

Shravan Ram Vs. State of Bihar

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Court : Patna

Decided On : Oct-25-2005

Judge : Aftab Alam and Rekha Kumari, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 395 and 396; Code of Criminal Procedure (CrPC) - Sections 161

Appeal No. : Criminal Appeal No. 36 of 2002

Appellant : Shravan Ram

Respondent : State of Bihar

Advocate for Def. : G.P. Jaiswal, A.P.P.

Advocate for Pet/Ap. : Anjana Prakash, Sr. Counsel and Ajay Mishra, Advs.

Disposition : Appeal allowed

Judgement :

Aftab Alam, J.

1. The two appellants before this Court stand convicted under Section 396 of the Penal Code and Appellant No. 1 Shrawan Ram was named In the F. I. R. itself. Appellant No. 2 Rajdeo Ram was named by the inmates of the second of the two houses where dacoity was committed in their statements recorded under Section

161 of the Code of Criminal Procedure. The police seems to have submitted chargesheet against them apparently without much effort to find out the other culprits. Both the two appellants were, therefore, put on trial and were convicted and sentenced as noted above.

2. The prosecution case was instituted on the basis of the statement of Sonamati Devi. (P. W. 3) made before a Sub-Inspector of Police attached to Bijaipur P. S. at the Referral Hospital, Bhore on 5-12-1988 at 3 in the morning. The statement was taken down in the form of fardbeyan (Ext. 2) which was incorporated in the formal F. I. R. (Ext.1) drawn up later on the same day at 7.15 in the morning.

3. Sonamati Devi stated that after having her meal earlier in the night (of 4-12-1998) she was sleeping in her house. She added that there was no door at the main entrance to the house. At about 11 in the night she was woken up by the sound of a box being dragged. She saw that one of her co-villagers, Shrawan Ram (Appellant No. 1), carrying a lathi in his hand, was carrying away her box. A lantern was burning in the house. She raised the alarm, 'chor-chor' and caught hold of Shrawan Ram on which he hit her with the lathi, causing injury to her. She further said that another person (Chor) was standing in the Angan whom she was unable to identify. Two other culprits were standing Inside the room of her husband. They were admonishing him to keep lying down. She alleged that two boxes were car-tied away from her house that contained clothes of daily use and a silver payal. She added that dacoity was also committed in the house of her Pattidar Ram Kalap Rai (P.W. 4) about which he would give further details. She then tried to describe the dress of the culprits and the language in which they talked among themselves. In the end she added that on her hulla her Dewar Pawan Rai came running to the place of occurrence but the dacoits hit him with a bomb causing grave injuries to him. She also said that she was unable to give the number of dacoits. That after committing dacoity the culprits fled away towards the west. In conclusion she gave the names of a number of persons who came and witnessed the occurrence. Her statement was read out and on finding it correctly recorded, she put her signature on it.

4. In support of its case the prosecution examined seven witnesses. The last witness examined before the trial Court (numbered as 6A instead of 7) is an Advocate's clerk (Tayeed). He was examined to formally prove the fardbeyan and the F. I. R. P. W.6 was tendered. Among the remaining five, P. Ws. 1, 3, 4 and 5 are the inmates of the two houses where dacoity was committed. P. W. 2 is the wife of Bhawan Ram who is said to have been killed during the commission of dacoity. Geeta Devi (P/W. 1) is the wife of Ram Kalap Rai (P. W. 4). Sonamati Devi (the informant-P. W. 3) is the wife of Item Darash Ram (P. W. 5). Ram Kalap Rai (P. W. 4) and Ram Darash Ram. (P. W. 5) are full brothers. They lived in two separate houses at a close distance to each other. The dacoity was committed in the houses of both the brothers. Bhawan Ram, though referred to as 'Dewar' in the fardbeyan of Sonamati Devi (P. W. 3) does not appear to be the full brother of Ram Kalap Ram and Ram Darash Ram. It appears that on hearing hulla he came out of his house the door of which is opposite the door of Ram Darash (P. W. 5). According to P. W. 2, appellant No. 2 lobbed a bomb that hit him in the face, causing grievous injuries to him as a result of which he died 3-4 days later.

