

**Jitendra Singh Vs. State of Bihar**

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**Court :** Patna

**Decided On :** Jan-28-1999

**Judge :** R.A. Sharma and A.K. Prasad, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 302, 307 and 326; Code of Criminal Procedure (CrPC) - Sections 107, 164 and 307

**Appeal No. :** Criminal Appeal No. 307 of 1989, (R)

**Appellant :** Jitendra Singh

**Respondent :** State of Bihar

**Advocate for Def. :** Samir Prasad, APP

**Advocate for Pet/Ap. :** Kameshwar Prasad, Sr. Adv. and Sunil Kumar Sinha, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**A.K. Prasad, J.**

1. This appeal at the behest of the sole appellant Jitendra Singh is directed against the judgment and order dated 4-9-1989 in S.T. No. 118/126 of 1981-89 passed by Shri Syed Md. Mahfooz Alam, the then 2nd Additional Sessions Judge, Jamshedpur, whereby and whereupon he has been convicted under Section 302

of the Indian Penal Code on the charge of committing the murder of Hare Ram Dixit alias Bhagat and sentenced to life imprisonment thereunder.

2. Briefly, stated, the prosecution case, as made out in the fardbeyan (Exhibit 3/1), is as under:

On 30-3-1979 at about 7.30 p.m. Arun Prasad Dubey (PW 5), the informant, was returning home after collecting the price of coal from the hotel of Chito and on the way he saw his maternal uncle Hare Ram Dixit alias Bhagat, the deceased, coming on a bicycle from the direction of Kumhar Pada, while he spotted at that moment 6-7 persons variously armed coming from the market side. Among them, he identified the appellant Jitendra Singh, who was armed with a sword and co-accused Dinesh Pandey (who had a Bhujali), Raj Kishore Choudhary (who wielded a knife), Narayan Chatisgaria (who wielded a Gupti) and one of the unknown miscreants having hockey stick. All the miscreants ran towards the deceased and appellant Jitendra Singh gave alalkara that the deceased should not escape alive and simultaneously attacked him with sword and the other culprits surrounded, him. The deceased got down from the bicycle and ran for few steps, whereupon the co-accused Dinesh Pandey, Narayan Chatisgaria and Raj Kishore Choudhary armed with Bhujali. Gupti and knife respectively and one of the miscreants holding hockey stick attacked him. The deceased with severe wounds fell by the side of the road in a pool of blood. The informant out of fear did not intervene and escaped raising alarm. The culprits fled away through a nearby Gali. At the time of the incident there was power failure and the informant witnessed the occurrence in the light of petromax burning in the nearby betel shop of Mahavir. The informant rushed home and narrated the incident to his father and brother and disclosed the names of the culprits to them and he returned with them to the scene of occurrence, where the police officers were present and he gave his fardbeyan (Exhibit 3/1) before the S.I. (J.P. Narayan), then officer in charge, Sonari Police Station, on the same night at about 8.15 p.m. The motive alleged thereunder for the murder is the long standing enmity between the deceased and the accused persons.

3. On the basis of the fardbeyan, the present case was instituted, a formal first information report (Exhibit 4) was drawn up and after investigation charge sheet was laid against the accused persons. At the juncture, it may be stated that co-accused Dinesh Pandey, Narayan Chatisgaria, Panna Lal, Ajeet Singh and Raj Kishore Choudhary were acquitted by the trial Court of the charge under Section 302 read with Section 34 of the Indian Penal Code. Out of them, co-accused Dinesh Pandey, Narayan Lodhi alias Narayan Chatisgaria and Raj Kishore Choudhary were acquitted on giving benefit of doubt.

4. The defence of the appellant is of innocence and false implication out of enmity.

5. At the trial, the prosecution examined eight witnesses in support of its case. Out of them PW 7 (Umar Khan) is a formal witness. PWs 1, and 2 (Rana Ashok Singh and Shyam Lal Yadav respectively) have turned hostile to the prosecution. PW 3 (Md. Ibrahim) is a witness on inquest report. Exhibit 2 is the signature on the inquest report. The other PWs are: PW 4 (Anuradha), who claims to have identified the appellant fleeing from the scene of occurrence armed with sword, PW 5 (Arun Prasad Dubey) is the informant, whereas PW 6 (Kameshwar Singh) is the Investigation Officer. PW 8 (Dr. G.P. Choudhary) has proved the carbon copy of the post mortem examination report (Exhibit 7/1) of the deceased in the pen of Dr. M.S. Ahmad, whose attendance could not be secured as he was away to Saudi Arabia, and has proved the opinion of the doctor M.S. Ahmad that the injuries found on the persons of the deceased at time of the post mortem examination were sufficient in the ordinary course of nature to cause the death. It may be pointed out ' that the original post mortem examination report of the deceased is Exhibit 7, which has been proved by PW 7.

