

Garib Singh Vs. the State of Bihar

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Court : Patna

Decided On : Jan-22-2004

Judge : Aftab Alam and B.K. Jha, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 300

Appeal No. : Criminal Appeal No. 148 of 2000

Appellant : Garib Singh

Respondent : The State of Bihar

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

Advocate for Pet/Ap. : Suraj Narayan Prasad Sinha, Sr. Counsel, Rashmi Ranjan, Adv. and Ravi Shankar, Pd.Salahuddin Khan, Adv.

Disposition : Appeal allowed

Judgement :

Aftab Alam, J.

1. By the judgment and order coming under appeal, the appellant-Garib Singh stands convicted under Sections 302 of the Penal Code and 27 of the Arms Act. He is sentenced to undergo rigorous imprisonment for life and one year respectively for the two offences; the sentences are directed to run concurrently.

2. Before the trial Court, apart from the appellant there were four other accused. The appellant-Garib Singh and co-accused Umesh Singh were charged under Section 302 of the Penal Code; the appellant was separately charged under Section 307 of the Penal Code and all the five accused, including the appellant were further charged under Sections 302/34, IPC and 27, Arms Act, while referring to the charges framed against the accused it was noticed that though the date of occurrence in this case was undeniably 13-2-1999, the date mentioned in the charge was 13th day of July, 1999. The mistake is inconsequential and does not affect the case in any manner; it nevertheless shows a lack of proper application of mind by the trial Court. This Court expects the trial Judges in future to be more careful in matters of legal details.

3. At the end of the trial, it was the appellant alone who was convicted and sentenced, as stated above, while rest of the four accused were acquitted.

4. It may also be noted here that one of the co-accused Subodh Singh is the own brother of the deceased-Ashok Singh and the informant Vinod Singh. P.W. 5.

5. On going through the records we get the sad impression that a proper trial for the offence of murder was effectively frustrated by the police investigating the case and the witnesses examined on behalf of the prosecution; whether the I.O. and the prosecution witnesses acted jointly or separately is another matter.

6. The prosecution case began on the basis of the statement of Vinod Singh, P.W. 5 made at the Referral Hospital, Gogri on 13-2-1999 at 10-15 a.m. before the A.S.I., A.N. Thakur of Gogri P. S. The statement was recorded as Fard-e-bayan (Ext. 1) which was sent to Pasraha P.S. since the place of occurrence fell within its area. A formal FIR (Ext. 2) was drawn up by incorporating the Fard-e-bayan, giving rise to Pasraha P.S. Case No. 9 of 1999.

7. In the Fard-e-bayan Vinod Singh stated that in the morning of 13-2-1999 at about 7, he along with his younger brother Ashok Singh (the deceased) went to the tea-shop at Pasraha Chowk for taking tea. After taking tea, they were standing on the road with brick soling when accused Garib Singh, Umesh Singh, Prakash Singh, Subodh Singh and Ravindra Singh, all armed with unlicensed weapons

were seen approaching from the east. Sanoj Choudhary (not examined) exclaimed that the out-laws were coming with arms and that they should run away. Thus, identifying the accused, the informant and his brother fled towards west in order to save their lives. He further said that the appellant fired a shot from his rifle that hit him in the toes of his right foot. He fell down crying that he was hit. Upon this, his younger brother Ashok Singh turned back towards him. At that moment Umesh Singh and Garib Singh fired shots from their respective fire-arms and Garib's shot hit Ashok squarely in the head. As a result, he died on the spot. The informant further said that then to save his life he fled towards west and came to the Referral Hospital. Gogri along with Sanoj Choudhary and Vijendra Singh (not examined) where he was giving his statement before the police. Concluding his statement, the informant asserted that the accused persons mentioned by him had killed his brother because he opposed their 'Rangdari'. At the end he said that he had gone through the recorded statement which was also read over to him and finding it correct, he had put his signature.

8. It is noted above that the Fard-e-bayan was recorded at the Referral Hospital, Gogri by an A.S.I. of that police station. The murder was committed at Pasraha Bazar that fell within the area of Pasraha P.S. From the evidence of the I.O., who was examined in this case as Court witness No. 4, it appears that on 13-2-99 at 8.30 in the morning he got information at Pasraha police station that a person was killed by gun shot at Pasraha. He then came to the P.O. along with a posse of armed policemen. At Pasraha Chowk. he found the dead body of a person lying. There was no one else except the wife and a small child of the deceased. The wife was not in the state to give any statement. He also came to learn that one of the brothers of the deceased who was injured in the shooting had gone to the Referral Hospital. Gogri. He then prepared the inquest report which is shown to have been made at 9.30 a.m. and sent the body for post-mortem to Khagaria Hospital. He came back to Pasraha P.S. where he received the Fard-e-bayan through a special messenger from Gogri P.S. On the basis of the Fard-e-bayan, he instituted Pasraha P.S. Case No. 9 of 1999 and took up investigation of the case.

