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Court : Patna

Decided On : Mar-30-1995

Judge : R.N. Prasad and Loknath Prasad, JJ.

Appeal No. : Criminal Appeal Nos. 438, 439, 440 and 441 of 1991

Appellant : Arbind Kumar Singh @ Arvind Singh and ors.

Respondent : State of Bihar

Disposition : Appeal Dismissed

Judgement :

R.N. Prasad and Loknath Prasad, JJ.

1. All the four appeals have been filed against the judgment and order dated 16.9.1991 passed by 11th Additional Sessions Judge, Patna in Sessions Trial No. 158 of 1989/Tr. No. 11 of 1989. They have been heard together and are being disposed of by this common judgment.

2. The appellants in all the appeals, except Cr. Appeal No. 439 of 1991, have been convicted for the offence under Section 302/149 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for life. Appellant, Ajay Singh, in Cr. Appeal No. 439 of 1991 has been convicted for the offence under Section 302 of the Indian Penal Code and has been sentenced to undergo

rigorous imprisonment for life. The appellants in all the four appeals have further been convicted for the offence under Section 147 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for one year, Ajay Singh in Cr. Appeal No. 439 of 1991 and Vijay Singh in Cr. Appeal No. 441 of 1991 have further been convicted for the offence under Section 27 of the Arms Act and have been sentenced to undergo rigorous imprisonment for one year.

3. The prosecution case in brief is that the informant, Punam Kumari, gave her fardbeyan, Ext. 7, on 23.1.1987 at about 8.30 A.M. at the place of occurrence, stating therein that yesterday on 22.1.1987 at about 7 P.M. she was in the Bungalow situated on the roof of her house. Her grand father, namely, Mundrika Singh and her younger brother, Kaushal Kumar, were inside the shop after taking their meals. Her father, Sachidanand Singh, after taking meal had also gone to the shop for taking sale proceeds of the day. They were sitting inside the shop where a lantern was burning. On hearing some sound she looked below and saw that 6-7 persons flashing their torches came to the shop. Her grant father, Mundrika Singh, opened the door and came out of the shop and when the door was opened she identified the appellants and one son-in-law of Vijay Singh in the light of the Lantern Vijay Singh was armed with small gun and Ajay Singh was armed with rifle. Her grant father caught the rifle of Ajay Singh upon which all the accused persons tried to snatch away the rifle and assaulted her grand father. While scuffle was going on the father of the informant closed the door from inside. All the accused persons threw her grand father on the ground and appellant, Ajay Singh, fired from his rifle on her grand father. Thereafter all the accused persons started breaking open the door of the shop and the informant started raising alarm and throwing brick bats from the roof. Accused, Arbind Singh, then took the rifle of Ajay Singh and when the door of the shop was broken, Vijay Singh and Ajay Singh entered the shop and put of the Lantern which was burning inside the shop. Both the accused persons caught hold of her father namely, Sachchidanand Singh and threw him on the ground and Vijay Singh killed her father by firing from his gun. While the informant was raising alarm one shot was fired towards the roof. On hearing the sound of firing and the alarm raised by her, her mother came out of her house and accused, Arbind Singh, fired upon her mother due to which she fell down in the lane after receiving injury. She and her grand mother also went to the

shop and found her father and grand father lying dead there. She started weeping over the dead body of her father. When they arrived near the shop the accused persons were at the place of occurrence but soon thereafter they ran away in different directions and while running away they fired several rounds. Her younger brother, Kaushal Kumar, who was inside the shop at the time of the occurrence along with the father and grand father, had seen the occurrence who had hidden himself in the corner of the shop and saved himself. The motive of the occurrence was that about 4-5 years ago the brother of the accused, Vijay Singh, was killed in which her father was made accused. Since then enmity was persisting between the parties.

4. On the aforesaid fardbeyan a formal First Information Report. Ex. 10, was drawn up and the case was taken up for investigation. On completion of the investigation charge-sheet was submitted against seven persons. On receipt of the charge-sheet in the court, cognizance was taken and the case was committed to the court of sessions for trial.

5. The defence of the appellants was that they were innocent and had not committed any offence. They have falsely been implicated out of the previous enmity.

