

Nanhku Singh and Another

Vs

State of Bihar

Criminal Appeal No. 279 of 1968

(P. Jagmohan Reddy, K. K. Mathew JJ )

21.04.1972

JUDGMENT

JAGANMOHAN REDDY, J. -

1. Of the 26 accused charged with offences under Section 307/149, 304/34, 147, 148 and 379, the Trial Court acquitted 24 accused but convicted Nanhku Singh, A-1 and Lalita Singh, A-2 under Section 307 and sentenced the former to 7 years' rigorous imprisonment and the latter to 5 years' rigorous imprisonment. In appeal the High Court confirmed the conviction of both the accused but under Section 307 read with Section 34 and reduced the sentences to be undergone by each of them to 3 years' rigorous imprisonment. This Court granted Special Leave only to Nanhku Singh and rejected the petition of Lalita Singh for default of surrender.

2. According to the prosecution case, on November 17, 1964 at about one pahar after sunrise about 7 or 8 a.m. Nanhku Singh, Lalita Singh, Mohan Singh, A-3 who had each a gun, along with accused Nos. 4 to 26 who were armed with armed ballams, garashas and lathis came to the field of Indradeo Singh P.W. 12 and were alleged to be engaged in cutting the paddy crop in that field. On seeing this, Indradeo Singh along with Chait Ahir, P.W. 8 and others went there and when Indradeo Singh protested at the high-handedness of the accused there was an altercation between him and the party of the accused whereupon Nanhku Singh shot Indradeo Singh. This was followed by Mohan Singh also firing at Indradeo Singh. Indradeo Singh was injured after which he fell down in the field of Sumer Singh situated in the north of his own field separated by a small plot of Jamua Singh and a water nala. After Indradeo Singh fell down, Chait Ahir went to his rescue and wanted to lift him but Lalita Singh fired and caused him injuries. On hearing these gun shots some nearby persons came there when the accused ran away after taking the harvested paddy. Dina Nath, P. W. 11, who was cutting his paddy crop in the field situated near Indradeo Singh's field, on hearing the gun shots came to the scene and witnessed the shooting of Chait Ahir. He placed Indradeo Singh on a cot and he along with others took him to the Police Station, about 8 miles away. There about 2 p.m. Dina Nath lodged a First Information Report because Indradeo Singh was not fully conscious and was unable to speak. The injured persons were then sent to the Durgawati Hospital for their medical examination where they were attended by Doctor Aggarwal.

3. It appears from the evidence that there was enmity between the father of the appellant Ambika Singh and Indradeo Singh, P.W. 12, Chait Ahir, P.W. 8, Dina Nath, P.W. 11, Mushan Pandey, P.W. 7. Ambika Singh initiated proceedings under Section 107, Cr. P.C., against Bilar Ahir, P.W. 3, Mushan Pandey, P.W. 7, Chait Ahir, P.W. 8, Dina Nath, P.W. 11 and Indradeo Singh, P.W. 12. It also appears that in a case brought against P.W. 3 by Chureher Garari, accused Mohan Singh and Ambika Singh had given evidence and though he was convinced by the Trial Court, The Appellate Court acquitted

him. In view of the admitted ill-feelings between Ambika Singh and Mohan Singh and some of the witnesses including Indradeo Singh and Chait Ahir, the evidence of the eye-witnesses has to be scrutinised carefully. Both the Trial Court as well as the Appellate Court were aware of the need to exercise caution and after weighing the evidence carefully and giving the utmost benefit to the accused nonetheless came to the conclusion that the offence against both the appellant and the other accused had been established. This Court does not ordinarily interfere with the findings arrived at on an appreciation of evidence by the High Court particularly when it affirms the finding of the Trial Court unless the conclusions arrived at cannot be supported by the evidence or that it is perverse. We do not think this is a case that kind where our interference is called for.

