

**Amar Kumar Singh Vs. the State of Bihar**

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**Court :** Patna

**Decided On :** Oct-15-2009

**Judge :** C.M. Prasad and; Dharnidhar Jha, JJ.

**Acts :** Indian Penal Code (IPC) - Sections 34 and 302; ;Arms Act - Section 27

**Appeal No. :** Criminal Appeal No. 471 of 2003 (D.B.)

**Appellant :** Amar Kumar Singh

**Respondent :** The State of Bihar

**Advocate for Def. :** Ashwani Kumar Sinha, A.P.P.

**Advocate for Pet/Ap. :** Rana Pratap Singh, Sr. Adv. and; Aruni Singh, Adv.; Mani

**Disposition :** Appeal allowed

**Judgement :**

**C.M. Prasad and Dharnidhar Jha, JJ.**

1. These three appeals arise out of a common judgment passed by the learned Additional Sessions Judge, 3rd Court, Patna, in Sessions Trial No. 825 of 1996 in which the four appellants in the three appeals were tried together. By the judgment and order of conviction dated 12.8.2003 a verdict of guilt was returned by the learned trial Judge on the charges under Section 302 read with Section 34 of the

Indian Penal Code and Section 27 of the Arms Act, commonly framed against the four appellants and while hearing on sentence, the learned trial Judge directed each of the appellants to suffer rigorous imprisonment for life for his individual conviction under Section 302 read with Section 34 of the Indian Penal Code. Appellant Amar Kumar Singh (appellant in Cr. Appeal No. 471 of 2003) was the only accused who was found guilty of committing the offence under Section 27 of the Arms Act also and was directed to suffer rigorous imprisonment for two years only. The learned trial Judge did not pass any sentence of fine upon any of the appellants.

2. We have heard the batch of three appeals together and we are disposing them of by this common judgment.

3. The facts of the case are very short which are contained in Ext.1, the written report said to have been presented by Ramesh Kumar Singh, P.W.5, the informant of the case, to the Deputy Superintendent of Police, at about 8 P.M. on 19.7.1995 at the very place of occurrence. It was alleged by the informant that he along with his brother had gone to Bairya for purchasing some medicines and both were coming back to their village by their scooter bearing No. BR-1B-5813. One of the co-villagers, namely, Indrajeet Kumar Singh (not examined) also met them at the market place and he expressed his desire to travel with them and, as such, he was also taken as a pillion rider on the scooter. While coming back, the informant and his companions reached near their village and when they were near the High School the four accused persons, i.e., the four appellants, appeared there. Appellant Bimlesh Kumar Singh was armed with iron rod whereas appellants Ashok Singh and Pashupati Singh were having hockey stick and lathi in their respective possessions. Appellant Amar Kumar Singh was possessing a country made pistol. All the four appellants are said to have opened assault and to have assaulted the deceased Dinesh Kumar Singh, the full brother of P.W.5, incessantly. Yet another co-villager of the informant, namely, Nawal Kumar Singh who was going to Bairya attempted to intervene. However, appellant Pashupati Singh ordered his son appellant Amar Kumar Singh to shoot and kill Dinesh Kumar Singh and, accordingly, appellant Amar Kumar Singh fired a shot which hit the deceased Dinesh Kumar Singh who fell down and died instantaneously.

The informant stated that he rushed to Gopalpur Police Out Post and informed the Officer-in-charge there, but in spite of the distance being about 2 or 2 1/2 K.Ms., the police Officer reached the scene of occurrence 1 and 1/2 hours later. It was alleged that the Officer-in-charge of Gopalpur Police Out Post was an accused in complaint case No. 850 (C) of 1994 filed by the informant and he had doubts that the Officer would take proper action, rather there were all possibilities that he would spoil the case of the informant. As such, he did not give any reports, orally or in writing, to the Officer-in-charge of Gopalpur Police Out Post and presented Ext.1 to the Deputy Superintendent of Police, Patna, when he had arrived at the scene of occurrence.

It was further stated by the informant in his written report that the motive for the occurrence was the old enmity between the parties and further that there had been an altercation and exchange of abuses and hot words in the very morning of the day of occurrence and, as such, the occurrence.

