

Sanjay Singh Vs. State of Bihar

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Court : Patna

Decided On : Aug-04-2005

Judge : Aftab Alam and Sadanand Mukherjee, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302; [Explosive Substances Act, 1908](#) - Sections 3, 4 and 7; Code of Criminal Procedure (CrPC) - Sections 313 and 465

Appeal No. : Cr. Appeal No. 53 of 2002 (DB)

Appellant : Sanjay Singh

Respondent : State of Bihar

Advocate for Def. : G.P. Jayswal, APP

Advocate for Pet/Ap. : Kanhaiya Prasad Singh, Sudhir Kumar Jha and Sanjay Kumar Singh, Advs.

Disposition : Appeal dismissed

Prior history : Aftab Alam, J. 1. The hearing of this appeal was taken up along with another analogous appeal, against the same judgment and order filed at the instance of one Umesh Pandit. After hearing had gone on for some time it was stated before the Court that Umesh Pandit was dead. Hence, the appeal filed on his behalf (Criminal Appeal No. 21 of 2002) was adjourned for the counsel to file a proper petition stating about his death and the Court proceeded with the hearing of

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Judgement :

Aftab Alam, J.

1. The hearing of this appeal was taken up along with another analogous appeal, against the same judgment and order filed at the instance of one Umesh Pandit. After hearing had gone on for some time it was stated before the Court that Umesh Pandit was dead. Hence, the appeal filed on his behalf (Criminal Appeal No. 21 of 2002) was adjourned for the counsel to file a proper petition stating about his death and the Court proceeded with the hearing of this appeal.

2. The single appellant Sanjay Singh stands convicted under Section 302 of the Penal Code and Section 3 of the Explosive Substances Act and sentenced to undergo rigorous imprisonment for life for the offence of murder and seven years for causing explosion by throwing a bomb. The two sentences were directed by the trial Court to run concurrently.

3. The prosecution case was instituted on the basis of the statement of one Ram Babu Singh (PW 8, brother of the deceased) recorded as fardbeyan by the Officer-Incharge of Katra P.S. (PW 12) at Primary Health Centre, Katra on 7.12.1996 at 2 P.M. The fardbeyan was incorporated in the formal FIR instituted on the same day at 2.30 p.m.

4. In his fardbeyan the informant stated that on that day he along with his brother Shyam Kumar Singh (deceased) proceeded from thief village Dhanaur for the Bank at Katra on a motor cycle. His brother was driving the motor cycle and he was riding on the pillion. At about 12 noon when they reached the pucca road towards the east in front of Chamunda Asthan someone standing near a Gumti (a wooden kiosk on four posts) fired a shot at his brother Shyam Kumar Singh. Unnerved by this his brother jumped off the motor cycle and ran towards north. At this point accused Tuntun Singh and his younger brother (whose name the informant did not know) both sons of Rajeshwar Singh, resident of village Basghatta and Vijay Singh of village Kishun Nagar each carrying a bomb in his hand swooped

down (upon him) from east. From the west came one Raju Singh and Umesh Pandit, both carrying pistols in their hands and Raj Kumar Bhagat and 3-4 other unknown accused person about whom he said he would identify them by face. Tuntun Singh and his younger brother hurled, one after another, two bombs at his brother Shyam Kumar Singh that hit him on the right side of the rib cage and the right shoulder (DAHINA PANJRA EWAM DAHINA PAKHURA), causing grievous injuries to him. Shyam Kumar Singh fell down. Then Vijay Singh hurled another bomb that fell on the ground and caused splinter injuries to him and his co-villager Manoj Kumar Singh. In the meanwhile, some of his villagers namely Ram Vivek Thakur, (PW 3), Bindeshwar Thakur (not examined), Vijay Thakur, (PW 1), Harihar Thakur (not examined), Bhushan Thakur (not examined) arrived at the place of occurrence and witnessed the occurrence. On the sound of the bombs and on the informant's cries the nearby people and the shop-keepers too ran on which the accused fled towards east and were chased by the people. The informant then carried his injured brother on Khat to the Primary Health Centre, Katra but the Doctor there said that he was dead. He further stated that the occurrence took place due to enmity with Tuntun Singh with regard to a dispute over settlement of a Jalkar. He further stated that he came to learn that the person who had fired the first shot was caught by the people and he disclosed his name to be Satish Kumar.