4. Of the witnesses who spoke about the incident, the most important are Indradeo Singh and Chait Ahir both of whom were injured by gun shot. Bilar Ahir, P.W. 3, Bikram Singh, P.W. 5, Mushan Pandey, P.W. 7 and Dina Nath, P.W. 11 are the other witnesses who were near about the place of the incident. We have already pointed out that P.W. 3, Bilar Ahir, P.W. 7, Mushan Pandey and P.W. 11, Dina Nath had been earlier involved in a case filed by Ambika Singh, the father of the appellant. Bilar Ahir, P.W. 3 who, while going to harvest the paddy crops, passed Indradeo Singh's field, heard a hulla and saw many persons variously armed standing in the field of Indradeo Singh. Some of them were cutting the paddy crop and the remaining were standing on the ridge. On the instigation of Ambika Singh, the appellant opened fire from his gun which hit Indradeo Singh and he fell down. Chait Ahir went to pick up Indradeo Singh but Lalita Singh opened fire from his gun which hit Chait Ahir. As the witness had not involved Mohan Singh, he was acquitted. In view of the admission of the witness that he was involved by Ambika Singh along with others in proceeding under Section 107, Cr. P.C. and also as he had not involved Mohan Singh the High Court observed that had he been the only witness to speak about the occurrence, perhaps, his version about the accused persons would not have been accepted. While so observing the High Court however said that there was ample corroboration of evidence of the witness which can be got from other witnesses. These observations show how cautious the High Court was in weighing the oral testimony of the witnesses against whom there may be a doubt that they were being motivated by enmity or hostility to involve innocent persons. It appears to us that there are two circumstances which lend weight to the evidence of P.W. 3. Firstly, that though in the theft case filed by Chureher Gareri against Bilar Ahir, P.W. 3, Mohan Singh had given evidence on behalf of the prosecution by reason of which Bilar Ahir was convicted, he did not involve Mohan Singh at all. If motive had played a part in the testimony of P.W. 3 one would have expected him to have implicated Mohan Singh. Secondly, P.W. 3 says that after Indradeo Singh received gun shot injury, he went and fell down at the ridge of Sumer Singh's field on the northern end of Baha. This statement was corroborated by the discovery of the Investigating Officer of blood-stains at the place where Indradeo Singh is said to have fallen down.

5. P.W. 5, Bikram Singh was not considered by the High Court to be an eye-witness because according to him it was only after he had heard a gun shot that he went to the field by which time Nanhku Singh had already fired and injured him. He could not, therefore, have seen Nanhku Singh or Mohan Singh shooting Indradeo Singh. Even otherwise as pointed out by the High Court he did not figure as an eye-witness during the investigation by the Police. This witness had no enmity with any of the accused and though there is a tendency to exaggerate, it cannot be gainsaid that the witness must have seen these persons with guns in their hands even though that part of the evidence that he saw Mohan Singh firing at Indradeo Singh cannot be accepted. The evidence of Mushan Pandey, P.W. 7, does not show that he was present when Indradeo Singh was shot at because even on his own admission he was in his house when he heard a hulla and gun fire. It was only after Indradeo Singh was shot that he came and speaks only of seeing Lalita Singh firing at Chait Ahir.

According to the witness, Lalita Singh had fired at Indradeo Singh but it hit Chait Ahir and Indradeo Singh both. The possibility of his having seen the later part of the incidence viz. firing by Lalita Singh cannot be ruled out. When a person fires at a place whereas here there are two persons one witness may think that it is fired at one person and the other may think that was fired at the other. Merely because the inference drawn by one witness which may not fit in with the inference drawn by the other the factum of the firing at the place where the injured persons were, cannot be rejected. It cannot be held that the witness is a liar and he wanted to falsely implicate the appellant and Lalita Singh. Even the injured person Chait Ahir does not seem to go out of his way to implicate the appellant. But in so far as the person who fired at him is concerned, he has not hesitated to implicate them. There is nothing to show that he had any enmity with Lalita Singh. The evidence of P.W. 11, Dina Nath was accepted by the High Court which did not find any reason to discard his testimony. At the time of the incident, Dina Nath was having paddy harvested and has seen how when the appellant and others had come to harvest the paddy crops of Indradeo Singh, Indradeo Singh protested and Nanhku Singh fired at him. Lalita Singh had fired at Chait Ahir. No doubt P.W. 11, must have entertained ill-feelings towards Ambika Singh, the father of the appellant, which might furnish a motive for him to depose against Ambika Singh, but there was no reason why he should have falsely implicated and given a prominent part to the appellant against whom he has no direct enmity. Even if it is assumed that because of the enmity with Ambika Singh he would involve his son, surely the most important part such as firing at Indradeo Singh could not have been given to the son because at the time when the F.I.R. was lodged, there was no certainty that the injury to Indradeo Singh would not turn out to be fatal. A reference to the F.I.R. shows that P.W. 11 had not in fact said that Ambika Singh had instigated his son to shoot as was spoken to subsequently by some of the witnesses.

