
(2002) 07 PAT CK 0105

In the Patna High Court

Case No : Criminal Appeal No. 417 of 1987

Shashi Bhushan Singh @ Satendra Singh and Shekhar Singh	APPELLANT
Vs	
The State of Bihar	RESPONDENT

Date of Decision : 05-07-2002

Acts Referred:

Citation : (2002) 07 PAT CK 0105

Final Decision : Allowed

Judgement

M.L. Visa, J.—This appeal is directed against the judgment and order dated 31.8.87 passed by 1st Additional Sessions Judge, Patna in Sessions Trial No. 942/86 convicting and sentencing Appellant Satendra Singh to undergo imprisonment for life u/s 302 of the Indian Penal Code (in short, IPC) and Appellant Shekhar Singh to undergo imprisonment for life u/s 302/109 I.P.C. Appellant Satendra Singh has been further sentenced to undergo imprisonment for life u/s 302/109 IPC. Appellant Satendra Singh has been further sentenced to undergo R.I. for 3 years u/s 27 Arms Act and both the sentences passed against him have been ordered to run con-currently.

2. The case of prosecution in short is that on 30.5.86 at 7.30 PM informant Sant Kumar Singh (P.W. 7) along with his brother Anshuman Singh (P.W. 8), his cousin Naresh Prasad Singh (P.W. 1) his nephew Upendra Singh (P.W. 2) and his wife Mahangi Devi (P.W. 3) was sitting in the courtyard of his house. His younger son Barun Kumar @ Lali was reading in the light of a lantern by sitting on floor in the eastern "Osara" (Verandah) of the house. At that time both the Appellants came in the courtyard of informant and inquired about Shambhu Prasad Singh (P.W. 9), elder son of informant and when the informant said that he had gone to ease out both the Appellants went in the verandah of informant where Appellant Satendra Singh @ Shashi Bhushan Singh opened fire from his country made pistol on Barun Kumar @ Lali. on receiving injury Barun Kumar @ Lali raised alarm and informant immediately ran to the verandah where he found bleeding injury on the left side of chest of Barun who after some time died there and both the

Appellants fled away towards northern side. Informant sent information of incident to Kharbhaiya camp from where police came and his fardbeyan was recorded. About the genesis of occurrence informant in his fardbeyan has said that at the time of Holi a Lukka" (fire lamp) thrown by Shambhu Prasad Singh had fallen in the paddy seedling of Appellant Satendra Singh on which some altercation took place between Shambhu Prasad Singh and Satendra Singh. Police after investigation submitted chargesheet against both the Appellants who were put on trial and after the trial they were found guilty and convicted and sentenced as stated above.

3. The case of Appellants as it appears from the trend of cross examination of prosecution witnesses is that at the time of occurrence Shambhu Prasad Singh (P.W. 9) elder son of informant, was cleaning his gun which accidentally fired and hit the deceased Barun Kumar who died there and thereafter the Appellants have been falsely implicated in this case.

4. Altogether 15 witnesses have been examined on behalf of the prosecution Sant Kumar Singh (P.W. 7) is the informant Dr. Chandreshwar Prasad (P.W. 10) is the doctor who had held post mortem examination on the dead body of deceased. Ram Naresh Singh (P.W. 1), Upendra Singh (P.W. 2) Mahangi Devi (P.W. 3) and Arjun Singh (P.W. 4) have not supported the case of prosecution and they have been declared hostile Sitaram Mistry (P.W. 11) and Chandeshar Paswan (P.W. 12) are tendered witnesses Suresh Pd. Singh (P.W. 6) is a seizure list witness in whose presence the police had seized blood stained soil, blood stained book and exercise books from the place occurrence and one "Fasult from the (sic) near the house of informant. Sudhir prasad Singh (P.W. 5), Anshuman Singh (P.W. 8) and Shambhu Prasad Singh (P.W. 9) hearsay witnesses who were told by (sic) that Appellants had committed murder of deceased. Out of these witnesses Anshuman Singh (P.W. 8) is also a fitnesses of seizure list when police seized od stained soil and blood stained books and exercise books from the place of occurrence. Bandhu Mahto (P.W. 13) and (sic)anesh Dutta (P.W. 15) are investigating officers of this case. Ram Deo Paswan (P.W. 14) is a Chaukidar who had informed about the occurrence at Kharbhaiya camp.

