

(1988) 09 PAT CK 0011

In the Patna High Court

Case No : Criminal Appeal No's. 449 and 451 of 1987

Ramjee Pandey and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 29-09-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164

Evidence Act, 1872 — Section 57

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

Citation : (1989) 37 BLJR 18 : (1989) PLJR 890

Hon'ble Judges : Ramnandan Prasad, J; Binodanand Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Ramnandan Prasad, J.—Sheo Kumar Prasad Sharma Alias Prabhat Kumar Singh, appellant of Cr. App. No. 451/87 has been convicted u/s 302 of the Indian Penal Code (hereinafter referred to as "the Code") and has been sentenced to undergo rigorous imprisonment for life. The two appellants of Cr. App. No. 449/87 to wit, Ramjee Pandey and Rambrichh Singh, have been convicted u/s 302 read with Section 34 of the Code and have been sentenced to undergo rigorous imprisonment for life. It appears that six more persons were put on trial along with these three appellants, but they have been acquitted by the learned additional Sessions Judge who tried the case.

2. The prosecution case, as disclosed in the fardbeyan of Janardhan Pd. Singh (P.W.7), on the basis of which the present case was instituted, is that on 11-8-1981 in the morning his brother Sadhu Sharan Singh was returning home from Warsaliganj in a bus know as "Sheo Shambhu". This bus happened to reach near Badi More at about 10 A.M. and was forced to stop there as the road was found cut. As soon as the bus stopped, these three appellants, who were armed with a rifle each entered into the bus and started searching out Sadhu Sharan Singh, who was sitting on the staff seat in the front portion of the bus. On seeing

him, appellants Prabhat Kumar Singh asked the two other two appellants to pull him out and to kill him. Accordingly, those two appellants forcibly took out Sadhu Saran Singh, but he managed to flee away after rescuing himself. Thereafter, all the three appellants chased him and, ultimately, Prabhat Kumar Singh succeeded in shooting him down from his rifle, as a result of which he fell down near Saidi Bagicha. It is said that the three appellants thereafter thrashed his face etc. with the butt end of their rifles. The cause of this occurrence, according to Janardhan Pd. Singh, is that appellant Prabhat Kumar Singh wanted to extend the main road towards his village Darbeshpur which was objected to by the deceased Sadhu Saran Singh.

3. Nobody went to the police to inform about this incident until A.K. Singh (P.W.12), officer-in-charge of Griyak police station happened to reach there of his own at 2. P.M. At that hour he recorded the fardbeyan of Janardhan Pd. Singh in the Saidi Bagicha itself and himself took up investigation. Eventually after completing investigation the police submitted charge-sheet against these three appellants as well as six others, who were in due course put on trial with the result as stated above.

4. It appears that the prosecution developed the case sometime after the institution of the case making allegations against the aforesaid six accused persons, namely, Arun Kumar Singh Alias Gita Singh, Anil Kumar Sharma, Baleshwar Singh, Janardan Pd. Singh, Awadhesh Kumar and Lakshmi Narain Singh, also, A case was made out on behalf of the prosecution to show that these six persons were also along with the three appellants, when they had entered into the bus for searching out the deceased. These six persons are also said to armed with rifles and guns and they were asking people not to go near the deceased by standing on the road and they were also instigating appellant Prabhat Kumar Singh to kill Sadhu Saran Singh. They were telling the people that they would also be killed if they tried to save Sadhu saran Singh. The learned Additional Sessions Judge did not accept this part of the prosecution case as true, as, according to him, this was an after-thought and a subsequent development. He, accordingly, acquitted all these six accused persons and that is the end of the matter so far they are concerned.

5. The defence of the appellants was that the deceased Sadhu Saran Singh was a man of questionable character. In the previous night he had gone to Saidi Bagichha for committing rape and it was in this connection that he was murdered there by somebody in the night itself, it has been alleged that these appellants have been implicated falsely on account of emnity.

