

Parshuram Singh and ors. Vs. the State of Bihar

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Court : Patna

Decided On : Sep-11-2002

Judge : Manohar Lal Visa and Bal Krishna Jha, JJ.

Appeal No. : Criminal Appeal Nos. 524, 529, 536, 554 and 581 of 1987

Appellant : Parshuram Singh and ors.

Respondent : The State of Bihar

Prior history : Manohar Lal Visa, J. 1. All these appeals which arise out of the same judgment and order dated 26.9.1987 passed by 4th Additional Sessions Judge, Ara, in Sessions Trial No. 209 of 1984, have been heard together and are being disposed of by this common judgment. 2. Appellant Jomdhari Koeri alias Lukuri of Cr. Appeal No. 509/87 and appellant Mudrika Ram of Cr. Appeal No. 581/87 have been convicted and sentenced to undergo imprisonment for life under Section 302 read with Section 34 of the Indian

Judgement :

Manohar Lal Visa, J.

1. All these appeals which arise out of the same judgment and order dated 26.9.1987 passed by 4th Additional Sessions Judge, Ara, in Sessions Trial No. 209 of 1984, have been heard together and are being disposed of by this common judgment.

2. Appellant Jomdhari Koeri alias Lukuri of Cr. Appeal No. 509/87 and appellant Mudrika Ram of Cr. Appeal No. 581/87 have been convicted and sentenced to undergo imprisonment for life under Section 302 read with Section 34 of the Indian Penal Code (in short, IPC). Remaining seventeen (17) appellants of Cr. Appeal Nos. 524/ 87, 536/87, 554/87 and 560/87 have been convicted and sentenced to undergo imprisonment for life under Section 302 read with Section 149, IPC.

3. The case of prosecution as disclosed in the fardbeyan (Ext. 3) of informant Mahabir Singh (PW-1), in short is that on 25.7.1983 informant and his brother deceased Jomdhari Singh alias Raghubir Singh were working in their field. Informant was ploughing the land whereas his deceased brother Jomdhari Singh alias Raghubir Singh was constructing ridge with a spade. At about 4 p.m. all the appellants along with 10-12 others came there and they all surrounded the deceased brother of informant. They all were armed with guns. Appellant Dasai Korei ordered for killing on which appellant Mudrika Ram fired from his gun on the head of deceased brother of informant and appellant Jomdhari Korei alias Lukuri fired from his gun on the left leg of deceased who after being injured fell down. The appellants and their companions chased the informant in order to kill him also and they also fired several shots from their fire arms but none of the shots fired by them hit the informant who by running came to village Khairaha and thereafter, appellant Dasai Korei fled away towards west of Baina Village and other appellants towards east. On hearing the sound of firing the nearby persons who were working in their fields and tending their catties came there and they saw the occurrence and also saw the appellants fleeing away from the place of occurrence. On the basis of fardbeyan of informant, formal FIR (Ext. 4) under Sections 302/34, 120B, IPC and 27 Arms Act was drawn against the appellants and 10-12 unknown persons. After investigation police submitted charge-sheet against the appellants. Appellants were put on trial after framing charge under Section 302/149 against all the nineteen (19) appellants and additional charge under Section 302, IPC was framed against appellants Jomdhari Koeri alias Lukuri and Mudrika Ram. The case of appellants is complete denial of charges levelled against them and their false implication in this case.

4. In order to prove its case the prosecution has examined seven (7) witnesses in this case. Mahabir Singh (PW-1) is informant. Ram Kailash Singh (PW 2), Ram Dayal Pandey (PW 3) and Gorakh Nath Mishra (PW 4) are said to be eye-witnesses to the occurrence. Rama Kant Pathak (PW 5) is a doctor who had conducted autopsy on the dead-body of deceased. Murat Ram (PW 6) and Ram Chandra Prasad (PW 7) are formal witnesses who have proved fardbeyan (Ext. 3), formal FIR (Ext. 4), inquest report (Ext. 5) and para 1 to 57 of case diary in the pen of M.P. Singh, the then SI (Ext. 6) and para 58 to 64 of case diary in the pen of Narendra Pd. Singh the then officer-in-charge (Ext. 6/1). Ram Chandra Prasad (PW 7) has said that M.P. Singh, the then SI is dead now.