5. Dr. Chandreshwar Prasad (P.W. 10), in his evidence, has said that on 31.5.86 he held post mortem examination on the dead body of the deceased and found multiple punctured lacerated wounds of the size of 1/4" x 1/4" altogether 12 in number situated over front of left side of chest over an area of 21/2" x 21/2" below the left (sic) and para sternal line and the wounds were having inverted margin and communicated with the left chest cavity constituting the wound of entrance and one punctured lacerated wound with everted margin without tatooing situated over left side of back of chest over the scapular region with the Size of 1/2" x 1/4" communicating with Chest cavity and this was the wound of exit. According to him, death was due to hemorrhage and shock caused by aforesaid injuries and injuries found on the dead body were caused by fire arm fired from a close range and may be country made pistol. He has proved his post

mortem examination report which is marked Ext. 2. From the evidence of this witness it appears that deceased died of fire arm injuries.

6. Santa Kumar Singh (P.W. 7) informant and father of deceased is the only eye witness to the occurrence examined in this case on behalf of prosecution. He in his evidence has stated that on 30.5.86 he was sitting on a cot in the "angan" of his house. His brothers Ram Naresh Singh (P.W. 1) and Anshuman Singh (P.W. 8), Upendra Singh (P.W. 2) and Mahangi Devi (P.W. 3) were also there. Both the Appellants came there and inquired from him about his elder son Shambhu and when he replied that Shambhu had gone to ease out both the Appellants went to the verandah of his house where his younger son was reading in the light of a lantern and he was sitting on the floor of verandah. Appellant Shekhar Singh said that if Shambhu is not available, Barun be finished on which Appellant Satendra Singh alias Shashi Bhushan Singh fired on Barun from his country made pistol and the shot hit on the chest of Barun resulting into a bleeding injury and about five minutes thereafter Barun died and both the Appellants fled away. About the genesis of occurrence he has said that at the time of Holi his son Shambhu had thrown a Lukka which fell in the paddy seedling of Appellant Satendra Singh and when Shambhu was picking up Lukka, Appellant Satendra Singh abused him and for this reason both the Appellants committed the murder of his younger son. In para 3 of his evidence he has said that his brother Anshuman Singh (P.W. 8) had gone to police station and firstly he went to camp from where Jamadar came to his house and thereafter information to police station was given and from police station also police came to his house and re-corded his fardbeyan on which he put his signature (Ext. 1/2).

7. From the evidence of informant it appears that at the time of occurrence his wife Mahangi Devi (P.W. 3), his cousin Ram Naresh Singh (P.W. 1), his own brother Anshuman Singh (P.W. 8) and his nephew Upendra Singh (P.W. 2) were with him but out of these witnesses P.Ws. 1, 2 and 3 have not supported the case of prosecution and they have been declared hostile. Ram Naresh Singh (P.W. 1) has simply stated that at the time of occurrence he was in his house when he heard sound of firing and when he came out from his house he did not see anybody coming out from the house of informant. Mahangi Devi (P.W. 3) who is the wife of informant and mother of deceased, has simply stated that on the day of occurrence at 7 PM she was cooking meal in her house and her son was reading when her deceased son received fire shot but she did not see any outsider coming in her house and neither she saw the assistant nor heard about the assailant. Anshuman Singh (P.W. 8), the brother of the informant, who according to FIR as well as evidence of informant was with the informant at the time of occurrence has said that he and informant live in the same house partitioned by a door which always remains open and at the time of occurrence he heard sound from the portion of house of informant and when he went there he saw bleeding injury on deceased who died. He has further stated that he saw both the Appellants running towards eastern side and he thereafter went to Kharbhaiya camp from where police came and recorded the statement of

