

Sheo Kumar and ors. Vs. State of Bihar

Sheo Kumar and ors. Vs. State of Bihar

SooperKanoon Citation : sooperkanoon.com/130098

Court : Patna

Decided On : Feb-27-1998

Judge : N. Pandey and I.P. Singh, JJ.

Appeal No. : Criminal Appeal Nos. 370, 373 and 459 of 1993

Appellant : Sheo Kumar and ors.

Respondent : State of Bihar

Judgement :

N. Pandey, J.

1. These three appeals are directed against the judgment and order dated 17.8.1993, passed by the District & Sessions Judge, Nalanda at Biharsharif, in Sessions Trial No. 501 of 1992, whereby, he has held appellant Gorelal Singh responsible for the murder of deceased Ram Niwas Singh and sentenced him to undergo imprisonment for life under Section 302 of the Indian Penal Code and a further sentence of two years rigorous imprisonment under Section 27 of the Arms Act besides the sentences of one of year's rigourous imprisonment under Section 148 of the Indian Penal Code. Appellants Hari Kant Singh, Srikant Singh, Ram Sarowar Singh, Sheo Kumar Singh, Ram Nandan Singh and Ramadhar Singh alias Khadi Singh were sentenced to undergo life imprisonment under Section 302 read with Section 149 of the Indian Penal Code besides the sentence of one year's rigorous imprisonment under Section 148 of the Indian Penal Code. Appellants

Hari Kant Singh and Sri Kant Singh have further convicted under Section 307 read with Section 34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for five years. The sentences have, however, been ordered to run concurrently.

2. To put in short the prosecution case as per the Fardbeyan (Ext-3) of the informant (P.W. 9) is that on 24.2.1992 at about 9.00 a.m. he along with his brother Ram Niwas Singh (deceased) was present in his Khalihan. Having noticed that accused Sarowar Singh was getting the 'Jao' Crops grazed, the informant and deceased arrived there to take the she buffalo of the accused to the pond on which altercation took place between Sarowar Singh and the informant. However, the informant and his brother Ram Niwas Singh succeeded in taking the cattle to the road, which was situated near the tank. But all of a sudden, accused Srikant Singh, Hari Kant Singh and Gorelal Singh, armed with country made rifles, and other three accused, namely, Ram Nandan Singh, Sheo Kumar Singh and Khadi Singh, holding Lathi arrived there and surrounded the informant and his deceased brother. It is alleged that accused Sarowar Singh ordered to shot at the informant and his brother whereupon appellant Srikant Singh and Hari Kant Singh fired their respective rifles, but the informant and his brother managed to escape. Just thereafter, accused Gorelal Singh fired his rifle at the deceased, as a result of which he received injury and fell down. Several witnesses like Binod Singh, Rabindra Singh, Suresh Singh etc., who were working in their field and Khalihan, when arrived at the place of occurrence, the accused persons fled away. The police on the basis of the aforesaid statement, registered a regular case and prepared inquest report (Ext. 5) and sent the dead body of Ram Niwas Singh for post-mortem examination. The Investigating Officer, also examined witnesses and ultimately having found a prima facie case against the accused persons, submitted chargesheet. The learned Magistrate thereafter on receipt of the chargesheet committed the case to the Court of Sessions calling upon the appellants to explain charges.

3. The defence of the appellants 'as would appear from their statements under Section 313 of the Code of Criminal Procedure as also the trend of cross-examination of the prosecution witnesses, is total denial of the allegations. Attempt

was made to establish that deceased Ram Niwas Singh was murdered at a different place and in a different manner, but on account of enmity, the informant and his witnesses have implicated them.

4. As would appear from the inquest report (Ext. 5) and the evidence of Dr. Daya Nand Prasad (P.W. 10) that deceased Ram Niwas Singh died on account of fire arm injuries. As per the findings of the doctor, injury No. 1 was lacerated wound of oval shape ' i' deep to neck structures on side of the middle of neck. This according to the doctor, was the wound of entry. The doctor also found exit of that wound on the right side of lower part of chest 1' i' deep to cavity. Therefore, there is no dispute that the death of deceased Ram Niwas Singh was homicidal.

5. The prosecution in support of its case examined altogether eleven witnesses. Out of them, P.W. 1 (Bhaktimal Singh) and P.W. 3 (Muneshwar Singh) are the formal witnesses, P.W. 2 (Manoj Kumar) was, however, tendered. P.W. 10, as noticed above, is doctor who has conducted post mortem whereas P.W. 11 (Shambhu Nath Pathak) is the Investigating Officer. P.W. 4 (Satyadeo Singh), 6 (Rabindra Singh), 7 (Binod Singh), 8 (Suresh Prasad Singh) and P.W. 9 (informant) have supported the case of the prosecution as they were pretest near the place of occurrence.

