

State of Bihar Vs. Triloki Singh

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Court : Patna

Decided On : Mar-10-1999

Judge : Bisheshwar Prasad Singh and P.K. Sarkar, JJ.

Acts : [Arms Act, 1959](#) - Sections 7, 27 and 27(3); [Indian Penal Code \(IPC\), 1860](#) - Sections 302, 307, 376, 448 and 511; Code of Criminal Procedure (CrPC) - Sections 217

Appeal No. : Death Ref. No. 4 of 1998 and Cri. Appeal No. 103 of 1998

Appellant : State of Bihar

Respondent : Triloki Singh

Advocate for Def. : Mridula Mishra, Manoj Kumar and Jhaand Dharmendra Kumar Jha, Adv.

Advocate for Pet/Ap. : Ganesh Prasad Jaiswal, Adv.

Prior history : Bisheshwar Prasad Singh, J. 1. The sole appellant herein, namely, Triloki Singh was put up for trial before the 2nd Additional District and Sessions Judge, Chapra in Sessions Trial No. 175 of 1997 charged of offence under Sections 302 and 376/511 of the Indian Penal Code having attempted to commit rape on Samshunisha and in the process killing her minor son Naushad who clung to her out of fear at the time of occurrence. It appears from the order-sheet of the trial Court that after the argum

Judgement :

Bisheshwar Prasad Singh, J.

1. The sole appellant herein, namely, Triloki Singh was put up for trial before the 2nd Additional District and Sessions Judge, Chapra in Sessions Trial No. 175 of 1997 charged of offence under Sections 302 and 376/511 of the Indian Penal Code having attempted to commit rape on Samshunisha and in the process killing her minor son Naushad who clung to her out of fear at the time of occurrence. It appears from the order-sheet of the trial Court that after the arguments had been concluded in the case, the trial Court framed a charge against the appellant under Section 27 of the Arms Act on 23rd January, 1998 which was read over to the appellant to which he pleaded not guilty. The matter was then put up for argument on 2nd February, 1998 and thereafter by his judgment dated 10th February, 1998 the learned trial Court found the appellant guilty of the offence under Section 302 of the Indian Penal Code and Section 27 of the Arms Act. The trial Court then heard the parties on the question of sentence and by his order dated 17th February, 1998 he sentenced the petitioner to death Under Section 302 of the Indian Penal Code and also sentenced him to pay a fine of Rs. 1,000/- and in default to undergo simple imprisonment for three months. He also sentenced the petitioner to death under Sub-section (3) of Section 27 of the Arms Act. The trial Court, however, acquitted the appellant of the charge under Sections 376/511 of the Indian Penal Code.

The appellant has preferred Criminal Appeal No. 103 of 1998 against his conviction and sentence, while the trial Court has made a reference to this Court for confirmation of his sentence of death being Death Reference No. 4 of 1998.

2. The case of the prosecution is that on the night intervening the 11th and 12th June, 1996 at about midnight the appellant taking advantage of the fact that most. Samshunisha the informant, was sleeping in her house with her minor son, since her husband was not present, entered the house of the informant with a view to commit rape on her. The informant resisted his attempt and in the process her minor son Naushad woke up and clung to his mother out of fear. The appellant

threatened the informant to separate her son or else her son would be killed. Since the child clung to his mother, he took out his pistol and shot him from close range. The informant came out with her son and cried for help which attracted co-villagers to the place of occurrence and thereafter the injured child was brought to the Sadar Hospital at Chapra where he was treated for the injuries caused to him. However, the minor son Naushad succumbed to his injuries.

