

Suresh Singh and ors. Vs. State of Bihar

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Court : Patna

Decided On : Oct-29-2003

Judge : Sachchidanand Jha and Braj Nandan Prasad Singh, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 302 and 307

Appeal No. : Criminal Appeal Nos. 16, 36 and 61 of 2000

Appellant : Suresh Singh and ors.

Respondent : State of Bihar

Advocate for Def. : Lala Kailash Bihari Prasad, Adv.

Advocate for Pet/Ap. : Rana Pratap Singh, Rajiv and Vinay Kirti Singh

Disposition : Appeal dismissed

Judgement :

B.N.P. Singh, J.

1. Though all the appellants suffered conviction under Section 302/34 of the Indian Penal Code (IPC), for which they were sentenced to suffer rigorous imprisonment for life. Akaloo Ahir suffered conviction also under Section 307, IPC for which he was to undergo rigorous imprisonment for a term of ten years. Akaloo Ahir and Brij Mohan Ahir suffered conviction also under Section 27 of the Arms Act but no

sentence was awarded to them on this count. In case of those who suffered conviction on two counts, sentences in their case were directed to run concurrently.

2. Before we advert to the prosecution case, it would be appropriate to notice that Garju Ahir, who too was put on trial along with the appellants, died in the midst of the proceeding, and as such proceeding was dropped against him.

3. Factual matrix centering round the prosecution case are not in much details and that can be recapitulated with brevity. Allegedly at about 5 p.m. on 10th January, 1981, while Kishore Bhagat had returned along with his father after feeding cattle, Garju Ahir emerged from north and insisted upon him for supply of seedlings, and on his failure to oblige him, though he fired a shot on him, but the aim was lost, and in quick succession, Akaloo Ahir too, who came from north, fired another shot on him, but that time too the aim was lost. It was alleged that shortly thereafter, Suresh Singh and Brij Mohan Ahir too came there and on being supplied firearm by the former, the later fired shots on Kishore Bhagat who dropped at door of his house. Not only that a number of villagers flocked to the place of occurrence hearing sound of firing, but it was alleged that Girgit Ahir, Chhatu Ahir, Kishun Ahir, Babu Lal Bhagat. Ram Kathin Ahir and Jaalal Ahir also came there variously armed with weapons, pursuant to which Chhatu Ahir, smashed chest of Kishore Bhagat and also dealt blows with hard and blunt substance on him. Pursuant to the institution of the Police case, Police came in action and during investigation, collected evidence, to put the accused on trial. Statement of witnesses were recorded by the Investigating Officer who visited place of occurrence, got autopsy held over the dead body of the deceased and on conclusion of investigation, laid charge sheet before the Court. During trial that followed, State examined 20 witnesses including seven persons who claimed to be ocular witnesses to the incident, the doctor, two Police Officers and also other host of witnesses to whom we shall advert to later on.

4. Defence of the appellants was that of total innocence and suggestion that was given to the witnesses claiming innocence of the appellants was that a dacoity had been committed in the house of Ram Prit Koiry in the night of the incident in which

the deceased too was participant. However, trial Court on evaluating probative value of testimony of witnesses and also positive finding recorded by the doctor, while rejecting plea of innocence of the appellants, recorded finding of guilt and sentenced appellants in the manner stated above.