5. From the above it would appear that at the time of commission of dacoity P. Ws, 1 and 4 were together and similarly P. Ws. 3 and 5 were together in their respective houses. It would be, therefore, convenient to examine the prosecution witnesses in that order.

6. From the depositions of P. Ws. 1 and 4 it appears that they were sleeping together on a cot in one room and their Children were sleeping on the ground (their house had two rooms : P. W. 4, Para 12). At about 12 in the night the culprits entered into their house. One of the dacoits snatched away the silver chain from the neck of P. W. 1 and another took away the wrist watch of her husband P, W. 4. Two others carried out two boxes that were kept on the loft. The boxes contained clothes of daily wear and some silver and gold ornaments. Among the dacoits who had entered inside the house they identified Rajdeo Rain and Shrawari Ram. Rajdeo Ram took away the cycle of P. W. 4 and Shrawari Ram is said to be standing at the door with a sword in his hand. On hulla Shrawan Ram went out of the house. There was then an explosion of bomb. Being inside the house the two witnesses were unable to see who threw the bomb but on coming out. P. W. 4 saw

that Bhawan Ram had received bomb injuries. Their statements were taken by the police on the day following the occurrence. The witnesses stated that a number of neighbours and co-villagers had come to the place of occurrence and had witnessed the commission of dacoity. They also said that, dacoity was also committed in the house of their full brother Ram Darash Ram that was situate at a close distance from their own house. According to P. W. 1, she had seen five dacoits inside her house.

7. The statements made by P. Ws. 1 and 4 before the trial Court appear to be quite consistent with each other. But their statements in Court cannot be said to be wholly consistent with their earlier statements before the police. In the statements recorded under Section 161, Cr. P. C. the role attributed to the two appellants are somewhat different. For example, P, W. 4 had stated before the police that Rajdeo Ram was standing on the verandah with a country made gun and Shrawari Ram was outside carrying a sword. Before the police it was not said that Rajdeo Ram was seen with his (witness) cycle which he carried away. Strictly speaking the witness' earlier statements as recorded in the case diary cannot be looked into for the simple reason that his attention was not drawn to those statements. Though P. W. 4 has not asked any question about the actual occurrence with reference to his earlier statement before the police on another point his attention was drawn to his earlier statement (see paragraph 5 of his deposition) but he denied having said before the police with regard to the dispute with Shravan Ram over a piece of land for which he had got a sale deed executed from Savita Devi (the Phua of Shrawan Ram). A reference to the case diary (paragraph 29) shows that he had actually made such statement before the police and his denial in the court was incorrect. In that view it was strongly argued on behalf of the accused that a serious prejudice was caused to them due to non-examination of the I. O.

8. From the depositions of P, Ws. 3 and 5 it appears that they were sleeping in two different rooms in their house when the dacoity took place. Two of the culprits stood guard over the husband (P. W. 5) and kept him confined to the spot where he was sleeping. Two other dacoits carried away two boxes from the room where the wife P. W. 3 was sleeping. From the sound of the boxes being dragged she woke up. One of the dacoits carrying away the box was Shrawan Ram. P. W. 1

went after him and caught him by the waist from behind. In order to free himself he hit her with a short stick on her head. The blow(s) caused injuries to her head and she fell down letting him flee away. After the dacoits had gone out there was an explosion of bomb. P. W. 5 came out, carrying a lantern and found that Bhawan Ram had sustained bomb injuries on his face. His brother Arjun Ram (not examined) was yelling and shouting. They carried Bhawan Ram to Bhore hospital and from there to Gopalganj hospital but 3-4 days later he died in course of treatment. The attention of P.W. 3 was drawn to her statement before the police with regard to the land dispute between Ram Kalap Ram (P. W. 4) and appellant No. 1 but she denied having made any such statement before the police. A reference to the case diary (Paragraph 5) shows that her denial before the Court was incorrect and she had in fact made such statement before the police.