3. The prosecution has examined seven witnesses in support of its case. Most. Samshunisha, the informant, was examined as PW-2. The Fardbeyan of Samshunisha PW-2 was recorded by ASI Bishundeo Yadav of Bhagwan Bazar Police Station, at 8-15 a.m. on 12th June, 1996 at Emergency Ward of Sadar Hospital, Chapra. On the basis of the said Fardbeyan a formal First Information Report was drawn up and a case was registered against the appellant under Section 448, 376, 511 and 307 of the Indian Penal Code as also under Section 27 of the Arms Act. After the death of Naushad, Section 302 was added. In her Fardbeyan the informant Samshunisha PW-2 stated that she was a resident of Village Banwari Basant. She stated the age of her son Naushad Ali to be about 10 years. Her statement is that on the preceding night while she was lying on the ground in the courtyard of her house, after cooking meal, she went to sleep. Her son Naushad also slept on the ground besides her. Another son of hers, younger than Naushad, slept on the other side. At about 12 o'clock) in the night she saw that one person entered her 'angan' after removing the gate of her house and caught hold of her and asked her to lie down. He was asking her to lie down with bad intention. She told that person as to why he was trying to do this with her since she recognised him. That person was the appellant Triloki Singh son of Pravesh Singh, Mukhia of the village. In the meantime her son Naushad woke up and clung to her uttering 'amma' 'amma'. The appellant threatened her son to keep away or else he would kill him. Thereafter he fired a shot at her son with his pistol almost touching his body. The shot injured her son on the left and right shoulder and as a result her son fell down on the ground wreathing in pain and smeared with blood. She ran out of the house carrying her son in her lap and crying for help. Her crying for help attracted Yusuf Mian (PW-1), Tulla Mian (PW-3), Qadir Mian (PW-6), Zabir Mian (not examined) and other persons of the locality who came running and saw the occurrence. She told all of them about the occurrence.

After giving first aid she brought her son to Chapra Sadar Hospital in the morning where her son was being treated. Her husband was residing at her 'sasurar'.

4. The Fardbeyan was recorded by Bishundeo Yadav, ASI of Bhagwan Bazar Police Station at the Sadar Hospital, Chapra but the same was forwarded to the Officer-in-charge, Garkha Police Station, since the offence was committed within the jurisdiction of that police station. After investigation the appellant was ultimately put up for trial before the 2nd Additional District and Sessions Judge, Chapra.

5. It appears that the minor son Naushad Ali died at about 12 noon and inquest report was prepared at about 17.15 hours on 12-6-96. It has been marked as Ext. 4. Later, in the evening, at about 6-25 p.m. PW. 4 Dr. Ram Ekbal Prasad who was then posted as Civil Assistant Surgeon in the Sadar Hospital, Chapra held post-mortem examination on the dead body of Naushad. The doctor who held the post-mortem examination found the deceased to be about 12 years of age and found the following ante-mortem injuries on his body:--

(i) One lacerated wound with charred inverted margins on right side of neck near the root approximately 4' x 1 1/2' x 4' (wound of entry).

(ii) One lacerated wound on left side of neck approximately 4' x 1 1/2 x 2' with overted margin. Injuries Nos. 1 and 2 were communicating.

On dissection he found that both the injuries communicated with each other. There was fracture of posterior arches of fifth and sixth cervical vertebrae with contusion of the chord and laceration of soft tissues on the back of the neck. There was collection of dark fluid blood all around. In the opinion of the doctor, death was due to haemorrhage and shock on account of injury to the vital organ, namely, the spinal-chord. The injuries were caused by a fire arm such as pistol. Both the injuries were sufficient to cause death in ordinary course of nature. In the post mortem report the doctor admitted to have mentioned the time that elapsed since death as within six hours. PW. 4 was not in a position to say as to the distance from which the fire arm might have been used and what type of cartridge that was used. Looking to the injuries he opined that the injured could die instantly or could

survive for some time.

From the medical evidence on record it is apparent that there was really one injury caused by firearm and while injury No. 1 was the wound of entry, injury No. 2 was the exit wound. The presence of charging also established that the firearm must have been used from close range. There is hardly any cross-examination of the doctor worth noticing.

6. The case of the prosecution really rests on the testimony of the informant, because though several other eye-witnesses were examined at the trial, they do not claim to have seen the actual occurrence though they have supported the prosecution case as to the time and place of occurrence.

7. PW. 1 Md. Yusuf Mian deposed that the occurrence took place in the night though he did not remember the time. He was first sleeping. He heard someone weeping and even though he got up, he did not go there. He had however seen that some people had surrounded the boy on the road. The name of the mother of the boy was Samshunisha. By the time he reached there people had taken the boy to the hospital.

