

Surendra Singh, and ors. Vs. the State of Bihar.

Surendra Singh, and ors. Vs. the State of Bihar.

SooperKanoon Citation : sooperkanoon.com/913363

Court : Patna

Decided On : Jun-24-2010

Judge : Dharnidhar Jha; Akhilesh Chandra, Jj.

Acts : Indian Penal Code (IPC) - Sections 302 read with 34; Arms Act - Section 27; Code of Criminal Procedure (CrPC) - Sections 313, 162

Appeal No. : CRIMINAL APPEAL No.287 OF 1988

Appellant : Surendra Singh, and ors.

Respondent : The State of Bihar.

Advocate for Def. : Sushri Shashi Bala Verma, Adv.

Advocate for Pet/Ap. : Shri Rana Pratap Singh; Shri Surendra Kumar Singh; Shri Aruni Singh; Smt. Sudha Singh; Shri Shakil Ahmad Khan; Shri Pramod Kumar Mishra, Adv.

Judgement :

1. Akhilesh Chandra, JJ.- The three appellants were put on trial by framing charges under Sections 302/34 of the Penal Code and 27 of the Arms Act by the learned 3rd Additional Sessions Judge, Bhojpur at Ara, in Sessions Trial No.104 of 1985 and by judgment delivered on 14.4.1988 the learned trial Judge held the appellants guilty of committing the offences they had been charged with. While passing the order of sentence on appellants, the learned Judge directed each of the three appellants to suffer R.I. for life under Section 302/34 of the Penal Code

with another term of R.I. for two years for their individual conviction under Section 27 of the Arms Act. The judgment of conviction and order of sentence are being assailed by the appellants in the present appeal.

2. The prosecution case is contained in Ext.5, the fardbeyan of P.W. 8 Nand Lal Gope recorded by P.W.10 Raghubansh Prasad Singh on the date of occurrence, i.e., 9.11.1984, at 9.15 A.M. at the place of occurrence where the deceased Lallan Yadav was allegedly shot dead by the appellants. The narration is that while the informant was going back to his house after taking tea at the tea shop of P.W.3 Sitaram Kahar, he found the deceased standing at the road side and made a query about the reason for so being there. The deceased stated that he was to consult his Advocate and was on way to him. The informant proceeded to find the appellants and accused Sudarshan Singh standing there armed with rifle, D.B.B.L. gun and S.B.B.L. gun. It is alleged that seeing the deceased Lallan Yadav, accused Sudarshan Singh remonstrated that it was Lallan Yadav and he should be killed. Responding to the remonstrations, it is alleged, appellant Surendra Singh fired a shot injuring the deceased who attempted to run away, but both the appellants Surendra Singh and Mahendra Singh fired volley of shots as a result of which the deceased fell down and succumbed to the injuries at the petrol pump itself.

3. The reason for the occurrence as stated by P.W. 8 was that in the last June, i.e., June, 1984, the Chairperson of Kunwar Sena, an Army privately created on caste lines, had been murdered and the deceased was an accused in that case. The deceased had been arrested and remanded to custody and he had been released from custody just 10-15 days prior to the date of occurrence and in order to avenging the murder of Rajnath Singh the present occurrence had occurred.

4. It may appear from the evidence of P.W. 8 that he had picked up a rumour about the occurrence at about 8.15 A.M. on the date of occurrence and after making an entry to that effect in the Station Diary of his Police Station, he proceeded to the place of occurrence to reach there at 8.30 A.M. P.W. 11, S.I. Krishna Kant Prasad stated that when he reached at the place of occurrence P.W. 10, S.I. Raghubansh Prasad Singh was holding inquest report upon the dead body

and preparing the document Ext.3 in that behalf. P.W. 10 seized the empty cartridges and blood stained earth from the place of occurrence and prepared the seizure memo Ext.4 in presence of the witnesses. Thereafter, P.W. 10 recorded the fardbeyan of P.W. 8. P.W. 10 would say that he had orally been ordered to investigate the case and, as such, he inspected the place of occurrence, examined the witnesses and also sent the dead body for post-mortem examination and after close of the investigation submitted charge sheet, sending the four accused persons up for trial.

