

Satish Kumar Vs. State of Bihar

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Court : Patna

Decided On : May-08-2014

Judge : I.a. Ansari & Samarendra Pratap Singh

Appeal No. : Criminal Appeal (DB) No.1285 of 2008

Appellant : Satish Kumar

Respondent : State of Bihar

Advocate for Pet/Ap. : Mr. Ram Bejash Mahto

Judgement :

S.P. Singh, J.

1. The present appeal is directed against the judgment of conviction, dated 18.09.2008, and the order of sentence, dated 20.09.2008, passed by the learned Additional Sessions Judge, Fast Track Court No. IV, Begusarai, in Sessions Trial No. 442 of 2004, whereunder the accused-appellant has been convicted under Section 302 of the Indian Penal Code and Section 27 of the Arms Act, 1959. For his conviction under Section 302 of the Indian Penal Code, the accused-appellant, Satish Kumar, has been sentenced to undergo imprisonment for life and, for his conviction under Section 27 of the Arms Act, 1959, the accused-appellant, Satish Kumar, has been sentenced to undergo rigorous imprisonment for three years. Both the sentences having been directed to run concurrently.

2. The prosecutions case, as made out in the fardbayan of the informant, Sujeet Kumar Singh, son of Vishundeo Singh, resident of Village Hajipur, P.S. Barauni, District Begusarai, recorded by S.M. Khurseed, Sub Inspector of Police-cum-Officer-in-Charge, Barauni P.S., at about 2:00 hours, on 15.05.2004, at the door of the informant, in Village Hajipur, where a dead body was lying, is, in short, as follows:

(i) The informant (P.W.7) stated that the marriage of his sister, Kumari Nutan, was about to be solemnized, on 14.05.2004, with one Sanjay Rai, son of Sahdeo Rai. The baraat (i.e., bride grooms party) had come to his door and the function of marriage was in progress. At about 12 O'clock at night, the groom, Sanjay Rai, was brought to the door of the house of the informant for a ceremony, where garlands were exchanged between the bridegroom and the bride, and after about 10-15 minutes, informants sister also came to the door with her mother and other relatives. For the said purpose, a large number of persons, including family members, co-villagers, both male and female, were present on the occasion and as his sister, Kumari Nutan, stood to garland Sanjay Rai, at around 12.15 A.M., accused Satish Kumar, younger brother of the informants sisters husband (Surendra Kumar Suman), shot at the informants sister by a pistol standing at the verandah and while the first shot hit his younger sister on her right shoulder, the second shot hit his sister above her naval and, as a result thereof, she fell unconscious on the ground. Having shot at Kumari Nutan, as mentioned hereinbefore, accused Satish fled from the place of occurrence towards the northern side, but he was apprehended with pistol by the informant with the assistance of his co-villagers, namely, Ajit Kumar Singh, P.W.1, Sushant Kumar, P.W.2, Dharmendra Kumar Singh, P.W. 4, Chandradeo Singh, P.W.8 and Niranjana Kumar, P.W.9. The injured, Nutan Kumari, was carried, in a vehicle, to Begusarai for treatment, but she, unfortunately, succumbed to the injuries on the way to hospital and her dead body was brought back to the house of the informant.

(ii) It was alleged in the fardbayan that the motive, behind the occurrence, was that accused Satish Kumar wanted to marry Kumari Nutan and about 1 months prior to the occurrence, when talk of marriage of the informants sister with Sanjay Rai was almost at its final stage, accused Satish Kumar goaded the mother of the

informant and other family members to give Kumari Nutan in marriage to him (i.e., the accused), but as Sanjay Rai was an irresponsible person and had a criminal type attitude, no one was agreeable to his proposal to give Kumari Nutan in marriage to accused Satish Kumar. Being aggrieved, Satish Kumar had threatened them and had, now, shot Kumar Nutan to death.

(iii) On the basis of fardbayan, Barauni P.S. Case No.149 of 2004 was registered, under Section 302 of the Indian Penal Code and Sections 25(1-B)(a)/26/ 27 of the Arms Act, 1959, against the accused. During investigation, inquest was held over the dead body, which was also subjected to post mortem examination and, on completion of investigation, the police submitted charge sheet, under Section 302 of the Indian Penal Code and Sections 25(1-B)(a)/26/ 27 of the Arms Act, 1959, against the sole accused Satish Kumar.

(iv) At the trial, charges were framed under Section 302 of the Indian Penal Code and Sections 25(1-B)(a)/26/ 27 of the Arms Act, 1959, and the accused pleaded not guilty thereto and claimed to be tried.

