

**Ranjit Singh Vs. the State**

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**Court :** Orissa

**Decided On :** Dec-01-1964

**Reported in :** 1966CriLJ336

**Judge :** S. Barman and ;G.K. Misra, JJ.

**Appellant :** Ranjit Singh

**Respondent :** The State

**Judgement :**

**G.K. Misra, J.**

1. The appellant has been convicted under Section 302, I. P.C. and sentenced to imprisonment for life. He was called upon to show cause why the sentence should not be enhanced to death.

2. Prosecution case is that there was some ill feeling between the accused and the deceased who were residents of village Pachar. The deceased and Bibhisani Bhoi (P. W. 1) were brothers. About six months before the incident P. W. 1 found the accused in the house of her sister (P. W. 4) when she was alone and her husband was absent. This led to a quarrel. In the evening of that day the deceased also took exception to the conduct of the accused. In a punch the deceased and P. W. 1 executed Ext. 2 acknowledging their fault for having started the quarrel with the accused. The accused, however, did not agree to execute any document. Their ill

feeling continued. Just before sun-set on 16-6-63 the deceased was returning from his field when the accused shot him with a gun, P. W. 2, a cowherd boy, saw the incident. Other villagers gathered. The deceased made an oral dying declaration in presence of some of the villagers at the spot as well as in the village. While he was being carried to the hospital on the way he made similar dying declaration before P. Ws. 22 and 23 at village Dhandamunda. Soon after his arrival at Khaprakhol P. S. he expired. The defence is one of denial.

3. The learned Sessions Judge held that the deceased was killed being shot with a gun. The evidence of the Doctor (P. W. 10) and the Ballistic Expert (P. W, 27) fully establishes that death was due to gun shot. The finding that the deceased died as a result of gun shot has not been assailed before us.

4. The conviction of the appellant is based on the following pieces of evidence:

(i) the evidence of the eye-witness P. W. 2

(ii) dying declarations of the deceased made at different places before different sets of witnesses; and

(iii) the evidence of persons showing that the accused had brought the gun of D. W. 1 of village Bharatbahal and was found with the gun on the way after the murder by witnesses from different villages in between the villages of Pacher and Bharatbahel.

5. P. W. 2 stated in the committing Court that while he was returning to village he heard the accused asking the deceased as to what he did with his shoes. Soon after he heard the sound of shooting by gun, the deceased shouted saying that Jita Babu had shot him and he asked for help. P. W. 2 saw smoke spreading. He also noticed the accused running away with the gun towards the rivulet and the forest. In the village he informed this fact to Kama (P. W. 16) and Picharu (not examined). In the Sessions Court he resiled from his statement regarding the complicity of the accused, but admitted that when he was returning to the village he heard the sound of gun-fire and saw a man running away to-wards the rivulet. He further admitted that he heard one man shouted for help saying that Jita Babu

had shot him with a gun. He however, made a substantial departure in two important matters by saying that he could not say who was shouting and also who fired the gun and ran away.

Regarding his disclosure to P. W. 16, he stated that he did not disclose the name of the person who fired the gun but merely stated that somebody fired a gun and somebody was shouting for help saying that Jita Babu fired at him. Thus there is no variance between his statements in the committing Court and Sessions Court regarding the factum of his hearing the gun shot sound and somebody shouting for help saying that Jita Babu had shot him and his seeing somebody running away towards the forest with the gun. He made a departure by stating that he did not recognise the persons giving the gun shot and shouting for help. His change of version that he could not recognise the person who was shot and shouted for help, even if it is accepted, does not introduce any infirmity in the prosecution case inasmuch as the admitted position is that the deceased was found being shot at the spot. Obviously the shout that Jita Babu shot him which P. W. 2 heard refers to that of the deceased. The only substantial variation is regarding non-complicity of the accused.

The point for examination is which of the two versions is reliable. Under Section 288, Cr. P. C., the statement in the committing Court was tendered. If two contradictory statements are made on oath, the witness is unreliable on the face of it. Both the statements are substantive evidence. The Court must therefore clearly examine which of the two statements is more reliable. Cases may arise where without the help of any extrinsic or corroborative evidence one statement may be preferred to the other by the intrinsic character of the evidence itself. But in most cases it may be difficult to prefer one to the other without corroborative evidence See : [1964]4SCR589 .