5. As may appear from the record of the case, accused Sudarshan Singh absconded and his trial had to be separated leaving the trial only against the three accused which ended up in the judgment which is being impugned in the present appeal.

6. The defence of the appellants was that on account of caste hatred and caste war as also for previous enmity on account of murder of Rajnath Singh who was the uncle of appellant Surendra Singh, they had been falsely implicated so as to exerting criminal pressure upon the appellants. This fact has been stated by appellant Surendra Singh in his statement under Section 313 of the Cr. P.C. which is available to us at page 75 of the Paper Book. In that course he stated that deceased Lallan Yadav was, in fact, not an accused in the case as alleged by the prosecution.

7. We have heard Shri Rana Pratap Singh, learned Senior counsel for appellants Surendra Singh and Mahendra Singh and Shri Shakeel Ahmad Khan, learned Senior counsel appearing for appellant Tribhuwan Singh. Both of them argued the case on the same lines and we have not much to grapple with as regards the contentions of the appellants. It was, firstly, pointed out by learned Senior counsel that hybrid procedure of investigation was adopted by the police and that procedure of investigation appears rendering Ext.5 an inadmissible document because the document was brought into existence on account of being recorded by P.W. 10 much after the investigation had started. The said witness had already held an inquest on the dead body and had made seizure of certain articles and had prepared the seizure memo. Thos steps were the parts of investigation and,

as such, it could be safely said that the investigation had preceded the drawl of the F.I.R. which, as such, is hit by Section 162 of the Cr.P.C. It was contended that this could be the legal fallout as indicated and admitted from the evidence. The logical fallout could be something different. It was contended that the above acts of investigation was carried out only because no one was present to point out to the police as to how the occurrence had taken place and who were the real offenders and, as such, the claim of the witnesses that they could be the eye witnesses to the occurrence has to be rejected in the wholesale. It was contended that law does not bar sustaining conviction on the evidence of a solitary witness if he is found trustworthy and inspiring confidence, but the evidence of P.W. 8 Nand Lal Gope, the informant, in itself is sufficient to reject his claim that he could be the eye witness to the occurrence and further that his evidence could not be sufficient to base the conviction of the three appellants.

8. The last argument was that a protest petition was filed by the prosecution which has been marked Ext.B in the case and it may be found from the column containing the array of accused that in addition to the four accused three more persons, namely, Indrajeet Singh, Birendra Singh and Ramlochan Sigh were added up as accused with some additional allegations. Besides, the manner of occurrence was also distorted a bit. It was, as such, contended that the facts and circumstances appearing from the evidence rendered the judgment not sustainable in law.

9. Sushri Shashi Bala Verma, we must record, has acted in the highest tradition of the profession by submitting that the judgment of conviction could not be sustained in law inasmuch as the whole investigation and the evidence on record does not inspire confidence. The prosecution could not bring the best evidence on the record so as to justifying its claim that it proved the charges to the hilt. Sushri Verma, mainly referred to the evidence of P.Ws. 10 and 11 to critically submit that their evidence itself appears giving a death blow or putting a nail in the coffin to the prosecution story.

10. The learned Judge while delivering the judgment disbelieved the eye-witness account of P.Ws. 1 and 2, namely, Madan Gope and Hari Shanker Yadav. During

the course of hearing of the present appeal, we were taken through the evidence on record to scrutinize the finding and we are convinced that the finding as regards rejection of evidence of P.w.s. 1 and 2 could not be said to be bad on facts. The evidence of P.W.8, the informant, in paragraph 2 at page 36 of the Paper Book could be sufficient to show as to why the learned trial Judge had rejected the evidence made by P.Ws. 1 and 2 being the eye-witnesses. P.W. 8 stated that after the accused persons had made good their escape from the place of occurrence, Hari Shanker Yadav(P.W. 2) and Madan Gope(P.W. 1) reached the place of occurrence and, subsequently, P.Ws. 1 and 2 were sent home by P.W. 8 to inform the family members about the incident. This very line of evidence of P.W. 8 excludes the presence of P.Ws. 1 and 2 at the scene of occurrence prior to the accused persons had left the place of occurrence.