6. The defence, on the other hand, examined one witness, namely DW 1 (Mahavir Sahu)

7. On consideration of the evidence and materials on record, the trial Court relying on the testimony of the informant (PW 5), which was corroborated by the circumstantial evidence of PW 4 (Anuradha), who claimed to have identified the appellant fleeing from the scene of oc-eurrence armed with sword, held the appellant guilty of committing the murder of the deceased and convicted and

sentenced him under Section 302 of the Indian Penal Code, though he had been charged under Section 302 read with Section 34 of the Indian Penal Code. The trial Court gave benefit of doubt and acquitted co-accused Dinesh Pandey, Narayan Lodhi and Raj Kishore Choudhary (who were named in the First Information Report) on the ground that there was uncorroborated testimony of the informant (PW 5) and he was on inimical terms with co-accused Dinesh Pandey, Raj Kishore Choudhary, Panna Lal and others since his brother Shankar Prasad Dubey has brought a criminal case under Section 307 of the Indian Penal Code against them on 15-1-1979. Co accused Panna Lal and Ajit Singh were acquitted as they were not named or identified by any PW as the culprit involved in the incident.

8. The point which falls for determination is whether the prosecution has been able to established beyond reasonable doubt that the appellant committed the murder of the deceased.

9. Mr. Kameshwar Prasad, learned Sr. Counsel, appearing on behalf of the appellant, has assailed the impugned judgment mainly on the ground that the informant (PW 5) is related to the deceased and he is an interested witness and his testimony is not trustworthy on the involvement of the appellant in the alleged occurrence and the trial Court did not accept his evidence qua these F.I.R. named accused, namely, Dinesh Pandey, Narayan Lodhi and Raj Kishore Choudhary (who are acquitted) and the circumstantial evidence of Anuradha (PW 4) that she had identified the appellant fleeing armed with a sword from the scene of occurrence, in the circumstances of the case, is highly improbable and at least, the appellant is entitled to benefit of doubt. He further submitted that when the other five accused have been acquitted in the case, the conviction of the appellant under Section 302 of the Indian Penal Code in the absence of cogent evidence that in fact he had inflicted specific sword injury, much less fatal injury, to the deceased cannot be sustained.

The learned A.P.P. appearing on behalf of the respondent-State has supported the impugned judgment.

10. The factum that the deceased met with homicidal death is not in dispute. Dr. M.S. Ahmad, who held autopsy, could not be examined in the case as he was away to Saudi Arabia. The original post mortem examination report of the deceased is in the pen of Dr. M.S. Ahmad (Exhibit 7) PW 8 (Dr. G.P. Choudhary), tutor, department of Pathology, M.G.M. Medical College, Jamshedpur, has proved its carbon copy (Exhibit 7/1). The post mortem report shows that Dr. M.S. Ahmad held autopsy on 30-3-1979 and he found six incised wounds and four punctured wounds, which were ante-mortem, on the person of the deceased. The punctured wounds were on vital organs/parts of the body and the cause of death was due to haemorrhage caused by the injury of the vital organs. PW 8 has agreed with the opinion about the cause of death given in the post mortem examination report. He has further expressed that haemorrhage caused by the injury on the vital organs was sufficient in ordinary course of nature to cause the death. The medical evidence, as rightly held by the trial Court, established beyond doubt that the death of the deceased was homicidal.

11. The place of occurrence, as described by the Investigating Officer (PW 6), is the Southern Kaccha portion of the Kumhar Pada Pitch road near the house of Ibrahim. The pitch road is adjacent North to the house of Ibrahim in Mohalla Sonari, intervened by a drain, and adjacent East to the place of occurrence, is a lane which goes to the North, in which the houses of Jamuna Singh and Raj Kishore Chattisgaria are situate and the lane further leads to the house of the appellant. He has further stated that in the West to the place of occurrence there is a betel stall of Mahavir, which faces the pitch road. He has further stated that the Chowk of Fakatia Cinema Maidan is at a distance of about 20-25' from the place of occurrence. His evidence shows that the place of occurrence is a busy road. The identity of place of occurrence is not in controversy.

12. The Investigating Officer (PW 6) took charge of the body of the deceased, held inquest over it (vide Exhibit 2) and seized blood stained earth and an old bicycle (vide Exhibit 5/1) from the place of occurrence and a pair of Chappals from nearby the place (vide Exhibit 5).

13. It has now to be considered whether the appellant was instrumental in the murder of the deceased.

14. PWs 1 and 2 turned hostile to the prosecution at the trial and they did not support the prosecution case, although they had supported it in their earlier version before the police as well as in the statements recorded under Section 164, Cr.P.C.