5. It would appear that the appellant Sanjay Singh is not named in the informant's fardbeyan but it may be noted that the informant had described one of the accused as the younger brother of Tuntun Singh (both sons of Rajeshwar Singh, resident of Basghatta) and according to the fardbeyan both the brothers had hurled the bombs hitting the deceased. From the materials on record (e.g. statement under Section 313, Cr.PC) it would appear that the appellant Sanjay Singh is no one else than the younger brother of Tuntun Singh.

6. In this case the police was unable to complete the investigation and submit one comprehensive charge-sheet against all the accused. The manner in which the charge-sheets came has been fully discussed in paragraph 3 of the trial Court judgment. It appears that five charge-sheets were submitted and accused Tuntun Singh @ Hari Kishore Singh was named in the fifth charge-sheet, being shown as an absconder. It further appears that as a result of different charge-sheets the trial

proceedings against the different accused were separated and were at different stages at the time the trial Court passed its judgment in the present case. The proceedings against the appellant Sanjay Siwgh and Umesh Pandit were held on the basis of the third charge-sheet bearing No. 55 dated 8.11.1997 giving rise to S.T. No. 69 of 2000, from which the present appeal arises.

7. Before the trial Court the prosecution examined 12 witnesses in support of its case. PW 8 is the informant and PWs 1 to 3 are the other eye-witnesses, among whom PWs 2 and 8 had received splinter injuries from the third bomb hurled by accused Vijay Singh. PWs 5 and 6 were tendered. PWs 4 and 11 are Doctors; the former held post-mortem on the body of the deceased Shyam Kumar Singh and the latter examined the injuries of PWs 2 and 8. PW 10 is a formal witness who was examined to identify the handwriting of Kedar Prasad Yadav (I.O.) in the Case diary since the I.O. had not been examined till then but later the I.O. Kedar Prasad Yadav was himself examined as PW 12. PW 9 is a witness of the inquest report and PW 7 is another Police Officer who submitted the third charge-sheet in the case against the appellant and Umesh Pandit.

8. According to PW 4 he found the following ante-mortem injuries on the person of the deceased Shyam Kumar Singh:

- i. Lacerated injury with black charred area 8' x 7' x chest cavity deep on right side of chest. On dissection there were laceration of muscle with fracture of 4th to 10th rib on right side with rupture of right lung and liver. Few glass and iron particles were found which had been handed over to accompanying constable. Blood clots were found in chest and abdominal cavity.
- ii. Lacerated injury with black charred area 5' x 3' x bone deep on the back of the right arm with laceration of muscle, vessel and fracture of right humerus bone.

The Doctor gave his opinion that Shyam Kumar Singh died due to shock and haemorrhage as a result of the injuries caused to him by explosive substances such as glass and iron shrapnels.

9. To the only question put to him in the cross-examination the doctor replied that the injuries of the nature found on the person of the deceased could not have been caused by accidental fall to someone carrying a bomb in his hand.

10. The medical evidence leaves no room for doubt that Shyam Kumar Singh was killed as a result of injuries caused by some explosive substance thrown at him by enmical hands.

11. The evidence of the other Doctor PW 11 also supports the prosecution case with regard to the informant (PW 8) and Manoj Kumar Singh (PW 2) receiving splinter injuries in (he same occurrence. According to PW 11 he found the following injuries on the person of Manoj Kumar Singh:

i. Lacerated wound $1/2'$ x $1/4'$ x skin deep over right leg lower half part, simple in nature caused by hard and blunt substance.

ii. Abrasion $1/2'$ x $1/2'$ over right middle finger simple in nature caused by hard and blunt substance.

iii. Swelling $1'$ x $1'$ over leg right near lateral maleous, simple in nature caused by hard and blunt substance.