It is, therefore necessary to examine if the statement of P. W. 2 in the committing Court has been corroborated. P. W. 2 stated Under Section 164, Cr. P.C. that he saw the accused running away with the gun towards the forest after the gun-shot sound. The statement Under Section 164, Cr. P.C. is not substantive evidence. It can be used either for corroboration Under Section 157 or for contradiction Under

Section 145 of the Evidence Act. The statement Under Section 164, Cr. P.C. corroborates the evidence of P. W. 2 in the committing Court and contradicts that in the Sessions Court. P. W. 2 was cross-examined by the prosecution with regard to his statement made before the police during investigation. His evidence before the Sessions Court stands contradicted by his statement before the police. The position thus emerging is that while the statement in the committing Court is corroborated by the statement Under Section 164, Cr. P.C. the evidence before the Sessions Court stands contradicted by his statement made to the police and that recorded Under Section 164, Cr. P.C. The statement of P. W. 2 in the Sessions Court that he did not recognise the person, who ran away with the gun after the gun shot, stands condemned by his former statements to the police and Under Section 164, Cr. P.C. It is unreliable and must be discarded. The statement in the committing Court is reliable.

P. W. 2 was examined in the Sessions Court on 3-12-1963. He was confronted with his statement in :the committing Court Under Section 145, Evidence Act. The committing Court statement was, however, tendered on 26-2-1964 by a petition filed by the public prosecutor. The order-sheet of that date does not indicate any objection on the part of the defence. Mr. Ram, however, contended that his client was prejudiced inasmuch as he did not get notice on the date of examination of P. W. 2 that his statement in the committing Court would be tendered Under Section 288, Cr. P.C. and accordingly he did not fully cross-examine the P. W. 2. Section 288, Cr. P.C. does not prescribe that the committing Court statement of a witness is to be tendered. It merely says that such statement may in the discretion of the presiding Judge, if such witness is produced and examined, be treated as evidence in the case for all purposes, subject to the provisions of the Evidence Act. Tender of such statement before the closure of a case cannot thus be said to be contrary to law. There is, however, some force in the contention that the accused might be prejudiced if the Presiding Officer does not exercise his discretion in treating the committing Court statement as evidence while the witness is under examination in the Sessions Court. Each case must be examined with reference to its own facts and circumstances to determine if prejudice has been caused,

We called upon Mr. Ram to bring to out notice particular questions which the defence failed to put in cross-examination. P. W. 2 has been cross-examined at great length. The only substantial departure between the two statements is regarding the complicity of the accused. We are satisfied that no prejudice was caused by the committing Court statement having been tendered late at a subsequent stage in course of hearing. Sessions Judges of the State must, however, exercise their discretion when the witness is in the box so that the defence would be aware that such statements were being used as substantive evidence under Section 288, Cr. P.C. Mr. Ram also contended that in confronting P. W. 2 with the committing Court statement, the principles of Section 145, Evidence Act, were not adhered to. There is no substance in this contention and we reject it.

To sum up, we are satisfied that the evidence of P. W. 2 in the committing Court is true and reliable. It is a substantive evidence and can constitute the sole basis for conviction.

The evidence of P. W. 2 in the committing Court receives some corroboration from the evidence of P. W. 17. He stated that in the afternoon he had been to the field to graze cattle and saw the accused with a gun going towards the Khaliamal land. Before sun-set he came back to his village with his bullocks, and a little later he heard the sound of a gun fire. His evidence establishes the fact that the accused was moving with a gun sometime before the actual occurrence.

6. The deceased stated on the spot to a query from P. W. 3 that Jita Babu shot him with a gun. P. Ws. 1, 7,11,15, 16 and 17 corroborate P. W. 3. The deceased made a dying declaration soon after the gun-shot, hearing the sound of which these persons gathered at the spot. The deceased was removed in a cot to the village. To the query of the Sarpanch (P. W. 9) the deceased answered in the same strain in the presence of P. Ws. 1, 9,11 and 17. On the way to Khaparakhbol P. S. the cot was halted in village Dhandamunda. The deceased made identical dying declaration in the presence of P. W. 22, the Chairman of the Panchayat Samity and P. W. 23, the Agricultural Extension Officer of Khaparakhbol Block. Mr. Ram took considerable pains in taking us through the evidence of these

witnesses. He was unable to make any satisfactory comment on P. Ws. 22 and 23 who are men of status and fairly reliable. No substantial criticisms were also urged against the evidence of the co-villagers who deposed to the dying declaration both at the spot and in the village. The dying declaration was itself in a simple form that Jita Babu shot the deceased with a gun.

