
(1985) 05 PAT CK 0034
In the Patna High Court

Sobрати Mian

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 08-05-1985

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 147, 148, 149, 302

Citation : (1986) CriLJ 1226

Hon'ble Judges : M.P. Varma, J;Abhiram Singh, J

Bench : Division Bench

Judgement

1. The conviction of the appellant is based on the solitary statement of P.W. 10. who claimed to be an eye-witness

2. The appellant was put on trial along with six other accused. Charges under various heads, i.e. 302/149.302/120B and 148 and 147 of the Penal Code (hereinafter referred to as the Code) were framed. But all these need no discussion, as all other accused were acquitted and this appellant alone has been convicted u/s 302 of the Code. The charge against him is that he took out a gun from a Jholu (bag) and fired at Moinuddin causing his death. It all happened on 27-10-1980 in a field, where the deceased was on his way to school, in which he was working as a headmaster. P.W. 10 has said that in the morning between 9 and 10 a.m. he was going to purchase coal when he met the appellant. Proceeding a little ahead, he saw all other accused sitting at a place, with whom the appellant also joined. He further noticed Moinuddin Master going to Pokhari L. P. School. It was at this point of time that appellant Sobрати Mian shot at Moin Master. According to him, next to Sobрати Mian, another accused Hamid (acquitted of the charge) also fired a shot on Moin Master. This witness further narrates that he was caught hold of by the accused Nizam and Bhukhan. They took him behind a Jhari (bush) and asked him not to tell about it to any one and threatened that if he would do so, he would also be done to death. The witness has said that he then went to his cousin (Mamera brother) named Balo Mistry and told him all about the incident. He kept himself confined to his place till

Tuesday. It is his statement that it was only out of fear that he did not speak to any one about the incident. According to him, his cousin Balo Mistry also shared the view.

3. On the Sunday following P.W. 10 went out for marketing. There he met the Mukhia of the village named Shamsuddin; looking at him, probably his fear vanished, he got bold and told the Mukhia about the aforesaid incident of killing Moin Master by a gunshot fired by the accused appellant Sobrati Mian. The informant Abdul Kadir (P.W. 16) also got the information and they together, i.e. the Mukhia and Abdul Kadir took P.W. 10 to police station, Latehar, where he gave his statement telling all the details about the occurrence.

4. The information about the murder was lodged earlier before the police. The First Information Report was against unknown. But the recovery of the dead body was there rather much earlier to the examination of P.W. 10. The police were moving in the village making enquiries. But the disclosure of the incident came only through the mouth of P.W. 10 after six or seven days of the incident. Learned Counsel Sri A.(S.)K. Banerjee has submitted that this long delay of seven days creates reasonable doubt whether this witness really saw any incident or was propped to tell a tale on some consideration other than the truth. The Investigating Officer (P.W. 25) has said that he examined P.W. 10 Nageshwar Mistry on 3-11-1980, which shows that he was examined seven or eight days after the alleged incident of shooting. If the proper explanation of this long delay in disclosing the incident, is not coming forth, and if the reasons assigned for such a long silence are not convincing, it would not normally be safe to accept the testimony of such a dubious witness. P.W. 10 appears to be a witness of that character.

5. In the present case, as argued by Mr. Banerjee there are more than one reason to reject the statements of P.W. 10 in toto. The trial court said that P.W. 10 was speaking half truth and did not accept his part of the statement that all other accused had conjointly or in conspiracy with each other caused the murder of Moin Master. Apart from it, P.W. 10 is categorical in his statement in court that two shots were fired at Moinuddin, one by the appellant and the other by the accused Hamid. The doctor (P.W. 17) found only one gunshot injury on the body of the deceased and the trial court acquitted Hamid, as the learned Judge rejected that part of the evidence of P.W. 10 that Hamid had also fired at the deceased. The court in doing so obviously faltered in its judgment in accepting the other part of the statement of this witness P.W. 10 in holding the appellant guilty of the charge.

6. Our attention has been drawn to the post-mortem report as well as to the statement of the doctor. From the statement of P.W. 17 and the post-mortem report it is gathered that the deceased has as many as five to six bruises and abrasions and also lacerated wound on other parts of the body. These circumstances speak against the ocular version given by P.W. 10.

7. In the end the learned Counsel has said that P.W. 10 has a motive to grind his axe against the appellant. P.W. 16 has admitted that the son of this witness had deposed against Bhukhan in a case brought by the informant.. A suggestion has been thrown by the accused to P.W. 10 that Kedar, a close relation promised to sell some land and in support of it defence witness was examined to show that stamps were purchased. The argument has been advanced to suggest that possibility of procurement of P.W. 10 at a later stage to speak about and to implicate the appellant on some alurement cannot be ruled out.

8. As discussed above, the explanation of P.W. 10 is that after some time, he had concealed himself in the house of his cousin Balo Mistry and he had narrated about the incident to him. Balo Mistry has deposed as a defence witness. He has been examined as D.W. 1 and Balo Mistry has contradicted P.W. 10 stating that P.W. 10 has never come to his residence; did not stay with him and there was no question of narrating any incident against the appellant Sobrati Mia. There is no other corroborative evidence worth consideration and the statement of P.Ws. 2 and 8, as pointed out by the State Counsel Mr. Choudhary was rejected by the trial court and they do not give any such circumstances, suggesting the complicity of the appellant in the crime.

9. In the result, the case of the prosecution fails, the appeal succeeds and the order of conviction and sentence imposed on the appellant are set aside. He is discharged from the bail-bond.