

**Arbind Singh Vs. State of Bihar**

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**Court :** Patna

**Decided On :** Jan-05-2005

**Judge :** Manohar Lal Visa and Mridula Mishra, JJ.

**Acts :** Arms Act - Sections 27 and 27(3); Indian Penal Code (IPC) - Sections 34 and 302; Code of Criminal Procedure (CrPC) - Sections 164

**Appeal No. :** Criminal Appeal (DB) 271 of 2001

**Appellant :** Arbind Singh

**Respondent :** State of Bihar

**Advocate for Def. :** Lala Kailash Bihari Prasad, APP

**Advocate for Pet/Ap. :** Devendra Kumar Sinha, Sr. Adv., Anil Kumar, Adv. No. 1 and Sanjay Kumar Singh, Adv.Hare Krishna Kumar and Ram Sumiran Singh, Advs.

**Disposition :** Appeal dismissed

**Judgement :**

**Mridula Mishra, J.**

1. The appellant has filed this criminal appeal against the judgment and order dated 21.6.2001/22.6.2001 passed by Vth Additional Sessions Judge, Begusarai

in Sessions Trial No. 204 of 2000 whereby and whereunder he has been convicted under Section 302/34 of the Indian Penal Code and sentenced to rigorous imprisonment for life.

2. The prosecution case in brief as given out in the fardbeyan of Rajo Singh alias Rajendra Singh before the Officer-in-Charge, Begusarai police station on 12.8.1999 at about 6a.m. in the morning is that in the night of 11.8.1999 he along with his son Vinod Kumar Singh was sleeping in the verandah of his newly constructed house after taking meal. At about 2 O' clock he woke up hearing the sound of foot steps and in the electric light saw Arbind Singh and Bhola Singh both armed with pistol coming towards him. Bhola Singh put his pistol on his chest and asked Arbind Singh to kill his son Vinod Kumar Singh. On such instigation Arbind Singh opened fire which hit Vinod Kumar Singh and he died at the spot. On hearing the sound of firing and alarm raised by him Ram Chandra Singh, who was sleeping in that room and other family members came there and witnessed the occurrence. The accused persons left the place and fled towards eastern direction, when the family members came at the place of occurrence. The motive behind the occurrence is the previous enmity and series of cases going on in between the parties. Further it is alleged that in the year 1983 the accused persons have made attempt on his life and in this respect Chanpur P.S. Case No. 14 of 1983 was instituted. Besides this Nagar Thana P.S. Case No. 15 of 1989 and P.S. Case No. 116 of 1990 were also instituted against the accused persons. Two three days prior to the occurrence the accused persons had enhanced threat to him that they will kill him.

3. On the basis of aforesaid fardbeyan Begusarai P.S. Case No. 198 of 1999 was instituted against Bhola Singh and Arbind Singh under Section 302/34 of the Indian Penal Code (hereinafter referred to as the IPC) and 27 Arms Act. The case was investigated by the police and charge-sheet was submitted against the accused persons. Cognizance was taken against both the accused and they were committed to the Court of Sessions for facing trial on the basis of the material available on the record. The Sessions Court framed charge against both the accused persons under Section 302/34, IPC and Section 27(3) of the Arms Act and on conclusion of the trial both the accused were convicted and sentenced as

stated above.

4. Against the judgment of conviction both Arbind Singh and Bhola Singh had preferred the present appeal but appellant No. 2 Bhola Singh died during the pendency of the appeal as such the Arbind Singh is the sole appellant whose case is to be considered in the present appeal.

5. The prosecution in order to prove its case has examined altogether six witnesses. Out of them PW 2 Yadunandan Rai is the formal witness. He has proved the signature of SI Ram Sakal Mishra on the fardbeyan (Ext. 2). PW 4 Dr. Azad Hind Prasad has held autopsy on the dead body of Vinod Kumar Singh and the post-mortem report has been marked Ext. 4. PW 6 Kamod Prasad is the IO who has proved the fardbeyan of Rajendra Singh alias Rajo Singh recorded by SI Ram Sakal Mishra (Ext. 5) and inquest report Ext. 6. PW 5 Rejendra Singh alias Rajo Singh is the informant of the case. He has proved the signature on fardbeyan Ext. 1/A and signature of his advocate Kameshwar Prasad on protest petition (Ext. 1/F). He has also proved his own signature on protest petition Ext. 1/G. PW 1 Ramchandra Singh is the brother-in-law of the informant and has claimed to be an eye-witness. PW 3 Suman Kumari is the daughter-in-law of the informant. She is a practicing advocate and has been examined as an eye-witness of the alleged occurrence.

