

Chandra Mohan Singh Vs. State of Bihar

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Court : Patna

Decided On : Jul-03-2007

Judge : Madhavendra Saran, J.

Appellant : Chandra Mohan Singh

Respondent : State of Bihar

Disposition : Appeal dismissed

Judgement :

Madhavendra Saran, J.

1. This appeal is directed against the judgement and order dated 17.4.1993 passed by Sri Anil Kumar Verma, 2nd Additional 125/1983 by which he convicted the appellant Under Section 324 of the Penal code and sentenced him to undergo R.I. for two years.

2. The prosecution case, in short, is that on 18.10.1982 at about 10 PM informant Yogendra Rai after taking supper was lying in the cattle shed of his Bathan. His father Sonafi Rai was also lying there. A lantern was burning and hanging with the roof. It is said that 9-10 persons variously armed came there. The informant identified appellant Chandra Mohan Singh who was armed with country made revolver, Shambhu Singh and Sakindar Singh were armed with Bhala, Ram Kishore Singh was armed with Farsa, and Gauri Shanker Singh, Dinbandhu Singh

and Devesh Singh were carrying Lathi. As soon as they reached appellant Chandra Mohan Singh fired from his country made revolver which hit the informant on his right leg and knee, left leg and knee and other parts of the body. Shambu Singh hurled Bhala which, however, could not cause any injury to the informant. On informant's hulla his brother Mahendra Rai came out of his room and other witnesses also arrived'. Further case is that informant's brother Mahendra Rai told him that Ram Bilash Singh gave him two lathi blows and also snatched Rs. 5,00/- from his pocket. It is said that after villagers arrived the accused persons fled away. The reason behind the occurrence as stated in the fard bayan is that one day earlier to the date of occurrence Chandradeo Rai of village Mahesha was assaulted by Satendra Singh and his brother and for that there was an altercation between accused Ram Bilas Singh and the informant at 5 PM on the date of occurrence. It appears that informant was taken to Runni Saidpur police station where his statement was recorded on 19.10.1982 at 2.50 AM. It further appears that FIR was received in the office of Chief Judicial Magistrate, Sitamarhi on 20.10.1982. Police after investigation submitted charge sheet on the basis of which cognizance was taken. The case was later on committed to the court of Session and charges were framed against the appellant Under Section 307 of the Penal Code and 27 of the Arms Act. Other six accused were charged Under Sections 307/149 of the Penal Code. Accused Ram Bilash Singh was further charged Under Sections 323 and 379 of the Penal Code. He, however, died during the course of trial. After trial only the appellant was convicted Under Section 324 of the Penal Code and rest accused persons were acquitted. Against the said conviction and sentence the appellant has preferred the present appeal before this Court.

3. To bring home the charges the prosecution has examined in all 15 witnesses, namely, PW1, Gagandeo Rai, PW2, Satrugan Rai, PW3, Qarib Rai, PW4, Rajendra Rai, PW5, Julum Rai, PW6, Gobind Rai, PW7, Dharmdeo Rai, PW8, Mahendra Rai, PW9, Chalitra Rai, PW10, Ram Prasad Rai, PW11, Nageshwar Thakur, PW12, Yogendra Rai (informant), PW13, Dr. Jagannath Mishra, PW14, Sitaram Mahto and PW15, Arun Kumar Jha. PW13 at the relevant time was Medical Officer Incharge, Primary Health Centre, Runni Saidpur. PWs 14 and 15 are two police officers who had participated in the investigation.

4. The defence also examined two witnesses namely, Dr. Ramji Prasad (DW1) and Satyendra Singh (DW2) in support of the defence that during the year 1982-84 the appellant was living in village Karma in East Champaran and he was ill on the alleged date of occurrence and was admitted to the State dispensary, Paharpur.