The witness was declared hostile and was cross-examined by the prosecution. He denied having stated before the police that he had heard sound of firing in the midnight and had also heard a lady weeping in the vicinity. He also denied having stated before the police that he had sent both his sons to enquire, and his son Wasib told him that the son of Samshunisha had received gun shot injury and that Samshunisha was abusing mentioning the name of the appellant Triloki Singh. He denied that he was concealing the real fact in collusion with the appellant.

8. Rehmatullah alias Tulla Mian was examined as PW. 3. He was tendered for cross-examination. He stated that he resided in the house which lay to the east of the house of the informant with a road intervening. Only in the morning he had come to know that someone had shot Naushad in the night and fled away. In the morning people took Naushad to Chapra by a tempo where he died.

9. Abdul Qudir was examined as PW. 6. He was also tendered for cross-examination. He stated that he came to know in the morning that someone had fired a shot at Naushad and that his mother had taken him to the hospital in the morning.

10. It appears that these witnesses who are named in the FIR and are the neighbours of the informant have not supported the prosecution case as eye-witnesses but have supported the prosecution in so far as the place of occurrence and the time of occurrence is concerned. The only other witness worth noticing at this stage is PW. 5, the husband of the informant Kalimullah Ansari. This witness stated that he resided at Village Mahmad Parti Takia which was at the distance of about 14 miles from the house of his in-laws, namely, Village Banwari Basant. On the night of occurrence he was at his village when his nephew Salluddin gave him information at about 8 o' clock in the morning that Naushad had been shot by Triloki Singh. He stated that his wife used to live at his in-laws' place i.e. Village Banwari Basant for fifteen days in a month and used to stay in his house for the remaining fifteen days. On getting information from his nephew about the occurrence he came to the Sadar Hospital at Chapra. His son was then alive in the hospital but did not say anything to him. On way to Patna his son died and therefore he was brought back by the same vehicle.

The testimony of this witness is not of much assistance to the prosecution, so far as the actual occurrence is concerned, because admittedly he was not at the village of occurrence when the occurrence took place. This witness has stated in his cross-examination that the conduct of his wife was good and before this she had not made any complaint to him.

11. Before adverting to the evidence of the informant, we may notice the evidence of PW. 7 Badri Narain Sharma. Investigating Officer. He deposed that on 12-6-96 he was posted as Officer-in-Charge of Garkha Police Station where he received the Fardbeyan of Samshunisha which Was written in the pen of Shri Bishundeo Rai, AST, Bhagwan Bazar Police Station. On the basis of the said Fardbeyan he recorded the formal FIR. After registering a case he proceeded to the place of occurrence which was Village Banwari Basant. The place of occurrence was the

'sehan' of the informant built with bricks and tiles with the main door situated towards the east made of bamboo sticks. The house was completely open from three sides. On the western side there were two rooms facing east which was used as the residence of the informant and her family members. There was a boundary wall made of bricks all around the house about 5 1/2 ft. in height. In the Courtyard be found one mat upon which blood-stains were slightly visible. To the east of the house was a village pathway and the house of Rahmatullah PW. 3. He recorded the statement of the witnesses and thereafter submitted the charge sheet in the case. The inquest report of Naushad was in the pen and under the signature of Shri Bishundeo Rai, ASI, Bhagwan Bazar Police Station.

In his cross-examination he stated that he had received the Fardbeyan at 5 o'clock in the evening and thereafter he visited the place of occurrence at 7 o'clock. He admitted that he had not mentioned in the diary whether he had seized mat or bloodstains on the mat. On that very day he had recorded the statement of Yusuf PW. 1 but no other witness appeared before him. He again visited the place of occurrence on 13-6-1996 and recorded the statement of three witnesses, namely, Rahmatullah PW. 3, Abdul Qudir PW. 6 and Tabir Mian. In the case diary he had mentioned that he made a search for other witnesses but he could not find anyone. He recorded the further statement of the informant on 15-6-1996 and on that day he also recorded the statement of Kalimullah PW. 5. He denied the suggestion that he neither found any mat nor blood-stained mat at the place of occurrence.