5. At this juncture, we may notice narrations made by the witnesses at trial to appreciate the contentions raised. While reiterating his earliest version, Ramashish Bhagat (PW14), who was maker of fardbeyan and also son of the deceased, states that shortly after he came along with his father after irrigating land and the father was feeding cattle, in quick succession both Garju Ahir and Akaloo Ahir fired shot on his father when aim was lost. Shortly thereafter, Suresh Singh and Brij Mohan Ahir too emerged from north, when on being supplied firearms by the former, latter fired a shot on Kishore Bhagat who dropped on the land. Then came Kishun Ahir, Girgit Ahir, Chhathu Ahir, Babu Ram Bhagat, Ramakant Ahir and Jaglal Ahir variously armed with weapons, and all the six assaulted his father. He rendered his fardbeyan before Police only on the following day at about 1.30 a.m. without multiplying narrations made by other ocular witnesses, we may state that almost in similar terms and veins, narrations were made also by Jay Kishun Yadav (PW 2), Ram Raj Bhar (PW 4), Rama Shankar Yadav (PW 5), Bishwanath Bhagat (PW 6), Briksha Chaudhary (PW 9) and Sheo Nath Bhar (PW 12) about both Garju Ahir and Akaloo Ahir firing shots on Kishore Bhagat when aim was lost, These witnesses also state about Brij Mohan Ahir having fired shots on Kishore Bhagat, with firearm supplied to him by Suresh-Singh, who dropped dead on door of the house. These witnesses too in conformity with the earliest version of Ramashish Bhagat, stated about arrival of rest of appellants variously armed with weapons when Kishore Bhagat dropped, sustaining injuries at the hands of Brij Mohan Ahir.

6. We may notice some of the positive finding recorded by Dr. Rajendra Singh who happens to be PW 3 and the doctor stated to have found four penetrating wounds while two were in the nature of abrasions, and in his estimation, while four wounds were caused by firearms, two by hard and blunt substance. These injuries in estimation of the doctor were sufficient to cause death,

7. Chuman Choudhary (PW 17), who was chaukidar of the halka, stated to have rushed to the house of Ramashish Bhagat on receipt of information of killing of Kishore Bhagat by Brij Mohan Ahir. It was Ramashish and Ramdeo who informed him that Brij Mohan Ahir had shot dead the deceased. The witness stated to have noticed bleeding wounds on the dead body of the deceased.

8. Yet there are host of witnesses, who they are not of much significance. Awadhesh Kumar Singh (PW 1) has simply brought fardbeyan of Ramashish Bhagat on record, and similar was the case with Rameshwar Singh (PW 18) and Rajendra Singh (PW 19) whose evidences were quite formal in nature as they brought only first information report and inquest report on record. Evidence of Ramji Chaudhary (PW 11), Rajdeo Bhagat (PW 13), Munni Devi wife of the deceased (PW 16) did not warrant comment, as they were simply tendered by the State. Since Paltan Raj Bhar (PW 8) and Janak Sah (PW 10) turned volte face to the State, their attentions were drawn by the State. Though there was evidence of Lalan Chaudhary (PW 7) also, but he stated nothing about the incident.

.9. We may now advert to evidence of Umesh Prasad Srivastava (PW 20), who was Investigating Officer, and he states to have visited the place of occurrence on taking charge of the case from his predecessor. He recorded statement of witnesses, received inquest report from Siwan Hospital, took steps for apprehension of the appellants, and on conclusion of investigation, laid charge sheet before the Court. This is all the evidence that has been adduced on behalf of the State.

10. We may now take notice of some of he submissions made on behalf of the appellants for their appreciation in proper perspective. Referring to the physical feature of the place of occurrence, learned counsel would submit that regard being had to the situation of the place of occurrence, possibility of the deceased sustaining gun shot injuries from the place where the assailant was suggested to have fired shots appears to be extremely bleak. However, we have gathered from the evidence of the ocular witnesses that house of Ram Prit Koeri situates adjacent north to the house of the deceased, and north to the house of Ram Prit Koeri, there happens to be house of Jaglal Ahir, and north west to his house, there

is stack of straw from where Ram Briksh was suggested to have fired shot on Kishore Bhagat. If situation of the place from where assailant fired shot and also the place where the deceased sustained gun shot injuries, are taken together, visibility of the deceased by the assailant was quite conspicuous and hence contentions raised on behalf of the appellants did not bear merit. Referring to the evidence of Jay Kishun Yadav (PW 2), Ram Raj Bhar (PW 4), Bishwanath Bhagat (PW 6), Sheo Nath Bhar (PW 12) and Ramashish Bhagat (PW 14), submission is that since these witnesses were inimical to the appellants, their credibility was open to question. We have found that though some suggestions were given to the witnesses with reference to some cases, in which either they were accused or they had deposed, that factor did not alone render the witness unworthy of credence, if they are otherwise found reliable and trustworthy by the Court. The Court below too has considered reliability of the witnesses and found them trustworthy and we too endorse our finding. Learned counsel while referring to the evidence of PWs 4, 6 and 9, would urge that credibility of these witnesses too was at stake as they bore criminal antecedent and this argument too on the same analogy was devoid of merit.