6. At the trial the prosecution examined P.W. 2 Fateh Bahadur Singh, P.W. 3 indradeo Singh, P.W. 4 Sanjay Kumar, P.W. 6 Kishori Singh and P.W. 7 Janardhan Pd. Singh as eye-witnesses to the occurrence. The learned Additional Sessions Judge has, however, rejected the evidence of P.Ws. 3 and 4 mainly on the ground that they were not named in the fardbeyan and has chosen to convict the appellants only on the evidence of P.Ws 2. 6. and 7. He has given good reasons

for not placing reliance upon P.Ws. 3 and 4 and the learned Counsel appearing for the State could not show that his view in this regard was untenable. I would, therefore, exclude the evidence of P.Ws. 3 and 4 from consideration and proceed to consider whether the evidence of P.Ws. 2, 6, and 7 would be sufficient for upholding the conviction of the appellants. All these three witnesses have stated that appellants Ramjee Pandey and Ram Briksha Singh had pulled out the deceased from the bus, but the deceased succeeded in extricating himself and in fleeing away. He was, however, chased by the three appellants, out of whom, Prabhat Kumar Singh fired his rifle shooting him down. Now, the question arises as to whether it would be safe to act on the evidence of these three witnesses.

7. It was submitted by the learned Counsel for the appellants that the evidence of the aforesaid eye-witnesses is wholly inconsistent with the medical evidence—both with regard to the time of occurrence and manner of occurrence—and no conviction should be based upon such evidence. P.W.8 Dr. Suresh Chandra of Bihar Shariff Sadar hospital had held post-Mortem examination of the dead body of Sadhu Saran Singh at 2 P.M. on 12-8-1981. This post-mortem examination was conducted in presence of Dr. Vidyadhar Prasad (P.W.14), who was the then Deputy Superintendent of that hospital and was Civil Surgeon of Rohtas at the time of his evidence. This arrangement was made on the orders of the then Civil Surgeon of Bihar Shariff Hospital and the post-mortem report has been signed by Dr. Vidyadhar Prasad also.

8. P.W.8 Dr. Suresh Chandra had found as follows on the person of Sadhu Saran Singh:

Rigor mortis was absent in arms and present in both legs. Blebs had appeared on abdomen and limbs. The following injuries were detected over the body of the deceased;

(1) One fire arm wound with (a) wound of entrance 1/2" in diameter with charred inverted margins over left 6th inter costal space by the margin of sternum leading to wound No. (b), (b)-wound of exit 1/2" in diameter over right side of back at the level of scapular spine with lacerated and everted margin. Blood was oozing from this wound of exit.

(2) Fracture of sternum at the level of wound of entrance.

(3) One lacerated wound 3/4" x 1/2" over front of face below nostrils.

(4) Fracture of nasal, maxillary & zygomatic bones in pieces.

(5) Destruction of both eye-balls.

On dissection, right ventricle of heart was found pierced through and through. Both sides of chest cavities were full of blood. Right lung media sternum was pierced through and through. Brain was pale. There was haematoma or staining under the tissues of wound Nos. 3, 4 and 5. Liver, spleen and kidneys were pale. Stomach was empty. Bladder was partially filled. Small and large intestine

contained faeces and gas.

In his opinion, death was due to haemorrhage and shock caused by wound No. (1) which might be caused by fire arm. Inj. Nos. (1) and (2) are ante-mortem and (3), (4) and (5) postmortem.

Time, elapsed since death was 36-48 hrs.

9. Thus, according to P.W.8 Dr. Suresh Chandra, the time elapsed since death was between 36 and 48 hours. It has, however, been taken in cross-examination of this doctor that there are over writings in the figures "36 and 48" and it was suggested to him that originally they were "24 and 36 hours" respectively. The doctor has, however, not accepted this position. The other doctor, namely, P.W.14 has expressed his ignorance about the time when these over writings were made. The prosecution, however, did not try to know the opinion of this doctor (P.W.14) regarding the time elapsed since death on the materials found by P.W.8 in his presence and regarding which there was no dispute. If the prosecution felt that the elapsed since death could not be between 36 and 48 hours, it could easily question P.W.14 in this regard and place his opinion before the court, but that was not done. The fact that these over writings were there when the post-mortem report was sent to the police soon after the post-mortem examination was done could be disputed as within a few days thereof the investigating officer made an enquiry from P.W.8 in this regard. The investigating officer also wanted to know as to whether the time elapsed since death could be between 24 and 36 hours, but the doctor emphatically denied that it could be so. In any event, these overwriting do not relate to the findings of the doctor regarding which there is no dispute, and the only dispute is with regard to the opinion given by P.W.8 regarding the time of death. In such a situation, it will be unnecessary to go into the question as to when these overwriting were made, as the court can form its own opinion regarding the time of death on the basis of the finding given by the two doctors. Since it is the prosecution which is challenging the opinion, it will be for the prosecution to show that the opinion given by P.W.8 was wrong.

