

State Vs. Ranjay Paswan

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Court : Patna

Decided On : Aug-28-2009

Judge : Navin Sinha and; Dharnidhar Jha, JJ.

Acts : Indian Penal Code (IPC) - Sections 34, 120B, 302 and 304; ;Arms Act - Section 27; ;Evidence Act - Section 134; ;Code of Criminal Procedure (CrPC) - Section 313

Appeal No. : Death Referance No. 14 of 2008 with Cr. APP (DB) No. 1077 of 2008

Appellant : State;ranjay Paswan Son of Brij Nandan Paswan

Respondent : Ranjay Paswan;state of Bihar

Advocate for Pet/Ap. : Kalika Nandan Singh, Adv. in Cr. App. 1077/2008 and; Vijoy Kumar Pandey, Adv.;

Disposition : Appeal dismissed

Judgement :

Navin Sinha and Dharnidhar Jha, JJ.

1. The solitary appellant, namely, Ranjay Paswan was tried by the learned Additional Sessions Judge-cum-Presiding Officer, Fast Track Court IV, Jamui, in Sessions Trial No. 242 of 2006 with co-accused Sudarshan Paswan for composite

charges under Sections 302 read with Section 34 and 120(B) of the Indian Penal Code as also under Section 27 of the Arms Act. While acquitting the co-accused sudarshan Paswan of the charges indicated above, the learned Judge held the appellant guilty of committing offences under Section 302 of the Indian Penal Code and Section 27 of the Arms Act by his judgment and order of conviction dated 27.8.2008 and directed placing the records before him again on 3.9.2008 so as to hearing the convict on sentence and passing the order of sentence on that particular day. While passing the order of sentence on 3.9.2008, the learned Judge was of the view that the case fell within the category of the rarest of rare cases, because the impact of the murder of the deceased was going 'to give very bad impression to the society and public at large' and accordingly directed hanging of the appellant by his neck till he was dead and thus, the above noted Death Reference before this Bench. The appellant has challenged the whole judgment of conviction and sentence through the connected appeal which has been heard with the death reference today.

2. P.W. 15 is the informant of the case and she gave her fardbeyan (Ext.2) before the police alleging that the deceased Pappu Sharma who was the son of one Ramkishore sharma and happened to be the son of her husband's sister, was residing in her house and was prosecuting his studies in K.K.M. College, Jamui, as a student of Intermediate Class. P.W. 15 further stated that cost of education of the deceased was borne by his parents. It was further alleged that on the date of occurrence, i.e., 25.9.2005, Sunday, the deceased was at the house of P.W. 15 and was absorbed in his studies while the informant was cooking meals. At about 10 A.M. the appellant, who happened to be the son-in-law of co-accused Sudarshan Paswan, came there and wanted a hundred rupee-note to be exchanged for notes of lesser denominations to which the deceased stated that he did not have that much of money. The lady claimed also coming there by that time. It is alleged that the appellant told the informant as to why Pappu Sharma was flirting with his Sali (wife's sister) upon which the deceased stated that he never indulged in such bad activities. The appellant, it is alleged, pulled up a pistol from his waist, shot and killed the deceased Pappu sharma and ran away from there. P.W. 15 raised cry which, as per her statement, attracted many villagers who saw the appellant running away from the place of occurrence.

3. It was stated that co-accused Sudarshan Paswan was working out side his village and had reached home just a couple of days back and the lady suspected that Sudarshan Paswan could have abetted his son-in-law, i.e., Ranjay Paswan, to commit the murder of Pappu Sharma. The lady again reiterated that the appellant Ranjay Paswan doubted that the deceased was putting his greedy eyes upon his Sali though the fact was that he was himself entangled with the lady and, as such, committed the offence.