6. The defence of accused-appellant is of false implication on account of enmity with the informant and also with Brahamdeo Singh. The defence has not produced any oral evidence but has produced two documentary evidence i.e. Ext. A. FIR of Town Thana P.S. Case No. 42 of 1999 and Ext. B charge-sheet of Town P.S. Case No. 42 of 1999. In town P.S. Case No. 42 of 1999 deceased Vinod Kumar Singh and informant Rajo Singh have been shown as accused. These documents have been produced in order to prove the case of enmity.

7. PW 1 is the brother-in-law of the informant and maternal uncle of the deceased. As per his evidence he was sleeping in a room in the same house where the occurrence took place. He was staying there for his treatment and in the same house the deceased and informant were sleeping in verandah on the cot. At 2 a.m. he woke up hearing the sound of foot steps, and firing. In the light of electric bulb

he saw Bhola Singh putting pistol on the chest of informant. Bhola Singh ordered his son Arbind to kill Vinod and Arbind fired from his pistol at the head of Vinod Singh who died instantaneously. Bhola Singh and Arvind Singh after committing the offence fled away towards eastern direction. He has admitted in his cross-examination that besides the present case he has deposed in other cases of the informant. He has also stated that the informant and Bhola Singh were cousin and appellant Arbind Singh is the nephew of the informant Rajo Singh. There is dispute in between them relating to the land. He was sleeping in the same house where Vinod was sleeping. The room was only partition with a wall and there was a window in the room from that window he saw the occurrence. His statement was recorded by the police after 20-22 days of the occurrence. His statement was also recorded under Section 164, Cr PC.

8. PW 3 Suman Kumari is the daughter-in-law of the informant and a practicing advocate. She claimed to be an eye-witness and has stated that she was sleeping in her room in that very house where the occurrence took place. She woke up on hearing the sound of firing and alarm raised by informant. Immediately she rushed towards verandah where her father-in-law and elder brother of her husband Vinod Kumar Singh were sleeping. In the light of the electric bulb she saw Bhola Singh and Arbind Singh who had pistol in their hands. Arbind fired at Vinod, blood was oozing out from his head and he died at the place where he was sleeping. She has admitted that there was dispute relating to land with the accused persons. Three four months earlier also some altercation had taken place and two days earlier Arbind Singh had enhanced threat to Vinod Singh that he will kill him. She has stated that PW 1 was also sleeping in another room. Her statement under Section 164, Cr PC was recorded before the Judicial Magistrate on 18th September, 1999. She in her cross-examination admitted that she has not given any information regarding threats enhanced by the accused persons before any authority. She also admitted that there are several houses surrounding the house where the occurrence took place. She also stated that all other family members of the family resides in the old house and she alone lives in the newly constructed house. She also stated that the Officer-in-charge visited the place of occurrence at 7 O' clock in the morning, but she did not make any statement before him as she was with women folk in the house and was crying with them. She also admitted that her

statement was recorded by the IO after 20-22 days of the occurrence. She stated that though she was knowing that threats has been enhanced by Arbind Singh and Bhola Singh, but she did not inform any authority as she never believed that they will immediately execute their saying. She also stated that she had not shown the generator or the electric bulb to the IO as he himself was looking everything in the house.

9. PW 5, is the informant. He has stated that on the alleged night of occurrence he was sleeping on a cot along with his son Vinod (deceased). At about 2 a.m. he heard the sound of foot steps and woke up. He saw in the light of electric bulb Bhola Singh and Arbind Singh standing there armed with pistol. Bhola Singh pointed pistol at his chest and ordered Arbind Singh to kill Vinod. Immediately Arbind Singh fired at Vinod Singh and he died receiving single firm arm injury. He raised alarm and on hearing alarm Ramchandra Singh PW 1 and Suman Kumar, PW 3 who were sleeping in the same house in different rooms came there. As soon as they came Bhola Singh and Arbind Singh fled away from that place. PW 5 has admitted that he is contesting several cases with Bhola Singh both civil and criminal. He has also stated that two days prior to occurrence Bhola Singh had enhanced threat of killing to him. He has given reference of several litigations relating to land dispute being contested by him with Bhola Singh. He has also admitted that there are houses of other persons surrounding the house where the occurrence had taken place. He has stated that for nine days Maha Mritunjay Yagya was being performed and on the date of occurrence after the puja Vinod had gone to sleep on the cot. The IO had seen the place where Maha Mritunjay Yagya was conducted and he saw each and everything in the house. He also admitted that he has filed a protest petition as the case was not being investigated properly. He admitted that in the protest petition he had not stated about the generator, which was hired specially for Maha Mritunjay Yagya. The PW 5 also admitted that IO was not shown electric bulb and the generator as he thought that IO himself will see everything. He was cross-examined by the defence that the story of generator and lighting of electric bulb was not mentioned in the FIR but subsequently the story has been developed as IO did not find any wiring for electrification of the house. He denied the suggestion that there was no wiring in the house as such there was no electricity and also that there was no generator as

