

NabIn Kumar Singh Vs. the State of Bihar

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Court : Jharkhand

Decided On : Sep-07-2006

Reported in : 2007(1)BLJR348; 2007CriLJ1066; [2007(1)JCR474(Jhr)]

Judge : D.P. Singh and; D.G.R. Patnaik, JJ.

Acts : Arms Act - Sections 27; Indian Penal Code (IPC) - Sections 120B and 302; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Appeal (D.B.) No. 324 of 2000(R)

Appellant : NabIn Kumar Singh

Respondent : The State of Bihar

Advocate for Def. : B. Verma, APP.

Advocate for Pet/Ap. : P.P.N. Roy,; S. Sinha and; P. Kumar, Advs.

Judgement :

D.P. Singh, J.

1. This appeal is directed against the judgment of conviction and order of sentence dated 19.8.2000 passed in Sessions Trial No. 221 of 1998, whereby and whereunder the learned Sessions Judge, Singhbhum West at Chaibasa held the appellant guilty under Sections 302 IPC and convicted and sentenced him to

undergo RI for life and further sentenced him to undergo RI for three years under Section 27 of the Arms Act.

2. Brief facts leading to this appeal are that one Nagendra Singh, constable No. 29 of Chaibasa police line was taking food in mess No. 4 along with other constables including deceased Sunil Kumar Singh, constable No. 213 in the evening of 17.10.97. It is further stated that at about 9.15 PM Havaldar Ramanand Singh, constables Dinesh Sharma and Karjanand Singh reached there and asked the deceased Sunil Kumar Singh to come aside. According to the informant, deceased left his food and went along with them towards Barrack No. 5. It is further alleged that after 3-4 minutes a sound of fire was heard, on which all the constables present in the mess rushed towards Barrack No. 5 to find constable Sunil Kumar Singh lying injured towards northern door of Barrack No. 5. It is further asserted that appellant Nabin Kumar Singh, constable No. 768, was standing there with his rifle. According to the informant as many constables arrived there, appellant Nabin Kumar Singh fled away towards south. The injured Sunil was rushed to Sadar Hospital Chaibasa, where he was declared dead. According to the informant, in the morning of 17.10.97 one Rubi Kumari, daughter of Havildar Devendra Singh was teased by constable Harendra Prasad Sao and constable Bikasandu Tripathy, for which an altercation took place. It is further stated that the deceased Sunil Kumar Singh, who was neighbour of said Rubi Kumari, has taken active part in the said altercation and assaulted by Bikasandu and Harendra and Nabin Kumar Singh, the appellant, has taken their side. As such, this occurrence took place. It is also asserted that Nabin Kumar Singh used his rifle in commission of the offence.

3. The statement of Nagendra Singh was recorded by O.C. Sadar P.S. at 9.50 PM and Sadar P.S. Case No. 94/97 was registered under Sections 302/120B IPC and 27 of the Arms Act against four persons including the appellant. The police investigated the case and finally submitted chargesheet against all the four accused persons under Sections 302/120B IPC. The case was committed to the court of sessions where charge was framed on 7.11.98 against all the four accused under Sections 120B IPC and alone the appellant under Section 302 IPC and 27 of the Arms Act. The accused persons pleaded not guilty and claimed false prosecution. The trial court after examining witnesses ultimately acquitted the

three accused persons, namely, Harendra Sao, Ramanand Singh and Bikasandu Tripathy from the charge under Section 120B IPC but found and held this appellant guilty under Section 302 IPC and 27 of the Arms Act and sentenced him as aforesaid.

4. The present appeal has been preferred on the ground that the learned trial court has misconceived the facts of the case. It is also alleged that witnesses examined before the trial court have not supported the prosecution story and resiled from their earlier statements to be declared hostile. It is also asserted that in absence of any positive eye witness of the occurrence, the conviction of the appellant under Section 302 IPC does not deserve to be confirmed. According to the counsel for the appellant, the circumstances accepted against the appellant did not warrant his conviction as the direct link was missing with the offence and use of fire arm by the appellant.

5. Learned Counsel for the appellant submitted that hearsay witnesses have been relied upon by the trial court and suspicion has been substituted in place of evidence to hold him guilty, whereas no proof is available on record that the fire arm received by the appellant on that day was actually used. It is also submitted that all the circumstances were confronted to the appellant when statement under Section 313 Cr.P.C. was recorded by the lower court. Therefore, the conviction of the appellant deserves to be set aside.

