

Bijay Kumar Singh Vs. the State of Bihar

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Court : Patna

Decided On : Apr-24-2014

Judge : Dharnidhar Jha

Appeal No. : Criminal Appeal (SJ) No. 452 of 2002

Appellant : Bijay Kumar Singh

Respondent : The State of Bihar

Judgement :

1. The solitary appellant, Bijay Kumar Singh was put on trial in Sessions Trial No. 72 of 1992/69 of 1997 by the learned Sessions Judge, Sitamarhi after being indicted of committing offence under Sections 307 and 452 of the Indian Penal Code. It appears that the judgment was ultimately delivered by the learned 3rd Additional Sessions Judge, Sitamarhi on 07.08.2002 by which the appellant was held guilty of committing the two offences, he had been charged with. The appellant was heard on sentence on 08.08.2002 and was directed to suffer rigorous imprisonment for ten years as also to pay a fine of Rs. 5,000/-, else to suffer rigorous imprisonment for one year after being convicted under Section 307 of the Indian Penal Code. The appellant was also to undergo rigorous imprisonment for two years due to having been held guilty under Section 452 of the Indian Penal Code. The appellant has filed the present appeal to challenge the correctness of the findings as regards his guilt and the appropriateness of the order of sentence passed upon him.

2. P.W.6 Hari Kishore Singh, as per his Fardbeyan (Ext.1) was sleeping in his Khalihan after having taken his meals in the night on 08.04.1991. He was awakened by this appellant at 11 P.M. and after he awoke, the appellant is alleged to have said to him that the informant was exceeding his limits and saying that dealt a blow with the knife which was in the hand of the appellant into the belly of P.W.6 the informant. The informant was deeply injured and raised alarms shouting that the appellant had stabbed him and was running away into the fields. He, any how collected himself and after putting his hand on the wound ambled up to his house and narrated the incident to his uncle Ram Akshay Singh (P.W.5) who also raised alarms upon which Nandan Singh (P.W.4), Laxman Singh (not examined), Ramchandra Singh (P.W.3) and Arun Kumar Singh (P.W.1) came there and finding the informant seriously injured brought him to Sadar Hospital, Sitamahi where he was treated.

3. As regards the reason for the occurrence, the informant alleged that the present appellant who was one of his agnates, had some dispute with the informant who had been stopped from using a particular path way so as to accessing his house. It was further stated that some domestic matters were also the reasons for the strained relationship between the informant and the present appellant when the informant and his uncle P.W.5 had intervened into the incident of burning his wife by the appellant and on that day also this appellant had assaulted the informant.

4. The Investigating Officer has not been examined and as such, it is not available from record as to how the investigation had proceeded but it appears sufficiently indicated by the record that after close of the investigation, the appellant was sent up for trial which resulted in the impugned judgment.

5. The defence of the appellant was that the informant was a bad character and he had many other enemies also and probably someone amongst them had settled some scores with the informant and he had wrongly and falsely implicated the present appellant for personal grudge and animosity.

6. During the course of trial, the prosecution examined as many as seven witnesses while the defence produced two witnesses. Out of seven prosecution witnesses, P.W.1 was not an eye-witness to the occurrence and he claimed

having learnt about the details of the occurrence from the injured informant. P.W.2 Ram Kishore Singh was the full brother of the informant and he projected himself as an eye witness. P.W.3 Ramchandra Singh and P.W.4 Nandan Singh both named in the First Information Report did not support the prosecution story and both of them, as such were declared hostile. P.W.5 Ram Akshay Singh was the uncle of the informant who was informed about the incident by P.W.6 just after the incident of stabbing him by the appellant and P.W.7 Dr. Yogendra Mahto had examined the informant and had issued the medical certificate Ext.2.

7. So far as the defence case was concerned, D.W.1 Madan Mishra was giving evidence on the bad character of the informant and was stating that there had been many Panchayatis on complaint against the behaviour of the informant. D.W.2 Baliram Singh had given evidence that there had not been any incident as was alleged by the informant and in fact after having heard a Halla, D.W.2 reached the Khalihan of the informant where people was stating that the informant had been stabbed by someone else and was lying injured there. D.W.2 was also stating that he did not find any blood anywhere in the Khalihan.