9. From his deposition before the Court, it appears that the two brothers Ashok Singh (the deceased, being the younger brother) and Subodh Singh were clashing

over partition of the family properties and for dominance of their respective gangs in the area. Ashok Singh was accused in a number of criminal cases and had come out from Jail only 4-5 days prior to the occurrence. Some of the witnesses (Brajesh Kumar Singh, P.W. 1) told the I.O. that Sanoj Choudhary had taken cloth worth about Rs. 2000-3000/-on credit from the shop of Rajendra. On demand he refused to make payment and this led to trouble. In the evening, previous to the date of occurrence, there was an exchange of fire between the groups of Ashok Singh and Subodh Singh and in the morning of 13-2-1999, the two groups again clashed and there was once again an exchange of fire in which Ashok Singh was killed and Vinod Singh received gun shot injury.

10. Some other witnesses (Harilal Singh, P.W. 2) stated before him that in the morning of 13-2-1999, Vinod Singh, the informant. Ashok Singh (the deceased) and Sanoj Choudhary (not examined) had come to Pasraha Bazar with unlicensed arms, From the other side Subodh Singh came with a big gun. Six to seven shots were fired from both sides and one of the shots hit Ashok Singh in his head as a result of which he died.

11. According to the I.O. Ramotar Singh, the father of the deceased, the informant and the accused Subodh Singh had stated before him that Subodh Singh along with some of his lawless associates had got Ashok Singh killed.

12. It may be noted here that at an early stage in the investigation of the case some members of the prosecution party had alleged that the investigation of the case was not being made properly. A protest petition was filed before the C.J.M. and on February 22-23. 1999, four persons, namely, Vinod Singh, the informant, Sanoj Choudhary, Bhaskar Kumar and Santosh Kumar (the two sons of the deceased) got their statements recorded before the Magistrate under Section 154, Cr. P.C. The brief statements recorded under Section 164, Cr. P.C. are substantially the same as the informant's statement in the Fard-e-bayan.

13. On completion of investigation, the police submitted charge-sheet against the five accused named in the Fard-e-bayan/FIR and they were put on trial on the charges as noted above. Before the trial Court, six witnesses were examined on behalf of the prosecution, P.W. 6 is a formal witness who was examined to prove

the formal FIR and the endorsement made by the police officer on the Fard-e-bayan. The remaining five witnesses P.Ws. 1-5 were the material witnesses and were supposed to have witnessed the occurrence. Each one of them, including the informant, P.W. 5 turned hostile, P.Ws. 1-4 in their one sentence examination-in-chief said before the Court that they had no knowledge about the occurrence. At the instance of the prosecution, they were confronted with their respective statements made before the I.O. but they denied having given any statement to the police.

14. P.W. 5, the informant said that on 13-2-1999 he along with Ashok Singh had gone to Pasraha Chowk for taking tea, Sanoj Choudhary said that a mob was coming on which he (the witness) and Ashok Singh fled towards west. He was hit by a gun shot in his leg. He did not see who fired the shot. Similarly Ashok was hit by a gun shot but he did not see as to who had fired the shot. He admitted that he had made the statement (Fard-e-bayan) before the Jamadar A. N. Thakur of Gogri P.S. and after he had gone through it and the Fard-e-bayan was read over to him, he had put his signature. On being identified by him the Fard-e-bayan was marked as Ext. 1. But later in cross-examination by the accused, he said (in para 8) that Birendra Singh was his brother-in-law and Sanoj Choudhary was a co-villager. There were ten (other) co-villagers with him (at the time of making the Fard-e-bayan) and he had named the accused on their suggestion; that he had not seen the accused firing the shots.

15. This was the position in the trial and the prosecution case was effectively subverted when by order, dated 17-1-2000 the trial Court closed the prosecution case on the prayer made by the defence with the consent of the Addl. P.P. and fixed the case for taking the statement of the accused under Section 313, Cr. P.C.

