

Bhagirath Singh

Vs

State of Bihar

Criminal Appeal No. 177 of 1971

(P. K. Goswami, R. S. Sarkaria JJ)

31.10.1975

JUDGMENT

SARKARIA, J. -

1. Bhagirath Singh, aged 46 years, and 11 others of village Rahatpur were tried by the Additional Sessions Judge, Monghyr, under Sections 302, 302 read with 149 and 148, Penal Code. They were acquitted. The State carried an appeal against that order of acquittal to the High Court of Patna. The High Court has reversed the acquittal of Bhagirath Singh, only, and converted it into a conviction under Section 302, Penal Code, with a sentence of life imprisonment.

2. Hence this appeal by him.

3. The prosecution story so far as it can be gathered from some-what discordant material on record, is that on June 17, 1965, a poll was being held in village Rahatpur for election to the office of Mukhia of Sadanand Gram Panchayat. Village Rahatpur was within the jurisdiction of that panchayat. One of the polling booths was located in the eastern-most room of the school building at Rahatpur. Vidyapati Singh of village Rahatpur and Naval Kishore Singh village Sadanandpur were the rival candidates at the election. Ramakant deceased was a supporter of Naval Kishore while the appellant was an election worker of Vidyapati Singh.

4. The polling started at 8.00 a.m. and closed at 4 p.m. Soon after the close of the polling, a mob of 250-300 armed with lathis, bhalas, pharsas and saifs was seen coming from the northern side towards the Rahatpur thakurbari (a temple) which is situated on the south-east of the school. A group of twelve persons out of the mob surged ahead yelling that Ramakant was the mischiefmonger and should be dealt with. The appellant was the spearhead of the group. He was armed with a saif. He rushed toward Ramakant struck him with the saif in the inguinal region on the right side. On receiving the blow Ramakant fell down near the mango tree bleeding profusely. Others in the mob shouted that Ramakant was dead. The assailant then rejoined the big mob which retreated towards the darwaja of the appellant raising a hulla.

5. Ramadaya Singh (PW 5), Bindeshwari Singh (PW 9), Ramlakhan Singh (PW 10), Gunju Singh (PW 11), Rameshwar Singh (PW 12) and others, who were witnessing the occurrence went close to the deceased and found him dead. Ramsarup PW 13 removed the deadbody with the help of PW 12 towards the south of thakurbari, about 12 laggas (36 yards) away, as they feared that the mob might try to carry it away.

6. About 15 or 30 minutes thereafter, Parmanand Thakur, Block Development Officer (PW 21) and

Police Sub-Inspector Shyamdev Singh (PW 22) who were there to maintain peace at the election, reached the spot. Shyamdev Singh (PW 22) then took Ramsarup Singh, PW 13, into the school building and there recorded his statement (fardbeyan Ex. P. 12) and sent it to police station Balliya for registration of the case. PW 22 then returned to the scene of occurrence and prepared the inquest report Ex. 1/1 and sent the deadbody in the jeep of Naval Kishore Singh to Begu Sarai Hospital. The body reached the hospital at 6.00 p.m. The Medical Officer (PW 17) sent information about its arrival to Begu Sarai police station. Thereupon Sub-Inspector Raj Narain, PW 2 came to the hospital and prepared (another) inquest report Ex. P.1 in the presence of Ramsagar, PW 7, Mahendra Prasad, PW 8, and others.

7. In the meantime, Shyam Dev Singh PW 22, conducted the investigation at the spot. He removed bloodstained earth from two places, one from near the mango tree and the other from the place where the deadbody lay towards the south of thakurbari vide seizure memo Ex. 14.

8. At the trial, Bhagirath denied the prosecution allegations against him and alleged false implication by Ramsarup and others PWs, who, according to him, were all Gothias of Ramsarup Singh. He further stated that Ramsarup Singh was inimical towards him because he was pressing for repayment of a loan of Rs. 750 which Ramsarup Singh had taken from him on the foot of a promissory note.

9. The defence suggestion was that none of the six eyewitnesses examined by the prosecution had seen the assault on the deceased, who had received that injury in a sporadic quarrel with some person after a scuffle.

10. Dr. Rajendra Prasad, PW 17, who conducted the autopsy, found only one injury on the deceased. It was a sharp-cut penetrating wound, 1" x 1/3" x muscle deep, on the front of the right thigh two inches below the mid-inguinal point. The inner half of the femoral artery and the outer three-fourth of the femoral vein and the pectineous muscles were found cut. The death in the opinion of the doctor, was due to haemorrhage and might have occurred within 10 minutes of receiving the injury.