15. The prosecution case hinges on the testimony of PWs 4 and 5. PW 5 Arun Kumar Dubey, the informant is, the solitary eye-witness to the actual occurrence. He is related to the deceased. It is well settled that 'related' is not equivalent to 'interested'. The evidence of a witness is not to be rejected outright on the ground of relationship. The evidence of such a witness is to be examined with care and caution (reference AIR 1997 SC 1160 and AIR 1997 SC 1487: (1997 Cri LJ 727)). Keeping this principle in mind one may now proceed with the discussion of the evidence of PW 5. He has stated in his chief examination that when on the fateful day, around 7.30 p.m. he was returning after collecting money from Chito, the hotel keeper, on the way near the house of Paizullah (which is to South of the place of occurrence) he saw the deceased coming on a bicycle from the direction of Kumhar Pada and in the meantime, the appellant, Dinesh Pandey, Rajesh Kumar Choudhary and Narayan Chatisgaria (acquitted accused) who were armed with sword, Bhujali, Gupti and knife respectively and two unknown persons, one of whom wielded hockey stick, emerged from the market side, way-laid the deceased, and the appellant exhorted to finish the deceased and simultaneously attacked him with a sword. He has further stated that the deceased made abortive bid to escape and he was further assaulted by Dinesh Pandey, Rajesh Kumar Choudhary, and Narayan Chatisgaria, the acquitted accused with their respective weapons and an unknown culprit had used the hockey stick in the incident.

He has further deposed that the deceased fell on the spot with bleeding injuries and he himself ran away home raising alarm, whereas the culprits retreated through the lane. He has further stated that he narrated the incident and disclosed the names of the assailants of the deceased to his father and brother and returned to the place of occurrence in their company, where the police officer was present

who recorded his fardbeyan (Exhibit 3/1). It was a dark night. He claimed to have identified the appellant and the other culprits in the scattered light of burning petromax kept in the outer portion of betel shop of Mahabir. It has come in his cross examination that at the time of occurrence he was standing on the road at a distance of about 30-35 steps from the place of occurrence. He has further stated that the shop of Mahabir faces the road and he was 10-15 yards off Mahavir's shop.

A criticism has be made that the petromax, which is the source of identification, has not been seized by the Investigating Officer (vide paragraph 24 of the deposition of PW 6) and this adversely affects the prosecution case. It is mentioned in the fardbeyan that at the time of the incident petromax was burning in the betel shop of Mahabir, which is in the opposite direction of the place of occurrence. PW 4 too has testified to this effect.

16. DW 1 (Mahabir Sahu), the betel shop keeper, has stated that on 30-3-1979 his shop was closed. He has further stated that a lantern and not petromax is used in his shop. He has further deposed that he was away to his village between 12-3-1979 to 5-4-1979. He was a prosecution witness named in the charge sheet, but he has been examined by the defence. The evidence of the Investigating Officer (PW 6) shows that he was witness to the articles seized (vide Exhibit 5) by the Investigating Officer from near the place of occurrence on 30-3-1979 itself. Further, the statement of DW 1 (Mahabir Sahu) was recorded by the I.O. on the same night. There is cogent evidence of PW 4 and 5 that at the time of occurrence the petromax was burning in the betel shop of Mahabir. There is no reason to disbelieve their testimony on this point. It is evident that DW 1 has deposed to help the defence. He is not a truthful witness. The failure of the I.O. to make seizure of the petromax does not affect the prosecution case adversely.

17. There must have been enough light at the place of occurrence, which enabled the assailants to identify the victim whom they targeted without any mistake on the busy road. The informant or any other witness could have identified the culprits from short distance in the same night. PW 5 witnessed the occurrence from a distance of 30-35'. The evidence is that the occurrence had lasted for sufficient

long time extending to about 15-20 minutes. The appellant was known to PW 5. Therefore, it was quite possible for him to identify the appellant correctly amongst the assailants of the deceased.

18. It is true that the house of PW 5 is adjacent to the police station. His conduct in not going to the police station and returning to the place of occurrence accompanied by his father and brother (to whom he had narrated the incident at home) is not unnatural. One reacts in his own special way on witnessing a ghastly murder.

19. There is no material on record to suggest that PW 5 has direct enmity with the deceased. But it has come in his cross-examination that the deceased had got a proceeding under Section 107, Cr.P.C. against the appellant initiated on 19-2-1979. Thus, there was previous enmity between them. It may be argued that PW 5 is an interested witness. So as a rule of prudence and abundant caution it has to be seen whether the testimony of PW 5 on the participation of the appellant in the occurrence is corroborated by independent source and surroundings circumstances. Merely, because , three other persons named by him were acquitted, on giving benefit of doubt, on the ground of litigation with his brother and for lack of corroboration, it would not render his testimony as wholly suspect because *maxim falsus in uno falsus in omnibus* is not applicable (reference 1997 (Cri) 521).