9. P. W. 2 is the wife of Bhawan Ram. She stated that a dacoity had taken place in the houses of Ram Kalap (P. W. 4) and Ramdarash (P. W. 5). On hulla her husband went running but Rajdeo threw a bomb that hit him on the face. As a result he fell down. People took him to Bhore hospital and then to Gopalganj where he died in course of treatment. She further said that among the dacoits she had identified Shrawan who was carrying a sword. From paragraph 3 of her deposition it appears that her attention was drawn to her earlier statement made before the police on a number of points. But she denied having made those statements. A reference to the case diary (Paragraph 9) shows that her denial before the trial Court was quite incorrect.

10. The defence case as it appears from the trend of cross-examination, is that the accused were falsely implicated in the case due to a land dispute between the parties. It is an admitted position that Shrawan Ram is well known to the witnesses from long before. He lived at a distance of about 20 yards from the houses of P. Ws. 1 and 4 (P.W. 1, Para-13). Rajdeo Ram is his friend and he often lived with him. P. W. 4 (in paragraph 3 of his deposition) admitted that one Bhola Ram and Kari Ram were full brothers. Sanwariya is the daughter of Kari while Shrawan Ram is the grand son of Bhola Ram. Thus Sanwariya is the 'Phua' of Shrawan Ram. He admitted that he had got sale deed(s) executed from Sanwariya in his favour in respect of three plots of land measuring to an area of 8 Kathas 11.75 dhurs for a

sum of Rs. 9.500/-. He further stated that Sanwariya had taken money from him for performing the saradh of her husband and in consideration for the money she had executed the sale deed(s). All the four witnesses (P. Ws. 1, 3, 4 and 5) admitted about the execution of the sale deeds by Sanwariya in favour of the two brothers P. Ws. 4 and 5. It is also an admitted position that Sanwariya used to live in the house of Ram Kalap (P. W. 4) (See P. W. 1, Para 8). P. W, 5 also said (Para-12) that Sanwariya lived with him and he and his brother Ram Kalap had purchased some lands from her.

11. From the evidence on record it further appears that according to appellant No. 1 P. Ws. 4 and 5 had grabbed his land on the basis of the sale deed(s) executed by her 'Phua' Sanwariya. But according to the members of the prosecution party, a partition had already taken place between Sanwariya and Shrawan and through the sale deed(s) executed in favour of P. Ws. 4 and 5, Sanwariya had alienated only the lands falling in her share. They had nothing to do with the land of Shrawan Ram. It has also come in evidence that sometime before the occurrence Shrawan Ram had tried to lay foundation for constructing a house over a piece of land, 3 Kathas in area. That had given rise to a dispute between the parties. It has also come in evidence that at the material time Sanwariya was living in the house of P. W. 5 but on the date of occurrence at about 10-12 in the morning (i.e. a few hours before the commission of dacoity) Shrawan Ram had come and took her away with him on a cycle (P. W. 5, para-13).

12. It also appears from the evidence of prosecution witnesses that Shrawan Ram was employed in the Railway while P. W. 4 worked as Compounder at Bijaipur. Health centre. The house of P. Ws. 1 and 4, though pucca with thatched roof consisted of only two rooms. P. Ws. 3 and 5 lived in a Marai (huts built by straw/thatched). (P. W. 1, Para 10 : P.W. 4, Para 12).