5. Out of 15 witnesses examined in the case on behalf of prosecution PWs 3, 4, 6, 7, 10 and 11 have simply been tendered for evidence by the prosecution. PWs 1, 5,8,9 and 12 have claimed to have seen the occurrence with their own eyes. It appears from the FIR that the informant was carried to Runni Saidpur police station by Chalitra Rai (PW 9). Mahendra Rai (PW8), Garib Rai (PW3), Julum Rai (PW5), Rajendra Rai (PW4), Satrugan Rai (PW2) and Mahal Chowkidar, Ishwar Dayal Paswan. PW2 has said that on hearing hulla he woke up and came running to the place of occurrence and found informant Yogendra Rai lying injured with fire arm injuries. After arrival of chowkidar they carried him to the Runni Saidpur hospital. PW5 though has been declared hostile but he stated that on hearing sound of firing he came running to the door of Yogendra Rai and found him lying injured with fire arm injuries. He, however, could not identify any of the accused. Yogendra Rai told him that appellant Chandra Mohan Singh caused fire arm injuries to him. This witness has further stated that after arrival of village chowkidar they carried the informant on a cot to Runni Saidpur.

6. Thus we are now left with the evidence of PWs 1, 8,9 and 12 only. PWs 8 and 9 are the brothers of informant (PW12) so besides these three brothers PW1 is the only independent person who has come forward to narrate the prosecution story.

7. It has been argued on behalf of the appellant that in all 8 accused faced the trial and out of them one died during the trial and the rest six were acquitted by the trial court on the ground that prosecution has failed to establish the charges against them beyond all reasonable doubts. Learned Counsel argued that on the same set of evidence the appellant has been convicted. He then referred to the evidence of PWs 1, 8, 9 and 12 and contended that their evidence is contradictory to each other on major points. He then referred to evidence of PW13 and contended that such injury was not possible by one firing. He also contended that injury found by

the doctor cannot be caused from a distance-of 7-8- cubit. Learned Counsel lastly contended that the trial court failed to appreciate the plea of alibi raised by the appellant.

8. Now let us see what PWs 1,8, 9, 12 and 13 have said in their respective evidence. PW1 has come forward to say that at about 10 PM he was going to ease himself when he heard hulla coming from the door of Yogendra Rai. He went there and saw the appellant armed with revolver and also other accused persons standing there. He has further said that the appellant fired towards the informant which hit in his left leg near the knee. He has further stated that he found the informant senseless as he was not speaking anything. He has admitted that Gajadhar Singh, uncle of the appellant, had filed a case against the father of informant in which he was impleaded as an accused.

9. PW8 has admitted that when he reached the place of occurrence Yogendra Rai was lying on the ground and was senseless. Thereafter the villagers arrived and he along with others carried Yogendra Rai to the hospital.

10. PW9 at one stage stated that about 10 PM while he was sleeping in the house he woke up on hearing the sound of firing. He came out of the house and reached at the door of the informant. He has further said that appellant fired which hit 1n the leg of the informant. It is not the prosecution case that second firing was also made in the alleged occurrence.

11. PW13 Dr. Jagannath Mishra on 19.10.1983 at 4 AM examined informant Yogendra Rai (PW12) and found the following injuries on his person:

- (i) 4 black spot each 1/6' circular In the back of right thigh in its middle third;
- (ii) 56 lacerated injuries 1/6' x 1/6'x skin deep on the lateral side of right knee joint;
- (iii) 8 lacerated injuries 1/6'x 1/6' x skin deep on the back of right knee joint;
- (iv) 2 black spot 1/6' circular on the medial side lower third on left thigh;
- (v) 4 black spoto each 1/6' circular on the front of left thigh in its lower third;

(vi) 3 black spot on the back of left thigh in its lower third and;

(vii) One swelling 1 1/2' x 1 1/2' on the left side of face.

12. He expressed the opinion that injury Nos. i to vi were caused by pellets of fire arm and injury No. vii was caused by hard and blunt substance. Age of injuries within 24 hours and all were simple in nature.

13. Now the question is as to who caused the above injuries and in what manner the same were caused. PW12, informant has narrated the prosecution story. He has said that appellant was armed with country made revolver. Other accused were carrying bhala, lathi and farsa. According to this witness appellant opened fire causing pellet injuries in his both legs. Shambhu Singh attacked him with Bhala but he some how saved himself from the blow. He identified the accused in the light of lantern which was burning. This witness has admitted that he was assaulted due to caste politics.