3. As may appear from the records placed before us, the F.I.R. was instituted on the basis of Ext.1 and the investigation was taken up by P.W. 8 Bishwanath Prasad who inspected the place of occurrence after being entrusted with the investigation of the case by the Deputy Superintendent of Police, Patna, and found a few shops around the place of occurrence, specially that of one Krit Singh who was just 10-15 yards away from the place where Dinesh Kumar Singh was shot dead. He found copious blood on the eastern flank of the road and also found four tablets lying there on the ground. The inquest report was prepared by S.I. Vijaya Kumar Singh, Officer-in-charge of Gopalpur Police Out Post and the dead body was sent for post mortem examination. After examination of the witnesses during the investigation, the case was found true and the four appellants were sent up for trial. This is how they were tried and convicted and sentenced as indicated at some earlier stage of the present judgment.

4. The defence of the appellants as suggested to different witnesses, especially to P.W. 5 Ramesh Kumar Singh, was that it was a case of false implication on account of enmity and no occurrence had taken place in the manner as alleged by the prosecution. The witnesses were also suggested to bear clear motive for

falsely implicating the appellants on account of bearing some relationship with or on account of being the family members of the informant and that they were making false statements during the trial.

5. Learned Senior counsel Shri Rana Pratap Singh with the able assistance of Shri Aruni Singh has taken us through the evidence adduced by the prosecution during course of the trial and has suggested that it remains a mystery as to who wrote the written report and at what time and place and why not the informant was making a statement either to the Officer-in-charge of Gopalpur Police Out Post or to P.W.8 who had undisputedly reached the place of occurrence quite ahead of the Deputy Superintendent of Police. The attention of the Court was drawn to some paragraphs of the evidence of P.W.5, Ramesh Kumar Singh and specially to Paragraph 14 of his evidence to submit that the informant probably drafted the written report at some later point of time and for implicating the appellants falsely, presented it before the police again at some later point of time, may be, on the 20th of July, 1995 and, as such, there is an unexplained delay in institution of the case. It was contended that the mysteries are quite good in number. The informant has admitted, as is indicated in the evidence of P.W.8, that two Police Officers had reached ahead of the Deputy Superintendent of Police. Some of the witnesses have stated that they also coaxed the informant up to file an information with the police at the very place of occurrence itself but he was not ready to do it. The contention was that, in fact, the informant had not fixed his mind on implicating his enemies as regards their names or their number. It was submitted that in the light of the above facts the Court should outright reject Exhibit-1 as a concocted and fabricated document creating a grave doubt in the veracity of the prosecution case and acquit the accused persons.

6. The contention next was that the motive for the occurrence which was alleged in the written report appears completely changed by the evidence. There is no whisper in the written report about the money transaction in between the deceased and the appellant Bimlesh Singh, The F.I.R. talked of old enmity and some exchange of hot words and abuses in the very morning of the day of occurrence, but P.W.3 Harendra Kumar Singh who claims himself to be an eye witness has claimed that the dispute was for some money transaction as the deceased had

lent some money to appellant Bimlesh Singh who was not ready to pay it up and, as such, the occurrence. What is contended by reading out the relevant part of the evidence of P.W. 5 is that the original motive assigned appears changed. It was contended, as such, that the Court must hold that the specific motive which was alleged has not been established.

7. The other contention of learned Senior counsel appearing for the appellant was that the genesis of the occurrence also does not appear established inasmuch as it does not appear from the evidence of P.W. 5 Ramesh Kumar Singh as to what was the purpose for purchasing the medicine. Besides, the places from which the medicine was purchased, as indicated in the F.I.R. and as appearing from his evidence are vastly different and it appears that it was a cooked up story for creating a plank for filing a false case. It was contended in this connection that though P.W.8, the Investigating Officer, has stated in his evidence that he had seized four tablets from the place of occurrence but the same were never produced before the court nor any seizure list appears prepared or, if prepared, produced before the court. The manner of occurrence also appears not conforming to the medical opinion as the description of the injuries appears improbable in the light of allegation of firing a shot by accused Amar Kumar Singh upon the deceased. Besides, there was no injury found by the Doctor which could be caused by firearm and it could be caused either by lathi, iron road or hockey stick, as the witnesses have stated that blows, quite in number, were given by the accused persons upon the head or on other parts around head of the deceased by the weapons which were hard and blunt objects. It was, lastly, contended that it is admitted that the deceased, informant and others of his family were accused in earlier criminal case of serious nature. P.W. 5 has admitted that he had been acquitted of serious charges just 8-9 days prior to the occurrence which is also apparent from the judgment passed in Sessions Trial No. 139 of 1993 and may be that for settling scores one of the enemies, or most of them, had come together against the deceased.