4. After recording of Ext. 2, the same appears to have been sent to the Police Station and on that basis Ext.5, the F.I.R. of the case was registered. P.W. 14, Sub-Inspector of Police Umesh Chandra who recorded the fardbeyan (Ext. 2) was very much at the place of occurrence and, as such, he took up the investigation, during which course he inspected the place of occurrence which has been described by him as the house of P.W. 15 Neoji Devi situated at village Harnaha. P.W. 14 found that there was a table and a chair kept inside a room and books were spread over the table and the pen was still without its cover on. P.W. 14, the Investigating Officer, found the splash of blood in sufficient quantity at the table, chair and on the surface of the room, besides he found an empty cartridge lying somewhere around the place of occurrence. He prepared the inquest report (Ext. 6) and sent the dead body for post mortem examination.

5. Dr. Ganesh Kumar, P.W. 13, who was the Medical Officer posted at sub-divisional Hospital, Jamui, held Post-Mortem examination on the dead body of Pappu Sharma aged about 19 years, on 25.9.2005 and found the following ante mortem injuries:

(i) Wound of entry. It was a lacerated wound about 1 C.M. X 1/2 C.M.X cavity deep in chest on left side of Xiphisternum of anterior chest wall. The margin of wound was inverted and black in colour. This wound was communicating with the wound of exit which was another lacerated wound with everted margin and bleeding measuring about 1'X3/4' on the right infrascapular region of back. On dissection of thorax, P.W. 13 found the heart perforated through and through on left ventricle and right ventricle. Right lung was lacerated with huge collection of blood in thoracic cavity on right side.

(ii) An abrasion on right parietal area measuring 2'X1'. This wound was found on dissection of the scalp.

In the opinion of the Doctor, P.W. 13, the cause of death was haemorrhage and shock due to the above injuries which were caused by firearm within 24 hours of the holding of the post-mortem examination.

6. It does not appear either from the judgment or from the record of Statement under Section 313 of the Code of Criminal Procedure that the appellant had pleaded or placed any definite defence before the trial court. However, while hearing the present Death reference and connected appeal, the learned Counsel appearing for the appellant has put forth a theory by submitting that might be that Pappu Sharma was killed at a place other than the place claimed by the prosecution and his dead body was brought on a cot and after manoeuvring the police Officers, a false and fictitious case was registered against the appellant and the co accused. We must record here and now that none of the witnesses was even suggested that things could have happened as were asserted by learned Counsel for the appellant, but still we have chosen to notice this defence, because the appellant may not feel prejudiced on account of being refused to plead it at this belated stage.

7. In support of the charges, the prosecution examined as many as 15 witnesses out of whom P.W.1 Sone Lal Kumar is a formal witness who signed the seizure memo and the seizure of the empty cartridge from the place of occurrence prepared by P.W. 14. P.Ws. 8 and 10, namely, Chandra Sekhar Sharma and Bijoy Kumar Sharma had witnessed the performance of the inquest on the dead body and had signed Ext.6 the inquest report as witnesses to inquest. Their signatures have been marked Exts. 1/1 and 1/2 respectively. Out of the remaining witnesses, P.W. 2 Brahamdeo Sao, P.W. 3, Panchu Manjhi, P.W. 4, Anandi Manjhi, P.W. 5 Pappu Gupta, P.W. 6 Subey Paswan, P.W. 9 Keshow Paswan, P.W.10 Bijoy Kumar Sharma, P.W.11 Manoj Sharma and P.W. 12 Kari Devi have given one line of evidence that they did not know anything about the incident resulting into the witnesses being declared hostile and cross-examined to their previous statements which they had made before the police. Nothing tangible either in support of the

prosecution charges or probalising the defence of the appellant appears coming from the evidence of these hostile witnesses. The solitary evidence which comes in support of the prosecution charges is of the informant who has been examined as P.W. 15.

8. P.W. 15 has stated in her evidence in the court that while she was inside her house and was cooking meals and the deceased, her grand son, was reading, appellant Ranjay Paswan came with a hundred-rupee- note for getting its break up in notes of lesser denominations upon which the deceased stated that he did not have that much of money whereupon Ranjay Paswan shot and killed her grand son who died then and there while the informant remained sitting there. P.W. 15 states that she raised cry whereafter the villagers assembled there. Thereafter, she gave her fardbeyan to the Sub-inspector of Police which was written and read over to her upon which she put her L.T.I. In her examination in chief she has stated that this appellant shot and killed her grand son.