He gave his opinion that those injuries could be caused even from shrapnels from a bomb thrown on the ground.

He found the following injuries on the person of Ram Babu Singh:

i. Abrasion $1/2'$ x $1/2'$ over right elbow right side, simple in nature caused by hard and blunt substance.

ii. Abrasion $1/2'$ x $1/2'$ over left little finger dorsum, simple in nature caused by hard and blunt substance.

12. In regard to these injuries too he said that these could be caused by shrapnel from a bomb thrown on the ground.

13. Coming now to the ocular evidence, each of the four eye- witnesses, including the informant PW 8 fully supported the prosecution case. PW 8 deposed before the Court that he and his brother were on the way to the Katra Bank on a motor cycle. When they reached pucca road near Chamunda Asthan someone from a betal shop in a Gumti fired a pistol shot at Shyam Kumar Singh. On this both brothers left the motor cycle and ran towards north. At this point Tuntun Singh, Sanjay Singh, Vijay Singh, each carrying a bomb in his hands, came from east of the road. Tuntun Singh and Sanjay Singh hurled bombs at Shyam Kumar Singh, hitting him on his rib cage and shoulder, as a result of which he fell down. The bomb, next thrown by Vijay Singh, hit the ground and its splinters caused injuries to him and Manoj Singh. Urnesh Pandit, Raju Singh and Raj Kumar Bhagat along with three other accused rushed towards them from west. They were carrying pistols in their hands. On hulla raised by him a number of persons assembled at the place of occurrence and the accused fled away towards north in the direction of Lakhandai river. He further stated that with the help of the villagers he carried his injured brother on a Khat to the Katra hospital where he was declared dead. He next named the persons (some of whom PWs 2, 3 and 9 were examined as witnesses) who saw the occurrence. He also stated about the person, firing the first shot being apprehended by the people there who gave out his name as Satish Jha. He also stated that Tuntun Singh and Sanjay Singh were on enmical terms with them (the two brothers) over the question of settlement of a jalkar. In cross-examination nothing has been taken from him that might discredit the prosecution case. The other three witnesses PWs 1 to 3 also narrated the occurrence giving the same details and the same sequence of events. At the time of occurrence PW 1 was returning from Katra to his village Dhanour after getting his cycle repaired. At that time he saw the two brothers coming on a motor cycle and when they reached Chamunda Asthan the occurrence took place exactly as stated by the informant.

14. PW 2 was returning to his home at village Chamunda Asthan from Katra that when he witnessed the occurrence taking place on the pitch-road lying east of Chamunda Asthan. He too narrated the entire sequence of events from the firing of the pistol shot by some one standing near the betel gumti and then the hurling of the bombs by the three accused Tuntun Singh, Sanjay Singh and Vijay Singh.

He himself received splinter injuries from the third bomb thrown by Vijay Singh.

15. PW 3 is another eye-witness. He runs a betel shop at Dhanour Chowk and at the time of the occurrence he was returning from Katra Bazar where he had gone to purchase the materials for his shop. He also stated about the occurrence right from the stage of the firing of the first pistol shot by someone from near the betel Gumti till the fleeing away of the accused towards north in the direction of the lakhandai river and the arrest of the accused who had fired the first shot.

16. The ocular evidence coupled with the medical evidence leaves no room for doubt that the occurrence took place exactly as stated by the prosecution and Shyam Kumar Singh was killed as a result of the bombs thrown by Tuntun Singh and the present appellant Sanjay Singh that directly hit him on different parts of the body and there is not much to say in defence of the appellant.

17. To be fare to Mr. Kanhaiya Prasad Singh, Sr. Advocate appearing on behalf of the appellant the defence at the trial stage has not allowed much scope for any serious and tangible arguments on behalf of the appellant. Surprisingly, there is practically no cross-examination of the two Doctors and the I.O. and the cross-examination of the four eye-witnesses also failed to elicit anything to discredit the prosecution case.