11. Findings recorded by the doctor also came for criticism on the ground that against accusation attributed to Brij Mohan Ahir for firing one shot, the doctor had found four penetrating wounds on person of the deceased, and that apart, if the positive finding of the doctor is to be given any credence, all these wounds were caused by more than one shots and on these premises, contentions are raised that since finding recorded by the doctor runs counter to the ocular testimony of witnesses, the entire prosecution case was unworthy of credence and had to be discarded. We have given our anxious consideration to these aspects of the matter and we are of the view that conflict between oral testimony and medical evidence, as has been reiterated in catena of decisions of the Court, can be of varied dimensions and shapes, and the case under consideration is not a case of total absence of injuries which cannot be caused by such weapon with which the assailant had been saddled at trial, to have fired shots on the deceased. In other set of case, there may be possibility of all injuries caused by such weapon which are shown to have been used, but size and dimension of the injuries may not be correspondingly the same with size and dimension of the weapon, and there may

be other case where situs of injuries on a person or the deceased may not be as stated by ocular witnesses. In second and third categories, no such inference can be drawn about there being conflict between medical and oral testimony, as much would, depend on variety of factors. We may profitably refer to a decision of the Apex Court reported in 1984 SCC Cri 484 Punjab Singh v. State of Haryana, wherein it was held by the Apex Court that if direct evidences were satisfactory and reliable, the same cannot be rejected on hypothetical medical finding of the doctor. Again in Anil Roi v. State of Bihar, a case reported in 2001 SCC (Cri) 1009, it was held that if medical evidence when properly recorded, shows two different alternative possibilities, then one, reliable statement of eye witness has to be accepted. Considering the matter from this angle, we are of the view that testimony of witnesses cannot be said to be in contrast with the medical evidence and that apart, possibility of witnesses loosing sight of another shot fired by assailant can also be not lost sight of.

12. Possibility of the eye witnesses witnessing the incident also came for criticism in view of the place from where they claimed to have witnessed the incident, and on that score too we may refer to the narrations made by them. PWs 4, 6 and 12 claimed to have witnessed incident while they were standing near the pump and evidences on record do suggest that the pump situates beside the house of the deceased. As for Jay Kishun Yadav (PW 2), he states that he was returning from field and in the process of going to his house, he witnessed the incident. We have considered narrations made by witnesses and we too find them trustworthy and credible. Possibility of their presence at the place of occurrence from where they witnessed the incident cannot possibly be questioned. Though bald suggestions were given to the witnesses about defence of the appellants, that appears to be quite imaginative and far fetched, and that apart, defence had not even chosen to examine any witness in support of the contentions that are raised at Bar. Evidence of witnesses eloquently suggest that firings were shot at the deceased from a distance of about 15-20 yards, and no mitigating circumstance was brought to our notice to reject testimony of the ocular witnesses.

13. It is well known that though not in all cases but in some cases, depending on facts of the case motive too assumes significance. However, cases where

evidences are direct, motive pells into insignificance, and it remains only a matter of academic interest. But on this score too we have noticed that good and sound motive has been assigned by the State. Some witnesses had been stating at trial that two months preceding the incident, Chhathu Ahir, Kishun Ahir, Garju Ahir, and Akloo Ahir had assaulted Ramashish Bhagat and his cousin sister, for which a Police case had been instituted. Narration made by witnesses also gets corroboration from the finding of the Investigating Officer, who during investigation came to find that Ramashish Bhagat had instituted a case against Brij Mohan Ahir, Garju Ahir, Akloo Ahir and others under Section 307, IPC and other allied sections of the Penal Code, for murderous assault on Ramashish Bhagat and also his sister.