6. The learned APP opposed this contention on the ground that a constable was shot dead by the appellant for petty dispute and he misused the fire arm provided to him for maintaining law and order. Therefore, the conviction of the appellant deserves to be confirmed.

7. We have considered the submissions made on behalf of the appellant along with evidences available in the case records. The prosecution story revolves around death of constable Sunil Kumar Singh, constable No. 213 in the night of 17.10.97 within police line situated at Chaibasa. The informant Nagendra Singh, constable No. 29, whose statement was recorded by Officer Incharge, Sadar police station, Chaibasa within an hour of the occurrence, has not supported his earlier statement made before the police and was declared hostile when he was

being examined by the trial court just after one year. This informant stated, vide para 2 that on the date of occurrence he heard halla and reached in Barrack No. 5 to find Sunil Kumar Singh lying dead with bullet injury. He denied that he has seen anyone firing upon the deceased. He was cross examined by the prosecution after declaring him hostile, vide para 3 of his statement in which he denied his earlier statement recorded by the police in his fard beyan. During cross examination by the defence, vide para 5, he denied to have heard the sound of fire. He further admitted that he has not read over the contents of the fard beyan. In this context PW 1, Anil Kumar Singh, constable No. 565, PW 3, Chhotu Mahli, labour in mess and PW 4, Muni Ram Singh, police driver, have been declared hostile, who are said to be present in the mess when the occurrence took place. Though above mentioned witnesses were cross examined by the prosecution in which they have denied their earlier statements rather they have supported the appellant's case that Nabin Kumar Singh used to reside at about 900 yards north of the place of occurrence. PW 7 Ram Kumar Singh, Havaladar, PW 9, Jawahar Prasad, and PW 10, Md. Ekhlak are witnesses in different context.

8. According to the prosecution case, the appellant was deputed for going to Seraikella on receipt of information that additional force was required to control riot situation there. In this context PW 6, Sergeant Major has stated, vide para 1 that when he was holding an enquiry in the police line regarding ill- teasing of Rubi Kumari by some trainees constables along with members of Police Constables' Association, he received an information that the SP Chaibasa has directed him through telephonic message to reinforce Seraikela P.S. where riot has broken. As per this witness, immediately thereafter four sections of force were deputed including a Section led by PW 10, Md. Ekhlak, in which three constables were deputed including the appellant Nabin Kumar Singh. He has proved the command issued in their favour, vide Ext.3. According to this witness, on this command four constables were issued four rifles, each with 20 bullets, which has been shown in issuing register, vide Ext. 4. This witness has further stated that when he was seeing the forces, Vinay Pandey came and informed about appellant Nabin Kumar Singh that his daughter was suffering with vomiting etc. Thereafter the appellant left for his house and he could not proceed with Section on duty and at 9.15 PM he heard a sound of firing. He rushed towards the place of occurrence to see Sunil

Kumar Singh lying injured with bleeding injury, who was taken to Sadar Hospital and declared dead. He has examined the rifle used in this offence as Sergeant Major of the police line. According to this report, vide Ext. 5, he found that rifle No. 38662/52 with butt No. 399 was fired upon and one cartridge was missing from the cartridges delivered to the appellant.

9. This witness has been cross examined at length by the defence on the point that who has issued the arm, who got it packed and regarding the issuance of command but nowhere this has been suggested that the appellant Nabin Kumar Singh was not deputed along with Ekhlak Khan to proceed to Seraikela. PW 9 Jawahar Prasad, who has been declared hostile by the prosecution, has stated specifically that he along with the appellant was deputed for Seraikela and the appellant along with him has proceeded to Seraikela. This shows that deputation of appellant Nabin Kumar Singh along with arms is not doubtful. The prosecution version as made in the FIR was that when Nabin Kumar Singh was to board the vehicle he was informed by Binod Pandey that his daughter was unwell and he went towards his house. According to PW 6, when he did not return, the team proceeded for Seraikela leaving him behind. It is also admitted fact, vide Ext. 4, substituted copy of arms issuing register along with signature of the appellant that on 17.10.97 he along with Ekhlak Khan, Jawahar Prasad and Sarfuddin Khan has been given one rifle and 20 cartridges each. According to these witnesses, when arms were returned to the arms Incharge, the constables used to pen down through the entries. The entry made against this appellant stands not pen down through rather it mentions that rifle No. 38662/52 and 19 cartridges were returned on 18.10.97 at 2.30 AM. It also appears to have been overwritten. PW 6, as Sergeant Major and Incharge of the Ballistic Examination of Arms has reported, vide Ext.5, that the said rifle No. 38662/52 was used because there was presence of carbon and particles of explosives along with smell. It is also mentioned that bonnet of the rifle was missing. The issuance of rifle along with cartridges, as per Ext. 4, stands proved even with the evidence of PWs 9 and 10, who were deputed for going to Seraikela along with appellant, as they have deposited the rifle and cartridges on returning from Seraikela. Thus the fact remains that appellant was provided with rifle bearing No. 38662/52 along with 20 cartridges in the evening of 17.10.97 to proceed to Seraikela and the same was found used before its return at 2.30 AM on