9. The short evidence in examination in chief of P.W. 15 appears not necessitating a lengthy or longer cross-examination. She was cross-examined about surrounding neighbourhood of her house and different caste combination of persons who were her neighbours. She was also put question upon her relationship with her neighbours. She was asked whether she had any quarrels or dispute with her neighbours to which she replied that she had none. She stuck to her original statement that the deceased was reading while she was cooking meals. She also stated that the deceased did not have any quarrel or dispute with any one and that the appellant pulled up a pistol and shot the deceased which was seen by her. It was suggested to P.W. 15, as may appear from paragraph 9 of her evidence, that she had filed a false and concocted case so as to implicating the appellant at the behest of some of the villagers which suggestion was stoutly refuted by P.W. 15.

10. The learned trial court placed reliance on the solitary evidence of P.W. 15 and held that it was corroborated by the medical evidence of P.W. 13 and some of the objective findings of P.W.14 and recorded a conclusion that the charge under Section 302 of the Indian Penal Code and Section 27 of the Arms Act was brought

home clearly against the appellant.

11. It was contended by Shri Kalika Nandan Singh, learned Counsel for the appellant that the evidence of solitary witness in the present case was not of such quality as to be placed implicit faith to bring home the charge. It was contended that the initial prosecution story, on most of its parts, was given a go-by and the lady gave a very cryptic evidence making her not a truthful witness. It was contended next that P.W. 14, the Investigating Officer of the case, appears creating documents which could be contrary to his own findings on the question of place of occurrence. The finding of the dead body as appears from the inquest report (Ext. 6) also creates a doubt in the veracity of the prosecution case.

12. It was next contended that the Investigating Officer of the case does not appear properly investigating the case as P.W. 14 did not seize the blood from the spot, neither the blood stained cloths were seized nor any cloth which was spread on the cot on which dead body was kept, were seized. The blood was not sent to the chemical analyst for its analysis so as to placing evidence before the court that the splash of blood which was found on the table, chair and floor of the house could be human blood and that the occurrence had really taken place inside the room as stated by P.W. 14 in paragraph 4 of his evidence.

13. Learned Counsel appearing for the appellant has placed before us two decisions- one rendered by this Court and reported in 1998 (2) P.L.J.R. 540 Ram Barai Rai and Ors. v. The State of Bihar as also the decision of the Supreme Court reported in 1992 (2) P.L.J.R. 38 (S.C.) v. Sreedharan v. State of Kerala to submit that the evidence of solitary witness P.W. 15 not indicting as to what could be the motive for commission of the offence and other independent persons who could be her neighbours not coming forward to support also, it was not safe for the learned trial court to have recorded an order of conviction. It was contended that even if the court came to a conclusion that the offence was committed in the manner as alleged by the prosecution, the court should take a view that it was an act done without premeditation and in a fit of rage the act may fall within the purview of Section 304 Part I of the Indian Penal Code. In support of this contention, the case of v. Sreedharan (Supra) has been placed before us.

14. It was, lastly, submitted by Shri Kalika Nandan Singh, learned Counsel for the appellant that the sentence which was passed against the appellant appears extremely excessive, unwarranted and unjustified under the facts and circumstances of the case and the case could never have fallen within the category of rarest of rare ones. It was contended that the judgment, as such, errs heavily as regards passing of sentence upon the appellant.

15. Shri Ashwani Kumar Sinha, learned Counsel for the State submitted that it is not unknown to law that the evidence of solitary witness could be utilized for recording a conviction if that evidence appears acceptable and trustworthy to the court. It was contended that it is true that all the witnesses named in the chargesheet did not choose to support the prosecution case and turned hostile instead, but the corroboration of the manner of occurrence came from the evidence of P.W. 13 Dr. Ganesh Kumar and the incident appears generally being supported by the evidence of P.W. 14 also whose objective findings on the place of occurrence lends support to the charge and the prosecution allegation. It was contended that the learned trial Judge was perfectly within his jurisdiction to record the order of conviction against the appellant. However, Shri Sinha, learned Counsel for the State was very fair in conceding that the present could not be a case which could be categorized as the rarest of rare ones and passing of death sentence, as such, appears excessive. It was contended that the ordinary rule of sentencing an accused under Section 302 of the Indian Penal Code may be proportionate in the facts and circumstances of the case.