5. Dr. Rama Kant Pathak (PW 5) in his evidence has said that on 25-7-1983 he was posted at Jagdishpur State Dispensary as Medical Officer and on that day he had conducted post-mortem examination on the dead-body of deceased and found the following ante-mortem injuries:

(i) Right upper skull adjacent forehead, one big aperture having diameter of 4' x 3' (with irregular edge and depth of about 4 and 1/2') and other aperture below the above having 1/2' of circular with black smoke (wound of entrance). All the underlying structures at the site of injury like skin, face bone, blood vessels, brain matter were broken into pieces and brain matter was coming out, Bones were found broken into pieces. On search few pellets were found embedded to depth to the brain matter.

(ii) A lacerated wound with swelling over right neck having diameter of 4' x 2' with extra vasation of blood.

(iii) A big hole at the left lower leg 2' above the ankle joint having diameter of 3' x 3' x 2' 1/2' with all the underlying structures including bone badly damaged and broken into pieces with irregular margin. Only skins of back side were intact.

(iv) A small aperture over left hand at the base of middle finger having a diameter of 1/2' x 1/2' with all the structures broken and damaged.

The cause of death, in his opinion, was due to haemorrhage and shock due to gun shot injury Nos. (i) and (iii). The vital organs, brain, tissues and injury to large blood vessels after gun shot injury Nos. (i) and (ii) were found disfigured with hard blunt substance (lathi) and pellets were found in both the injuries and projectile discharge was from very close range. The nature of the wounds was ante-mortem and time elapsed since death was within 24 hours. He has proved his post-mortem examination report (Ext. 2). He has said that the injuries were sufficient to cause death in ordinary course. His evidence establishes the fact that death of deceased was homicidal.

6. Now it has to be seen what evidence has been led by the prosecution against the appellants for holding them responsible for the injuries which were found on the dead-body of deceased and which proved fatal.

7. The informant Mahabir Singh (PW 1), in his evidence, has said that on 25.7.1983 at about 4 p.m. he was ploughing his land and his deceased brother Jomdhari Singh alias Raghubir Singh was constructing the ridge by a spade in the field when about 25-30 persons came there who were armed with guns and pistols. Out of them he identified all the 19 appellants and appellant Dasai Koeri ordered to kill on which appellant Mudrika Ram fired from his gun inflicting injury on the head of deceased and thereafter, appellant Jomdhari Koeri alias Lukuri fired inflicting injury on the leg of deceased. When his brother fell down appellants and their associates chased him also and he then started running and appellants and their associates fired 4-5 shots at him. After occurrence the appellants fled away after dispersing here and there and he then returned to the place of occurrence and found that his brother had died. He has further said that when the police came in the village he narrated the incident and police recorded his fardbeyan. He has further said that occurrence was witnessed by Ram Kailash Singh (PW2) and Gorakh Nath Mishra (PW4). About the motive of occurrence he has said that appellants had formed a Kisan Sabha and they had asked him to become a member of that party but he refused and for this reason the occurrence took place.

8. Ram Kailash Singh (PW 2), Ram Dayal Pandey (PW 3) and Gorakh Nath Mishra (PW 4) have stated about the occurrence claiming themselves to be the eyewitness of the occurrence. Ram Kailash Singh (PW 2) has said that at the time of occurrence he was returning from market and when he reached near the field of informant he found that 20-25 persons, all armed with weapons, had surrounded the deceased and amongst them he identified the appellants and at the order of appellant Dasai Koeri, appellants Mudrika Ram and Lukri fired from guns at the deceased and at that time informant was ploughing his field who was also chased but he fled away and on his running appellants and their associates also fired at him but he did not receive any injury. Ram Dayal Pandey (PW 3) has said that at the time of occurrence he was returning from market and when he reached near the field of deceased he heard sound of firing and he saw that informant was ploughing his field and was surrounded by 20-25 persons who were armed with guns and pistols and he also saw that appellants Mudrika and Lukri fired shots at the deceased and they also chased informant who ran towards west and they also fired at him. He has further said that amongst those persons he identified all the appellants and after the appellant left the scene of occurrence he went near the deceased and found him dead and he also saw injuries on his head and leg. Gorakh Nath Mishra (PW4) has said that at the time of occurrence he was getting his land which is adjacent south to the land of informant, ploughed and at that time informant was also ploughing his land and deceased was working in his field and at that time appellants Mudrika Ram, Lukan @ Jomdhari and Shukat Ali who were armed with guns and appellants Gobudhan Ram, Aaras Kanu and Raja Ram who were armed with lathi, came there and thereafter appellants Mudrika Ram fired shot hitting the head of deceased and thereafter Lukari @ Jomdhari also fired shot hitting knee of the deceased and they also chased the informant to kill him. He has alleged that besides the aforesaid appellants there were 10-12 other persons who were armed with lathis. Ram Dayal Pandey (PW 3) in his cross-examination has admitted that his son Bishwanath had filed a case under Section 107 Cr.P.C. in which appellants Mudrika Ram, Raja Ram, Manbharan Ram, Aaras Kanu and Jomdhari alias Lukari were accused persons. In para 7 of his cross-examination he has admitted that when he first saw the deceased, at that time he was at a distance of 100 yards from him and from there he heard sound of firing and when