informant and also seized blood stained soil and blood stained books and exercise books and prepared seizure, list on which he put his signature. Shambhu Prasad Singh (P.W. 9), elder son of informant has simply stated that at the time of occurrence he had gone to ease out and when he was returning to his house he heard sound of firing and when he reached his house he found his brother dead and his father told that Appellants had fired at the deceased and after firing they fled away. Ramdeo Paswan (P.W. 14) who is a Chaukidar has said that on the day of occurrence he had gone to Kharbhaiya Camp and informed about the murder of deceased. He has further said that informant had told him that Appellants had committed the murder of deceased and at Kharbhaiya Camp he told that deceased was murdered by Appellants and thereafter Jamadar along with police. force came to the house of informant and thereafter Jamadar sent him and another Chaukidar with a paper for giving it at Shahjahanpur police station and he then reached Shahjahanpur police station where he handed over the paper and thereafter. police from Shahjahanpur police station along with him came to the place of occurrence. Bandhu Mahto (P.W. 13) has said that on 30.5.86 he was posted at Kharbhaiya camp and on that day at about 10 PM Chaukidar Ramdeo Paswan (P.W. 14) came to the camp and informed that Appellants had committed the murder of deceased and thereafter he along with police force went to the house of informant where he reached at about 10.30 PM and recorded the statement of informant (Ext. 3) and thereafter he sent the statement of informant to police station through Chaukidar Ram Deo Paswan (P.W. 14) and Chaukidar Bisheshwar Paswan and he has further said that he recorded the statement of Mahangi Devi (P.W. 3) and visited the place of occurrence and seized blood stained soils, blood stained books and exercise books and prepared seizure list (Ext. 4) and thereafter at about 4 AM on 31.5.86 he handed over the charge of investigation to Ganesh Dutta (P.W. 15) who had come to the place of occurrence for investigation. Ganesh Dutta (P.W. 15) has said that on 31.5.86 he was posted at Shahjahanpur Police Station and on that day at about 1.30 AM Chaukidar Ramdeo Paswan (P.W. 14) and Chaukidar Bisheshwar Paswan came to police station along with fardbeyan of informant which was recorded by Bandhu Mahto (P.W. 13) and he recorded the case on the Station Diary and proceeded for the place of occurrence for investigating the case where he reached at about 4.30 AM where he met P.W. 13 Bandhu Mahto who was already looking after the case and he then took charge of investigation from him at the place of occurrence and prepared request report (Ext. 5) of dead body and sent the dead body to NMCH for post mortem examination. He has further said that he recorded the statement of witnesses and after completing the investigation submitted chargesheet.

8. Learned Counsel appearing on behalf of the Appellants has stated that in this case except the informant nobody has claimed to be eye witness to the occurrence and evidence of informant does not inspire confidence because it is not supported by not only his own brothers and nephew but also his wife who all according to him were present at the time of occurrence and as they in their

evidence have not supported the case of prosecution therefore they have been declared hostile. Learned A.P.P. by relying on a decision of the Apex Court in the case of Krishna Mochi and Ors. v. State of Bihar 2002 (2) PLJR (SC) 305 has submitted that in the matter of appreciation of evidence the quality of evidence matters and not the number of witnesses. We fully agree with this submission of learned APP according to which quality of the evidence has to be considered.