3. The prosecution examined altogether 13 witnesses, namely, P.W.1 Ajit Kumar, who is witness to the occurrence as well as inquest report, P.W. 2, Sushant Kumar, who is a relative of the informant and also a witness to the occurrence, P.W.3, Rajendra Prasad Singh, is a co-villager of the informant and also a witness to the occurrence as well as to the making of the seizure list (Ext.6) with regard to seizure of a pistol and one cartridge, P.W. 4, Dharmendra Kumar Singh, co-villager of the informant, is not only a witness to the occurrence, but also a witness to the fardbayan (Ext.5) and inquest report (Ext.7), P.W.5, Awdhesh Singh, is brother of the informant and also a witness to the occurrence and to the seizure list (Ext.6), P.W.6, Vishundeo Singh, is the father of the informant and is also a witness to the occurrence, P.W. 7, Sujeet Kumar Singh, is the informant himself, P.W. 8, Chandradeo Singh, is a co-villager of the informant and a witness to the occurrence, P.W. 9, Niranjana Kumar, is a cousin of the informant and also a witness to the occurrence, P.W. 10, Dr. Gopal Mishra, conducted post mortem on the said dead body and has proved post mortem report (Ext.4), P.W. 11, Sulochana Devi, is mother of the informant and a witness to the occurrence, P.W.

12, Pukari Devi, is Mausi (mother's sister) of the informant and is a witness to the occurrence, and P.W. 13, S. M. Khurseed, Officer-in-Charge, Barauni P.S., is the Investigating Officer of the case and has proved fardbayan, production-cum-seizure list as well as the inquest report.

4. In his statement under Section 313(1)(b) of the Code of Criminal Procedure, the accused claimed that he was innocent and had not committed any offence.

5. The defence examined one witness, namely, Bipin Kumar Singh, and exhibited four photographs, which are marked as Ext. A to A/3, and their negatives, marked as Ext. B to B/3.

6. On considering the materials on record, the learned trial Court has convicted the accused under Section 302 of the Indian Penal Code and Section 27 of the Arms Act, 1959. However, the learned trial Court has acquitted the accused of the charge under Section 25(1-B)(a)/26 of the Arms Act, 1959, for want of sanction from the District Magistrate and also on account of fact that the expert, who had examined and seized the pistol and cartridge, has not been examined and, thus, the charge aforesaid does not stand proved.

8. Having convicted the accused, as mentioned hereinbefore, learned trial Court passed sentences, which we have mentioned above. Aggrieved by his conviction and the sentences, which have been passed against him, the accused, as convicted person, has preferred this appeal.

9. We have heard Mr. Ram Bejash Mahto, learned Counsel for the appellant, and Mr. Ashwini Kumar Sinha, learned Additional Public Prosecutor for the State.

10. As noticed above, prosecution examined altogether 13 witnesses in support of its case and, out of them, P.W. 5, Awadhesh Kumar Singh, is the brother of the informant, P.W. 6, Vishundeo Singh, is the father of the informant, P.W.7, Sujit Kumar Singh, is the informant himself, P.W.9, Niranjana Kumar, and P.W. 11, Salochna Devi, are family members of the said deceased, P.W. 2, Sushant Kumar Singh, and P.W. 12, Pukari Devi, are relatives of the said deceased; whereas P.W. 1, Ajit Kumar Singh, P.W. 3, Rajendra Prasad Singh, P.W. 4, Dharmendra Kumar

Singh, and P.W. 8, Chandradeo Singh, are co-villagers.

11. The informant, in his examination-in-chief, has supported the prosecutions case and proved his signature on fardbayan (Ext.5). He has stated that on 14.5.2004, the marriage of his sister, Kumari Nutan, was going to be solemnized with Sanjay Rai, the groom with baraat party (i.e. bride grooms party) had arrived, and, at about 12 O Clock, at night of 14.5.2004, as the informants sister, Kumari Nutan, rose to garland the groom, accused Satish Kumar fired two shots on his sister from northern gate of the verandah. While the first shot hit his sisters upper portion on the right shoulder, the second shot hit her abdomen just above her naval and, on account thereof, his sister fell unconscious on the ground, some blood slashed on the wall, the accused was chased, he was caught and a pistol was recovered from him. It is in the evidence of the informant (PW 7) that when his sister was being carried, in a vehicle, she succumbed to the injuries and her dead body was brought back to the informants house, the police came between 1.30 AM and 1.45 AM and recorded his statement, the police prepared seizure list of pistol and empty cartridge, whereupon the witnesses put their signatures therein and that, the inquest report was also prepared in his presence. It is also in the evidence of the informant (PW 7) that the accused had killed his sister, because the informant and his family members were not agreeable to give Kumari Nutan in marriage to the accused and that the accused had threatened them with dire consequences.

