
(2010) 03 PAT CK 0080
In the Patna High Court

The State of Bihar

APPELLANT

Vs

Praveen Kumar Singh, Sushil Kumar Singh, Binay Kr. Singh
and Bijay Kr. Singh
 Praveen Kumar Singh Vs State of
Bihar

RESPONDENT

Date of Decision : 10-03-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 319
Penal Code, 1860 (IPC) — Section 302, 304

Citation : (2010) 03 PAT CK 0080

Hon'ble Judges : Dharnidhar Jha, J;Birendra Prasad Verma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The Govt. Appeal along with the appeal preferred by appellant Praveen Kumar Singh arise out of the Judgment dated 4.4.2003 passed by Fast Track Court No. 1, Ara in Sessions Trial No. 411 of 1992. The four accused persons were put on trial for a charge u/s 302 IPC by the trial court, out of whom appellant Praveen Kumar Singh was the only accused who was named in the FIR. The remaining three accused persons were summoned u/s 319 Cr.P.C. and were put on trial along with appellant Praveen Kumar Singh. While delivering the Judgment the learned trial Judge acquitted accused Sushil Kumar Singh, Bimal Kumar Singh and Bijai Kumar Singh of the charge u/s 302 of the Penal Code. As regards appellant Praveen Kumar Singh he was also acquitted u/s 302 of the Penal Code for the reason that the learned trial Judge felt that offence was not made out in the face of the evidence available on record and an offence u/s 304 part-II IPC could be what appeared committed by appellant Praveen Kumar Singh. Accordingly, the appellant Praveen Kumar Singh was sentenced to suffer rigorous imprisonment for ten years.

2. The appellant Praveen Kumar Singh has questioned the propriety of the finding of his guilt and the appropriateness of the sentences passed upon him, whereas the Government Appeal has been preferred by the State of Bihar to

challenge the acquittal of the accused persons u/s 302 of the IPC as also the finding of the learned trial court on guilt of appellant Praveen Kumar Singh of committing offence u/s 304 II IPC. It further prayed that the sentence passed upon Praveen Kumar Singh had to be enhanced by setting aside his acquittal u/s 302 of the IPC and the acquittal of the other respondents of the Government Appeal.

3. We have heard the two appeals together and we are disposing them of by the present judgement.

4. Ravindra Kumar Singh, the son of Shivjee Singh (P.W.6) and some other boys were roasting gram-plants for preparing oraha. It is alleged that accused appellant Praveen Kumar Singh came there and started giving repeated blows with a piece of bamboo as a result of which Ravindra Kumar Singh was badly injured. The informant claimed seeing the occurrence from a place outside his house.

5. The informant with the help of Nawami Singh (not examined), Shatrghna Singh (not examined) and others who also rushed to the place of occurrence, brought his son to Ara Sadar Hospital where he was treated but was referred to Patana Medical College Hospital and, accordingly, the informant brought injured son to that hospital in Patna. Ravindra Kumar Singh breathed his last on the 15th of March, 1992 at about 5.30 P.M. and thereafter the farfdebayan (Ext-2) of P.W.6 was recorded by Pirbahore police station. It was stated by the informant that some of the family members of appellant Praveen Kumar Singh had assisted him in commission of the offence.

6. On the basis of Ext-2, the FIR of the case (Ext-3) was drawn up by P.W.7 and he himself took up the investigation. He came to the village of occurrence and inspected the place where the occurrence had taken place. According to P.W.7, it was an open barren piece of land situated by the side of the road which was running from Pipra to some other places to its south. P.W.7 found marks indicating that the gram-plants had been roasted. He also inspected the surrounding houses and structures near about the place of occurrence and noted down their description in the case diary. He, thereafter, recorded the statements of witnesses, obtained the postmortem examination report and other documents from Patna and, finding the materials sufficient, sent up the accused Praveen Kumar Singh for trial.

7. As noted at the very outset, three other respondents of the Government Appeal were summoned u/s 319 Cr.P.C. and were also put on trial along with Praveen Kumar Singh which ultimately ended in the impugned judgement.

8. The defence of the accused persons was that no occurrence in the manner had really occurred and that the accused persons had been implicated falsely on account of some ill-will between the parties.