Other motive that was assigned by the State was that a proceeding under Section 144 of the Code of Criminal Procedure had been pending between Kishore Bhagat and Garju Ahir.

14. Narrations with sustained consistencies were made by ocular witnesses about Akaloo Ahir and Suresh Singh, visiting place of occurrence together with Brij Mohan Ahir which shows that prior concert and also pre-arranged plan and makes them answerable under Section 34, IPC. We may state that Section 34 recognises a principle of vicarious liability in criminal jurisprudence. There is no gainsaying that common intention, presupposes prior concert which requires pre-arranged plan of the accused, participating in the offence. However, intention, as a question of fact in criminal cases, is to be proved mainly as a matter of inference from the circumstances of the case. Contrary to evidences operating adverse to Akaloo Ahir, Brij Mohan Ahir and Suresh Singh, evidence of the witnesses, which we have just noticed, would show that Kishun Ahir, Girgit Ahir, Chhathu Ahir, Babu Ram Bhagat, Ramakant Ahir and Jaglal Ahir came to the place of occurrence after Kishore Bhagat had dropped dead, and for which we may refer to the evidence of Jay Kishun Yadav (PW 2), Ram Raj Bhar (PW 4), Bishwanath Bhagat (PW 6), Briksha Choudhary (PW 9) and Ramashish Bhagat (PW 14). Narrations made by Rama Shankar Yadav (PW 5) and Sheo Nath Bhar (PW 12) simply shows these six appellants to be there. If narrations made by these majority of witnesses whose evidences have been referred to, are taken into consideration, the facts of the

case would show that they would not have shared common intention. We are, however, not oblivious that mere distance emerging from the scene would not absolve the accused, but all depends upon situation of the matter under the circumstance and no rule steadfast can be laid down therefor. Participation of these appellants deserves rejection on other ground also. Narrations made by some witnesses are that pursuant to their arrival, while Chhathu Ahir smashed chest of the deceased, others dealt blows with hard and blunt substance on him. Though there were two abrasions on gluteal region and legs no injury on the chest was noticed by the doctor who held autopsy over the dead body of the deceased.

15. In the circumstances, findings recorded by the Court below against these six appellants, namely, Kishun Ahir, Girgit Ahir, Chhathu Ahir, Babu Ram Bhagat, Ramakant Ahir and Jaglal Ahir are set aside.

16. However, what disturbs us is that though Brij Mohan Ahir was suggested to be author of killing of Kishore Bhagat, the trial Court has not recorded finding convicting him under Section 302, IPC, simpliciter. We, however, hasten to add that Brij Mohan Ahir was charged also under Section 302, IPC, and in this view of the matter, we are of the view that since Brij Mohan was charged under Section 302, IPC and only that evidences were laid by State on that score, but defences too, it appears, while cross-examining the witnesses, was quite aware of explicit accusation attributed to these appellants. Hence, instead of upholding conviction of Brij Mohan Ahir under Section 302/34, IPC, we convict him under Section 302, IPC simpliciter which in the circumstances will neither prejudice the appellants nor will lead to failure of justice as it is curable in nature. Rest finding recorded by the Court below, except in regard to these six appellants, who have been acquitted of the charges, are affirmed.

17. In the result, while we dismiss Cr. Appeal No. 61 of 2000 with aforesaid modification, also dismiss Cr. Appeal No. 16 of 2000, Cr. Appeal No. 36 of 2000, so far it relates to Akaloo Ahir, is dismissed. Since Akaloo Ahir and Suresh Singh are on bail, their bail bonds are cancelled and it is directed that coercive steps be taken against them for their apprehension and to consign them to custody to serve out the remainder of sentence. Remaining appellants of Cr. Appeal No. 36 of

2000, namely, Kishun Ahir, Girgit Ahir, Chhathu Ahir, Baburam Bhagat, Rama Kant Ahir and Juglal Ahir alias Jagtal Ahir are acquitted of the charges and they are discharged from the liability of their bail bonds.

S.N. Jha, J.

18. I agree.

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