16. We have a case in hand which is based on oral testimony of single witness. The testimony of a single witness is sufficient to record a conviction if the court places implicit faith upon his or her evidence. No particular number of persons is required to be examined to prove a fact. If one considers the background facts of the case, as appears told by P.W. 15 in her evidence, neither she nor the deceased had any dispute or quarrel with any one of the neighbourhood. The deceased or the witness had no grudge to feed fat against the appellant also. It is true that the motive which was alleged by her in her fardbeyan has not been stated by her in her evidence. But we have a case of an eye witness who appears competent and in that case even if motive has not been proved or even if it has not

been brought on record, it may not have had any impact on the proof of the charge. The informant appears a lady who does not have any animosity with any one. The only fact which appears is that the appellant might have some personal grudge against the deceased.

17. The F.I.R. may not be a substantive piece of evidence but the court may not lose sight of its importance of being the first version of the prosecution itself. It is a potent weapon both for the purpose of corroboration of the prosecution case or contradicting the same by the defence by its use. The prosecution could utilise the document to argue as to what was its basic case from the very inception. As against that, the defence could point out to the court that the prosecution has taken some turn so as to distorting the facts by inserting a particular circumstance and thereby has embellished its case only to concoct the case. Here, in the present case, as noted above, the lady or the deceased had good relationship with all their neighbours. This appears to us one reason to say that the lady might not have spared the real culprits in the background of there being no enmity with any one so as to implicating an innocent person. For falsely implicating the appellant, as was pleaded, the defence must show to us that there were compelling reasons for the lady so as to feed fat her grudge and thereby seeing the appellant convicted and sentenced to a particular term of imprisonment. This is not the case of that class. The evidence of P.W. 15 might not have been in details as it was in the fardbeyan, but the prosecution case has been proved by the prosecution by leading evidence on most of its material parts. While going through the evidence of P.W. 15 we found that it was telling the truth which could be material for the present case and she appears to us also a trustworthy witness.

18. The other witnesses have turned hostile. We have made a reference to the principle laid down by Section 134 of the Evidence Act that no particular number of persons is required to prove a particular fact. The value of medical evidence is also that it corroborates the manner of occurrence or it may contradict the same. As in the case of the F.I.R. so in the case of the evidence of the medical man, the defence has a right to rely upon the evidence of the Doctor or the report prepared by him, to show to the court that the manner of occurrence as alleged by the prosecution was not being corroborated by the medical man or it was being

contradicted in such a way as to improbabilise the very manner of occurrence. This the defence may do by reading out the allegation on manner of assault and also the evidence of witnesses in that behalf and then by referring to the court the medical evidence show to it that the injury or injuries as found on the injured or the deceased were not possible by the assault attributed to the accused by the prosecution and thereby the defence may argue that either the prosecution story is false or the witnesses had not seen the occurrence.

19. We have extracted the evidence of P.W. 13 Dr. Ganesh Kumar earlier. The prosecution story is that the appellant pulled up a pistol and fired a shot. The witness P.W. 13 Dr. Ganesh Kumar has stated as to what was the nature of weapon which had caused the injuries. He has stated in paragraph 4 of his evidence that the injuries which were found by him could be caused by firearm, may be a pistol.