9. Now advertent to the quality of evidence we find that the informant in para-5 of his evidence has clearly said that on the day of occurrence there was no reason for the Appellants to commit the murder of his son Barun except the incident which had taken place at the time of Holi festival. He has further admitted that by fall of a Lukka of his son Shambhu in the seedling no harm was caused to Appellants because immediately Lukka was picked up. In his evidence he has said that after inquiry from him about his elder son Shambhu both the Appellants went to verandah where Appellant Shekhar Singh said that if Shambhu was not available Barun must be finished on which Satendra Singh fired at the chest of Barun but in the fardbeyan he has not stated that Appellant Shekhar Singh had said that if Shambhu was not available then Barun be finished. In the Fardbeyan he has simply stated that after inquiry from him about Shambhu Appellant Satendra Singh fired from his pistol at the deceased. There he has not alleged any allegation against Appellant Shekhar Singh except that at the time of occurrence he was with Appellant Satendra Singh. In para 4 of his evidence he has also said that prior to the day of occurrence the Appellants had never made any attempt to commit the murder although Appellants are his neighbors and they used to meet him frequently. The genesis of occurrence as given by informant in the FIR as well as in his evidence does not appear to be convincing because fall of a Lukka in the seedling which caused no harm to them is said to be the root cause of occurrence but then according to the case of prosecution Lukka of Shambhu and not of deceased had fallen in the seedling of Appellants and at the time of occurrence Appellants were in search of Shambhu. It looks very peculiar that when Shambhu was not found by the Appellants then instead of causing any damage to informant or his brother or his wife they will choose his younger son for committing his murder without any reason. Besides this the circumstance that Mahangi Devi (P.W. 3), wife of informant and mother of deceased has not supported the case of prosecution cannot be easily ignored. In the case of The State of Uttar Pradesh Vs. Het Ram and Others, which has been cited by learned APP himself it has been held that entire evidence of a witness does not get excluded or rendered unworthy of consideration because he is declared hostile.

10. The case of Appellants is that the deceased received injuries when Shambhu, elder son of informant was cleaning his gun which accidentally fired and hit the deceased. This defense finds support from the evidence of P.W. 1 who although has been declared hostile but in his cross examination he has said that the wife of informant had told him that she was scolding her son Shambhu that why he had brought a gun and she had also told him that from the gun of Shambhu the

deceased received injuries. This witness is own cousin of informant as stated by informant in his fardbeyan. The evidence of Upendra Singh (P.W. 2) who is nephew of informant is that when after hearing the sound of firing he went to the house of informant, he found the persons there saying "Shambhu what you have done." This witness is admittedly the nephew of informant and his aforesaid evidence gives support to some extent to the case of defence that deceased received injuries by gun of Shambhu.

11. Learned Counsel of Appellants has argued that Bandhu Mahto (P.W. 13) who is said to be posted on 30.5.86 at Kharbhaiya Camp, in his evidence has said that on 30.5.86 at about 10 PM Chaukidar Ramdeo Paswan came to his camp and informed him that both the Appellants had killed the son of informant but he did not record the fardbeyan of chaukidar and instead of doing so, he went to the place of occurrence and recorded the fardbeyan of informant. It has further been argued that the informant in para 3 of his evidence has said that his brother Anshuman Singh (P.W. 8) had gone to police station for lodging information but even no statement of Anshuman Singh recorded by police has been produced by the prosecution in this case. It has also been argued that Sudhir Prasad Singh (P.W. 5), Anshuman Singh (P.W. 8) and Shambhu Prasad Singh (P.W. 9) in their evidence have said that informant had told them that Appellants had committed the murder of deceased and admittedly they are hearsay witnesses but then informant in his evidence has not said that he had told them about the occurrence and names of Appellants and on the contrary in para 10 of his evidence he has said that he did not tell anything to anybody and he remained weeping. If no adverse inference from the aforesaid facts is drawn against prosecution even then we find that as stated above entire prosecution case is based only on the evidence of informant who is said to be the only eye witness to the occurrence but then for the reasons mentioned above we find that his evidence does not inspire confidence to believe him. We therefore, find that prosecution has not been able to prove its case beyond all reasonable doubts.

12. In the result, this appeal is allowed. The judgment and order of the Court below convicting and sentencing the Appellants is hereby set aside. The Appellants who are on bail are discharged from the liability of their bail bonds.

B.K. Jha, J.

13. I agree.