated that they had seen the appellant Umesh Singh and accused Anil Singh and Jagdish Singh assaulting the deceased with dagger and Ramesh Singh was standing there with spade. After assault they ran away towards west. The deceased was taken to Nazarat Hospital Mokama but he died in the Hospital after some time. They were cross-examined at length. They in their cross-examination also supported the prosecution case on the relevant points. However, their attention was drawn to the statement made before the police.

6. Learned counsel for the appellants pointed out the contradictions in the evidence of P.W.1, P.W.2, P.W.3 and P.W.4 and submitted that their evidence is not fit to be relied upon. In support of his submission he referred the evidence of P.W.11, the investigating officer, who stated in his evidence that P.W.1 stated before him that accused Anil had spade in his hand. He did not say before him that accused Ramesh @ Katuk Lal Singh was standing there. He did not say before him that accused Anil assaulted the deceased with Chhura. P.W.2 did not say before him that Anil assaulted the deceased with spade and Umesh with knife nor he stated before him that occurrence took place at a distance of 15-20 hands south west of the post office. He did not state before him that Ramesh

was standing with spade. The witness did not state before him that all the accused persons chased Deepak Kumar, the deceased, and he was caught by appellant Umesh Singh. He stated before him that when he was near the house of Ramsagar at the relevant time he heard alarm coming from the side of post office. P.W.3 did not say before him that when he reached near the house of Ramsagar he heard hullah near the post office nor he stated before him that the accused persons were assaulting the deceased at a distance of 10-15 steps from the post office. The witness did not say before him that Anil and Umesh assaulted the deceased with dagger and Ramesh was standing with spade nor he stated before him that the accused persons chased the deceased and Umesh Singh caught him. P.W.4 did not say before him that when he was 20-25 steps away from the post office he saw the accused persons assaulting the deceased or three persons were assaulting with dagger and Ramesh was standing with spade nor the witness stated before him that the accused persons chased Deepak, the deceased, and appellant Umesh Singh caught him. The witness stated before him that Anil assaulted the deceased with spade.

7. It appears from the discussions made above that there are some contradictions on the point of use of weapon by the accused persons including by Anil and Ramesh and also that the witnesses did not state before the police with regard to distance from where they had seen the occurrence but the witnesses have categorically stated in their evidence that they were near the place of occurrence and had seen the occurrence. In such a situation merely on such contradiction as indicated above, their evidence cannot be brushed aside.

8. P.W.9, the informant, is of the village of the deceased. He stated in his evidence that he was near the Post Office at the alleged time of occurrence. Deepak Kumar the deceased was going ahead of him. The appellants and Jagdish Singh and Anil Singh were near the post office from before Umesh Singh, Jagdish Singh and Anil Singh had dagger in their hands. Ramesh Singh had spade in his hand. They asked Deepak to execute document in respect of 14 bighas land which he was holding in excess. On refusal Umesh Singh, Jagdish Singh and Anil Singh assaulted the deceased with dagger. Deepak raising hulla tried to run away but he was chased by them and Umesh Singh caught him and threw him on the ground. He shouted that he should not survive on which Jagdish and Anil assaulted him with dagger and Ramesh was standing there. After assault they ran away towards west. P.Ws. 1, 2, 3 & 4 were also near the place of occurrence. The injured was taken to the Nazarat Hospital Mokama where he died after an hour. In cross-examination the witnesses stated that the deceased and the accused persons were of one family. However, there was separation amongst them and were living separately. The father and brother of the deceased died earlier and in his family only his mother, two sisters and a nephew aged about one and half to two years were surviving At the relevant time he was going to ease. Blood had fallen at the place of occurrence. The witness was cross-examined at length and he stood the test of cross-examination, learned counsel for the appellants also could not be able to point out any such discrepancy as to

create any doubt.