20. Shri Kalika Nandan Singh, learned Counsel for the appellant was drawing our attention towards the finding on dissection of the scalp. It was an abrasion on the right parietal area measuring about 2'X1'. Learned Counsel was criticizing the learned trial Judge for conjecturing on many facts. He may also criticize in the same vein that we conjectured if we go on to say that the prosecution story is that the deceased was sitting in the room wherein the occurrence had occurred. P.W. 14, the Investigating Officer of the case, had described the place of occurrence in paragraph 4 of his evidence and it is indicated by that evidence that a table and a chair were kept inside it. The books were still spread over the table and the pen was uncapped indicating that the deceased was writing something. These facts go to indicate that the deceased was reading when the appellant arrived there. The boy was shot straight into his chest, on the left side of xiphisternum. One could visualize as to what could have happened after the boy, who was aged 19 years on the date of occurrence was shot. It could safely be said that he must have tumbled down on the ground and possibly his head had collided with the wooden part of the chair, table or the surface itself. As such, the finding of an abrasion by P.W. 13 appears to us inconsequential.

21. Learned Counsel for the appellant was strenuously arguing that the evidence of P.W. 14, the Investigating Officer when read in the light of connected records, like, seizure memo and the inquest report, indicates that the whole investigation was either inept or dishonest, probably for creating supporting materials to the benefit of the prosecution. Special stress was laid by the counsel on the finding of the blood seized from different parts of the house of P.W. 15 and not sending the same to the chemical analysis as in the light of finding, the dead body was found on a cot out side the house. We, must, first, note down that the place of occurrence is the house of P.W. 15. Out of that particular house a particular room could have been the real place where the occurrence of shooting the deceased had occurred. The whole of the house appears referred to by P.W. 14 as the place of occurrence. We do not see anything unusual in it because ultimately it was the house of P.W. 15 which was the place of occurrence where the occurrence had taken place at a particular place in that very house. This is clearly indicated by the evidence of P.W.14 in paragraph 4 that in which room he found the table, the chair and the splash of blood on the floor and an empty cartridge near it. Merely because the Investigating Officer did not seize the blood and even if he had seized, he had not forwarded the same for chemical analysis appears to us of no consequence because a solitary eye witness appears trustworthy and, secondly, the dead body was there which was found in the house itself and the Doctor has given sufficient data to indicate that the manner of occurrence as asserted by the prosecution was the only probability.

22. It could be an inexperienced Investigating officer or may be he was not conscious of the fact that he appears creating documents of seizure and inquest in a manner which could not be said to be quite perfect, but still it could not be noted that it was dishonest. The seizure memo (Ext. 7) mentions finding of an empty cartridge near the gate of the house. Learned Counsel for the appellant was attempting to impress upon us that it was that empty cartridge which was lying out side the house. If there is no evidence telling that it was indeed lying out side the house, then we had no reason to say as to what could be the inference drawn by the court. Similarly, the inquest report appears mentioning the place where the dead body was found in its column No. 2 as the place near the house but if one reads these words only it may not be a complete and proper reading of that

particular entry of Ext.6, because the words 'place of occurrence' (GHATNA STHAL) have been put after the word near the house within parenthesis. It does not appear to us that the dead body was found anywhere out side the place of occurrence. We are very much firm in holding that the dead body was found at the place of occurrence, might be it had been shifted by the villagers of neighbours for any particular reason to a place which could be another section of the place of occurrence.

23. Shri Kalika Nandan Singh, drew our attention to one line of evidence of P.W. 14, the Investigating Officer, who stated that where the dead body was found was the personal house of P.W. 15. If one carefully considers the evidence of P.W. 14 in paragraph 4 of his evidence the witness has described different sections of the house including the section where the real occurrence had taken place. While describing the real place of occurrence which was in occupation of P.W. 15 as the place of occurrence it was stated that it was to the east of that place where the boy was shot and killed. It is not indicated by the above evidence that a particular part of the house which has been described belonging to P.W. 15 could not be the part of the same house. Is not it a fact that in a house there could be many sections which could be under occupation of different persons who could be residing in those sections? That appears a case to us in the present case also.