8. Shri Ashwini Kumar Sinha, learned Additional Public Prosecutor and Shri Manish Kumar, learned Counsel appearing for the informant attempted their best to reconcile the infirmities pointed out by the learned Senior counsel for the

appellants by, firstly, pointing out to the Court that injury No. 2 in the post mortem examination report, which has been described as lacerated brain matter in the dissection part of the evidence of P.W. 7 could be caused by the weapons like lathi, iron rod or hockey stick which are hard and blunt objects and thus, the part of the story gets support from the medical evidence. It was contended by Sri Kumar that the police was completely hostile to the informant on account of filing of a case against one of the two Officers reaching the place of occurrence and in spite of having seized the tablets the police did not prepare seizure list nor did it produce the same before the court. Shri Kumar referred to some of the evidence of the witnesses to us and submitted that there were good reasons for the court to accept the explanation for non-examination of Nawal Singh or Indrajeet Kumar Singh in the light of some admitted facts and this Court should not draw an adverse inference for their non-examination. It was contended, lastly, that the court below has rightly convicted the appellants and sentenced them appropriately.

9. In a case of direct evidence to allege a motive is always not necessary. Even if the motive has been alleged, it loses its significance in a case of direct evidence. But, when the witnesses in a case are related then in that background the courts put themselves on guard and caution and have to approach the evidence of the witnesses adduced in that behalf with quite some amount of caution and care and when the situation appears, like that in the present case, then the court has also to search for proof of the motive which has been alleged by the prosecution. The reason behind it is that it could not be always necessary that motive for committing an offence be alleged, because it could be best known to the accused only as to for what reason he could commit an offence. But when the prosecution alleged that on account of a particular motive the accused were being impelled to commit an offence it becomes a compulsion for the prosecution to establish it. Keeping the above principle in our mind we have approached the contention of the sides. It is alleged in the written report that old enmity and altercation as also exchange of abusive words in the very morning of the day of occurrence were the reasons for the commission of the murder of Dinesh Kumar Singh. That submission appears completely given a go-by by the prosecution from the statement of P.W. 3 Harendra Kumar Singh when he came in the witness dock to give his evidence.

The witness has stated that the dispute was over some amount of money which the deceased had lent to appellant Bimlesh Singh who was not ready to pay it back and, as such, the occurrence had occurred. This witness has not admitted that he was the family member of the informant or the deceased who were full brothers between them, but for any reason he appears making statement on motive and we have tested that in the light of the evidence of other witnesses also.

10. P.W. 5 Ramesh Kumar Singh, who is the informant and the elder brother of the deceased, states that he knows the facts of the disputes the appellants could be carrying on with his brother. He has stated in paragraph 1 of his evidence that some 15 days back there had been some quarrel (Jhanjhat) between the deceased and the appellants. He elaborated this fact in paragraph 5 of his evidence when he was cross-examined by stating that there was no document testifying to the transaction of money nor there was any witness to support that the money had passed hands in his presence. Neither he had mentioned about the previous quarrel in his written report nor he had informed the police about the document on account of the transaction indicated above. Thus, what we find is that the prosecution story and motive have been given a go-by and in its place a new story has been introduced which was never put forth by the prosecution. It was for the first time that the story was introduced in the court through evidence. Admittedly, the informant had stated that he had not mentioned this fact earlier either in his written report or by making a report to the police. We find this fact utterly unacceptable as regards the motive part of the prosecution story and we find no hesitation in recording our finding that the prosecution has miserably failed in establishing the motive for the occurrence.

11. This brings us to consider the argument on fabrication and antedating of the written report Ext.1. P.Ws. 1 and 3 are the witnesses who claimed arriving at the scene of occurrence just after or at the time the occurrence had taken place. P.W.1 states that he arrived and found the accused persons running away after committing the offence whereas P.W.3 gives an eye witness account of the occurrence. Both the witnesses have stated that the police Officer of Gopalpur Police Out Post and Gaurichak Police Station had arrived. P.W.1 has stated in paragraph 3 of his evidence that he had stayed at the place of occurrence for half