6. The prosecution in support of its case examined ten witnesses out of whom P.W. 5 is the informant, P.W. 2 and P.W. 4 are eye witnesses to the occurrence. P.W. 1 is the witness to the inquest report. Ext. 8 and 8/1 and the seizure list Ext. 9 and 9/1 and has proved his signature on the aforesaid documents. P.W. 3 is the witness to the seizure list Ext. 9 and 0/1 and has proved his signature on the seizure list. P.W. 6 is also a witness to the inquest Ext. 8 and 8/1 and has proved his signature on the inquest report. P.W. 7 is the doctor, who examined the injured, P.W. 4 in the Patna Medical College and Hospital. P.W. 8 is another doctor who held postmortem examination over the dead body of Mundrika Singh and Sachchidanand Singh and has proved the postmortem report as Exts. 5 and 5/1. P.W. 9 is another doctor of Pothahi, who had given first aid to the injured P.W. 4 and referred her to Patna Medical College and Hospital for treatment. P.W. 10 is the investigating officer who visited the place of occurrence and seized the

incriminating materials from the place of occurrence. Three D.Ws. were also examined on behalf of the defence but their evidence was not referred by the defence as they were examined on behalf of accused Narendra Kumar Singh, who has been acquitted by the trial court.

7. The place of occurrence and the death of Mundrika Singh and Sachchidanand Singh have not been disputed in this case. It is the prosecution case that the occurrence took place inside the shop and outside the shop, which is a part of the residential house of the informant. The eye witnesses to the occurrence have also stated that the occurrence took place at the alleged place of occurrence. The investigating officer, P.W. 10, has also seized incriminating materials such as blood stained earth, watch, blanket, lantern, empty cartridges, broken bangles, shoes etc. from the place of occurrence. The doctor, P.W. 8, who held postmortem examination over the dead bodies, has also found ante-mortem injuries caused by fire arm and thus the place of occurrence and the death of Sachchidanand Singh and Mundrika Singh by fire arm have been well proved.

8. Altogether seven accused persons were put on trial, out of whom Anirudh Singh and Narender Kumar Singh were acquitted by the trial court due to paucity of evidence. Out of the ten witnesses examined on behalf of the prosecution. P.Ws. 2, 4 and 5 are eye witnesses to the occurrence. P.W. 2 is the son, P.W. 4 is the wife, P.W. 5 is the daughter of the deceased Saehchidanand Singh and the other witnesses, namely, P.Ws. 1, 3 and 6 are also related to the prosecution party and they are not eye witnesses to the occurrence. However, P.W. 1 deposed that the eye witnesses disclosed the names of the appellants, who participated in the occurrence. The enmity between the parties is also apparent from the first information report and the evidence of the witnesses. Enmity is a double edged weapon which cuts both ways. A man can commit a crime out of enmity and can be falsely implicated in the case out of enmity, However, in such a situation the evidence of the witnesses is not required to be thrown out but the requirement is that their evidence be scrutinised with care and caution. In the case of State of Uttar Pradesh v. Ballabh Das and Ors. : 1985 CriLJ2009 , it has been held that there is no law which says that in the absence of any independent witness, the evidence of the interested witness should be thrown out at the behest of or should

not be relied upon for convicting an accused person. What the law requires is that where the witnesses are interested, the court should approach their evidence with care and caution in order to exclude the possibility of false implication. If on analysis of the evidence of the interested witnesses the court comes to a conclusion that their evidence is trustworthy there is no reason to disbelieve them and their evidence cannot be rejected on this ground alone. Similar view has been expressed in *Bolineedi Venkataramaiah and Ors. v. State of Andhni Pradesh* : 1994 CriLJ61 .

9. We now proceed to examine the evidence of the witnesses in the light of the established principle of law as stated above. The occurrence took place outside the shop and inside the shop, which is a part of the residential house of the informant. P.Ws. 2, 4 and 5 are inmates of the house. P.W. 4 also received injury on the spot. Thus their presence at the place of occurrence are natural and cannot be doubted.

10. P.W. 5 is the informant. She has given the details of the occurrence and has stated in her evidence that at the relevant time she was reading on the roof of her house. She heard some sound and looked below and found that 6-7 persons flashing torches went to her shop which is situated in the north-west corner of her residential house. The distance of the place of occurrence from where she was witnessing the occurrence was only 9-10 feets. Her father Sachchidanand Singh and her grand father Mundrika Singh as also her younger brother Kaushal Kumar, were inside the shop where the Lantern was burning. Her grand father on hearing some sound opened the door of the shop and she identified the appellants in the light of the Lantern coming out from the shop. Her grand father caught the rifle of the appellant, Ajay Singh on which the other appellants tried to snatch away the rifle and started assaulting him. They threw him on the ground and the appellant, Ajay Singh, shot at him. While scuffling was going on with her grand father and the appellants, her father closed the door of the shop from inside. The appellants thereafter broke open the door and Ajay Singh and Vijay Singh entered the shop. They killed her father inside the shop. She has further stated in her evidence that all the appellants were armed with fire arms. When she raised alarm her mother, P.W. 4, came out of the house and was proceeding towards the place of