24. Coming to the laws, learned Counsel for the appellant placed the facts of the case of Ram Barai Rai (Supra) which appears completely different from the facts of the present case. In the case of Ram Barai Rai not even a single independent witness had been examined and the Doctor was also not examined. Even the evidence of the informant, who was also the eye witness, examined during the trial was also found suffering from contradictions. The infirmities which were found inflicting Ram Barai Rai's case do not appear to us with the present case and, as such, that particular decision of this Court reported in 1998 (2) P.L.J.R. 540 appears not applicable to the present facts.

25. This brings us to consider the contention of the appellant as to whether the case would fall under either of the parts of Section 304 of the Indian penal code which appears supported by the decision in v. Sreedharan (Supra). In that case

the fact was that there was a sudden quarrel between the appellant and the deceased and the appellant gave a single chhura blow. It was found that the blow was without premeditation and, as such, it was not a planned murder. Here in the present case the facts indicate that the appellant came fully prepared after having armed himself with a pistol. He came under a pretext of exchanging money and, lastly, he came to his real intention by asking the deceased as to why he was putting his greedy eyes upon his Sali and he pulled up a pistol and fired the shot. The steps of reaching the room under a false pretext and then killing did not permit us to say that it could be a sudden act which was not premeditated. The facts indicate that it was premeditated and that gets further corroboration from the evidence of P.W. 13, Dr. Ganesh Kumar. The description of the firearm injury by PW. 13 indicates that the shot was fired from a very close range as the margin of the entry wound was inverted and black in colour. These circumstances bring the present case out of the purview of application of law as was laid down in the case of v. Sreedharan (Supra). To us, it was with the premeditated intention by which the deceased was shot and killed by the appellant. The conviction of the appellant under Section 302 of the Indian Penal Code as recorded by the learned trial court appears to us perfect and fully justified within the facts of the case.

26. This brings us to consider as to what sentence was really required to be passed against the appellant. The learned trial Judge has held that it was one of rarest of rare cases as it was going to give bad signal to the society and public at large. We must assert that none of the reasons indicated by the supreme Court in Machhi Singh v. State of Punjab (1983) 3 S.C.C. 470 and in the case of Bachan Singh v. State of Punjab (1980) 2 S.C.C. 684, which appear discussed by the Supreme Court in Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra reported in (2009) 6 S.C.C. 498, was satisfied in the present case. As may appear from Paragraph 134 of Santosh Kumar Satishbhushan Bariyar (Supra) by referring to the earlier decision of the Supreme Court in Bachan Singh (Supra) their Lordships of the Apex Court extracted paragraph 209 of that particular decision at paragraph 134 and we are tempted to quote paragraph 134 of Santosh Kumar Satishbhushan Bariyar which is as follows:

Bachan Singh laid down its fundamental threshold in the following terms: (SCC p.751, para 209)

209. ...A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed.

(emphasis supplied)

To translate the principle in sentencing terms, firstly, it may be necessary to establish general pool of rare capital cases. Once this general pool is established, a smaller pool of rare cases may have to be established to compare and arrive at a finding of the rarest of the rare case.

Thereafter, their Lordships went on to consider in the case of Santosh Kumar Satishbhusan (Supra) to find out as to what were the mitigating circumstances so as to commuting the death sentence to that of life imprisonment. Many circumstances were there in the light of the decision in Santosh Kumar Satishbhusan (Supra), as may appear from paragraph 169 of the report and considering those circumstances we have also tried to pick out the circumstances in the present case so as to finding out as to what could have been the proper sentence which could be passed upon the appellant.

27. The appellant on the date of judgment was about 36 years of age. Thus, he was 34 years on the date of occurrence. He was married to the daughter of co-accused Sudarshan Paswan and it could be a case that appellant was motivated for committing the murder of the deceased either out of his own infatuation for his Sali or that he was too concerned and sensitive to the honour of the young lady that he committed the act. This could, thus, be a case to direct commutation of the death sentence to life imprisonment and accordingly we direct.

28. In the result, the Death Reference is negatived by not confirming the death sentence passed against the appellant. We direct the appellant to undergo rigorous imprisonment for life under Section 302 of the Indian Penal Code for

which he was found guilty.

29. The appeal stands dismissed with the modification in the sentence, as indicated above.

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