13. Mrs. Anjana Prakash. Sr. Counsel appearing for the appellants tried to capitalize on the prosecution's omission to examine the I. O. and the Doctor who held the post-mortem on the body of Bhawan Ram. She submitted that incalculable prejudice was caused to the appellants due to non-examination of the I. O. and the Doctor. The defence was denied the chance to highlight the

inconsistencies between the statements made by the witnesses before the Court and their earlier statements recorded under Section 161, Cr. P. C. In this connection, she further submitted that apart from the verbal statements of P. Ws. 2, 4 and 5 there was no material to show that Bhawan Ram had in fact died as a result of bomb injuries sustained by him during the commission of the alleged offence. Learned counsel pointed out that not only the Doctor was not examined but the post mortem report was also not on the record. She also submitted that even the F. I. R. and the fardbeyan was brought on record in a highly pedestrian way by getting them proved by an Advocate's clerk.

14. Mrs. Prakash next submitted that though from the evidence on record it would appear that the place where the alleged offence took place was densely inhabited and though admittedly a number of people had come to the place of occurrence whose names were also disclosed both in the F.I.R. and in the depositions of the witnesses, not a single independent witness was examined by the prosecution. She further submitted that the entire prosecution case rested on the testimonies of the five victims of the alleged offences who were highly interested and inimical towards the appellants.

15. Mrs. Prakash also submitted that nothing was produced as the source of light (e.g. lantern, torch etc.) that might have facilitated the identification of the accused.

16. She also contended that Shrawan was relatively better off than P. Ws. 4 and 5 and it was highly improbable that he should commit dacoity in their houses. With regard to Shrawan Ram she submitted that he was falsely implicated due to the land dispute between the parties and with regard to Rajdeo Ram she contended that his implication in the case was an afterthought since he was not named in the F. I. R. He was implicated as he was a friend of Shrawan.

17. I am not impressed by the submission of Mrs. Prakash with regard to the non-examination of any so-called independent witnesses. It is a social reality, repeatedly recognized by the courts that these days neighbours and others not having a direct involvement in the matter are extremely reluctant to come to the Court for deposing in a criminal case. A deeply cynical attitude and a sense of insecurity holds back most people from taking part, even as witnesses, in criminal

proceedings that are perceived as a dangerous thing to get involved into. In a large number of cases even the victims or those who are directly affected by the crime are gained-over with the passage of time and all that the Courts get are hostile witnesses. That being the position, if only the victim(s) of the crime come(s) forward to depose in the case, his/their testimony(ies), unless otherwise weak and inherently unreliable cannot be rejected on the ground of non-examination of independent witnesses.

18. I also find no substance in the point with regard to the source of light. Several witnesses have stated about lanterns burning in their respective houses in the light; of which they were able to identify the two appellants, who were admittedly well-known to them from long before.

19. Mrs. Prakash argued strongly that, having regard to the relative financial positions of Shrawan Ram and P. Ws. 4 and 5, it was quite unlikely that he should commit dacoity in their houses. In this regard she further submitted that there was a land dispute between appellant No. 1 and P. Ws. 4 and 5 from before and it was on account of the dispute that he was falsely implicated in this case. The point appears to be attractive at first sight but, on a closer scrutiny it does not seem to contain much substance. The courts have often observed that a previous dispute between the two sides which is suggested as a motive for false implication by the prosecution may equally constitute a strong motive for the accused to commit the crime against the member of the prosecution. A dacoity may not always be committed for immediate material gain but it may also be committed some time for teaching a good lesson to the victim. On that ground, therefore, I am not willing and prepared to disbelieve the prosecution case.

20. This brings me to consider the first point raised by Mrs. Prakash with regard to the non-examination of the I. O. and the Doctor as witnesses by the prosecution. In order to examine the effect of non-examination of the I. O. and the Doctor on the prosecution case, it will be appropriate to consider the commission of dacoity and the commission of murder of Bhawan Ram in course of dacoity separately.