9. The prosecution examined eight witnesses in support of the case. P.W.1

Sheokaran Singh, P.W.2 Rambabu Singh who was also the son of P.W.6 and brother of deceased, P.W.3 Pradip Kumar Singh and P.W.4 Hare Murari Singh gave evidence on the point that they along with the deceased had on the day of the occurrence indulged in roasting of gram-plants when the occurrence took place. They implicated the four respondents of the Government Appeal in different acts by stating that the accused persons came there and started quarreling with them and when the deceased protested the intervention of the accused persons in the acts of the deceased and witnesses, there was an altercation and ultimately, accused Bimal Kumar Singh and Bijai Kumar Singh remonstrated to assault the deceased. They further stated that accused Sushil Kumar Singh caught the waist of the deceased and appellant Praveen Kumar Singh dealt blows with a piece of bamboo as a result of which the deceased was injured and fell unconscious who ultimately died in Patna. P.W.5 Ram Niwas Singh, an eye witness has also given account of the occurrence in the same manner as was given by P.Ws.1 to 4. P.W.6 Shivjee Singh is the informant of the case and he besides stating the fact that Praveen Kumar Singh dealt blows with a piece of bamboo upon his son, also stated that there was a remonstrance by two accused persons of the family of accused Praveen Kumar Singh and further that one young man caught the waist of the informant whereupon accused Praveen Kumar Singh brought a piece of bamboo from his Dalan (Dalan is a place meant for men folk of a family) and blows were given by appellant Praveen Kumar Singh repeatedly on the head of Ravindra Kumar Singh as a result of which he fell down unconscious and he was brought to Sadar Hospital, Ara from where the deceased was referred to Patna Medical College & Hospital and ultimately, Ravindra Kumar Singh died there. P.W.6 gave his statement (Ext-2) before the Pirbahore police. P.W.7, S.I. Raj Bali Choudhary is the investigating officer and P.W.8 Dr. Sunil Kumar Singh had held postmortem examination on the dead body of Ravindra Kumar Singh and prepared the postmortem examination report(Ext-4).

10. The defence did not examine any witness nor they produce any documentary evidence.

11. On consideration of the evidence on record the impugned Judgment was passed.

12. We have heard Sri Krishna Prasad Singh, the learned senior counsel appearing for the sole appellant of the Criminal Appeal and the four respondents in the Government Appeal. We have heard Miss Shashi Bala Verma in support of the Government Appeal and we have also heard Sri Ajay Kumar Thakur, the learned Counsel appearing for the informant in both the appeals.

13. Sri Singh, the learned senior counsel for the solitary appellant as also the four respondents, has taken us through the evidence of witnesses and contended that there are many pit-falls in the evidence of the prosecution. Sri Singh drew our attention, firstly, to the evidence of P.W.6 (informant) and submitted that as per the evidence of P.W.6 himself he remained in Ara for more than six hours and

was also approached by the police for giving his statement to them but not only did he not give the statement, but flatly refused to do it unless his son had regained consciousness. Sri Singh contended that in fact the informant was not knowing the facts of the case or in other words, the manner in which the occurrence had taken place and, as such, he was not ready to give his statement. It was contended further that the above conduct of the informant appears a doubtful conduct inasmuch as there could be probability arising out of the evidence that he may not be present on the day of occurrence at the village in the above connection. Sri Singh drew our attention to the evidence of P.W.1 Sheokaran Singh in paragraph 12 in which he has stated that he did not see the informant on the day of the occurrence and in fact, had met Rambabu Singh (P.W.2) and had stated to him about the facts of the occurrence. Sri Singh further contended that the informant in the same paragraph has admitted that when he had come back after performing the last rites of his son, he was told by P.W.5 Ram Niwas Singh and Ram Kumar Singh (not examined) as to who were the other accused persons who had caught hold of his son. This goes to indicate, submitted Sri Singh, that the informant was a person who was always inclined to lend his ears to others and act accordingly. Sri Singh was highly critical of the conduct of the informant, in not stating in the FIR itself that some other persons either remonstrated the accused Praveen Kumar Singh to assault or some one had caught hold of the waist of the deceased. It was contended that the basic prosecution case contained in Ext-2, appears being completely departed by the prosecution when the witnesses introduced the story that other boys like P.Ws.1 to 4 were also assaulted by the accused persons, as has been narrated by those witnesses. Sri Singh contended that when there is a tendency in the witnesses of changing the prosecution case from stage to stage or when there could be a tendency in a witness to implicate some innocent persons falsely, then the court must not accept the evidence of such witnesses to sustain the conviction.