11. At the trial, the prosecution examined 22 witnesses out of whom PWs 5, 9, 10, 11, 12 and 13 claimed to be eyewitnesses of the occurrence.

12. The trial Court examined the evidence in detail and found it unworthy of credit. The main reasons given by the trial Court for holding these witnesses to be unreliable were these : (i) the story propounded by these witnesses that all the twelve accused were shouting that Ramakant should be killed as he was the real mischiefmonger was highly improbable because : (a) The rival candidates, Vidyapati and Naval Kishore on the polling day took their lunch together and were also moving round in a Jeep together with Bhagirath appellant, appealing with folded hands to the people to maintain the peace. As a result as deposed to by the Presiding Officer, PW 16 and PW 21, the polling was throughout peaceful. Therefore, there was absolutely no occasion, cause or, motive, for a mob to collect and for the 12 accused to join hands to kill Ramakant, even if the latter had canvassed for Naval Kishore Singh; (b) If - as the prosecution story goes - all the 12 accused armed with lethal weapons, crying for the blood of Ramakant, had rushed together to attack him, there should have been more than one injury on the deceased; (ii) There were multiple tears, besides a rent corresponding to the seize of the wound, in the dhoti of the deceased. The numerous tears could not have been caused by a single thrust of the weapon which caused the fatal injury. These tears were strongly suggestive of the possibility that Ramakant received his wound - might be with dagger - in the course of a scuffle and not in the manner alleged by the prosecution; (iii) The

prosecution case that the mob came from the north-east and Bhagirath out of then mob rushed at Ramakant and gave him the fatal blow, is rendered highly doubtful, if not incredible, by the evidence of the Block Development Officer (PW 21) and Shyam Deo Singh (PW 22). According to PW 21 there were two mobs, one 200 to 300 strong advancing rapidly from the northern side towards the trees east of thakurbari and another mob of about 50 to 60 strong facing south. These two officers rushed towards the mobs and were successful in pacifying and dispersing the same. If the murder of Ramakant had been committed by a person out of the mob, it could not escape the notice of PWs 21 and 22. The very fact that the assault on the deceased did not take place within the sight of these two officers, indicates that it had taken place in some other manner; (iv) At the trial, all the eyewitnesses (except PWs 11 and 13) have suppressed the fact that the Block Development Officer had seen, pacified or dispersed any mob, although before the police four of them, namely PWs 5, 9, 10 and 12, had stated that after the occurrence the accused joined the main mob and raised 'hulla' and then the Block Development Officer along with the "military" (police) pacified the mob and prevented further incident. These witnesses purposely changed their previous statements; all the eyewitnesses have suppressed the fact that a mob of 50 or 60 strong was poised for a clash with the bigger mob of 300 strong; (v) It could not be said that these eyewitnesses had no motive to falsely implicate the accused because :

(a) Ramsarup Singh had borrowed money from Bhagirath on the basis of the handnote and it is probable that he was annoyed with Bhagirath because of the demands of repayment of the same. Bhagirath had instituted a criminal case in the Sadanandpur Gram Kutchery against PW Ramsarup Singh on June 12, 1965 :

b) Ramdev accused had brought a criminal case against Ramsarup PW and his son, following a boundary dispute;

(c) Ram Kishan accused had brought an arson case against Ramsarup;

(d) As admitted by PW 10, the Babhans of the village were divided into two families. The deceased and the eyewitnesses all belonged to Baba Ghar family while the accused, including Bhagirath, belonged to Tinkhuti family;

(vi) The evidence of all the eyewitnesses disclosed a suspicious uniformity and appears to be mechanical; (vii) None of the eyewitnesses denounced Bhagirath as the assailant of Ramakant when the Block Development Officer and the Investigating Officer reached the spot about 15 or 30 minutes after the occurrence.

13. The High Court has dealt with these 'reasons' and tried to dispel them. As shall be presently discussed it has succeeded in off-setting some of those reasons, but not all.

14. In its opinion, the circumstance that the dhoti of the deceased had a number of tears did not indicate that the sustained them during a scuffle. The tears, according to the High Court, might be due to frequent wash and wear or they could be post-mortem tears sustained when the body was being carried in the jeep to the hospital. The High Court did not attach any significance to the fact that in his report Ex. 9 the Block Development Officer (PW 21) had not mentioned Bhagirath as the assailant of Ramakant, though he claims to have learnt before writing the report that Bhagirath was being denounced as the culprit.