9. P.W.10 is doctor who held postmortem over the dead body on 1.11.1982 at 3.20 P.M. He found 9 incised penetrating wounds on the person of the deceased. On dissection viceras were found pale and there was perforation of left side colon at two places and perforation Of small intestine at one place and also there was punctured wound on the left lobe of liver. The doctor opined that injuries were possible by dagger or big knife. The death was within 12 hours. Injury nos. 1, 2 & 3 were sufficient to cause death in ordinary course.

10. P.W.11 is the Investigating Officer. Deputy Superintendent of Police informed him that one person has been killed and has been taken to Nazarat Hospital, Mokama. He was directed to go to hospital. He entered Sanha entry no. 9 dated 1.11.1982. The fardbeyan was recorded by P.W.12 A.S.I. Mokama Police Station who prepared inquest report. Fardbeyan and inquest report were handed over to him at Mokama Police. Station. The deceased was sent to Barh for postmortem. He recorded formal First Information Report. He recorded the statement of Mahendra Prasad Singh, P.W.1 and inspected the place of occurrence. In his evidence he gave vivid picture of place of occurrence. He found trampling marks at the place of occurrence. He found Muffler and Slipper of the deceased and also blood at the place of occurrence. He seized those articles and prepared seizure list. He also found blood stains at a distance of 18 steps from the place where Muffler was found. On 2.11.1982 he recorded the statement of P.Ws. 2, 3 and others. He also seized blood stained clothes of the deceased and prepared seizure list. He also proved material exhibits in the court.

11. Therefore, it is evident that evidence of the doctor and the finding of the investigating officer corroborate the prosecution case and the evidence of P.W.9 on the point of place of occurrence, manner of occurrence and the time of occurrence. Thus, even if the evidence of P.W.1, P.W.2, P.W.3 and P.W.4 is ignored for the sake of argument the conviction of the appellants can be sustained on the evidence of P.W.9 as there is no inconsistency/contradiction on any material point and his evidence is wholly trustworthy. Learned counsel for the appellants also could not be able to point out any such discrepancy as to disbelieve his evidence on any material point. It is well known that conviction can be sustained on the evidence of solitary witness if his evidence is wholly trustworthy. Moreover, in the instant case the evidence of P.W.1, P.W.2, P.W.3 and P.W.4 cannot be brushed aside only on a few contradiction, as indicated above.

12. Learned counsel for the appellants next pointed out that in the first information report as well as in the evidence of P.W.9 there is nothing to show that appellant Ramesh Singh @ Katuk Lal Singh assaulted the deceased with spade and as such his conviction is liable to be set aside. In this regard it would be pertinent to mention herein that the appellants have been convicted for the offence u/s 302/34 of the Indian Penal Code. For applying the provision of section 34 of the Indian Penal Code the requirement is that the act is done by several persons in furtherance of common intention of all which can be gathered

from the act done disclosing the element of participation on the part of all the accused persons. The acts may be different, may vary in their character but they all are actuated by the said common intention.

13. In the instant case, it has been stated in the first information report that all the accused persons surrounded the deceased and asked him to execute the document with respect to 14 Bighas of land which he was holding in excess, when he refused to execute such document the occurrence took place. P.W.9 in his evidence also stated that all the accused persons asked to execute document with respect to 14 Bighas of land which he was holding in excess and when he refused to execute such document the occurrence took place. Therefore, participation of appellant, Ramesh Singh, is also evident on the facts stated above. The act done by each of the accused persons may be different but participation of the appellant cannot be ruled out. Therefore, even though there is no allegation of assault by Ramesh Singh, his conviction u/s 302/34 of the Indian Penal Code cannot be said to be bad. Moreover, it has come in evidence that when the deceased tried to run away he was chased by the accused persons, which clearly indicates presence of common intention.

14. No other point was raised.

15. Thus, on consideration, as discussed above, in my view there is no need of interference with the judgment and order of conviction and sentence passed by the trial court. Accordingly, this appeal is dismissed. The bail bonds of the appellants are hereby cancelled and they are directed to surrender before the trial court to serve out the remaining period of sentence.

M.L. Visa, J.

I agree.