14. Sri Ajay Kumar Thakur, the learned Counsel appearing for the informant, attempted his best to convince us that the informant may not have known the facts initially but as soon as he knew it, he was forthright in making his statements before the police as also in the court about the full facts of the case. Sri Thakur was candid in conceding as regards the acquittal of the three respondents than Praveen Kumar Singh of the Govt. appeal that order passed by the learned trial Judge appears proper. Sri Thakur was putting before us the background facts of the case, as appearing from the evidence of P.W.3 Praveen Kumar Singh and submitted that it was some days of holidays and the children were roaming around the fields and were indulging in the acts of preparing oraha and the occurrence appears taking place during that course. Sri Thakur contended that the pitfalls which were highlighted by Sri Singh, the learned Counsel for the appellant, may not be telling the whole of the prosecution case. Sri Thakur submitted that the Judgment passed by the learned trial Judge as regards the conviction of Praveen Kumar Singh appears partially not sustainable as the offence u/s 302 was clearly made out. Sri Thakur, as such, suggested to

us that we should upset the finding of the learned trial Judge acquitting the appellant Praveen Kumar Singh of the charge u/s 302 of the Penal Code and should hold him guilty, instead of an offence u/s 302 of the Penal Code and inflict an appropriate sentence as deemed fit and proper under the facts of the case.

15. The FIR of the fardbeyan may not be a substantive piece of evidence. Nonetheless, it does not lose the importance of being the basic document of the prosecution which contains many important details and facts. The defence could by reading out the contents of the document, like the fardbeyan and the FIR, to make a submission to the court as to what was the basic prosecution case and how the witnesses of the prosecution deviated from its fundamental story and have made improvements and embellishments. In other words, the defence could be entitled in making the submission on leading evidence by the prosecution in a manner different from the facts as narrated in the FIR. The defence, thus, may submit that the prosecution had admitted or had really created a third story which was never its case and as such could argue before a court of law not to accept the evidence of witnesses who have made a departure from their earlier statements or who have given evidence which could be in conflict with the basic prosecution story. This is why this Court had repeatedly held that FIR is the most potent weapon in the hands of the defence so as not only to challenging the very veracity of its story, but also the credibility of its witnesses.

16. When we come to the FIR, what we find is that many parts of the story which were presented by the witnesses specially, by the four boys examined as P.Ws.1 to 4 and also by P.W.5 were not contained in that document. Sri Thakur was submitting to convince us that the court must not lose sight of the psychological state of mind of the informant who was carrying his unconscious son from his village to Ara Sadar Hospital and from there to P.M.C.H. and, as such, the court should give some allowance to P.W.6 in not putting down in Ext-2 the story which was propounded by P.Ws.1 to 5 when they were stating before the court that other persons than appellant Praveen Kumar Singh also came with him simultaneously and assaulted them with fists and slaps and thereafter Praveen Kumar Singh, at the remonstrance of two accused persons namely, Bimal Kumar Singh and Bijai Kumar Singh gave repeated blows with a piece of bamboo on the head of the deceased. This part of the story is not in Ext-2, the fardbeyan. P.W.2 who is the son of informant and brother of the deceased was cross-examined on the above facts in paragraph 8 of his evidence. He has stated to be assaulted repeatedly. This story as narrated by P.W.2 does not appear to be stated by P.W.1 that he was also assaulted by one of the accused persons. Likewise, P.W.3 Pradip Kumar Singh also does not state as to who assaulted which of the witnesses as may appear from the very examination-in-chief of P.W.3. Thus, we find that this part of the story which was conspicuous by its absence in the FIR appears introduced by the witnesses. Not only that P.W.6 the informant has also given similar story in his evidence. This appears to us quite an improvement in the prosecution story which was not initially available to the court.

17. P.W.6 the informant did not state in his fardbeyan that any other person had either remonstrated or had assaulted the witnesses also. What was stated was that some other family members of appellant, Praveen Kumar Singh had also participated with him in the commission of the offence. It was not a case of simple participation by mere presence at the site of the occurrence, it appears from the reading of the evidence of witnesses a clear case of participation by doing some overt-act of administering assault to the witnesses and the deceased. The informant was an eye witness. He has stated in his fardbeyan that he saw the occurrence after going somewhere near the place of occurrence. The evidence of P.W.6 recorded by the learned trial Judge also gives the same impression that he was an eye witness. He had perceived the occurrence from his own eyes but he did not state the above facts in his fardbeyan.