an hour and that the police had reached there at the place of occurrence after he had come back to his house. P.W. 3 Harendra Kumar Singh has stated in paragraph 6 of his evidence that he had told P.W. 5 that he had seen the occurrence and that in spite of that he did not file any report with the police Officers who had arrived there. P.W. 5 Ramesh Kumar Singh, the informant, has stated both in his written report and in his evidence in paragraph 2 that he went to Gopalpur Police Out Post and lodged an oral information about the incident with the Officer-in-charge of the Out Post and admitted that the Police Officer had come and this appears a probability if we consider the evidence of P.W. 8 in paragraph 1 when he states that he arrived at the scene of occurrence and he found that the Officer-in-charge of Gopalpur Police out Post was also present there. P.W. 8 has stated that he requested the informant to give his statement but he declined stating that he will give the report to the Dy.S.P. whenever he comes. This is the only probability to us because there is a mention in the written report that the informant had filed a complaint case against the Officer-in-charge of Gopalpur Police Out Post, but during whole of the trial no copy of the complaint petition was brought before the trial court to indicate that there was a complaint which was filed by the informant. Not only this, while deposing in court P.W.5 did not even whisper that he had filed any case against the Officer-in-charge of Gopalpur Out Post and that the Officer-in-charge or, for that matter, any police officer shall be collectively destroying or distorting his case. The informant in paragraph 2 of his evidence has stated that he wrote the written report and handed it over himself after signing it to the Sy.S.P. On the contrary, on being cross-examined on this fact in paragraph 15, P.W.5 has stated that the writings of the written report are completely at variance with the signature of the written report. In other words, the informant has admitted that the signature on the written report was not of the person who had written the contents of the written report. Thus the document could safely be said to be a false and unacceptable document. There is no iota of evidence on the whole of the record as to who was the real author of the written report. This creates a doubt in our mind as to who or on whose behest the written report was written and under which circumstance and if it had really been handed over to the Dy.S.P. as claimed by the prosecution at 8 P.M., then why he had not ordered some action on it by making some writing to

that effect over it for taking appropriate action. Thus, we view the document with quite some suspicion, which further creates a doubt as to why in spite of the written report being handed over to the Dy. S.P. on 19.7.1995, the F.I.R. could be registered after more than 12 hours on next day, i.e., on 20.7.1995. This question assumes a greater significance because there is no averment either in the written report or in the evidence of any of the witnesses that P.W.8 who was the Investigating Officer of the case was adversely disposed towards the informant or any of his family members and, as such, he could have destroyed the case. There is no explanation as to why not the report was given either orally or in writing to P.W. 8. We deduce from the evidence on record that the informant was probably spinning out some story in his mind to concretize his narration so as to presenting it in a foolproof manner so that the accused persons did not have any let off. This document Ext.1 appears to us a suspect document. If a document like the written report could be suspect as we are clear about in our minds then this alone could be a ground for rejecting the whole of the prosecution story.

12. The witnesses are interested and the independent witnesses are not coming forward. Then also, the shopkeeper Kriti Singh whose shop was situated within the vicinity of 15 yards from the place of occurrence did not appear examined by the I.O. and we believe because he did not find the allegation true and real and, as such, he did not come forward and this could be the case with Nawal Singh and Indrajeet Kumar Singh. The I.O. has given some explanation that Nawal Singh did not appear before him for his statement on several occasions for which attempts were made by him in as serious a manner as to issuing notice to him for appearing before him to give statement. But Indrajeet Kumar Singh in spite of being given notice for giving his statement, he did not appear. Shri Manish Kumar, learned Counsel drew our attention to the evidence of P.W. 8 in paragraph 11 in which he has stated that for assaulting the mother of Indrajeet Kumar Singh a case had been instituted and P.W.5 was an accused in that case. If this was that for which the said Indrajeet Kumar Singh Was not coming forward then he could never have come forward in investigation as well. He came forward to give his statement, but did not come to support the charges during trial. We believe that he was not carrying on any plan for settling scores or taking vengeance so as not to support the prosecution charge. On the contrary, we have an inclination to take a view that

he was not ready to tell a lie so he was not coming forward as was the case with Nawal Singh who even did not choose to come for his statement. We say this much on the non-examination of the above two witnesses. As regards other witnesses, while reading their evidence we always had a clear impression that they were giving evidence in court out of their imagination.