such there was no means of identification of the accused persons, PW 5 has stated that Binod was killed as he was not allowing accused persons to take possession of some valuable land and also because he used to look after the Court cases relating to disputed property.

10. The IO PW 6 has stated that on the date of occurrence he was posted at Begusarai police station. Fardbeyan of Ramchandra Singh was recorded by Ram Sakal Mishra and inquest report was also prepared by Ramsakal Mishra in his presence. PW 6 visited the place of occurrence which is verandah of a newly constructed house. On the verandah he found the dead body of the deceased on a cot and he was informed that PW 5 Rajo Singh was also sleeping on that very cot. He found blood under the cot and also on the bed. From his official record he came to know that several cases are pending against both the parties instituted by them against each other. PW 6 has admitted that in his re-statement the informant had stated that his family members also came at the place of occurrence, but he did not name any one.

Informant did not show him any blood mark on his clothes or on his person. He has not noted down in his case diary about the presence of electric bulb as informant had stated in his fardbeyan that he identified accused persons in the electric light. Not a single witness stated before him about performance of Maha Mritunjay Yagya and also that the electricity was being generated through generator. He was not shown any generator by any one. PW 1 Ramchandra Singh and PW 3 Suman Kumari had stated before him that the occurrence took place at 2 a.m. in the night but no other person from the locality stated that the occurrence took place at 2 a.m. and they heard any alarm in the night. The residents of that locality and neighbours only stated that some one killed Vinod in the night. PW 1 and PW 3 did not make themselves available for recording their statement till 3rd September, 1999. They came at the police station on 3rd September, 1999 and got recorded their statement. No other family members of the informant family like the son-in-law or the wife of the deceased came forward for recording their statement. He was not shown any document relating to land dispute.

11. PW 4 has stated that he conducted the post-mortem examination on the dead body of Vinod Kumar Singh on 12th August, 1999 and found lacerated wound 1' x 1/4' x 1' x going inside on the middle of scalp-with-burnt margin blackened' and inverted with fracture of skull. There was swelling on the upper part of right lateral aspect of neck. On dissection of the cranial cavity the bullet had passed through the wound No. 1 and pierces the meninges then passed through the brain matter lacerating it. There is comminuted fracture off spheroid bone and bullet was recovered from the upper part of right lateral aspect of neck. There was haematoma at that site. Death was caused due to haemorrhage shock due to above said injury caused by fire arm. The time elapsed since death was within six to eighteen hours. The doctor had found semi-digested food in the stomach of the deceased which indicated that he had taken meal within one to six hours before his death. From the size and shape of injury he cannot firmly say that firing was made from behind. It might have been from front also. The chance of survival after receiving such injury was not possible.

12. The defence counsel has raised several grounds in order to show that the trial Court has passed the judgment of conviction overlooking the evidence on record and has not considered the evidence in proper perspective. First attack has been made on the point of identification of the accused persons. In the FIR it has been stated by the informant that other family members including PW 1 and PW 3 who came at the place of occurrence on hearing the sound of firing, identified the accused persons in the light of electric bulb. PW 1, PW 3 and PW 5 have stated that they identified the accused persons in the light of electric bulb but the IO did not find any wiring in that house. He did not find any electric bulb in the house. Considering the objective finding of IO that he did not find any electric connection at the place of occurrence. PW 1, PW 3 and PW 5 changed their version and they introduced the story of generator, which was hired for Maha Mritunjay Jap and electricity was being generated through the generator. The IO has specifically stated that he was not shown any generator by any witnesses or by the informant. The changed version of the prosecution regarding the source of identification for the first time in Court indicates that the prosecution has tried to improve its case on the point of identification. During the investigation no such statement was made by any witnesses. In the protest petition filed by the informant PW 5 on 17.8.1999.