This brings us to the discussion of the evidence of PW 4 (Anirudh). She has testified to the effect that on the fateful night, around 7.30 p.m. she had come to Kumhar Pada road turning in search of her younger son (Mani). She has further stated in her chief-examination that when she heard a cry of 'save-save', she stood there and saw five persons running towards the lane of Jamuna Singh in the moon light and in the light of petromax burning in the shop of Mahabir she identified a bulky man, who is the appellant, fleeing with a sword. She has further stated that after the miscreants had fled, she moved forward to some distance to find that a bicycle was lying on the road and the deceased was in pool of blood, whereafter she quickly returned. It was argued that PW 4 has made development in her evidence that there was moon light also at the time of occurrence. She did

not state before the police that it was a moon lit night. The evidence on record shows that it was a dark night.

The evidence of PW 4 was recorded after six years of the occurrence. It may be that due to normal error of memory due to lapse of time, PW 4 has stated that at the time of occurrence there was moon light also. The fact remains that she has stated that there was light of petromax which is in consonance with the prosecution case. Her statement about presence of petromax light has not been challenged during her cross-examination. She has stated that she had seen the fleeing culprits from a distance of 30'. It has been elicited in her cross-examination that the appellant was behind the group of the miscreants and she had seen him from back. It was urged by Mr. Kameshwar Prasad that it was not possible for PW 4 to identify the appellant from his back. She claims that the appellant was known to her from before. This fact is not challenged by the defence. It is quite possible that the appellant might have looked back while fleeing into the Gali and PW 4 had the opportunity to identify him by his face and by his gait. A wild suggestion has been given by the defence to PW 4 that she is a concubine of the deceased and for this reason she has implicated the appellant. This suggestion has been denied by PW 4. There is no material on record to suggest that she had illicit relation with the deceased. She is an independent and simple witness. It does not stand to reason why she would falsely implicate the appellant. She could have identified the appellant from a short distance in the light of the petromax. She has named and identified the appellant in Court. There is no reason to discard her testimony on the point of identification.

20. The evidence of PW 4 that soon after the occurrence, the appellant was identified by her fleeing from the scene of occurrence lends assurance to the testimony of PW 5 that the appellant participated in the occurrence. The appellant is named in the fardbeyan. The fardbeyan was recorded within an hour of the occurrence. The post-mortem examination report reveals that there were incised wounds on the person of the deceased. An incised wound is possible by sword blow. The fardbeyan and the medical evidence also corroborated the testimony of PW 5.

21. It has been urged by Mr. Kameshwar Prasad that the motive attributed to the appellant, which was a proceeding under Section 307, Cr.P.C, is not so strong as to impel him to participate in the murder of the deceased. It is suffice to say that the motive for a criminal act may not necessarily be proportionately grave to do grave crimes. Some times motive established may appear to be a weak one, but that by itself is not sufficient to lead to any inference, adverse to the prosecution (reference AIR 1997 SC 1808 at pp 1811-1812).

22. In view of the discussion made above and on consideration of the evidence on record, I find that the prosecution has been able to prove beyond doubt that the appellant armed with sword participated in the occurrence culminating in the murder of the deceased.

23. Now it has to be determined about the nature of the offence committed by the appellant. Five co-accused, who were charged along with the appellant, under Section 302 read with 34 of the I.P.C. have been acquitted in the case by the trial Court. No separate charge under Section 302 I.P.C. against the appellant was framed. It has not been spelt out in the evidence the exact injury or the nature of injuries caused by the appellant to the deceased. There were other injuries on the person of the deceased, which were possible by other weapons. It cannot be said on the basis of the evidence on record that the appellant had caused wounds to the vital organs or that he is the author of the fatal blow. It cannot be postulated in the circumstances of the case that the appellant had caused all the injuries to the deceased. It can be safely inferred from the evidence on record that the appellant intended to cause grievous injury to the deceased by sharp weapon. Hence, in the circumstances of the case, it is difficult to hold that the guilt of the appellant amounts to murder simpliciter. For these reasons, the conviction of the appellant under Section 302 of the I.P.C. cannot be sustained. Instead, I convict him for the offence under Section 326, I.P.C. and set aside the sentence of imprisonment for life and instead sentence him to undergo rigorous imprisonment for five years.

24. In the result, the appeal is dismissed with the modification, as indicated above, in the order of conviction and sentence passed by the trial Court against the appellant. The appellant shall surrender to his bail bond in the Court below to

serve out the remaining part of his sentence forthwith, failing which the Court below shall take all steps for securing his attendance.

**R.A. Sharma, J.**

25. I agree.

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