12. In the cross-examination, P.W.1 has stated that initially, the relation between the accused, who happened to be younger brother of his sisters husband, was cordial, but it, later on, turned sour as the accused was forcibly trying to marry the informants sister, Nutan Kumari. It is in the evidence of the informant that the accused had, time and again, proposed to marry Nutan Kumari, but his proposal was turned down. However, in paragraph 11 of his cross-examination, the informant has stated that he never made any complaint regarding the conduct of the accused. He denied the suggestion that his sister was in love with the accused.

13. In his further cross-examination, PW 1 has stated that there are two routes for Begusarai from his village; one via Zero Mile and other via Barauni Block. There is one Police Station near Zero Mile and also some outposts, but they did not give any information about the incident either while carrying the injured to hospital or while bringing her dead body home. In paragraph 25 of his cross-examination, PW 1 has stated that he bodily lifted his sister to the car for carrying her for treatment and, in the process, his cloths got stained with blood and some of the blood even fell in the car.

14. P.W. 2, Sushant Kumar Singh, a co-villager and relative of the informant, supported the prosecutions case inasmuch as he has stated that as soon as bride, Nutan Kumari, rose to garland Sanjay Rai, accused Satish Kumar fired at her and, on hearing the sound of firing, he rushed towards her and, in the meantime, the accused fired another shot at her, whereupon he (PW 2), along with others, chased and caught hold of the accused and brought him to the house and that the accused threw pistol like article, while fleeing. It is in the evidence of PW 2 that after some time, the police arrived and seized one country-made pistol and one empty cartridge.

15. P.W. 3, who, too, claims to be an eye witness, has deposed that he was present at the door of the informant at about 12 O'clock, when accused Satish Kumar Rai opened fire at the bride, while she was about to garland the groom. This witness has also deposed that Satish fired two shots, the first shot hit her right shoulder and the second shot hit her abdomen and though the accused fled towards the north, he was chased and caught and, then, brought to the door of the informant, a pistol was recovered from the possession of the accused and an empty cartridge and bullets were recovered from the place of occurrence. It is in the evidence of PW 3 that he signed the seizure list, which was also signed by P.W. 5 (Awadhesh Kumar Singh). He proved his signature, which was marked as Exhibit-2. he also proved the signature of Awadhesh Kumar Singh, which was marked as Ext.2/1. In paragraph 7 of his cross-examination, he has stated that the accused was apprehended within 20 minutes of firing.

16. P.W. 4 has deposed that on the night of marriage, at about 12 O'clock, he was present at the door of the informant and as soon as Nutan Kumari rose to garland the groom, two shots were fired at her by the accused, who was chased and caught, a pistol and an empty cartridge were recovered from him and that front part of an empty cartridge was found at the verandah. He identified his signature on the fardbayan, which has been marked as Exhibit-3. He has admitted, in his cross-examination, that no information was given to the police out post either during the journey to the hospital or while bringing the dead body home, though police posts fell on the way.

17. P.W. 5 is brother of the informant. His evidence is that a pistol was recovered from the accused and that one empty cartridge and front part of an empty cartridge was recovered from the place of occurrence.

18. P.W. 6, Vishundeo Singh, is the father of the deceased. He has deposed that he, too, heard sound of two shots being fired. In his cross-examination, he has stated that Nutan Kumari was not wearing any ornaments at the time of wedding.

19. The evidence of P.W. 8, Chandradeo Singh, is not relevant inasmuch as he has stated that the police had not recorded his statement.

20. P.W. 9, Niranjan Kumar, is a cousin of the informant. He has deposed that tents and shamiyana were fixed at the field towards west of the house of the informant and many people had assembled for the baraat (i.e. bridegrooms party) and that he, too, had heard the sound of two shots being fired and the bullet hit Nutan Kumari.

21. P.W. 10 (Dr. Gopal Mishra) conducted post mortem examination on the dead body of the said deceased, on 15.05.2004, at 09.40 A.M, and found the following ante mortem injuries on the dead body of Kumari Nutan:

œ(i) Firearm projectile wound of entry ? in diameter with adjoining skin blackened and scorched in an area of 1 ? x 1? over epigastrium right side.

(ii) Firearm projectile wound of entry ? in diameter over right shoulder just below right coracoids process with margins blackened and communicating with injury

No.(iii)

(iii) Firearm projectile wound of exit 1? x ? and communicating with injury no.(ii) over right deltoid.

On dissection abdominal cavity was found full of blood and blood clots.

Liver was lacerated, stomach was empty, spleen and kidneys were pale. All major vessels in abdomen besides L4-L5 vertebra were lacerated and one bullet was present besides L4-L5 vertebra.?

22. The doctor has opined that death of the deceased was due to hemorrhage and shock as a result of the aforementioned injuries caused by fire-arm.

23. It is in the evidence of the doctor that the said dead body, with its belongings and one bullet recovered from the dead body and kept in a sealed glass, was handed over by him (PW 10) to the accompanying police personnel. The doctor (PW 10) has proved the post mortem report as Exhibit-10.