occurrence. She was fired at by the appellant, Arbind, due to which she became injured and fell down in the lane near the house of Mahanand and thereafter she along with her grand mother went to the place of occurrence and found the dead bodies of her father and grand father. Her younger brother, who was inside the shop and hiding himself by means of a blanket, had also seen the occurrence and had disclosed that appellants, Vijay Singh and Ajay Singh killed her father.

11. P.W. 2 is another witness, who is minor son of the deceased, Sachchidanand Singh. His age was ascertained at the time of examination as 12 years. The trial court took precaution and tested his reasoning and was satisfied that this witness was capable to understand the question.

This witness, P.W. 2, has given the detailed narration of the incident. He has suited in his evidence that he, his father and grand father were sitting inside the shop. His father and grand father were counting the sale proceeds of the day. In the meantime his grand father on hearing some sound came out from the shop by opening the door. When he opened the door he identified the appellants in the light of the Lantern burning in the shop. His grand father, Mundrika Singh, caught hold of the rifle of appellant, Ajay Singh. All the accused persons tried to snatch away the rifle and they assaulted him. They threw him on the ground. In the meantime his father closed the door from inside. Thereafter the accused persons broke open the door of the shop and appellants, Ajay Singh and Vijay Singh entered the shop. They caught hold of his father and threw him on the ground and appellant, Vijay Singh, fired at his father causing his death. Only female members came at the place of occurrence and after the occurrence P.W. 1 and the villagers came there to whom he narrated the incident. There is nothing in his evidence to show that the witness deposed falsely nor anything was pointed out by the learned Counsel for the appellants that he has falsely deposed, rather it appears from the evidence that he unfolded the prosecution case in a very natural way.

12. P.W. 4 is the wife of the deceased, Sachchidanand Singh, and had received injury at the place of occurrence. She has stated in her evidence that she went to the place of occurrence hearing the sound of firing and the alarm raised by her daughter, P.W. 5. While she was proceeding to the place of occurrence she saw

the appellants with fire arms at the place of occurrence. The son-in-law of the appellant, Vijay Singh fired at her due to which she sustained injury and fell down near the house of one Mahanand Singh. She deposed that she has also seen the killing of her husband and her father-in-law and while retreating, the appellants fired 14-15 rounds. Her evidence on the point of witnessing the assault on the deceased appears to be a development as she has admitted in her evidence that when she was in the hospital P.W.5 and P.W. 2 came and they narrated the actual manner of assault. But her evidence cannot be discarded on this ground alone because her presence at the place of occurrence cannot be doubted as she had received injury in the said occurrence. Furthermore, even if the evidence with regard to witnessing the actual assault on the deceased persons is discarded there is nothing in her evidence to discard it with regard to the identification of the appellants at the alleged place of occurrence. Thus, in our view, her evidence also corroborates the evidence of the eye witnesses namely, P.W. 5 and P.W. 2 on the point of identification and participation of the appellants in the alleged occurrence.

13. P.W. 1, although related to the deceased, has not claimed to have seen the occurrence. However, he has stated in his evidence that when he reached the place of occurrence he found the dead bodies lying there and the eye witnesses had disclosed the name of the appellants as participants thereof. The prosecution witnesses have also stated in their evidence that after the occurrence the witnesses came, to whom they disclosed about the occurrence.

14. From the discussions made above it is obvious that the evidence of the witnesses are consistent on all material points. There is no discrepancy in their evidence nor any material discrepancies were pointed out by the learned Counsel for the appellants to doubt, their presence or their evidence. Thus on consideration of the entire facts and circumstances of the case it is obvious that their evidence is trustworthy and cannot be rejected on the ground that they are interested, and inimical.

15. Furthermore, the evidence of the eye witnesses is also corroborated by other evidence. P.W. 10, the investigation officer, inspected the place of occurrence and found that the place of occurrence is a part of the residential house of the

informant. He seized blood stained earth, pen, empty cartridges, blanket, coins, torch, lantern, broken Chhitkilli (an instrument for closing the door) and prepared seizure list, Ext. 9. He also seized blood stained earth, empty cartridges, broken bangles, plastic shoes, brick bats from outside the shop and the lane and prepared seizure list Ext. 9/1. He went to the hospital where P.W. 4 was being treated. Blood stained blouse, Sweater and Chadar of P.W. 4 were produced there and he prepared production list Ext. 9/2. He has given the details of the place of occurrence and he has stated categorically that the place of occurrence is visible from the roof of the house wherefrom the informant claimed to have seen the occurrence. He found brick bats on the roof of the house which were similar to the seized brick bats from the place of occurrence. The seized articles were also produced in the court and were marked as Material Exts. He found marks of violence on the plank of the door.