There was no whisper about generation of power through generator, but after one year four months of the occurrence for the first time in Court a new story has been developed. PW 5 in his evidence has stated that the generator belonged to his son-in-law and son-in-law Dewan Singh has also not been examined to corroborate the evidence of PW 5 that the generator was hired for Maha Mritunjay Yagya. It has been submitted that non mentioning of having generator in course of investigation and for the first time coming out with this story in course of trial has created doubt against the reliability of the evidence of the witnesses on the point of identification. Considering the evidence on record the only conclusion which can be derived is that there was no means of identification and the prosecution witnesses have not identified the accused persons in the light of electric bulb which was being generated by a generator.

13. Mr. Lala Kailash Bihari Prasad, learned counsel for the prosecution has stated that identification of a known person is possible, even if there is no light, specially in case of village people who are not acclimatized to flurocent light, the standard of visible capacity applicable in case of urban people can not be applied to villagers whose optical potency is attuned to earthen lamps. Reliance has been placed by him in the case of Ram Gulam Chowdhary and Ors. v. State of Bihar, reported in 2001 (4) PLJR 123, and in the case of Kalika Tiwary and Ors. v. State of Bihar, reported in 1997 (4) SCC 445. I find that these two decisions have no application in the present case as the prosecution witnesses are not villagers rather they live in town area of Begusarai, where they are used to electric light. Besides that it is the case of prosecution that witnesses like PW 1 and PW 3 woke up from their sleep, and the time of occurrence was at 2 a.m. In this circumstance it is not possible for any one to immediately identify any one unless there is sufficient light. This has also been admitted by prosecution witnesses that accused left the place of occurrence immediately after firing. In the short period any person who has been awoken from sleep, who is not mentally alert will not be able to identify even known person, if there is no means of identification. Identification by PW 1 and PW 3 appears to be doubtful, considering the evidence on record.

14. Another limb of argument is that the trial Court did not properly considered the evidence of PW 1 and PW 3 who claimed to be eye-witness. In his fardbeyan PW

5 has stated that in the alleged night of occurrence accused persons came at 2 a.m. armed with pistol, when he was sleeping with his son on a cot at verandah of his newly constructed house. He woke up hearing the sound of foot steps and saw Bhola Singh putting his pistol on his chest and on instigation of Bhola Singh Arbind Singh fired on head of his son Binod Singh. He raised alarm and PW 1 Ramchandra Singh as well as other family members came and saw accused persons who fled away immediately. PW 1 is named as eye-witness in the FIR itself, but PW 3 has not been named as witness in the FIR. The evidence of PW 5 and PW 1 is that PW 1 came at verandah when he heard the sound of firing. This is also in the evidence that single fire was made by Arbind Singh so it may be said that PW 1 did not see who fired at Binod Singh as such he cannot be said to be an eye-witness of firing by Arbind Singh. Another important aspect is that if at all PW 1 was present in the house and saw the occurrence then what prevented them from recording their statement before the IO immediately after the occurrence when the IO came at the place of occurrence in the next morning. Both PW 1 and PW 3 came at police station on 3.9.1999 after 22 days of the occurrence for recording their statement when occurrence had taken place in the night of 11/12.8.1999. In the present case on 12.8.1999 after the occurrence Ram Sakal Mishra came at the place of occurrence at 4.35 a.m. Ram Sakal Mishra recorded the fardbeyan of the informant, prepared inquest report, sent the dead body for post-mortem. At that time PW 1 and PW 3 were present in the house, but they did not get their statement recorded by the IO PW 6 the IO arrived at the place of occurrence at 7.45 a.m. and he recorded the re-statement of PW 5. Inspected the place of occurrence and examined independent witness namely Nepo Singh, who is a garage owner and tenant of the informant. The IO made attempt to record statement of family members, but none of them including PW 1 and PW 3 gave any statement. The IO thereafter examined the persons whose houses are surrounding the place of occurrence. These witnesses stated that some one killed Vinod Singh in the night, but they did not name any person. On the next day PW 6 the IO again visited the place of occurrence and searched for witnesses but no one appeared before him. There was sufficient opportunity but none of the witnesses appeared and claimed that they identified the accused persons either at the time of commission of offence or at the time of fleeing away. On 17.8.1999