24. P.W. 11 (Sulochna Devi) is mother of the said deceased. This witness has deposed that on the date of the occurrence, marriage of her daughter, Nutan Kumari, was to be solemnized and baraat, (i.e. bridegrooms party), had come from Bhagalpur. This witness has also deposed that she, along with others, went to her door for varmala (i.e. exchange of garland between the bride and bridegroom), when accused Satish Kumar fired. The first shot hit the right shoulder of Nutan Kumari and the second shot hit her abdomen.

25. P.W. 13 (Syed Md. Khursheed) is the Investigating Officer of this case. His evidence is that while he was posted as Officer-in-Charge, Barauni P.S., an information was received that a girl was murdered, at Village Hajipur, by firing, while she was about to garland her groom and, on receipt of the information, he, along with police party, reached the village within 15-20 minutes, where he recorded the fardbayan of the informant, which has been marked as Ext.5. It is in the evidence of the Investigating Officer that the informant produced a pistol, front portion of a cartridge and an empty cartridge, which were seized by him in presence of P.Ws. 3, 5 and the informant. The Investigating Officer has deposed

that he prepared inquest report of dead body of the said deceased in presence of P.W.4 and P.W. 1, which is marked as Ext.7. It is in the evidence of the Investigating Officer (PW 13) that the accused Satish Kumar was produced before him by the villagers, whom he arrested, he found blood at the place of occurrence and got the recovered fire-arm examined by Sergeant Major and obtained his report.

26. Learned Additional Public Prosecutor has submitted that the prosecution has been able to prove the charge under Section 302 of the Indian Penal Code and also Section 27 of the Arms Act, 1959, against the accused-appellant.

27. Learned counsel for the appellant submits that the prosecutions case is full of infirmities and the evidence of the witnesses is in conflict with each other. In this regard, he submits that while P.W.3, P.W.6 and P.W.7 have stated that the pistol was recovered from the possession of the appellant, P.W. 1 and P.W.2 have stated that the accused threw away the pistol, while fleeing. He next submits that the story of marriage ceremony is concocted inasmuch as the Investigating Officer had, neither in the case diary nor in the inquest report, stated that the said deceased was wearing any ornaments or had applied any Mehndi (i.e., henna) on her hand. Similarly, points out the learned counsel for the appellant, there is no mention of any tent or marwa in the case diary at the field, where the bridegrooms party had assembled. Learned counsel for the appellant further submits that the learned trial Court did not consider the photographs, namely, Ext. A to A/4 and Ext. B to B/3, which would show that Kumari Nutan wanted to marry the appellant.

28. Learned Counsel, for the appellant, has strenuously argued that wound of entry was ? in dimension, which would prove that the bullet used was .505; whereas the pistol, which is alleged to have been seized from the possession of the appellant, could fire bullet of .303 dimension.

29. We find from materials on record that though the ballistic report was prepared, the same has not been produced as an exhibit. Further-more, Sanha No. 232, dated 15.05.2004, entered at 01.30 A.M., at Police Station, Barauni, in response to the order of the learned trial Court, has not been exhibited.

30. Situated thus, we are of the clear view that the conviction of the accused-appellant and the sentences passed against him need to be set aside and the case needs to be remanded to the learned trial Court with direction to dispose of the case after bringing on record Sanha No. 232, dated 15.04.2004, and after examining the ballistic expert and taking on record the report of the said examination. We may, however, hasten to add that the infirmities pointed out in the evidence of various witnesses are minor in nature and borne out of the circumstances of the present case, when a bride had been shot at and killed moments before she was to put varmama (i.e., garland) on the neck of her bridegroom and, hence, the contradictions, which the appellant has pointed out, are natural and cannot be taken to have affected the substratum of the prosecution case.

31. We have consciously avoided expressing any opinion of ours on the merit of the case lest it prejudices the learned trial Court in coming to its own independent conclusion after considering the ballistic experts report along with other evidence, which may come on record, including Sanha No. 232, dated 15.05.2004, entered at 01:30 AM, at Barauni Police Station.

32. For the reasons aforementioned, this appeal is partly allowed and the impugned judgment of conviction, dated 18.09.2008, and the order of sentences, dated 29.09.2008, passed by the learned Ad hoc Additional Sessions Judge, F.T.C. IV, Begusarai, in S.T. No.442 of 2004, arising out of Barauni P.S. Case No.149 of 2004, are hereby set aside and the case is remanded to the learned trial Court for disposal, in accordance with law, within three months from the date of receipt/production of a copy of this order.

33. However, in the facts and circumstances of the case, we are not inclined to release the appellant from jail custody and the question of his release would be subject to the outcome of the trial.

34. Send back the Lower Court Records along with a copy of this judgment and order.