11. So far the evidence of P.W. 8 is concerned, it was rightly submitted that if the witness is found by us inspiring confidence and worthy of credence, there could be no bar in law to sustain conviction on the basis of solitary witness. Keeping that principle in our mind and further keeping in our mind the background of enmity on account of caste war prevailing during that time in the township of Arrah and in the surrounding locality, we have no hesitation to hold that there could be the possibility of a situation that picking up such an information regarding the murder of a kith and kin of theirs, on account of psychological pressure, there could be an inclination among the prosecution witnesses or persons belonging to that party, to rope in some persons in the case which could be temporary or permanent. It may be unfortunate, but it is one of the realities of our society that there is a dangerous trend in us to treat a person belonging to our caste or community as a savior who perpetrates serious criminal acts against any one belonging to a different caste or community. Such a nasty criminal is often treated as a caste or community hero. This is why the rate of criminality and crime escalated during past some years. It is highly dangerous for a democratic secular society, but it often happens. We still live in the society and adjust ourselves to such dangerous situations.

12. The allegation is that the murder of the deceased was committed on account of the earlier murder of Rajnath Singh of Kunwar Sena in June, 1984. The statement of accused Surendra Singh made under Section 313 of the Cr. P.C. has

to be considered, in view of the said provision, so as to seeking explanation from an accused on a circumstance which had appeared against him through the evidence of the prosecution witnesses. Thus, it could not be said that the explanation is meaningless. It could contextually be appreciated. Appellant Surendra Singh has explained that the murder of Rajnath Singh had taken place on 5.6.1984 and Lallan Yadav, the deceased was not an accused. There is no evidence produced on behalf of the prosecution to rebut the above explanation of the defence or to contradict it that in fact Lallan Yadav deceased had been an accused in that case and had indeed been sent to prison and, further, that he had been released from custody just 10-15 days prior to the date of occurrence. This is one aspect of the matter.

13. The other aspect is that the very presence of P.W. 8 on or around the place of occurrence becomes doubtful when we consider his claim of being there at the tea shop of Sitaram Kahar. The said Sitaram Kahar has been examined as P.W. 3 and he appears indicating to the court his profession and in that context he has stated that he vends tea. In his evidence he has stated that many persons were there at the tea shop at that time but he could not say as to who those persons were. We could accept the evidence of the witness that he could not be remembering the names of all his customers but he could remember the name of one who had just taken tea whose nephew had been murdered and, further, that P.W. 3 also rushed out of his tea shop after sound of gun shots and it is expected that he could be very well picking up the name of that person who had just taken tea and left his shop. It is one reason upon which we could say that P.W.8 could not be around the place of occurrence. The other evidence which comes in the above connection as regards the presence of this witness at the place of occurrence is in his cross-examination(Paragraph 7). In his examination-in-chief, he has stated that P.W. 10 S.I.Rabhubansh Prasad Singh had held inquest upon the dead body and the document prepared in that behalf was signed by him. Thus, the evidence in examination-in-chief of P.W. 8 indicated that he could be present at the place of occurrence at the time of holding of inquest but what does he say in paragra-7 is that it was absolutely correct that he had put his signature, Ext.1/3, on inquest report Ext.3 at the entry of the Post-Mortem Hall. If we attempt to reconcile the above two statements of P.W. 8, we could simply say that if this could be the

statement of a person as regards signing of the document which might be the testimony of his presence at the place of occurrence, then, it becomes doubtful that P.W. 8 had indeed been present at the place of occurrence when ext.3 was being prepared.

14. The main contention of learned Senior counsel for the appellants was that the logical fallout of the investigating preceding holding of inquest or making seizures could be that no one was there at the place of occurrence to point out to the police as to who had indeed committed the offence, in what manner and for what reason, because the inquest was held at 8.30 A.M., the seizure list Ext.4 was prepared half an hour later at 9 A.M. and the fardeyan was recorded at 9.15 A.M. i.e, 45 minutes later. It appears to us that there could not be any person to tell the story to P.W.8 about the commission of murder and complicity of the appellants.

15. These are the reasons which we have found emerging out from the evidence upon which we record that the judgment of conviction and the sentences passed upon the appellants could not be sustained. The same are hereby set aside and the appellants are acquitted of the charges.

16. In the result, the appeal is allowed and the appellants, who are on bail, shall stand discharged from the liabilities of their respective bonds.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com