8. Addressing the Court on the merits of the appeal, it was submitted by Shri Ajay Kumar Thakur, learned counsel appearing for the appellant that there was some vital variance in the evidence of witnesses. Submission was that the informant stated that the police first recorded his statement and thereafter the doctor had started his treatment whereas the injury report issued by the Investigating Officer, which is part of the judicial record and on which basis Ext.2 the injury certificate was issued, indicated that when the Investigating Officer had arrived at the hospital, he had found the informant already bandaged and as such had issued the requisition for obtaining the injury certificate in respect of the informant. It was further submitted that the claim of P.W.2 Ram Kishore Singh that he was an eye witness to the occurrence appears not acceptable on the very basis of his own evidence in cross-examination and that also appears probable on the ground that no such statement was made in the Fardbeyan by the informant that anyone was around and had seen the incident of stabbing him by the appellant. Submission also was on the constitution of the offence and by drawing the attention of the Court to Section 320 as also to Section 307 of the Indian Penal Code, it was

contended that the doctor did not state that the injury which was found by him on the person of the informant was dangerous in the ordinary course of nature or that it could be as dangerous as to put into peril the life of the injured. It was contended in the above context that the doctor had not even stated that the injury could be grievous and as such the offence constituted on facts, could be that under Section 324 of the Indian Penal Code.

9. Smt. Abha Singh, learned Additional Public Prosecutor had submitted that it was a case which attracted the provisions of Section 307 of the Indian Penal Code and the sentence which was passed upon the appellant was also appropriate.

10. Out of seven prosecution witnesses, as pointed out earlier, P.Ws.3 and 4 had turned hostile. P.W.1 Arun Kumar Singh had stated that he woke up on hearing Halla and found that the informant was holding his belly and had stated that it was this appellant who had stabbed him. In cross-examination the witness had very well admitted that he had not himself seen any part of the occurrence and whatever he learnt about the incident, it was from P.W.6 the informant. What I further find is that nothing was brought into his short cross-examination to discredit the witness as regards his trustworthiness. As regards P.W.2, he claimed himself to be an eye witness and stated that while he was sleeping in his room and when he came out of it, he found the appellant simultaneously stabbing the informant. In cross-examination (paragraph 4) the witness stated that it was a dark night and that he came out just at the nick of time to witness the informant being stabbed. There are many reasons for not accepting P.W.2 as an eye witness, the first being that no such statement was made by the informant that anyone had been around to see the occurrence. The witness himself stated that he was sleeping inside the room. Prior to being stabbed there was neither a Halla nor any alarms raised by anyone. It may not be probable that someone wakes up and comes out of the room. It also appears surprising that P.W.2 could be getting up from his bed to come out of the room at the very nick of time so as to see the appellant stabbing the injured. The other circumstance which appears from the evidence of P.W.2 is that he is the full brother of the informant as appears from paragraph 3 of the evidence of P.W.2. What he stated in paragraph 5 is that in spite of seeing his own brother being stabbed by the appellant neither he raised any Halla nor did he

make any attempt to chase or catch the assailant of his brother. He also does not appear reaching out to his brother so as to helping him out in moving from the Khalihan up to his house where he met his uncle P.W.5 who narrated the story. The curious evidence of P.W.2 was that he simply followed his brother silently so as to reaching his house with him. It does not appear from the evidence of P.W.2 that he even had an exchange of words with his full brother. This is all absurd and unnatural conduct of a full brother who had seen the whole incident occurring with his own eyes and in front of him. On these reasons, I am very much reluctant to accept the claim of P.W.2 that he could be an eye witness to the occurrence.