16. Furthermore, the doctor, P.W. 8, who held the postmortem examination over the dead bodies has deposed that he found ante-mortem injury caused by fire arm on the persons of the deceased. P.W. 9, another doctor to whom the injured, P.W. 4, was taken for treatment, has stated in his evidence that he had given first aid to P.W. 4 and referred her to Patna Medical College and Hospital P.W. 7 is the doctor, who treated P.W. 4, in the hospital, has deposed that he found injury on the person of P.W. 4 caused by fire arms and has proved the injury report as Ext. 3. Thus, from the evidence on the record it is obvious that the evidence of the eye witnesses is corroborated by other evidences available on the record. There is nothing to discard the evidence of the prosecution witnesses as they are consistent with the prosecution and are trustworthy.

17. However, learned Counsel for the appellants contended that it was not a case of murder, rather it was a case of dacoity committed by some unknown persons and the appellants have falsely been implicated in this case. In support of his submission he pointed out that P.W. 2 has stated in his evidence that the dacoits were pushing the plank of the door of the shop and also P.W. 10, the investigating officer, has stated in his evidence that he found the articles scattered in the shop and it might be a case of dacoity but he did not investigate into the matter on that line. The submission appears to be based on surmises and conjecture as he

based his submission on stray evidence of the witnesses which are commonly used in the rural areas When the occurrence takes place in the night. Besides there is no evidence on the record of committing loot or taking away any article from the place of occurrence and even the investigating officer has not found any evidence of commission of dacoity. Furthermore, the prosecution witnesses categorically stated that the appellants committed murder of two persons and they identified the appellants committing the crime. In such a situation, the appellants cannot escape being guilty of committing the offence of murder. Thus, we are of the view that there is no substance in the submission of the counsel for the appellants.

18. Learned Counsel for the appellants further contended that the first information report in this case is not admissible in evidence as the earliest version given by the Chaukidar should have been treated as first information report. Besides, Sanha Entry recorded on the basis of information given by the Chaukidar has not been brought on the record. In support of his submission he relied upon a decision in the case of Savi and Ors. v. State of Tamil Nadu and Ors. 1981 Cr.L.J. 136 from a perusal whereof it appears that the facts of the case are entirely different from that of the present case. In the aforesaid case on receipt of information the police entered the same as Sanha entry and proceeded to the place of occurrence with the first information report book and in spite of the order given by the trial court to produce the counterfoil of the first information report book, the same could not be produced before the court and in that circumstances the Apex Court held that the conduct of the police was peculiar an inference should be drawn that original first information report was suppressed. In the instant case, it is manifest from the evidence on the record that the Sanha entry was made on the information given by the Chaukidar. P.W. 10, the investigating officer, has categorically stated that the information given by the Chaukidar was based on rumour and hence the Sanha entry was made and being not satisfied with the information proceeded to the place of occurrence where he recorded the Fardbeyan. There is no evidence on the record to show that in spite of the direction by the court the Sanha entry was not produced before the court. In the case of Savi (supra) the Apex Court has observed that if the police was not satisfied with the information given that cognizable offence was committed it was quite right in making an entry in the

general register and proceeding to the village to verify the information without registering the first information report. Furthermore, in the case of *Somebhai v. State of Gujarat* : 1975 CriLJ1201 it has been held that not recording of first information report on cryptic information will not make the first information report inadmissible in evidence. In the case of *Shiv Narain v. State of Bihar* 1994 (1) P.L.J.R. 270 a Division Bench of this Court has held that lodging of first information report is not a condition precedent for starting investigation. The question as to whether a particular information received about the commission of the crime would constitute a first information report or not is a question of fact and depends upon the facts and circumstances of each case. Every information received by the police first in point of time is not to be treated as first information report if the information received by the police is vague, uncertain and cryptic. It has already been stated that in the instant case P.W. 10 has categorically stated that the information given by the Chaukidar was based on rumour and hence he entered the same in the station diary and proceeded to the place of occurrence. Accordingly, we are of the view that the decision relied upon by the learned Counsel for the appellants does not help him in the facts and circumstances of the case.