13. P.W.1 has stated in paragraph 3 of his evidence that he had gone to Bairya for purchasing fertilizers but he saw the occurrence at the place which could be somewhere as the mid point between the village of the accused persons and the informant and Bairiya. He says that the place of occurrence was half K.M. west of village Bairya and if one could go half K.M. further towards west he could reach Bairya. P.W.1 states that he still stayed for half an hour at the place of occurrence and thereafter went to back to his village. But he again says that he purchased fertilizers from Bairiya. If he had returned back to his home, how was it that he went to Bairiya simultaneously. Besides, he did not produce any receipt in support of purchase of the same. As indicated in the F.I.R. Rajesh Kumar alias Rinku (P.W. 2) has claimed in his. evidence that he was informed about the occurrence by P.W.5, but neither P.W.5 nor any person came forward to state that he had indeed informed either P.W.2 or any other witness or person about the occurrence. P.W.3, admittedly, is the employee of the Post Office in Patna. He has projected himself as an eye witness. This witness, to us, appears doubtful, the reason being that as per his evidence his duty hours are from 10 A.M. to 6 P.M. On that particular day he claimed leaving his office ahead of the office hours and coming to the place of occurrence. The witness shamelessly admits that he did not seek permission from his superior controlling officer nor did he point out any reason as to why he left his workplace early. He was traveling by foot and reached at the time of occurrence around the place of occurrence. We are not ready to accept his claim of leaving the office without giving any special reason for leaving his office. It is expected as a matter of presumption that if he was to leave his office earlier before normal hours of the work, he could have left after informing his superiors before the normal duty hours of the work. P.W.4, in our opinion, is a hearsay witness claiming his knowledge from P.W.5. As regards P.W.5, we have already indicated the important part of his evidence while dealing with the antedating and fabrication of the written report by not giving information to one of

the police officers present at the place of occurrence and the purpose for going to Bairya to purchase the medicine. Firstly, the witness P.W.5 has stated that he did not have any medical prescription but it was prescribed by an allopathic practitioner. When further pursued in cross examination, he stated that the medicine had been prescribed by a Vaidyajee, i.e., an Ayurvedic practitioner. He claims in the written report and in his examination in chief that he purchased the medicine from the medical shop in Bairya, but on being pursued in cross-examination he completely gives a go-by to that part of his story and states that he purchased the medicine from Honey Medical Store which was situated near Nalanda Medical College Hospital, in the heart of Patna. We could not go in further details of the evidence of P.W. 5, that is to say, that the very evidence of going to Bairya as claimed by P.W.5 appears a hoax and without any reasonable ground. Besides, he stated that he could not produce any prescription and the ploy invented by him was that he had left the same at the Medical shop at Bairya. He claimed that the medicine purchased by him was for treatment of fever and some wounds which had appeared on the body of the deceased. But, the evidence of P.W. 5 indicates that there were no other wounds than those caused to the deceased. These are some of the reasons upon which we are convinced that there was no such ailment and purpose for purchasing the medicine as stated by P.W. 5 in his evidence. We have assigned reasons for recording this finding. We have already discussed some of the material characteristics of his evidence. One such feature is that he was traveling by the scooter as may appear from paragraph. 16 of his evidence but curiously P.W. 8 while inspecting the place of occurrence did not find any scooter there. It is available in the evidence of P.W. 8 in paragraph 7. If the scooter was not there then the claim of the witness of travelling with the deceased by the vehicle appears doubtful.

14. These are the reasons under which we find that the whole case shrouded in mystery. In fact, the deceased had many enemies and one of them or most of them might have acted in concert for settling scores with the deceased who had just been acquitted, as may appear from Ext. A, and might have committed his murder. We have also an inclination to indicate that, probably, there was no clue initially as to who had committed the offence and this could be the reason that the informant was not ready to give statement and that he was probably weaving out

the story to implicate his each rivals. The Court ought to have held the charges disapproved. We hold, accordingly, and hereby set aside the judgment of conviction and sentence and acquit; the appellants by allowing the appeals.

15. We find that the appellant Amar Kumar Singh (appellant in Cr. Appeal No. 471 of 2003) D.B.) is in custody. Other appellants, namely Bimlesh Singh, Ashok Singh and Pashupati Singh, the appellants in other two appeals, are on bail who are discharged from the liabilities of their respective bail bonds. Appellant Amar Kumar Singh is directed to be released forthwith from custody if not wanted in any other case.

16. The appeals are allowed.

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