18.10.97. The prosecution case is that the deceased Sunil Kumar Singh was found dead when he arrived at Sadar Hospital, Seraikela with bullet injury. The doctor, PW 5, has given details of the injuries found on the dead body of Sunil Kumar Singh, discussed by the trial court, vide para 8 which provides the details of the wounds, resulting in fatal internal injuries. The learned trial court has further discussed materials brought on record through different Exts 3, 4, 9 etc. showing that the said rifle was made over to the appellant along with 20 cartridges in the evening of 17.10.97. No suggestion or explanation has been made by the appellant in this context as to in which circumstance the said missing bullet was fired from the rifle in question, which was in his possession.

10. In the above circumstances the evidence of I.O., PW 11, OC. Sadar P.S. Chaibasa requires to be considered in details. PW 11 Raj Kumar Sinha received an OD slip, which was registered as SD entry No. 363 dated 17.10.97 at 21.50 hours. The witness arrived at Sadar Hospital, Chaibasa and recorded the statement of PW 2 in presence of constables Bir Bahadur Singh, Dinesh Kumar Singh and Anil Kumar Singh, though later on these witnesses have turned hostile. This witness further stated that he recovered assault rifle from the appellant bearing No. 38662/52 along with four cartridges in the magazine of the rifle and 15 cartridges from his belt. He got the FIR registered and started investigation. He has seized the blood stained soil from the P.O. and recovered bonnet of rifle lying near the PO in bush. These seizure lists were later on handed over to PW 8, the subsequent I.O. He gave in details what the witness Nos. 1, 2, 3, 9 and 10 have stated before him. This witness was cross examined at length by the defence counsel. The cross examination made on behalf of the appellant, vide para 16 to 22, did not suggest that said rifle was not found in possession of the appellant. He has mentioned that seizure of rifle was mentioned in para 23 of the case diary. But the witnesses were not named in whose presence the seizure was made. He has asserted that the said rifle was recovered from the possession of the appellant.

11. Learned Senior counsel appearing on behalf of the appellants stressed before us that mere possession of weapon of assault in the evening of 17.10.97 accepting as one of the major circumstance to hold guilty the appellant is not justified. It is also submitted that in such cases where no eye witness is available,

the link of circumstance should be full proof, as required under the law laid down by the Apex Court that in all probabilities the offences require to be proved to have been committed by the appellant. It was further stressed that these circumstances were not put to the appellant during his examination under Section 313 Cr.P.C. resulting in prejudice to his defence. In this context, learned Counsel has relied upon 2005 (1) East. Cr. Cases 10 (SC), in which the Hon'ble Apex Court observed as follows:

16. It is lastly submitted by the learned Counsel for the accused/appellants that the statement under Section 313 Cr.P.C. of the accused persons have been recorded in a most cursory, casual and perfunctory manner by the Sessions Court. It is urged that this is a normal practice followed in the Court in the State. The manner in which the trial court recorded the statement under Section 313 Cr.P.C. of the accused persons, is not in accordance with law and, therefore, accused-appellants are entitled for the benefit as they have not been provided with sufficient opportunity to explain the circumstances appearing in evidence against them. We have perused the statement under Section 313 Cr.P.C. and the quest formulated by the trial court in the present case and we may say that it is far from satisfactory. This Court time and again has laid down that it is obligatory on the part of the trial court to examine the accused for the purpose of enabling the accused personally to explain any circumstance appearing in evidence against him. If such opportunity is not afforded, the incriminating piece of evidence available in the prosecution evidence against the accused cannot be relied upon for the purpose of recording the conviction of the accused person. It is imperative on the Court to record the statement under Section 313 Cr.P.C. of the accused persons so as to give opportunity to the accused persons to explain any incriminating circumstance proved by the prosecution. The duty cast on the Court cannot be taken lightly.