10. The two most important factors relevant for determining the time of death are (1) Disappearance of the rigor mortis from the upper limbs. The post-mortem report shows that rigor mortis was present only in both the legs and was absent from other parts of the body. (2) Blebs had appeared over abdomen and limbs. According to Modi, a celebrated author on medical jurisprudence. The usual duration of rigor mortis in northern India is 24 to 40 hours in winter and 18 to 36 hours in summer. It is the undisputed position that the rigor mortis first appears on the muscles of the eye-lids and then on the neck and lower jaw and it gradually goes downward and passes off in the same sequence. So, the legs are the last resort of rigor mortis. The presence of rigor mortis only on the legs would indicate that the same had disappeared from other parts of the limbs, and the death had taken place at least 28 hours ago, as rigor mortis starts appearing ordinarily not earlier than four hours of the death. So, it is manifest that in the present case the death had occurred at least 28 hours prior to the holding of the

post-mortem examination.

11. What is, however, more important for determining the time of death is the presence of blebs over abdomen and limbs. The minimum time taken for formation of blebs, according to Modi, is 35 hours and the average time is 49 hours 34 minutes (See Modi's Medical Jurisprudence 5 Toxicology-Twentieth Edition at page 130). So, the presence of blebs on the abdomen and other limbs would indicate that the death had taken place at least 49 hours earlier i.e., the death would have taken place round about 9 A.M. on 10-8-1981.

12. Moreover, the doctor had also found that the blood was oozing out from the wound of exit i.e. injury No. 1(b). Evidently this was caused due to pressure of the gas produced by decomposition of body in an advanced stage. The presence of blebs and the oozing out of the blood from injury No. 1(b) lead to the only conclusion that the death must have taken place beyond 36 hours of the post mortem examination. This would mean that Sadhu Saran Singh had died sometime on 10-8-1981 and not at 10 A.M. on 11-8-1981 as alleged by the prosecution witnesses.

13. The other circumstances appearing in the post-mortem report also lead support to this view. The stomach of the deceased was found empty and both the large and small intestines were found to contain faecal matters and gas. The bladder was also found partially filled. These circumstances would indicate that the deceased, who was an average healthy man, had not defecated before his death and it appears more probable that he had died before morning and not at 10 A.M. as alleged. In this background the opinion of P.W.8 regarding the time of death cannot be doubted as it is based on the findings recorded by him in presence of another (P.W.14)

14. Thus, the medical evidence does not support the prosecution story regarding the time of death of deceased Sadhu Saran Singh, if it was so, it will not be possible to accept the evidence of the prosecution witnesses that the deceased was murdered at about 10 A.M. on 11-8-1981, It was, however, contended by Mr. Lala Kailash Bihari Prasad, who appeared on behalf of the State, that treatise on Medical Jurisprudence cannot be looked into for weighing the evidence of the doctor when the relevant passages relied upon by the learned counsel for the appellants did not confront the doctor with those passages. In support of this submission learned Counsel placed reliance on the case of Sunderlal Vs. The State of Madhya Pradesh, . To be more specific the learned Counsel placed reliance on paragraph No. 4 of this decision which is as follows:

It was argued by Mr. Lobo appearing for the accused that the High Court should not have lightly interfered with the conclusion reached by the learned Sessions Judge & when the accused had been acquitted of the charge u/s 302 the presumption of innocence worked with added force in favour of the accused. Mr. Lobo also contended that the evidence of Dr. Dube was, not quite satisfactory and his opinion was that the death was due probably to strangulation. The

conviction of the accused by the High Court was mainly based on passages from the text book of Modi on Medical Jurisprudence and Toxicology and these passages had not been put Dr. Dube when he was in the witness box with the result that the High Court was not right in coming to the conclusion adverse to the accused by merely relying upon these passages.