18. The prosecution case is as simple as they come. The deceased and his brother (the informant) were going on a motor cycle. They were waylaid and ambushed by the accused at a spot near Chamunda Asthan. First a pistol shot was fired at the deceased and when they jumped off the motor cycle and ran to save their lives the other accused converged on Shyam Kumar Singh. Tuntun Singh and the appellant hurled bombs at him directly hitting him on his body. A third bomb was thrown by Vijay Singh that fell on the ground and exploded. Shyam Kumar Singh died as a result of the bomb injuries caused to him.

19. Mr. Kanhaiya Prasad Singh, however, submitted that though five persons were named as eye-witnesses in the FIR and in the deposition of PW 8 (see paragraphs 4 and 11), only three of them were produced in Court as PWs 1, 3 and 9 and PW 9 was examined only as a formal witness of the inquest report. Mr. Singh submitted

that the remaining two persons named in the FIR namely Bindeshwar Thakur and Harihar Sahani were neither examined nor any explanation was given for their non-examination. In our view the non-examination of the two witnesses out of the five named in the FIR and in the deposition of the informant does not affect the prosecution case in any manner.

20. Mr. Singh next stated that the deceased and his brother the informant were running to save their lives. They were being chased by the accused from behind and PW 2 was still ahead of them (PW 2, para 8, page 17 and PW 3, para 1, page 21). He submitted that in that situation it would not be possible to identify the accused who hurled the bombs as they were behind their victims who were running ahead of them and secondly the bombs thrown from behind would not cause any injury on the front portion of the chest. We find no substance or merit in this submission either. We see no difficulty in identification of the accused hurling the bombs. It is impossible to imagine that the witness PW 2, the two victims (the deceased and PW 8) and the accused were running in a row and in a straight line and no one was looking around, side ways or behind in order to save his life and to see what the attackers intended to do. We also find nothing in the submission regarding the position of the injuries on the victim's person. Quite possibly the first bomb, hit the deceased on his shoulder (see injury No. 2) hurling him around and then the second bomb hit him in the front of chest.

21. He next submitted that PW 1 on his own showing could not be an eye-witness. He stated that he heard the sound of the bombs from a distance of 200 ft. In all three bombs were exploded and there was a lot of smoke. The witness never said that the smoke was so thick as to hinder the sight.

22. He next submitted that the victim and all the PWs belonged to village Dhanour and the accused was of village Basghatta and they had no means to know when and how the victims would pass through that spot. We find no merit in this submission either.

23. Mr. Singh also submitted that the I.O. did not find any remains of bomb explosion and any blood at the place of occurrence. The ocular evidence and the medical evidence is unimpeachable on the point that the bombs were thrown and

Shyam Kumar Singh died as a result of the bomb injuries received by him. The witnesses also said that blood had fallen at the spot where he had fallen down. Therefore, the omission of the I.O. to record those findings in the case diary does not affect the prosecution case.

24. Mr. Singh finally submitted that the conviction under Section 4 of the Explosive Substances Act was bad since there was no sanction under Section 7 of the Act. On this point he seems to be on firm grounds.

25. Mr. Jaysawal tried to take help from the provision of Section 465, Cr PC but that provisions can be resorted to in case of any error or irregularity in the grant of sanction. On a careful scrutiny of the materials on record, we find that there is no sanction at all in this case. Section 465, Cr PC is, therefore, of no avail. Consequently, the conviction of the appellant under Section 4 of the Explosive Substances Act and the sentence given to him under that provisions are set aside. So far as his conviction and sentence for the offence of murder is concerned, those are fully justified by the materials on record and his conviction and sentence under Section 302 of the Penal Code are hereby confirmed.

26. In the result, this appeal is dismissed subject to the aforesaid modification.

Sadanand Mukherjee, J.

27. I agree.

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