19. Learned Counsel for the appellants further contended that there was inordinate delay in lodging the first information report and hence the prosecution case should not be accepted. The delay in lodging the first information report is not always fatal to the prosecution. In the case of *State of Haryana v. Manoj Kumar* : 1993 CriLJ3839 it has been held that it is true that the time factor has an important role in the context with lodging of first information report. But if the prosecution explains the delay satisfactorily, the court is not expected to reject the whole prosecution case merely on the ground of delay. In the instant case it is an admitted position that the police station is at a distance of 8 K.Ms. Two persons, namely father of the informant and the grand father of the informant were killed in the occurrence. The informant is the daughter of the deceased. Sachchidanand Singh and there was no adult male member in the family. The mother of the informant, P.W. 4, was also shot at the place of occurrence. A man can easily visualise the agony and pathetic condition of the family of the informant in such a situation. Furthermore, the mother of the informant was also injured and it was primal and pious obligation of the

informant to save her life and for that purpose she was taken to the doctor. The occurrence also took place in the night. In such circumstances lodging of first information report on the next day of the occurrence in the morning at about 8.30 A.M. at the spot must be held to have sufficiently been explained. Furthermore, the prosecution witnesses have unfolded the prosecution case in a most natural manner. There is no scope of imaginary doubt about the correctness of the prosecution case. The evidence of the eye witnesses is fully corroborated by the other evidences such as evidence of the investigating officer, P.W. 10, who has found incriminating articles at the place of occurrence and also by the evidence of the doctor, P.W. 8, who held post-mortem examination over the dead bodies and found ante-mortem injury caused by fire arm. In the circumstances, we are satisfied that the delay in lodging the first information report has sufficiently been explained and we find no substance in the submission of learned Counsel for the appellants.

20. Learned Counsel for the appellants further contended that identification of the appellants in the light of the Lantern is not possible and their evidence must be rejected. In support of his submission learned Counsel relied upon a decision in the case of *State of Uttar Pradesh v. Jageshwar and Ors.* : 1983 CriLJ686 , a perusal whereof shows that the occurrence took place in the dead of the night when everyone was in sound sleep and the people woke up on hearing the sound of gun shot and cry. 14-15 persons were identified in the light of the Lantern. The Apex Court, in the circumstances, held that identification in the light of the Lantern of a group of 14-15 persons at the dead of the night is highly unlikely as the accused persons would not continue to remain at the scene of the occurrence after committing the murder. In the facts and circumstances of the present case, the aforesaid decision relied upon by the learned Counsel for the appellants is not at all applicable as in the instant case the occurrence took place at 7 P.M. when the people are expected to be not in sound sleep. Furthermore, the appellants were known to the prosecution party. The evidence of the witnesses is also categorical that they identified the appellants while committing the crime in the light of the Lantern from a close range. P.W. 2 was in the shop itself where the occurrence took place and P.W. 5 was on the roof of her house which is at a distance of 9 to 10 feet from the place of occurrence. P. W. 4 came out of the

house and was going to the place of occurrence which is a part of the residential house and thus the identification. In the circumstances, in the light of the Lantern cannot be doubted.

21. Learned Counsel for the appellants further contended that the appellants, Lallu Singh, is entitled to the benefit of doubt as no weapon has been attributed to him in the first information report nor there is any evidence on the record to show that he committed the murder, besides the appellant, Lallu Singh, is handicapped. P.W. 2 had deposed that this appellant is slightly bent. In this regard it is pertinent to mention herein that in the first information report itself it has been stated that when the deceased, Mundrika Singh, caught hold of the rifle of Ajay Singh all the appellants assaulted the deceased, Mundrika Singh, and they threw him on the ground and thereafter Ajay Singh fired causing his death. Eye witnesses have also deposed that all the appellants were deposed that all the appellants were armed with fire arms. P.W. 2 has deposed that appellant, Lallu Singh, was slightly bent is not indicative of the fact that he was handicapped. From the discussions made above it is obvious that he also participated in the alleged occurrence and thus he is not entitled to the benefit of doubt in the facts and circumstances of the case.

22. On consideration of the entire facts and circumstances of the case, as discussed above, we find no merit in the appeals and are accordingly dismissed. The trial court is directed to take all steps to apprehend the appellants, namely, Arbind Kumar Singh @ Arvind Singh, Hari Narayan Singh and Lallu Singh, who are on bail, for serving the remaining period of sentence.

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