6. Learned Counsel appearing for the appellants firstly contended that the trial Court having held that P.Ws. 4, 6, 7, & 8 were, in fact, not the eye witnesses of the actual occurrence, should have rejected their entire testimony. It was not open to him to take any aid from their evidence in order to convict the appellants. He submitted that from a bare reference to the First Information Report, it would appear that P.Ws. 4, 6, 7 and 8 had arrived at the place of occurrence after the deceased was shot at and fell down in the ditch. Though these witnesses have claimed to have seen the entire occurrence and the manner in which deceased was shot at by the accused persons but as a matter of fact, in the Fardbeyan it was specifically mentioned that they arrived at the place of occurrence immediately after the incident of shooting and, therefore, it can be safely presumed that they had not seen the occurrence. But in order to implicate the appellants, they have claimed to have seen the occurrence.

7. No doubt in the Fard-beyan the informant had mentioned that when the deceased fell down witnesses arrived there to save them. He has not mentioned that these witnesses (P.Ws. 6, 7 and 8) had not seen the occurrence. But taking worst view, as was taken by the trial Court, on such a statement of the informant, other eye-witnesses cannot be disbelieved. Because from a bare reference to the evidence of P.Ws. 6, 7 and 8 it would appear that at the time of occurrence they were present in their Khalihaan. This has also come in evidence that the place of occurrence was fully visible from the Khalihaan and there was no obstacle. As per the statement of these witnesses, they having seen the altercation etc. between the informant and the appellants, rushed to the place of occurrence but in the meantime, incident of shooting started. Therefore, if these witnesses while rushing to the place of occurrence had occasion to witness the manner of assault and part played by respective accused persons, there cannot be any scope to doubt their credibility simply because in the Fard-beyan it was mentioned that when deceased fell down having received fire arm injuries, witnesses arrived. That apart from a bare reference to the statements of the witnesses and the contents of the Fard-beyan it would appear that entire occurrence took place simultaneously. Therefore, in our view, there can not be any scope to discredit the testimony of P.Ws. 6, 7, and 8.

8. It was next contended that in view of the finding of the doctor regarding blackened margin at the wound of entry, the manner of occurrence and firing at the deceased either disclosed in the Fard-beyan or in the evidence of eye witnesses becomes fully contradictory and doubtful. Similarly there is another vital contradiction in the Fard-beyan coupled with the ocular witnesses and findings of the doctor regarding wound of entry and its exit. Learned Counsel contended that having regard to the nature of injury coupled with opinion of the doctor until and unless the firing was made from a height of 6 to 8 feet, such injuries were not possible. Because the wound of entry was found on the neck with averted margin and the wound of exit was found on the right side of lower part of back of chest about 3 lateral to the mid line. But this is not is case of the prosecution that the firing was made from a height of 6 to 8 feet or at a time when deceased was sleeping.

9. Contradictions were also pointed out that as per the evidence of prosecution, deceased after receiving fire arm injury, rolled sown in a ditch, but not a single scratch was found on the person of the deceased by the doctor, particularly when the earth at the place of occurrence was quite hard and uneven.

10. It is a fact that no allegation was made in the First Information Report whether appellant Gorelal Singh fired at the deceased from a close range or it was made from a distance. But of course in their evidence some of the witnesses have said that firing was made from a distance of 6 to 8 feets, and one of them said that it was from a distance of 20 to 25 steps. But a question arises whether in the background of consistent evidence of P.Ws. 6, 7, 8 and 9 regarding the genesis of occurrence and the manner in which the accused persons assaulted the deceased, simply because there are certain contradictions in the Statement of medical evidence, testimonies of such witnesses can be discarded outright.

11. I have already indicated that barring few contradictions, no material was placed before us to discredit the testimony of the eye witnesses. This cannot be disputed that the informant was present with the deceased throughout nor that P.Ws. 6, 7 and 8 were present in their Khalihan when this unfortunate incident originated. In my view, then it is proved beyond any doubt from the evidence of direct eye-witnesses that appellant Gorelal Singh fired at the deceased, causing gun shot injuries, the inconsistency between the opinion of the expert and the evidence of such witnesses carries no weight. Reliance in this regard can be usefully to a decision of the Apex Court in the case of Karnail Singh and Ors. v. The State of Punjab : 1971 CriLJ1463 and yet another decision of the same Court the case of Mayur Panabhai Shah v. State of Gujarat : 1982 CriLJ1972 .

12. In the opinion of the doctor, Such a firing can be expected if the shooter was standing at a higher level of 6 to 7 feets, than the person shot at. In the instant case, there is no evidence that at the time of firing the deceased and the shooter Gorelal Singh were standing in a parallel position. Rather from the evidence of some of the witnesses coupled with the Investigating Officer, it can be noticed that the place where occurrence took place was quite uneven. Therefore, simply on the basis of the opinion of the doctor that such an injury was possible from a height of

6 to 7 fts., it would not be Safe to reject the prosecution version and evidence of as many as four other witnesses, who had occasion to witness the occurrence from a close range.