appellants fled away he went near the deceased and he identified the appellants when they were running away. In para 9 of his cross-examination he has admitted that he did not see appellants Mudrika Ram and Lukari @ Jomdhari firing at the deceased. This admission on his behalf makes his statement that he saw appellants Mundrika Ram and Lukari @ Jomdhari firing at the deceased quite doubtful and it is very difficult to hold that he is an eye-witness to the occurrence. Ram Kailash Singh (PW 2) in his cross-examination has admitted that prior to occurrence there was a proceeding under Section 145 Cr.P.C. in respect of a Government land in which he was member of first party and appellants Jomdhari @ Lukari, Mundrika Ram and Aaras Kanu and others were the members of 2nd Party and appellant Lalmohar had deposed in that case on behalf of members of 2nd party. The defence has drawn his attention that in his statement before the Investigating Officer he had named only six persons and had stated that when he was returning from market he reached a place situated to some distance from the east of field of informant and he saw six persons scolding the deceased and out of fear he stopped there and he had further stated that when deceased after receiving injuries fell down, thereafter, from the direction of south east 15-20 other persons who were hidden behind the buffaloes and bushes came there. He has denied this suggestion. M.P. Singh, I.O. of the case who recorded the statement of this witness during the investigation has not been examined on account of his death and Ram Chandra Prasad (PW 7) has said that M.P. Singh is dead but at the same time PW 7 has proved paras 1 to 57 of case diary which is marked Ext. 6. Learned Counsel of appellants has submitted that since the Investigating Officer M.P. Singh is dead and prosecution itself has brought on record statements of PW 2 and others by getting it proved through PW 7 it will amount that statement of PW 2 recorded by I.O. is duly proved and appellants can use this statement in order to contradict the evidence of this witness whose statement is recorded in para 10 of case diary which shows that he had stated there that while returning from market when he reached near the field of informant he saw appellants Lukari Jomdhari, Mundrika Ram, Raja Ram, Shaukat Ali, Aaras Kanu and Gobudhan who were armed with guns were scolding the deceased and he had also stated that when deceased after receiving injuries fell down 15-20 other persons came from sought east direction among them he identified some remaining appellants! It has been

argued that in view of this contradiction in his earlier statement and in the evidence given in Court where he has claimed that he identified all the appellants at the time of occurrence cannot be believed. I find force in this submission made on behalf of appellants.

9. So, on consideration of evidence of informant and P.Ws 2, 3 and 4 who have claimed themselves to be the eye-witnesses to the occurrence. We find that PW 3 does not appear to be an eye-witness to the occurrence in view of his statement that he did not see appellants Mundrika Ram and Lukari @ Jomdhari firing at the deceased. Gorakh Nath Mishra (PW4) has named only appellants Mundrika Ram, Lukari @ Jomdhari, Raja Ram, Shaukat Ali, Gobudhan and Aaras and Ram Kailash Singh (PW 2) in his earlier statement before I.O, had also named only these six persons. In this view of the matter we find that the case against appellants except Mundrika Ram, Lukari @ Jomdhari, Shaukat Ali, Gobardhan, Aaras and Raja Ram becomes quite doubtful but so far case against appellants Mundrika Ram, Lukari @ Jomdhari, Shaukat Ali, Gobardhan, Aaras and Raja Ram is concerned they were seen by the eye-witnesses to occurrence at the place of occurrence and two of them namely, appellants Lukari @ Jomdhari and Mundrika Ram were seen firing at the deceased.