12. We shall now notice the deposition of the informant Samshunisha PW. 2. She deposed that her son Naushad Ali was ten years old. On the night of occurrence after cooking meal she slept along with her son. At about 12 in the night appellant Triloki Singh entered her 'angan' and clung to her with a bad intention. Her son Naushad woke up and also clung to her. The appellant asked Naushad to go away otherwise he would kill him. The appellant fired a shot from his pistol: at Naushad who has injured and fell flat on his back. He started writhing in pain whereafter she picked up her son bodily and took him outside. Witnesses Qudir Mian, Yusuf Mian, Zabir Mian and Rahmatullah came there and took her son to the hospital on a cot. She hired a vehicle at Basant Bazar and brought her son to Chapra Sadar

Hospital. While her son was being sent to Patna from Chapra Sadar Hospital he died at the Patna Bridge. This witness then added that her son died at Chapra Hospital. Her statement was recorded in the hospital.

In her cross-examination she stated that she along with her 'nanad' (husband's sister) and 'bhagina' (maternal nephew) and her son stayed at Chapra Hospital for an hour. At that time her son was alive. The doctor wrapped bandage, administered saline water and thereafter suggested that he should be taken to Patna. She was married in the year 1971 and her relationship with her husband was cordial. She has been staying at her paternal home since eight years prior to the occurrence. She admitted that she knew Ram Naresh Singh and his son Mahesh Singh of her village. She earned her livelihood by earning wages. She had never worked for Ram Kumar Singh. There was litigation between Ram Kumar Singh and Triloki Singh which was going on for a long time. On the date of occurrence she had no talk with Sri Ram Kumar Singh. She deposed that on an earlier occasion as well, about three months prior to the occurrence, Triloki Singh appellant had entered her house in the night but she had abused him. She had stated that fact to the villagers but she could not state the names of those persons to whom she had stated this fact. She had also reported the matter to the father of the appellant. The appellant shot her son on the right side of neck from point blank range. The appellant had remained in her house for five minutes. None from the vicinity had come inside her house. They came only after she went out of the house on the road carrying her son. The distance between her house and the house of the appellant could be covered within five to fifteen minutes. She denied the suggestion that she worked at the house of Ram Kumar Singh and that she had filed the false case at his instance.

13. The deposition of the informant is fully corroborated by the First Information Report lodged by her. There is hardly anything in her cross-examination to discredit her testimony. All that was suggested is that she was working for Ram Kumar Singh who was litigating with the appellant and that she had falsely implicated the appellant at his instance. We have read her deposition with care and caution because the prosecution case rests on her testimony. We have found no omission or contradiction worth noticing in her deposition. Nothing has been

elicited in her cross-examination which may discredit the witness so as to render her evidence suspicious or false. The informant being the mother of the deceased who was a minor child sleeping with her in her house, is a natural witness. There appears to be no reason why she should falsely implicate the appellant if he was not really the perpetrator of the crime. She is well-known to the appellant and therefore there would be no chance of mistaken identity, particularly when the appellant clung to her and asked her son to be separated from her. She had therefore abundant opportunity to notice the appellant and identify him. The evidence of this witness is fully corroborated by the medical evidence on record which proves the causing of an injury by a firearm which proved fatal. The presence of charring corroborated the testimony of this witness that firing was resorted from close range. The informant being the mother of the deceased would not have spared the real culprit if it was someone else. The fact that the occurrence took place on the date of occurrence and at the time and place deposed to by the informant is also corroborated by the evidence of the other witnesses who do not claim to have seen the actual occurrence, but who claim to know of it later. The fact that in the morning the injured child was taken to the hospital is itself a proof of the fact that the occurrence had taken place in the night. In fact there is nothing to suggest that the occurrence may have occurred at any other place.