15. Further, the High Court doubted the evidence of PWs 21 and 22 inasmuch as they had stated that

in their presence, no clash between two mobs took place and that the mob had been successfully dispersed by them before the occurrence. It did not accept the sworn word of the Investigating Officer, PW 22 that on the date of the poll, he had seen Vidyapati Singh (candidate), Bhagirath appellant and other persons going about in a jeep, requesting people with folded hands not to disturb the peace. It did not accept the testimony of PW 22 that the rival candidates and others had taken their lunch together on the day of the poll, at the house of Naval Kishore Singh. It characterised this version as "highly improbable and against human conduct". It observed :

It is admitted case of the parties that they (PWs 21 and 22) were made in-charge to maintain law and order during the election. In such circumstances, it is natural that they would try to minimise about any untoward happenings in the election.

16. The High Court did not attach and importance to the version of PWs 21 and 22, that when they went to the spot where the deadbody lay, the PWs though present, did not, there and then tell these officers about the name of the assailant. In its opinion, this fact had been suppressed because the fardbeyan had not been recorded till then. In support of this conclusion it referred to PW 22 who had stated in cross-examination that the usual practice was to write the diary after the recording of the fardbeyan.

17. Before the High Court it was contended by the defence that the prosecution story, that 12 persons surged ahead from a mob of 250 or 300 persons, shouting to kill Ramakant, was a subsequent improvement, as it did not find mention in the first information report. The contention was rejected. Similarly, no importance was attached to the omission in the F.I.R. that out of the 12 persons in the mob, crying for the blood of Ramakant, one, namely, Bhagirath darted out and attacked the deceased. The reason given for ignoring these obvious improvements was that the version of the eyewitnesses, at the trial, was consistent on this point. When it was urged on behalf of the accused that no motive to single out Ramakant for the assault had been established, the High Court brushed it aside with the observation "that it is well-established that the motive loses its importance when there is positive evidence on the record".

18. When it was pointed out that the evidence of PWs 21 and 22 runs counter to the story told by other eyewitnesses, the High Court tried to overcome this difficulty by resorting to speculation. It imagined that Ramakant was killed prior to the pacification of the mob by PWs 21 and 22. It further surmised that "there was nothing improbable that the appellant along with 11 others by outflanking the bigger mob went and killed Ramakant".

19. The High Court did not reject the defence plea that Ramsarup PW 13, owned Rs. 750 to Bhagirath which he had taken as loan on the basis of handnote. But, in its opinion, this circumstance did not furnish a motive for false implication of Bhagirath by Ramsarup (PW 13), because Bhagirath

would not have demanded repayment of loan only six months after its advance and even if it was demanded it was highly improbable that PW 13 instead of being obliged after receiving the loan, would have falsely implicated the respondent (Bhagirath).

20. The High Court concluded that even if the prosecution case with regard to all the 12 accused persons charging at Ramakant, crying for his blood, is disbelieved, then also their entire evidence could not be rejected by applying the maxim falsus in uno falsus in omnibus. The evidence of the eyewitnesses (PWs 5, 9, 10, 11, 12 and 13), according to the High Court, in so far as the infliction

of the injury on the deceased with saif was concerned was acceptable, as it had been corroborated by the evidence of the doctor who had performed the post-mortem examination of the body of Ramakant.

21. After considering and weighing the reasons, summarised above, given by the trial Court and the High Court in support of their respective orders, we are of opinion that this was a case in which the High Court should not have, in keeping with the settled rule of practice, interfered with the order of acquittal. While the view taken by the High Court is also a possible view, some of the reasons given by the trial Court are difficult to dispel.

22. As already noticed, one of the main reasons given by the trial Judge for disbelieving the story pronounced by the eyewitnesses, PWs 5, 9, 10, 11, 12 and 13, was that it stood substantially contradicted by the evidence of PWs 21 and 22. There was great force in this reasoning. The High Court tried to discount this by saying that PWs 21 and 22 had suppressed the truth and that the 12 accused might have broken away from the mob, and "by outflanking the bigger mob went and killed Ramakant". In saying so, the High Court was not on firm ground, but in the realm of conjectures. PWs 21 and 22 were responsible, government servants who were at the spot on official duty. They were disinterested and independent witnesses. The prosecution never said that the witnesses had turned hostile. They never cross-examined them to impeach their credit. On the other hand, PWs 5, 9 to 13 were, as rightly pointed out by the trial Court, all highly interested witness. Ramsarup PW 13, the star witness of the prosecution had a possible motive to falsely implicate Bhagirath. The other eyewitnesses were also of a similar brand. They also had a hostile animus against Bhagirath's coaccused.