10. Learned Counsel of appellants has argued that Dr. Rama Kant Pathak (PW 5), in his evidence, has said that Injury Nos. (i) and (iii) found on the body of deceased were found disfigured with any hard and blunt substance such as lathi and there is no evidence on record that the deceased was assaulted with lathi also, therefore, the medical evidence does not support the case of prosecution. He has further submitted that on this point the Court below in its judgment has stated that it is possible that the appellants might have inflicted injuries by using butts of their guns making injuries (i) and (iii) disfigured and because informant had fled away when his brother was gunned down and the eye-witnesses were at some distance, therefore, they could not explain all the injuries. According to the appellants, there is no evidence on record that accused persons used the butts of their guns in inflicting any injury to the deceased. The case of prosecution is that appellants Mundrika Ram and Lukari @ Jomdhari Koeri fired shots from their guns at deceased causing injuries on the head and leg. The medical evidence fully

supports the case of prosecution that deceased had received injuries on his head and leg by fire arms and cause of death of deceased was these injuries. It is true that Rama Kant Pathak (PW 5) has stated that he found injuries (i) and (iii) disfigured. The evidence of informant is that after receiving injuries his brother fell on the ground. We, therefore, find that injury Nos. (i) and (iii) which were initially caused by fire arms used by appellants might have been disfigured by fall of deceased on ground. The medical evidence does not leave any room for doubt that deceased died of injuries caused to him by firearms.

11. Two witnesses have been examined on behalf of the appellants. Bachchu Singh (DW1) has said that Ram Kailash Singh (PW 2) is uncle of one Hari Lal Singh and wife of Hari Lal Singh and wife of informant are cousins to each other. He has further stated that Ram Dayal Pandey (PW 3) is a clerk in his village post office and working hours of post office are from 10 a.m. to 12 O'clock in the noon and from 2 p.m. to 3 p.m. Obviously, he has been examined to prove the relationship between informant and Ram Kailash Singh (PW 2) but evidence adduced by him that aunt of Ram Kailash Singh (PW 2) is cousin of wife of informant does not inspire confidence because in his cross-examination he has said that he has no relation with Ram Kailash Singh (PW 2) and he does not know the name of father-in-law of informant of Hira Lal Singh. Sone Lal Ram (DW 2) has proved some writings in the pen of Lalan Pd. Yadav who, according to him, was a postal inspector, in a register giving details of working hours of different employees of post office. He has proved signature of this Lalan Pd. Yadav on page 10 of this register which is marked Ext. A. He has also proved initial of Lalan Pd. Yadav in para of this register which is marked Ext. B. His evidence has been adduced in order to prove that at the time of occurrence witness Ram Dayal Pandey (PW 3) could not have been present at the place of occurrence. In cross-examination DW 2 has admitted that the register is not on printed papers but on manuscript papers and writings in this register were made in one sitting by one pen any there are some writings and cuttings in the register which do not bear initials of anybody and the register was not written in his presence. We find that the evidence of DW 2 does not in any way, help the case of defence.

12. Considering the entire evidence on record we find that so far case of appellants Mundrika Ram, Jomdhari Singh @ Lukari, Shaukat Ali, Gobudhan Ram @ Gobardhan Prasad, Aaras Kanu and Raja Ram Kumhar is concerned, the prosecution has proved its case beyond all reasonable doubts. The conviction and sentence passed against them is hereby confirmed. So far remaining 13 appellants are concerned, the prosecution has not been able to prove its case. So they are not held guilty and they are acquitted of the charge and the conviction and sentence passed against them is hereby set aside.

13. In the result, Cr. Appeal No. 529/87 of sole appellant Jomdhari Singh @ Lukari and Cr. Appeal No. 581/87 of sole appellant Mundrika Ram are dismissed, Cr. Appeal No. 536/87 of sole appellant Dasai Kori and Cr. Appeal No. 554/87 of all the three appellants namely Kanhaiya Ram, Lal Mohan Ram @ Lalmohar Chamar and Maharaj Ram @ Maharaj Chamar and allowed and Cr. Appeal No. 524/87 is allowed in part (allowed for appellants Parshuram Singh, Merha Kumar and Chandeshwar Mahto and dismissed for appellants Raja Ram Kumhar alias Raja Ram Mushra, Aaras Kanu and Shaukat Ali) and Cr. Appeal No. 560/87 is allowed Gena San, Manbharan Ram, Garju Kori, Bhagelu Ram, Sidhu Bin alias Sadhu Bin and Bikrama Ram and dismissed for appellant Gobudhan Ram alias Gobardhan Prasad.

14. So far appellants Mundrika Ram, Jobdhari Singh @ Lukari, Shaukat Ali, Gobardhan Ram alias Gobardhan Prasad, Aaras Kanu and Raja Ram Kumhar alias Raja Ram Mushra, who are on bail, are concerned, their bail bonds are cancelled and they are directed to surrender before the Court below for serving out the remainder of sentence and so far remaining appellants, who are also on bail, are concerned, they are discharged from the liabilities of their bail bonds.

B.K. Jha, J.

I agree.