Oral dying declarations are to be scrutinized with care. Unless the Court is in a position to know the exact contents of the dying declaration, it would be difficult to base a conviction thereon. The Court has therefore to be sure as to what exactly was the statement of the deceased. In this case, the substance of ' the dying declaration is very simple and whatever may be the variation of the words, the witnesses are almost unanimous regarding the statement that Jita Babu shot the deceased with a gun. The evidence leaves no room for doubt in our mind that the deceased implicated the accused as having shot him with a gun. The dying declaration, was made at the earliest opportunity. Immediately after the gun shot the exclamation of the deceased connected the accused with the gun shot which P. W. 2 could hear. The spot of occurrence is at a distance of about one furlong from the village and on hearing the gun shot sound the villagers gathered on the spot immediately after. The dying declaration was made in the presence of those persons and was consistently adhered to before P. Ws. 22 and 23. Though the deceased was having some pains, he had full consciousness and his memory was clear. The dying declaration left no doubt regarding the identity of the accused. The oral dying declaration thus satisfies all the tests usually adopted to scrutinise it, that is, the memory and the consciousness of the deceased, consistency of the statement, definiteness about the identity of the accused and whether it was made at the earliest opportunity, There is no longer any controversy that a conviction is well founded on the dying declaration itself if it is reliable. Corroboration is not essential in all cases. There is no inherent weakness in a dying declaration as a piece of evidence. If it is not free from any infirmity, corroboration is necessary. In this case the dying declaration suffers from no inherent infirmity and a conviction can be properly based on it. If corroboration is necessary, the dying declaration and the evidence of P. W. 2 corroborate each other.

7. The conviction can be properly based on the evidence of P. W. 2 and the dying declaration. Even if the gun (M. O. IV) belonging to D. W. 1 is not proved to be the instrument of murder, the prosecution case is not at all affected. Where the prosecution is well grounded on the evidence of the eye-witnesses or on circumstantial evidence completing the entire chain, prosecution cannot fail if the instrument of murder is not produced. If in a particular case the prosecution case is that the eye-witnesses actually saw a particular gun being used in the murder, and the opinion of the Ballistic Expert or the finding is that the injury caused could not be the outcome of that gun, there may be room for a conclusion that the prosecution case might fail on that ground. In this case, it is not the prosecution story that P. W. 2 actually saw M. O. IV being used by the accused. To probabalise the prosecution case, it has given further evidence that the accused borrowed the gun M. O. IV from its owner D. W. 1 and returned it soon after the murder. P. Ws. 12 & 14 are residents of Tamia and Dabkani respectively which lie in between the villages of Pachel and Bharatbahal.

They deposed that they found the accused going with a gun towards Bharatbahal the next day after murder. They are residents of different villages and have absolutely no axe to grind against the accused. No substantial criticism had been levelled against their evidence to impress us that they are not witnesses of truth. P. W. 18, president of Bharatbahal, saw the accused going from Tamia side to Bharatbahal carrying a muzzle loaded gun. The evidence of these three witnesses conclusively establishes that the accused went towards Bharatbahal with a muzzle loaded gun. The distance between Pacher and Bharatbahal is 23 miles. The accused was arrested on 22-6-63 and was absent from the village for 2 days. P. W. 18 deposed that the accused had borrowed a gun from D. W. 1, There is undoubtedly enmity between P. W. 18 and D. W. 1. The learned Sessions Judge accepted the evidence of P. W. 18 as reliable as he even had not lodged a case under the Arms Act against D. W. 1 and he is corroborated by the evidence of P. Ws. 12 and 14, We are inclined to accept the reasoning and hold that the evidence of P. W. 18 is acceptable. D. W. 1 the owner of the gun, denied the fact that he ever lent it to the accused. It is natural for him to disown the factum of lending as it would implicate him in an offence.

The learned Judge therefore came to the right conclusion that soon after the murder the accused was found going from his village to Bharatbabal to return the gun M. W, IV. The evidence of the Ballistic Expert is that the gun shot injury on the deceased could be caused by M. O. IV if shot from a distance of 4 feet. There is no prosecution evidence as to from what distance the gun was actually shot. There is therefore no inconsistency in evidence and a finding can be recorded that the injury could be caused by the gun M. O. IV. The findings that the injury could be caused by M. O. IV and that the accused was found going from village Pacher to Bharatbahal with a muzzle loaded gun next day, fully corroborate the evidence of P. W. 2 and the dying declaration.

8. On the materials discussed we are of opinion that the learned Sessions Judge rightly found the accused guilty under Section 302, I. P.C. A notice was issued to the accused to show cause why the sentence of imprisonment for life would be enhanced to death. On examining the reasons given by the learned Sessions Judge and after hearing Mr. Ram and the learned Government Advocate, we are not inclined to enhance the sentence.

9. In the result, the notice for enhancement is discharged and the appeal is dismissed.