16. At this stage petitions were filed by the father and the wife of the deceased making a prayer for the examination of five witnesses as Court witness. The trial Court, anxious to do justice in the trial, reopened the prosecution case and by order, dated 21-1-2000 summoned the persons named in the petitions for their examination as Court witnesses. On the basis of that order Bhaskar Kumar, the son of the deceased Ashok Singh and Ramotar Singh, the father of the deceased

were examined as Court witnesses 1 and 2. Apart from them Dr. Pramod Kumar who had held post-mortem over the body of the deceased was examined as Court witness 3 and the I.O. as Court witness 4.

17. The doctor's evidence and the postmortem report clearly establish that Ashok Singh was killed by a gun shot. The shot had hit him on the right ear causing a lacerated wound of entry and had existed at the centre of the forehead, above the bridge of the nose, causing the wound of exit.

18. Bhaskar Kumar (son of the deceased) examined as C.W. 1 supported the prosecution case as stated in the Fard-e-bayan but significantly he named only the appellant Garib Singh, Umesh Singh and Prakash Singh as the accused. He did not name his uncle Subodh Singh and Ravindra Pd. Singh.

19. The father of the deceased Ramotar Singh was examined as C.W. 2 and he is admittedly a hearsay witness. At the time of occurrence, he was not present at Pasraha but was at Khagaria. There he received the information that one of his sons Ashok Singh was killed. On receiving the information he came to village Pasraha. It is not known from whom he received the information regarding his son being killed and the person who gave him the information has not been examined as witness.

20. The I.O. who was examined as C.W. 4 had not taken the statement of Bhaskar Kumar in course of investigation and according to him, Ramotar Singh, the father of the deceased and the accused Subodh Singh had told that Subodh along with his lawless associates had got Ashok Singh killed.

21. From the facts and circumstances discussed above, it is evident that the conviction of the appellant rests solely and entirely on the testimony of Bhaskar Kumar, examined as C.W. 1.

22. Learned counsel for the appellant submitted that Bhaskar Kumar was not examined by the police. His statement under Section 164, Cr. P.C. was recorded on 23-2-1999, that is to say, more than a month after the occurrence. The Magistrate who had recorded the statement was not examined as a witness and

the statement recorded under Section 164, Cr. P.C. was, therefore, not an exhibit in the trial. The statement under Section 164, Cr. P.C. though lying on the record in the material sense was not legally a part of the record and the legal position was that Bhaskar Kumar was making his deposition before the Court for the first time after about eleven months of the occurrence. Learned counsel also referred to paras 4 and 6 of the deposition of C.W. 1 and submitted that the statements suggested that on 13-2-1999 he was not at Pasraha but was living with his grand father at Khagaria.

23. The submissions made by the counsel for the appellant cannot be said to be entirely without substance. But to me the most significant aspect of the evidence of Bhaskar Kumar. C.W, 1 appears to be the omission of names of his uncle Subodh Singh and the other co-accused Ravindra Prasad Singh. I have referred to his statement recorded before the Magistrate under Section 164, Cr. P.C. in that statement made on 23-2-1999 (slightly more than a month of the occurrence) he had named all the five accused named in the FIR including his uncle Subodh Singh and Ravindra Singh. But deposing in Court after eleven months of the occurrence, he named only three accused, the appellant Garib Singh, Umesh Singh and Prakash Singh. It is evident that though the desire to avenge the murder of his father was still there, it was somewhat compromised to the pragmatic need to protect and save the uncle and it was for that reason that he omitted to name Subodh Singh as one of the five accused. From the materials on record, including the statement of the father, Ramotar Singh, it is plain and clear that the rivalry between the two brothers had led to the gun battle in which Ashok Singh was killed. In those circumstances the omission of Subodh Singh cannot be overlooked.

24. I am, therefore, of the view that Bhaskar Kumar cannot be accepted as a witness of unimpeachable integrity and it will be unsafe to sustain the conviction for the serious charge of murder on the sole testimony of this witness. To my mind, therefore, the appellant is entitled to the benefit of doubt.

25. I am acutely conscious that a murder committed in a Bazar in broad day-light goes unpunished and that is surely to be described as a failure of the system of

criminal administration of justice but on the basis of the materials on record the Court is unable to come up with any other verdict.

26. In the result, this appeal is allowed. The conviction and sentence passed against the appellant by the judgment of the trial Court is set aside and he is directed to be released forthwith unless he is required in connection with any other criminal case.

B.K. Jha, J.

27. I agree.

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