14. It has come in the evidence of PW12 at para 6 that at the time of firing the appellant was standing at the distance of 6-7 cubit from him. It has been contended on behalf of the appellant that doctor has found some of the injuries as black in colour and such injuries cannot be caused from a distance of 6-7 cubit. According to Modi's Medical jurisprudence the effects produced by small shot fired from a shotgun vary according to the distance of the weapon from the body, and choking device. A charge of small shot, fired very close to, or within a few inches, of the body enters in one mass like a single bullet making a large irregular wound with scorched and contused edges, and is followed by the gases of the discharge which greatly lacerate and rupture the deeper tissues. Particles of unburnt powder expelled from the weapon behind the missile are driven to some distance through the wound, and some of them are found embedded in the wound and the surrounding skin, which is also singed and blackened by the flame and smoke of combustion. The exit wound of a close range shot may show greater damage of tissues than the entrance wound, the margins are everted, but there is no evidence of blackening of singeing. At a distance of one to three feet, small shots make a single aperture with irregular and lacerated edges corresponding in size to the bore of the muzzle of the gun, as the shot enter as one mass, but are

scattered after entering the wound and cause great damage to the internal tissues. The skin surrounding the wounds is blackened, scorched and tattooed, with unburnt grains of powder. On the other hand, at a distance of six feet, the central aperture is surrounded by separate openings in an area of about two inches in diameter made by a few pellets of the shot, which spread out before reaching the mark. The skin surrounding the aperture may not be blackened or scorched, but is tattooed to some extent. At a distance of 12 feet, the charge of the shot spreads widely and enters the body as individual pellets producing separate openings in an area of five to eight inches in diameter depending on the choke, but without causing blackening, scorching or tattooing of the surrounding skin.

15. In the present case, admittedly, country made revolver was used. Country made hand guns with shot barrels give usually high dispersion data. Unless, a definite opinion about the distance from which firing was discharged is given only then above formula can be applied. It is not the stand of the appellant that someone also caused the injuries to the informant. On the other hand it is the prosecution consistent case that injuries on the person of the informant were caused by the appellant. Therefore, the mere fact that doctor found some of the pellet injury black in colour is not sufficient to discard the prosecution case as against the appellant. Learned Additional Session Judge has believed the evidence of PW12 in part which according to him was fully supported by the medical evidence.

16. As mentioned above, it is the prosecution case that the alleged occurrence took place on 18.10.1982 at 10 PM. Fard bayan of informant was recorded at Runni Saidpur police station on 19.10.1982 at 2.30 AM. The doctor, PW 13 on the same night at 4 AM examined the informant and found several pellet injuries on his body. According to FIR the distance of place of occurrence from the police station is 15 km. There was prompt and early reporting of the occurrence to the police. When the FIR is prompt there are remote chances of false Implication even if the parties are on inimical terms.

17. It is true that learned Additional Session Judge on the same set of evidence has acquitted 6 accused persons. It is not the law that a part of the prosecution

case cannot be accepted. On the ground of enmity alone evidence of witnesses cannot be brushed aside though it should be scrutinized with great caution and should be accepted only when it finds corroboration. Learned trial court has rightly accepted the evidence of PW12 which finds support from the evidence of the doctor. Minor discrepancies appearing in the evidence of PWs 1,8,9 and 12 are not enough to throw the prosecution case against the appellant also. The plea of alibi has rightly been rejected by the trial court.

18. The judgement of the trial court discloses a careful examination of the evidence. The view taken by the trial court does not appear to be unreasonable.

19. It appears that the appellant is facing the present prosecution since the year 1982. A period more than 25 years has elapsed. No previous conviction was proved against the appellant. As mentioned above, the doctor found the Injuries to be simple 1n nature. In these circumstances, appellant, Chandra Mohan Singh is sentenced to pay a fine of Rs. 2,000/- and in default of payment of fine he shall undergo R.I for two months. He is directed to deposit the amount of fine within one month from the date of receipt of lower court record which must be sent down immediately. The amount of fine so realized from the appellant shall be paid to the informant Yogendra Rai by the court.

20. With the above modification in sentence, this appeal is dismissed.

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