6. The learned Advocate for the appellant has sought to contend that on the same evidence Mohan Singh was acquitted by the Trial Court and that benefit should have also been given to the appellant and the other accused. This submission does not take into account that there was no appeal against acquittal of Mohan Singh and the High Court was not called upon to make an appreciation of the evidence on the relative culpability of the two accused.

7. Some contradictions were sought to be pointed out in the statement as given in the First Information Report and in the evidence of the witness P.W. 11, but we do not think it is open to the learned Advocate to comment upon it because none of those contradictions have been put to the witness at the time of his giving evidence. According to the F.I.R., it would appear that Indradeo Singh accompanied by Chait Ahir, Vikrama Singh, Mushan Pandey, Billar Ahir and Mangru Ahir resident of the village went there and forbade the accused persons from cutting paddy crops from his field, but the accused persons did not listen to them. Indradeo Singh made many entreaties (sic) requested them not to commit such high-handedness, but the accused persons did not listen in spite of making such entreaties. Later on exchange of hot words took a serious turn from both the sides. In the meantime Nanhku Singh fired one shot with his gun at Indradeo Singh. Again immediately Mohan Singh also fired one shot at Indradeo Singh. Indradeo Singh fell down on the ground as soon as he received the gun shot fired by Mohan Singh. Seeing Indradeo Singh fallen down Chait Ahir went to lift him. At this Lalita Singh fired one shot at Chait Ahir which hit him in his arm and abdomen. On this statement in the F.I.R., the learned Advocate contends that P.W. 11 did not speak in such detail when giving the evidence in the Court, nor did he say that all of them went and made entreaties and asked them not to commit such high-handedness nor did he say Indradeo Singh fell in the field of Sumer Singh. In the first place it may be noticed that F.I.R., is not a substantial piece of evidence. It is an information of a cognizable offence given under Section 154 of the Criminal Procedure Code and if there is any statement made therein it can only be used for the purposes of

contradicting and discrediting a witness under Section 145 of the Evidence Act. In the second place the statement given by the informant need not necessarily be an eye-witness account of what he has actually seen. There were others who had gone along with him who could have furnished him with information as to what transpired in so far as it was in their knowledge. If these aspects had been put to P.W. 11, he would have had an opportunity of explaining the statement made in the F.I.R. but since that opportunity was not given, any comment based on the statement given by P.W. 11 in the F.I.R. would be without effect. It is also submitted by the learned Advocate that Indradeo Singh could have given a statement to the Police but did not do so till after about 12 days which only shows that the case against his clients was fabricated. We do not think there is any validity in this submission because the Investigating Officer Rang Nath Prasad, P.W. 13, who was posted as an Officer Incharge, Durgawati Police Station on the day of the occurrence at 2 p.m. and had recorded the F.I.R., says that he could not record the statement of Indradeo Singh because he was in pain and could not speak. Nothing was suggested in cross-examination that this was not so, nor was the Doctor, Aggarwal, asked whether Indradeo Singh was in a position to speak when he first saw him on his admission to the hospital. The evidence of P.W. 13, is corroborated by the fact that there was a punctured wound on the left prominence of the cheek 8/10" X 1/2" X 1/2" with averted and irregular edges and another wound of 1/2" X 1/10" X 1/2" situated 1/5" below the right lobule of the ear. These injuries can well have made it difficult for him to speak. On a review of the evidence, we do not think that the concurrent findings of the Trial Court and the High Court call for any interference.

8. The conviction is accordingly confirmed and the appeal dismissed.

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