If was then contended that as per the case of the prosecution and evidence of eye-witnesses, it would appear that the deceased had wrapped Gamachha around his waist but not a single drop of blood was found by the Investigating Officer on the Gamachha, The submission is if the deceased had received injury on the neck, it was quite natural that sufficient blood would have oozed out and fallen on the Gamachha. Therefore, in absence of any blood on the Gamachha the Court should draw adverse inference against the case of the prosecution. True it is, if it is established beyond doubt that the deceased continued standing even after receiving bullet injury, trace of blood on such a Gamachha was quite natural and essential. But in this case allegation is that immediately after firing the deceased fell down. Therefore, having regard to the facts, noticed above, and the absence of blood on Gamachha no adverse inference can be drawn against the prosecution.

13. Thus, having taken into consideration all the facts, noticed above, in my view, there appears no manner of doubt that accused Gorelal Singh fired at the deceased, causing his death at the spot. The evidence of the prosecution referred to above, has clearly established that it was the sole accused Gorelal Singh, who shot at the deceased. Therefore, in my view, the trial Judge was quite justified while holding him guilty for the offence under Section 302 coupled with Section 148 of the Indian Penal Code and 27 of the Arms Act.

14. Coming to the case of other appellants, though there is specific allegation that appellants Hari Kant Singh and Srikant Singh also fired at the informant and the deceased, but no injury was caused. These appellants were also named in the Fard-beyan. The eye-witnesses like P.Ws. 6, 7, 8 and 9 have also corroborated the prosecution version that these appellants made attempt to fire at the deceased out of course no injury was caused, Therefore, in my view, the trial Court appears quite justified while holding these appellants guilty for the offence under Section 307 read with Section 34 of the Penal Code for attempting to commit murder of the informant and the deceased. I, therefore, having found their conviction justified,

affirm the sentence under Section 307 read with Section 34 of the Indian Penal Code.

15. Now the question arises whether conviction and sentence under Section, 302 read with Section 149 of the Indian Penal Code as recorded against appellants Srikant Singh. Hari Kant Singh and other appellants, namely, Sheo Kumar Singh, Ramadhar Singh @ Khadi Singh, Ram Nandan Singh and Ram Sarowar Singh can be held to be justified. Because the submission is that from a bare reference to the genesis of the case, it would appear when the deceased and his brother Geeta Singh (informant) started taking she-buffalo of the accused to the pond, appellants arrived there and tried to rescue their cattle from the clutches of the informant and the deceased. There was neither any intention nor common object of the assembly to commit murder of the deceased. Therefore, remaining appellants cannot be convicted for the charges under Section 302 read with Section 149 of the Indian Penal Code. Because in order to convict a person for committing any offence with the aid of Section 149 of the Penal Code, the prosecution has to prove that the accused had a common intention or common object or even a knowledge that main accused would commit murder, such accused cannot be held guilty for the offence under Section 302 read with Section 149 of the Indian Penal Code.

16. Mr. Jaiswal learned Counsel appearing for the State contended that from a bare reference to the facts of this case and evidence of eye-witnesses that all the accused persons, variously armed, arrived at the place of occurrence with the main accused, would be enough to hold them guilty for the offence under Section 302 read with Section 149 of the Indian Penal Code, his participation with the main accused at the time of assault etc. is not necessary. Mere presence of such accused would be enough to establish that the object of the assembly was to commit murder and not merely to rescue the she buffalo.

17. There cannot be any dispute with regard to the views expressed by the State counsel. But a question arises whether the prosecution was able to establish in this case that all the accused persons had a pre-plan or common object to commit murder of Ram Niwas Singh or they had asserted at the place of occurrence to

rescue their cattle and prevent the informant and deceased from taking such cattle to the pond. In my view, answer to such a proposition is very plain and simple. Because there is no evidence in this case that all the accused persons had assembled at the place of occurrence with common object to commit murder of the deceased. The sole object of the assembly was to rescue their cattle and even to use force to obstruct the informant and the deceased from taking such cattle to the pond. If during such attempt Gorelal Singh fired at the deceased, he alone can be held responsible for the murder. But the other accused persons in absence of any evidence that they had knowledge that Gorelal Singh, would commit murder of the deceased, conviction under Section 302 read with Section 149 of the Indian Penal Code against the remaining appellants may not be justified. I, therefore, have no opinion but to set aside their conviction under Section 302 read with Section 149 of the Indian Penal Code.

18. In the result, the conviction of Gorelal Singh under Section 302, 148 of the Indian Penal Code and 27 of the Arms Act is confirmed and his appeal is dismissed. Conviction and sentence of Harikant Singh and Srikant Singh under Section 307 read with Section 34 of the Indian Penal Code and 27 of the Arms Act is also being affirmed. Likewise, the conviction and sentences of all the appellants under Section 148 of the Indian Penal Code is also confirmed and they are directed to serve their sentences recorded under that count.

19. With the aforesaid modification of conviction and sentences, Cr. Appeal No. 370 of 1993 and 373 of 1993 are partly allowed whereas Cr. Appeal No. 459 of 1993 stands dismissed. Since appellants Sheo Kumar Singh, Ram Nandan Singh, Ramadhar Singh alias Kahdi Singh, Sarowar Singh alias Ram Sarow Singh, Hari Kant Singh and Srikant Singh, are already on bail, therefore, their bail bonds are cancelled and they are directed to be taken into custody for serving out their sentences.