11. P.W.5 is Ram Akshay Singh and his name appears in the First Information Report as the person who had been related the facts of the incident by P.W.6. P.W.5 also stated that while he was sleeping, the informant came there in a pull of blood holding his belly to inform him that it was this appellant who had stabbed him in his belly whereafter the appellant ran away into the fields. This witness also appears honest in stating that he had not seen the incident with his own eyes and had learnt about the incident from P.W.6 while he was all alone at his house. It appears from paragraph 7 of the evidence of P.W.5 that attention of the witness was drawn to a specific fact that he had stated to the Investigating Officer that the informant had been stabbed at the Dalan. The witness has stated that there was no distinction between the Dalan and the Khalihan. Even if he had stated the fact that the informant had been stabbed at the Dalan, in my considered view it was not such a material contradiction so as to changing the place of occurrence which attempt was seriously made by the defence while cross-examining P.W.5 in paragraph 7. P.W.5 was the witness who had stated to the motive part of the occurrence and it appears from paragraph 7 of his evidence that there was some ill will between the parties on account of some obstruction to the path way created by the appellant against the informant. The informant Hari Kishore Singh has supported his case in the same manner as he did while lodging the report. During his cross-examination he was put questions on all aspects of the incident and the story narrated by him as to when he had gone to sleep in the Khalihan and further as to when he was stabbed. P.W.6 stated that when he was asleep he was awakened by the appellant and he was stabbed into his belly. At that particular time he was lying by his back and the appellant stabbed him with the Chhura, he

was armed with. There were certain questions put to P.W.6 on his conduct as to whether he was frightened after seeing the Chhura and it appears from perusal of his evidence in paragraph 5 that his reply to that question was quite natural when he stated that ayes, he was frightened after seeing the weapon?. P.W.6 further stated that no sooner than he was awoke, the appellant stabbed him and did not give him any time to run away from the line of attack. P.W.6 also stated that the appellant was already holding the Chhura in his hand and after having stated to him that he has assumed bigger proportions, he simultaneously dealt the blow. On perusal of the evidence of P.W.6, I find the witness inspiring the confidence of the Court and there does not appear a single fact which could render his evidence unsafe to accept.

12. P.W.7 Dr. Yogendra Mahto had treated P.W.6 Hari Kishore Singh in Sadar Hospital, Motihari and had found a penetrating wound 2? x 1? x abdominal cavity deep. P.W.7 has found a part of intestine popping out of the aperture caused by the blow, the margin of which was sharp.

During hearing of the present appeal, the attention of the Court was drawn to the cross-examination part of the evidence of P.W.7, specially to that part in which P.W.7 stated that the injury might have been caused 24 hours prior to the examination of P.W.6 by P.W.7. It was submitted in the above connection that the time of occurrence in the light of the above evidence of P.W.7 could not be said to be established or in other words, it may be doubtful that the informant had indeed been stabbed at the place and also at the time he had claimed being hit by the blow. It is true that P.W.7 has stated that the injury could have been caused 24 hours prior to his examination, but that particular line could not lead to the only conclusion that the injury could have been caused not at any point of time in between the time of examination of P.W.6 by P.W.7 and 24 hours prior to that time. In my opinion, prior to 24 hours also includes the time at which P.W.7 had examined P.W.6 and as such it could not be said that there was any defect in the prosecution case as a result of which the time of occurrence and, as such, the place of occurrence may be improbabilized. On perusal of the evidence of witnesses, what I find is that the material was sufficiently produced by the prosecution to establish that it was this appellant who had stabbed the informant.

13. It was submitted during argument that the night being dark, as was stated by P.W.2 in paragraph 4 of his evidence, the identification of the appellant would have been difficult or impossible. I want to point out that it is not denied that the appellant and the informant were very closely related by blood and as appears from the evidence, their houses were situated probably side by side to each other and so was the reason that there was obstruction to the easementary right of the informant when his path way was blocked which led to his house. In such a close relationship even a person approaching so closely as to give a blow with Chhura to the other could very well be recognized by the injured. Moreover, the fact is consistently available that before giving the blow the present appellant had awakened the informant and had also told him that he had assumed some bigger proportions and thereafter had given the blow. The informant had been awakened and he had been duly frightened on account of being awakened and on account of having seen the Chhura and having experienced the incident, must have been left with some indelible mark on his mind as regards the identity of the person who had indulged into the act of stabbing him. In that view of the matter, I find that there would not have been any difficulty for the informant in identifying the appellant. The evidence is so consistent as to lead to no doubt that it was this appellant who had stabbed the informant.