21. So far as the participation of the two appellants in the commission of dacoity in the houses of P. Ws. 4 and 5 is concerned, that stands well proved by the

testimonies of the four prosecution witnesses (P. Ws. 1 and 3 to 5). Their evidences appear to be quite reliable, trustworthy and acceptable on the point of commission of dacoity. There are indeed some minor inconsistencies here and there in the depositions of the four witnesses but those discrepancies or deviations are well within the normal range. If the four persons are made to describe dacoities taking place in two neighbouring houses over a time span of about 20-30 minutes, it is impossible that the descriptions would be identical. There is bound to be some differences between different descriptions based on the subjective perceptions of the witnesses. Otherwise the descriptions will not be natural and may be liable to be rejected as artificial, tutored and the result of a common meeting of mind. Keeping this in view the depositions of the witnesses would appear quite consistent and I have no reason to disbelieve them.

22. So far as the dacoity is concerned, the Doctor's evidence would have no relevance to it and in regard to dacoity I am not impressed by the submission that any irreversible prejudice was caused to the appellants due to non-examination of the I. O. in appeal it is not sufficient for the appellants to simply claim prejudice due to non-examination of the I. O. in the trial. The Appellate Court must be shown what was the prejudice and how it was caused. If there were any major inconsistencies between the depositions of the witnesses and their earlier statements before the police the precise points of inconsistencies should be identified in order to hold that the examination of the I. O. would have facilitated the defence to bring out the omission, inconsistencies or contradictions in the witnesses depositions, in this case, though there were some deviations and inconsistencies of a minor nature between the witnesses' depositions in Court and their statements before the police with regard to the actual occurrence, their attention was not drawn to their earlier statements on those points. The attention of the witnesses was drawn only to their statements with regard to the purchase of land from Sanwariya and the resultant dispute with Shrawan Ram. They denied having made those statements before the police. Their denial in Court was apparently incorrect but that does not have any significant impact on the prosecution case inasmuch as it has already been held that the mere existence of a land dispute between the parties may not lead to the inference that, the accused were falsely implicated. I, therefore, find and hold that so far as the commission of

dacoity and participation of the two appellants in it are concerned, those are proved beyond reasonable doubt on the basis of the materials on record.

23. Coming now to the commission of murder of Bhawan Ram in course of dacoity the position appears to be otherwise and on this issue I am inclined to accept the submission of Mrs. Prakash. In the complete absence of any medical evidence and in the absence of any objective findings by the I. O. with regard to the presence of blood or remnants of the exploded bomb etc. at the place of occurrence, it would not be entirely safe and prudent to hold that Bhawan Ram died due to injuries caused to him by a bomb exploded by the accused in course of the dacoity. It is elementary and basic that all issues in dispute must be proved by leading the best primary and substantive evidence before the Court, moreso, in criminal matters. With regard to the cause of death the importance and the value of the medical evidence and the objective findings at the place of occurrence cannot be over-emphasized. Ocular evidence is indeed very important and in certain circumstances it may even be given overriding effect over the medical evidence and the I. O.'s finding. But normally the medical evidence, the ocular evidence and the objective findings should supplement each other.

24. In the present case the only witness who claims to have seen Bhawan Ram being hit by the bomb thrown by the accused is P. W. 2. P. Ws. 4 and 5 were both inside their respective houses when the explosion took place and later on coming out from their houses they saw that Bhawan Ram had sustained bomb injuries on his face. P. Ws. 1 and 3 came to learn about the injuries caused to Bhawan Ram still later. That is all the prosecution evidence on the point of his murder in course of the dacoity. There is no explanation for non-examination of the Doctor and for not bringing on record the post mortem-report.

25. In the aforesaid circumstances, I find it difficult to sustain the appellants' conviction under Section 396 of the Penal Code merely on the basis of the verbal statements of the witnesses. I accordingly give them the benefit of doubt so far as the offence punishable under Section 396 of the Penal Code is concerned but the commission of the dacoity and the participation of the two appellants in it stand proved beyond all doubts. They are accordingly convicted under Section 395 of

the Penal Code.

26. As a consequence of the change in the conviction, their sentences are reduced to rigorous imprisonment for seven years. The judgment and order of the trial Court is modified accordingly and the appeal is allowed to the extent indicated above.

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