Pramod Singh husband of PW.3 (not examined) went to the police station and gave his statement before the IO PW 1 and PW 3 who claimed to be eye-witness did not appear before the IO till 2.9.1999. Both these witnesses had given their statement on 3.9.1999. Such long delay in getting their statement recorded by the IO regarding occurrence and regarding the identification of the accused persons creates a good deal of doubt regarding the veracity of the evidence of these two witnesses. Their evidence becomes doubtful specially when no explanation for such delay have been advanced by them. The veracity of PW 1 and PW 3 should not have been relied particularly when such a long delay has not been explained. The reliance has been placed by the appellants in the case of Balkrushna Swain v. State of Orissa, AIR 1971 SC 804. In this decision the evidence of prosecution witnesses was not held to be reliable as the witnesses were not examined for nearly ten days. No justifiable reason was enhanced for such delay and it was held that it becomes difficult to place reliance on such testimony particularly in a murder case when the witnesses claimed to be an eye-witness and failed to get his statement recorded just after the occurrence. In the present case also the prosecution witnesses claiming to be eye-witnesses of murder have failed to make their statements recorded immediately after the occurrence. No justifiable reason has been enhanced for such delay. Accordingly placing reliance on the testimony of such witness is not safe and cannot be relied.

15. The argument has been advanced by the appellants counsel that there was no immediate cause for the accused persons to commit the offence. The motive alleged that the threats were being enhanced by the accused persons is contradictory. PW 5 in his fardbeyan has stated that the threats were enhanced by the accused persons to him that he will be killed. PW 3 has stated that the threat was enhanced to Vinod Singh the deceased 2-3 days prior to the occurrence. If there would have been any threat either to the life of the informant PW 5 or the deceased Vinod Singh, then it is improbable that no information would have been given to any authority. PW 3 being an advocate should have given information at the police station or before any competent authority. Since no such attempt was made by the prosecution it indicates that there was no such threatening by the accused persons and a false case has been made out by the prosecution to indicate their enmity. Since the story of threat is not reliable as such there was no

immediate cause for committing offence by the accused persons. I do not find much substance in this argument. Admittedly there was enmity in between the parties. The prosecution has brought several documents in order to prove the enmity in between the parties. These documents also show that in a false case instituted by the accused person the informant and his son were acquitted. PW 5 in his evidence has stated that his son Vinod was killed because he was opposing accused persons from taking forceful possession of some of the valuable lands. He has also stated that it was Vinod who used to look after the landed properties as well as the Court cases relating to the landed properties. He has stated that this was the reason behind the killing of Vinod Singh. Considering the evidence of PW 5 and 3 I do not find that the argument advanced by the appellants that there was no immediate cause for committing the offence by the accused persons. Further it has been argued that admittedly the occurrence took place in the dead of night and the probability is that no one had seen the occurrence, but subsequently the name of appellants and his father Bhola Singh were implicated in this case due to long standing enmity. In this respect if the presence of PW 1 and PW 3 at the place of occurrence is disbelieved because they got recorded their statement after much delay of the occurrence even then the presence of PW 5 and his claim to be the eye-witness of the occurrence cannot be disbelieved and there is no reason for his claim of being the eye-witness of the occurrence. PW 5 has stated that at 2 a.m. the occurrence took place and he was sleeping with his son on the same cot. He has stated that he woke up hearing the foot steps. He was surprised to see his cousin Bhola Singh and nephew Arbind Singh standing there armed with pistol. At that very time Bhola Singh put his pistol on his chest and ordered Arbind Singh to kill his son. PW 5 woke up from his sleep and become quite conscious. He identified the accused persons who were their close relatives and specially Bhola Singh addressing his son to kill the deceased. He identified them by their voice as well as their presence. PW 5 has stated that only one fire was opened by Arbind Singh which hit on the head of his son and he died. This statement of PW 5 has been corroborated by the postmortem and evidence of PW 11 the doctor. PW 5 lost his younger son and during trial before the Court on several occasions he lost his control and became emotional. A father who has lost his young son it is not possible that he will make false statement before the Court and would try to

implead some other persons than those who are the actual culprits. Even though the evidence of PW 1 and PW 3 is disbelieved and found to be unreliable the evidence of PW 5 is sufficient to prove the case of prosecution. For proving the case of prosecution it is not necessary that a large number of witnesses should come and depose even the solitary evidence or reliable and trustworthy witness is sufficient to prove the case of the prosecution. The evidence of PW 5 is found to be reliable and trustworthy and that is sufficient for proving the case of prosecution.

16. In the facts and circumstances of the case I do not find any reason to interfere with the judgment of conviction passed by the trial Court. Accordingly this appeal is dismissed and the judgment of conviction passed by the trial Court is affirmed. The appellant is in jail and he is directed to be remain there for remaining period of his sentence.

**M.L. Visa, J.**

17. I agree.

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