14. Much was sought to be made of the fact that the informant lived separately from her husband at her parents' house. This to our mind does not make any difference. It would be too much to jump to the conclusion, as suggested by counsel for the appellant, that the informant is a woman of easy virtue. Even if it were so, that would not justify the killing of her child by the appellant. It was also submitted that there is some confusion as to whether Naushad died while at Chapra Hospital or whether he died while being taken to the Patna Hospital. There is some inconsistency on this aspect of the matter, but this does not touch the core of the prosecution case. It however appears from the record that it was suggested by the doctor at Chapra that the child should be taken to Patna Hospital for better treatment but while proceeding towards Patna the child died and therefore he was again brought back to Chapra Sadar Hospital where the inquest report was drawn up and post mortem examination conducted over the dead body of the deceased.

15. Counsel for the appellant submitted that the place of occurrence has not been established because the Investigating Officer did not seize blood-stained earth or the blood-stained mat about which he had spoken in his deposition. We have noticed that in large number of cases the Investigating Officers do not seize blood-stained items and even if seized, they are not sent for chemical examination. This is a very pernicious practice of the Investigating Officers in this State and in some of our judgments we have drawn notice of the Director General of Police, Bihar about such dereliction on the part of Investigating Officers. However, in this case there is nothing to suspect that the occurrence may have taken place at any other place other than the one stated by the witnesses. Not only the informant but also other witnesses who have not fully supported the prosecution case, have also supported the place and time of occurrence. We are, therefore, of the view that the evidence on record conclusively established that the place of occurrence was the courtyard of the house of the informant where she was sleeping with her son on the date of occurrence.

16. It was then submitted that the appellant had been falsely implicated by the informant at the instance of his enemy Ram Kumar Singh. There is nothing on the record to substantiate the submission except a mere suggestion to the informant which she has denied. Considering the fact that the deceased was no other than the son of the informant herself, it would indeed require very strong evidence to reject her testimony in so far as the identify of the assailant is concerned. We have already considered this aspect of the matter earlier and we have no hesitation in holding that the informant is speaking the truth.

17. It was then submitted that the other witnesses examined by the prosecution do not claim to be eye-witnesses and the case of the prosecution rests solely on the deposition of the informant PW. 2. We are conscious of the fact that the prosecution case rests solely on the evidence of the informant and therefore we have read her evidence with great care and caution so as to avoid any miscarriage of justice. We have found that the deposition of the informant has a ring of truth. There is no reason for her to falsely implicate the appellant. She had full opportunity to identify the assailant of her son. The appellant was known to her and, therefore, there is no question of mistaken identity. We are of the considered

view that having regard to the quality of the evidence of the informant, the same can form a reliable basis by itself for the conviction of the appellant. Where the prosecution case rests on the testimony of a sole witness, the conviction can be based on the testimony of such a witness if the testimony has the requisite quality which inspires confidence and rules out any possibility of miscarriage of justice. We have found the testimony of the informant to be of such quality and therefore we are satisfied that the conviction of the appellant on the charge under Section 302. Indian Penal Code is fully established. The trial Court has committed no error in convicting the appellant under Section 302. IPC. We shall consider the question of sentence separately.

18. The appellant has also been found guilty of the offence under Section 27(3) of the Arms Act and has been sentenced to death on that count as well. We are of the opinion that the trial Court fell into grave error in convicting the appellant of the charge under Section 27(3) of the Arms Act for two reasons. Firstly the charge under Section 27 of the Arms Act was framed after the arguments had concluded. No doubt after framing charge under Section 27 of the Arms Act the plea of the accused was recorded who pleaded not guilty and claimed to be tried. However, having regard to the facts and circumstances of this case, the Court ought to have acted under Section 217 of the Code of Criminal Procedure and should have afforded an opportunity to the prosecution and the defence to recall or re-summon and examine with reference to such additional charge any witness who may have been examined, unless the Court was satisfied that a witness was being recalled or re-examined only for the purpose of causing delay or for defeating the ends of justice. It appears that the trial Court completely lost sight of Section 217 of the Cr. P.C. and did not afford any opportunity to the prosecution or to the defence to recall or re-summon any witness who had been examined at the trial earlier.