14. After having said the above, what requires to be considered is the contention of the learned counsel for the appellant on the constitution of the offence. While drawing the attention of the Court towards the evidence of P.W.7, it was contended that P.W.7 had not given any opinion that the injury was dangerous to life in the ordinary course of nature or that it was even grievous in nature. It was contended that it is true that the intestine had protruded out of the aperture caused by the blow, but the injury did not fall under any of the eight-clauses of Section 320 of the Indian Penal Code. It was as such submitted that the conviction of the appellant under Section 307 of the Indian Penal Code was not sustainable.

15. Section 307 of the Indian Penal Code punishes an act which is done with such intent or knowledge and under such circumstances that if the offender by that act has caused the death of the victim he would have been guilty of murder. The act has to be planned with some intent or knowledge and simultaneously it has to be

executed under certain circumstance as to bringing it into the purview of the offence of attempt to commit murder of a person. An injury may not be caused and an act in itself be sufficient to constitute the offence, if other ingredients of the offence are sufficiently established by evidence. The act of giving a blow with Chhura may in itself reflect either the intention or the knowledge which was occupying the mind of the accused. In addition to the above, the circumstances which were attending on the commission of the act have also to be considered. While considering those circumstances what I find is that the appellant was motivated to do the act, i.e., to giving a Chhura blow to the informant merely because there was some dispute in respect of a path way. He had chosen a time as late as of 11 P.M. and, that too, when the informant was fast asleep in his Khalian. The place as appears from the evidence was quite secluded. There was no one around it. I have already discarded the evidence of P.W.2 who claimed that he was sleeping in a house situated nearby. The appellant was armed with as dangerous a weapon as a Chhura and the blow could be as decisive as appears to have pierced into the abdomen of the informant to cause the injury described by P.W.7. The omentum had come out of the injury. The evidence of P.W.5, the uncle of the informant, indicated that he was in a pool of blood but still he managed to hold his injury to come to his house to narrate the incident to P.W.5. His family members and others who were attracted on account of the shouts of the informant and his uncle as may appear from the evidence of P.W.6 arranged for a vehicle immediately and as may appear further from the evidence of P.W.6 rushed him to Sitamarhi Sadar Hospital, skipping the hospital at Riga where as per P.W.6 the facilities were not as good as could be available in Sitamarhi Sadar Hospital. Use of a weapon, and the part of body chosen for giving the blow as also the injury, in my view, coupled with the circumstances attending on the doing of the act are some of the parameters upon which the constitution of an offence under Section 307 of the Indian Penal Code has to be judged. I have noted some of the important circumstances which are established by facts of the case. The appellant was motivated on account of some trivial dispute and he had not only prepared by arming himself for committing the offence but had duly armed himself by picking up a Chhura. He had chosen an hour of the night where no one was around and then probably under the state of mind that he was giving final blow to the injured

had awakened him and had given him the blow in his belly. It is true that the doctor had not categorized the injury either as grievous or sufficiently dangerous to life in the ordinary course of nature but, the very description of injury no. 1 coupled with the circumstances I have just indicated clearly constitute an offence under Section 307 of the Indian Penal Code.

16. It was contended that the offence was committed in the year 1991 and the judgment was delivered sometimes in August, 2002 and this Court has taken up the hearing of the appeal in 2014. It was as such contended that the sentence of ten years with a fine of Rs. 5,000/- was excessive. I need not revert back to the facts of the case, I have just noticed those circumstances and facts and those circumstances in my considered opinion justify the sentence of rigorous imprisonment for ten years with a fine of Rs. 5,000/-, with further rigorous imprisonment for one year in case of making default in payment of fine. Likewise, conviction of the appellant and the sentence passed upon him under Section 452 of the Indian Penal Code also does not appear excessive.

17. In the result, I find no merit in the appeal and the same is dismissed. The appellant is on bail. The bail bond is cancelled. He shall surrender to the custody of the Court below to serve out his sentences.

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