18. Not only the above, he has also admitted in paragraph 6 of his evidence that he arrived in Sadar Hospital, Ara, the police came there and wanted to record his evidence, but he refused giving his evidence to them on the pretext that it was not possible for him unless his son had regained consciousness. Sri Singh was rightly contending that P.W.6 had remained in Ara for over six hours. This could be collected by reading the evidence of P.W.6 in paragraph 6 when he stated that he started from Ara for Patna when it was still some part of the night and when he reached P.M.C.H., Emergency Ward, it was almost dawn and ultimately the deceased died on that particular day at 5.30 P.M.. P.W.6 has stated that he reached Ara at 6 P.M. on 14.3.1992. Thus, Sri Singh has rightly contended that he was in Ara for almost the whole night of the incident, i.e., for more than six hours. It is not that he was all alone. He has admitted in his evidence in same paragraph 6 that when he started from the village with his injured son, he was accompanied by Ram Kumar Singh (not examined) who remained there with him and came back to his village by the same vehicle. He has further admitted that when he came back after performing the last rites of his son, he was informed by P.W.5, Ram Niwas Singh and Ram Kumar (not examined) as to who was the other person who caught his son and, accordingly, it could be deduced that he named the other accused persons only when he was told by the above two persons about their names. The above evidence raises an inference in our minds that P.W.6 is a person who was prone to listening to other persons and implicating innocent persons, else why should he not name those accused persons in the very fardbeyan which was given by him after more than 26 hours of the occurrence on 15.3.1992. One of the two persons, namely, Ram Kumar was with him for quite some time and it is expected on account of being in accordance with the ordinary human conduct, that the said Ram Kumar must have narrated to him the details of the incident or P.W.6 would have himself asked from him, as that witness had seen the assailants, as to who were the other accused persons than Praveen Kumar Singh. The very absence of the names of other accused persons appears to us a circumstance which belies the credibility which could be attached to a witness. We have already noted that TP.jW.6 appears a person who was prone to hear others and act accordingly

so as to implicating other accused. If this could be the conduct and behaviour of P.W.6, then we do not have any hesitation in noting that the implication of Praveen Kumar Singh might also be due to canvassing, upon the informant by the said Ram Kumar and others.

19. The above inference gets support from the evidence of P.W.1 in paragraph 12. We have some doubt about the very presence of P.W.6 at his village on the day of the occurrence. P.W.1 claims himself to be in the company of the deceased and P.Ws.2, 3 and 4 so as to roasting the gram-plants. P.W.1 has stated in paragraph 12 that he did not meet Shivjee Singh on the very day of the occurrence, rather he met P.W.2 Rambabu Singh who was the son of P.W.6 and further that P.W.1 had narrated about the incident to P.W.2. This line of evidence of P.W.1 in paragraph 12 raises two inferences that P.W.6, the informant may not be present on the day of occurrence at his village and further that P.W.2 Rambabu Singh may also not be present, as he has claimed, at the scene of occurrence. The reason is very simple for recording the above finding. If Rambabu Singh was really present at the scene of occurrence then why should P.W.1 narrate the facts of the occurrence to P.W.2. Thus, we doubt the credibility of the evidence of P.W.2 also. P.W.6 has admitted in his evidence in paragraph 2 at page 43 that he was residing outside his village since last 36 years. On perusal of the evidence of P.Ws.1 to 4, what we find is that on the day of the occurrence they could be within the age group of 6-7 years. So this could be very natural that most of the children of the village may not be known by P.W.6. It may not be an impossibility that most of his co-villagers may also not be known to him. When P.W.1 states that the informant was not seen on the day of occurrence at the village, then there could be a probability that he came to know about the assault on his son from others and, naturally, he had believed the statements made by others about the participants in the offence. In the above background there could be many probabilities that P.W.6 could be acting on account of being misled or misinformed as regards the manner of the occurrence. This could be the reason that many important facts happened to be rendered or introduced probably on account of being canvassed upon him by some persons. If this could be the probability, which appears staring in our faces, then it could be highly unsafe for us to sustain the conviction or to upset the order of acquittal.

20. We are not saying that Ravindra Kumar Singh was not murdered. He was really assaulted brutally and was killed, but we have serious doubt about the veracity of the evidence and about the truthfulness of the prosecution story. We also find ourselves inclined to take a view that possibility may not be ruled out that P.W.6 was acting at the tips of other so as to implicating persons. In the backgrounds of they evidences and inference coming out of them, we find that even the conviction of Praveen Kumar Singh on account of recording his participation appears suffering from grave doubt. It was a case in which Praveen Kumar Singh also deserved to be acquitted on account of being extended the benefit of doubt and that benefit of doubt we extend to appellant Praveen Kumar

Singh.

21. We allow this appeal and acquit him by setting aside the order of conviction and sentence passed by the trial court. For the reasons, we have just recorded, we dismiss the Government Appeal also. Appellant Praveen Kumar Singh is on bail. He shall stand discharged from the liabilities of his bail bonds.