Secondly, and more importantly, Section 27(3) of the Arms Act is not at all attracted to the facts of this case. Under Sub-section (3) of Section 27 of the Arms Act, whoever uses any prohibited arms or prohibited ammunition or does any act in contravention of Section 7, and such use or act results in the death of any other person, shall be punishable with death. In the instant case the weapon was not seized and therefore it is not known as to whether the pistol said to have been

used by the appellant was a prohibited arm and the ammunition used was prohibited ammunition. So far as Section 7 of the Arms Act is concerned, that also relates to the acquisition, manufacture, sale, transfer etc. by any person of any prohibited arms or prohibited ammunition without being specially authorised by the Central Government in this behalf. This again takes us to the question as to whether the weapon used and/or ammunition used was a prohibited arm or ammunition. As noticed earlier, there is no evidence on record as to the nature of the weapon or ammunition. In the absence of such evidence, Section 27(3) of the Arms Act was clearly not attracted in the instant case. We therefore have no hesitation in holding that the conviction and sentence of the appellant under Section 27(3) of the Arms Act is unwarranted and we, accordingly, set it aside.

19. The question then arises as to what sentence should be passed in a case of this nature under Section 302. IPC? We have given our most anxious consideration to this issue. It cannot be denied that the appellant is guilty of having committed a heinous crime. His depravity is established by the fact that taking advantage of the helplessness of the informant he attempted to commit rape on her. With such an intention he entered her house late in the night and caught hold of her in an attempt to make her sleep with him. One cannot under-estimate the depravity of a person who makes such attempt taking advantage of the helplessness of a married lady. Not only this, he entered the house to satisfy his lust armed with pistol. The only inference that can be drawn is that he was prepared to go to any extent in achieving his vile objective. Thereafter when the child woke up and out of fear clung to his mother he wanted the child to be separated from his mother. This again demonstrates the complete lack of emotion and sensitivity so far as the appellant is concerned. The child was a helpless spectator who could neither defend himself nor his mother. He could offer no resistance. His mother was in no better position. Then, to shoot the child who was clinging to his mother out of fear is another gruesome act executed with extreme cruelty particularly having regard to the fact that a son aged about ten years clinging to his mother was being shot at in her presence. Neither the deceased nor his mother had offered any provocation to the appellant. Both were defenceless and unable to resist the onslaught of the appellant. Killing an innocent child in the presence of his helpless and defenceless mother is itself an act of

extreme cruelty. The question yet arises as to whether this is one of the rarest of rare cases in which a death sentence can be upheld, Counsel for the appellant has relied upon several decisions of the Supreme Court and submitted that this would not be a case falling under this category and, in particular, she has drawn our attention to the principle laid down by the Supreme Court in AIR 1980 SC 898 : 1980 Cri LJ 636 : AIR 1979 SC 916 : 1979 Cri LJ 792 and AIR 1983 SC 957 : 1983 Cri LJ 1457. She also drew our attention to a recent decision of the Supreme Court reported in (1997) 10 SCC 130 : 1997 Cri LJ 3182 *Mukund v. State of Madhya Pradesh* and submitted that that was also a case in which the widow and her two children were killed. The Supreme Court did not uphold the sentence of death passed against the appellant and converted it to one of rigorous imprisonment for life. We are of the view, having regard to the principles laid down by the Supreme Court, that this case comes dangerously close to the category of cases which can be said to be the rarest of rare cases. However, having regard to the fact that the conviction of the appellant is based upon the sole testimony of the informant, not as a matter of law, but by way of abundant caution, we are of the view that the sentence of death may not be justified in the facts of this case, and if the appellant is sentenced to undergo rigorous imprisonment for life, the ends of justice will be met.

20. In the result, we partly allow the Criminal Appeal No. 103 of 1998 and while setting aside the conviction of the appellant under Section 27(3) of the Arms Act, uphold his conviction under Section 302 of the Indian Penal Code. We however convert the sentence of death into one of rigorous imprisonment for life. We, therefore, decline Death Reference No. 4 of 1998 and do not confirm the sentence of death passed against the appellant. In the facts and circumstances of the case the sentence of fine is also set aside.

P.K. Sarkar, J.

21. I agree.