12. We have minutely scrutinized the statement of the appellant recorded under Section 313 Cr.P.C. by the trial court on 19.11.99. At the very outset we find that recording of statement, as provided under law, requires putting of specific questions to the accused along with evidences, which the learned court intends to rely upon. In the present fact the single question was put up to the appellant in which general allegation was made that he along with several accused persons

conspired to commit murder of Sunil Kumar Singh and in furtherance of that conspiracy he used Government arms to cause death of Sunil Kumar Singh. The next question put up before the appellant was that if he has to say something in his defence, the appellant has answered the question by simple denying 'Jee Nahin'. In the facts of the case where almost all eye witnesses or probable witnesses have turned hostile, the court when relying upon the circumstances to convict the appellant, was supposed to put up all the circumstances in specific words to the appellant on 19.10.99 so that the appellant may have fair opportunity to explain those circumstances. It was of much importance in the facts that the prosecution has alleged issuance of rifle and cartridges to the appellant on his deputation to proceed to Seraikela. The fard beyan mentions that he did not proceed to Seraikela whereas defence has cross examined PWs 9 and 10 on this point to suggest that Nabin Kumar Singh has proceeded along with them to Seraikela in the evening of 17.10.97. In such circumstance, this fact remains undisputed that Nabin Kumar Singh was provided with rifle in question along with 20 cartridges on his deputation to proceed to Seraikela along with PWs 9 and 10. The next fact stands admitted that the said rifle was returned in the Armory along with 19 cartridges only. The rifle No. 38862/52 was found used by PW 6 on the very next day. Therefore, the onus shifted upon the appellant in which circumstance the said rifle was used and one bullet was missing. No explanation so far has been made on the records about this by the appellant. Learned Counsel for the appellant could not explain this laches on the part of appellant who was supposed to give the details in which circumstance the said rifle was used and he returned only 19 cartridges.

13. In the present case eye witnesses have turned hostile but the material available on record shows that rifle No. 38862/52 was in possession of the appellant along with 20 cartridges, which was later on returned with one cartridge missing from the magazine of the rifle and the rifle was found to have been used in between the time when he received it and returned it in the armory. This circumstance requires explanation by the defence. The fact also remains that deceased Sunil Kumar Singh was brought dead in the hospital and the doctor, during post mortem, found and held that fire arm injury caused his death. The statement of hostile witnesses 1, 2, 3, 4 does not dispute the fact that Sunil Kumar Singh was lying injured with

bullet injury at 21.15 hours on 17.10.97. PW 7 has also stated like that. As against this PWs 9 and 10 have asserted that appellant Nabin Kumar Singh has gone along with them to Seraikela in the evening of 17.10.97. The appellant has not asserted that he actually left for Seraikella along with PWs 9 and 10. According to PW 11, he arrested the appellant near the hospital along with arms seized by him, which were later on examined by PW 6 to find that the rifle No. 38862/52 was used shortly before examination and one bullet was missing. All these facts indicate that appellant, while in custody of assault rifle No. 38862/52, had used it. The death of Sunil Kumar Singh is admittedly caused by a bullet injury in police line itself. These circumstances require to be explained to the appellant during his statement under Section 313 Cr.P.C.

14. We have already discussed this lacuna on the part of the trial court while recording the statement under Section 313 Cr.P.C. and found that essential ingredients of the evidence, available on record, were not put to the appellant for giving him proper and fair chance to explain those circumstances likely to be used against him.

15. In the present fact, where the appellant has been sentenced to serve RI for life for an offence under Section 302 IPC along with use of Government fire arms for committing the offence, we feel that he should be given proper opportunity to defend himself as required under the law. As such we find that the present conviction and sentence of the appellant cannot be sustained.

16. Accordingly, the order of conviction and sentence passed against the appellant is hereby set aside with a direction to remand the present case for getting the appellant examined afresh under Section 313 Cr.P.C. and thereafter to pass appropriate order in accordance with law.