15. On a careful perusal of this decision, I find myself unable to accept the contention of the learned Counsel that the medical treatise should not be referred to at all for appraising the medical evidence, unless the relevant passage are put to the doctor in cross-examination. What I could infer from the decision is that unless the passages relied upon are put to the doctor when he appears in the witness box the High Court should not have come to the conclusion adverse to the accused by merely relying upon those passages. The case before the High Court was an appeal against the acquittal of the accused persons and it was observed that in such a situation the presumption of innocence worked with added force in favour of the accused and the Supreme Court disapproved the idea of discarding the medical evidence which goes in favour of the accused only by making reference to the passages of medical jurisprudence without putting them to the doctor in the witness box. This case does not lay down the proposition that Books on Medical Jurisprudence cannot be looked into for appraising the opinion of the doctor regarding the time of death. In the present case the doctor has already opined that the death had taken place between 36 and 48 hours of the post-mortem examination and it is the prosecution which is challenging this opinion. It was in this background that this Court looked into the book on Medical Jurisprudence and Toxicology by Modi for determining whether the opinion of the doctor which was being assailed by the prosecution was correct and acceptable. It is not a case in which some passages were required to be put to the doctor for discrediting his finding on behalf of the accused person, rather the passages have been used for lending support to the opinion expressed by the doctor. Indeed, the court has been given powers u/s 57 of the Indian Evidence Act to refer to the articles, Journals and Books by authors acquainted with such affairs. This view has been approved by a Full Bench of the Patna High Court in the case of Madho Singh Vs. The State of Bihar and Others, . Indeed, Section 57 of the Evidence Act would become nugatory if it is held that the Court can not take the aid of appropriate books by eminent authors for ascertaining the correct position. With regard to the matters science, Art, Literature and Public history.

16. In the next place it was contended by Mr. Lala Kailash Bihari Prasad that the doctor is as good as any other witness and there is no presumption that the doctor is always a witness of truth. In support of this submission he referred to the decision of the Supreme Court in the case of Mayur Panabhai Shah Vs. State of Gujarat, . This is indeed a small judgment and the facts of the case have not been stated therein. Of course, the Supreme Court has observed that there is no presumption that the doctor is always a witness of truth, but such an observation was made in a different context, as the learned single Judge of the High Court

had made such an observation and had passed an order of conviction mainly relying on the medical evidence. It was in this background that the Supreme Court made the aforesaid observation. It may be that the doctor is not always a witness of truth, but generally courts act on the findings given by a doctor for appraising the evidence of other witnesses as the evidence given by a doctor is objective in nature and is not tainted in the sense that it is coming from the mouth of a partisan or interested witness.

17. Learned Counsel also referred to the decisions of the Supreme Court in the Case of (1) Solanki Chimanbhai Ukabhai Vs. State of Gujarat, and (2) Punjab Singh Vs. State of Haryana, the latter for his proposition that the medical evidence cannot override direct evidence about assault by particular weapon and the former for his proposition that the testimony of the eye-witnesses cannot be discarded on the ground of inconsistency between it and the medical evidence. In the latter case the Supreme Court did not accept the medical evidence regarding the weapons used as the evidence with regard to the assault had been accepted by both the court below and secondly, the medical evidence, if properly read supported the prosecution story. In the case of Solanki Chimanbhai Ukabhai (supra) the Court has simply observed that the manner of occurrence alleged by the eye-witnesses cannot be thrown out unless the medical evidence goes so far that it completely rules out all possibilities whatsoever of injuries taking place in the manner alleged by eye-witnesses. The following paragraph of the decision would make the position clear:

12. Ordinarily, the value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner alleged and nothing more. The use which the defence can make of the medical evidence is to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eye-witnesses, Unless, however, the medical evidence in its turn goes so far that it completely rules out all possibilities whatsoever of injuries taking place in the manner alleged by eye witnesses, the testimony of the eye witnesses cannot be thrown out on the ground of alleged inconsistency between it and the medical evidence.