23. If the occurrence had taken place in the manner deposed to by PWs. 5, 9 to 13, then PWs 21 and 22 also should have been eyewitnesses of the fatal assault but their is that no such assault took place in the their sight and presence. Ramsarup wants to have it believed that it was about half an hour after the occurrence that PWs 21 and 22 came to the place. Even so, Ramsarup or his companion witness, though present, did not denounce Bhagirath as the assailant before those officers at the spot, nor told them how the occurrence took place. In his report which he wrote on returning to the school building PW 21 did not mention as to who had assaulted or attempted to assault Ramakant. That report is conspicuous by the non-mention of the name of any accused. PW 21 said that he omitted these facts from his report because he thought it was not necessary. This is no explanation. He had come to the village to maintain law and order at the polling. The inference is that he failed to name the assailant of Ramakant because upto that time the prosecution case had not taken shape and he was not sure as to who was the assailant of the deceased. The conduct of Ramsarup and his companion witnesses in not denouncing Bhagirath as the assailant, before PWs 21 and 22, at the spot, also leads to the same inference. The occurrence took place at about 4 p.m. The fardbeyan, Ex. 12, is alleged to have been written at 5 p.m. It was not written at the very spot but in the secrecy of the school. The formal F.I.R. is said to have been registered in the police station at 8 p.m. The F.I.R. therefore was not a spontaneous report. It appears to have been prepared after deliberation.

24. It is in evidence that a couple of minutes past 4 p.m., a woman elector presumably on the objection of a polling agent, was not allowed to cast her vote by the Presiding Officer (PW 16). This sparked off trouble between the supporters of the rival candidates and thereupon menacing mobs collected. But it is nobody's case that Ramakant deceased was in any way involved in that incident at the polling booth. He was not a polling agent of Naval Kishore Singh. Indeed, it has not been satisfactorily proved that he was one of the workers of Naval Kishore in the election. No question on this point was put to Naval Kishore (PW 20) when he appeared in the witness box although he

was supposed to be the best informed person about his fact. It has not been established that Ramakant was a man of influence and status whose support could affect the result of the election. The appellant or his coaccused had therefore no conceivable motive to single out Ramakant as the target of the fatal assault. Again not less a person than Naval Kishore Singh (PW 20) himself admitted in unqualified terms in cross-examination that he and his rival candidate Vidyapati Singh together with Bhagirath appellant and others were going round in a jeep and requesting people with folded hands to remain peaceful. PWs 21 and 22 have also spoken to this fact. If this was the conduct of Bhagirath appellant before the formation of the mobs, it seems, improbable that he would suddenly run berserk and without rhyme or reason, at the head of the mob of 250-300 strong would charge at Ramakant and fatally assault him. It may be further noted that it was Naval Kishore Singh who took the deadbody of the deceased to Begu Sarai police station and he was accompanied by Ramsarup PW 13. Naval Kishore Singh has stated that on reaching the police station he verbally reported about the occurrence. Naval Kishore has not stated that Ramsarup at any time told him or the police on that occasion about the occurrence. Obviously, Naval Kishore Singh reported the matter at the police station as he thought the matter had not been reported by any person up to that time. This further throws doubt about Ramsarup being an eyewitness of the occurrence and about the recording of his fardbeyan at 5 p.m. in the school building at Rahatpur.

25. Now it cannot be disputed that the multiple tears in the dhoti of the deceased could not have been caused with the thrust of the weapon which caused the single, fatal injury to the deceased. The trial Court's observation that the possibility of those multiple tears having been sustained by him during a scuffle with the assailant was not without substance.

26. It is not necessary to go in detail over all the reasons and counter reasons given by the two courts below. It would be sufficient to say that the view taken by the trial Court was also reasonably possible on the state of the evidence in the case. It is well-settled that where two views on the evidence are possible, the High Court should not disturb the order of acquittal merely because it thinks that, sitting as a trial Court, it would have taken the other view.

27. This Court has time and again emphasised that although the powers of the High Court in an appeal against acquittal are as extensive as in an appeal against conviction, it should, before reversing an acquittal pay due regard to the reasons given by the trial Court in support of the order of acquittal and try to dispel the same in a general or specific way. It should also bear in mind that the initial presumption of innocence in favour of an accused person is in no way weakened, if not reinforced by his acquittal at the trial. Due weight must also be given to the opinion of the trial Court as to the value of the oral evidence rendered by the oral witnesses because the trial Court had the advantage of observing the demeanour of the witnesses appearing before it. If two conclusions can be reasonably reached on the same evidence, one of which supports the acquittal then the High Court should say it hands from interfering with the order of the trial Court. The case before us is of this category.

28. For these reasons, we allow this appeal, set aside the judgment of the High Court and restore that of the trial Court. The appellant be set at liberty forthwith if not otherwise required.

</html