18. So, even according to this decision if the medical evidence completely rules out the possibility of the prosecution story, being correct the court would be at liberty to throw out the evidence of the eye-witnesses, if the inconsistency between the medical evidence and the eye-witnesses cannot be reconciled. In the present case, the medical evidence completely rules out the possibility of death of deceased Sadhu Saran Singh having taken place at about 10 A.M. on 11-8-1981, and, if it is so, it would not be possible for the Court to act on the oral evidence of the prosecution witnesses which is directly in conflict with the medical evidence regarding the time of.

19. In the present case the medical evidence does not fit in with the evidence of the prosecution witness regarding the manner of assault as well. Firstly, all the three prosecution witnesses had stated before the investigating officer that

Prabhat Kumar Singh had fired from his rifle upon the deceased while he was chasing him and the deceased fell down on being hit. From their statements it appears that Prabhat Kumar Singh had fired three rounds as a result of which the deceased fell down on being hit by the rifle shot. In the evidence, however, a development was made by these witnesses, evidently, to make their evidence consistent with the medical evidence. This had become necessary since injury No. 1(a) could not be possible if the deceased was hit from behind. To overcome this difficulty evidence was led to show that shot fired from behind did not hit the deceased and Prabhat Kumar Singh fired upon the deceased on his front side when the deceased looked back at him. This explanation had evidently become necessary as the wound of entry was on the left sixth costal space near the neck. Apart from the fact that this part of the prosecution story is a clear development, the medical evidence still does not fit in with the evidence by the prosecution witness. It would appear that the wound of entry (injury No. 1(a)) is on the sixth costal space and the wound of exit (injury No. 1(b)) is on the level of scapular spine which would indicate that the muzzle of the rifle was directed obliquely at time of firing and the bullet had an oblique path. Such an injury could not be ordinarily possible if both the shooter and the victim were standing on the same level at the time of firing. A close look at the injuries would give an impression that in all probability the deceased was fired upon when he himself was lying down or that the shooter was at a higher level, but the prosecution case does not indicate anything like this. In view of the site of these injuries it may well be said that they could not be caused by Prabhat Kumar Singh in the manner alleged by the prosecution witnesses. Then, the doctor found that injuries Nos. 3, 4 and 5 were post-mortem injuries. According to the prosecution evidence, these injuries on the face were caused almost simultaneously after the deceased fell down on sustaining rifle shot injury. If it would have been so, the doctor could not have opined them as post-mortem injuries. The doctor has made it clear that the post-mortem injuries are only those injuries which are caused after death and not simultaneously with ante-mortem injuries. So injuries Nos. 3, 4 and 5 were not definitely caused in the manner alleged by the prosecution.

20. Thus, the medical evidence does not support the prosecution witnesses—either regarding the manner of assault or even regarding the time of death and in face of such inconsistency it is difficult to act on the statements of prosecution witnesses, to wit, P.Ws. 2, 6 and 7, who are admittedly *Gotias Inter se* and belong to one group along with the deceased.

21. The greatest infirmity in the prosecution evidence is that the prosecution witnesses have falsely implicated six accused persons who have been acquitted by the trial court saying that they were introduced at a later stage and their names were clearly an after-thought. The learned trial court has given cogent reasons for discarding the prosecution evidence so far those accused persons are concerned and for holding that their names were clear additions. The learned Counsel for the State did not dispute this finding of the trial court and it is an established fact now that these prosecution witnesses tried to falsely implicate

those six accused persons. If these witnesses could falsely implicate as many as six accused persons, what could be the guarantee that they have told the truth regarding the three appellants before us.

22. The prosecution witnesses have also failed to indicate how nine accused persons or even the three appellants all on a sudden appeared at the scene of the occurrence as soon as the bus stopped there, P.Ws. 2 and 7 were admittedly there from before and they could easily see as to wherefrom they appeared, as the place was an open place and there was no obstruction to the vision. The sudden appearance of those nine accused persons or even of the three appellants from nowhere as soon as the bus stopped there is a mystery. It is also surprising that the accused persons did not make any attempt to assault the informant, who was the full brother of the deceased, if he was really there from before as claimed by him and was well-known to them. To crown all, the informant did not try to go police for lodging information for full four hours after the alleged murder, even though Katrisarai out post was only two miles away from the place of occurrence according to P.W. 3 and that outpost is manned by one Sub-Inspector of Police, who is authorised to investigate into the cases lying within its jurisdiction which included the present place of occurrence, according to P.W. 12. The simple explanation that he was perplexed cannot be accepted so easily in view of the aforesaid infirmities, more so, when he could easily send at least P.Ws. 2 and 6 or anybody also to Katrisarai Police station, but he made no attempt at all in this direction.

23. Indeed, the presence of the informant at the place of occurrence is also highly doubtful. He is a Field Officer working in the Land Development Bank at Hisua in the district of Gaya. That he has claimed that he was going to a potter for purchasing some potteries. Firstly, it was a working day and it was not expected of him to absent himself from his office at that hour and, secondly, he, being an officer, was not expected to go personally to the house of a potter for purchasing potteries and in fact he does not claim to have made any purchase at all. Then, there is a mystery regarding his presence at the place of occurrence. In his evidence in court he has stated that he had gone to village Badi for purchasing potteries and while returning from there he witnessed the occurrence. In his statement before the investigating officer he had, however, stated that he was waiting for the bus at Badi More when he happened to see the occurrence. He, however, gave a different story altogether in his statement made before the Magistrate u/s 164, Cr. PC. In that statement he had stated that he was coming from Warsaliganj in the same bus along with the deceased when the occurrence took place. Indeed, his fardbeyan also gives the same impression. In view of these inconsistent statements it is difficult to accept his claim that he saw the occurrence, specially when he did not make any attempt to inform the police about the occurrence until 2 P.M. when the police officer (P.W.12) himself appeared at the scene and, indeed, been explained beyond reasonable doubts.

24. Then, no witness of Saidi Bagich or Said More where the occurrence is said to

have taken place during the broad day light has been examined for the reasons best known to the prosecution and only interested witness, all of whom belong to the village of the deceased and are his agnates, have come forward to support the prosecution story. Even the driver and conductor of the bus, who would have been naturally the competent witness on substantial part of the prosecution story, have not been examined at all, although the police and examined them in course of investigation.

25. Then, the inquest report does not support the prosecution story and gives an impression that nobody saw the occurrence, as there is a reference to garansa injury having been sustained by the deceased in that report. Indeed, this inquest report is itself a very suspicious document inasmuch as the number of police station case has been mentioned there in, although this report is said to have been written along before the case was instituted at the police station. According to the Investigating officer, this inquest report was prepared soon after the drawing up of the fardbeyan at 2 P.M., whereas formal first information report was drawn up at the police station at 8 P.M. If was so, how the number of P.S. case appears on the inquest report?. Indeed, this number also appears on the post-mortem report which would indicate that the number was mentioned even in the chalan along which the dead body was sent to the hospital for postmortem examination. This circumstance may indicate that the inquest report and Chalan were prepared after 8 P.M. at the police station and not at the place of occurrence itself.

26. If the deceased was coming from Warsaliganj in a bus. It was expected that he would be wearing shoes also besides Dhoti & Kurta, but the investigating officer did not find the shoes either on the person of the deceased or anywhere at or near the place of occurrence. What happened to the shoes is really a mystery as he must have worn the shoes when he had gone for marketing to Warsaliganj Bazar. Then, no bus ticket was also found on his person, although it is admitted that the bus ticket was provided to the passengers. Indeed, no money of any kind was also found on his person. All these create some doubt about the genuineness of the prosecution story that the deceased was returning in a private bus after making purchases in Warsaliganj Bazar.

27. In view of the infirmities pointed out in the evidence of the prosecution witnesses and more particularly the inconsistencies between their evidence and the medical evidence, it is not possible to sustain the conviction of the appellants. In my opinion, the prosecution evidence is wholly unreliable and the prosecution witness have not told the truth.

28. In the result, all the three appellants are found not guilty to the charges for which they have been convicted and the order of conviction and sentence recorded against them is set aside. The appeals are, accordingly, allowed and the appellant of Cr. App. No. 451 of 1987, namely, Sheo Kumar Prasad Sharma alias Prabhat Kumar Singh, who is in custody, is directed to be released forthwith, if not wanted in connection with any other case. The two appellants of Cr. App. No.

449 of 1987, namely, Ramjee Pandey and Rambrichh Singh, who are on bail, are discharged from the liabilities of their hail bonds.

Binodanand Singh, J.

29. I agree.