

SUPREME COURT OF INDIA

Ramasray Pandey

Vs.

State of Bihar

Crl.A.No.292-A of 1971

(P. N. Bhagwati, R. S. Sarkaria and S. Murtaza Fazl Ali, JJ.)

06.09.1976

JUDGEMENT

SARKARIA, J.:-

1. By our order, dated September 1, 1976 we had allowed this appeal and acquitted the appellant. We now proceed to give our reasons in support of that order.

2-3. The facts of the case may briefly be stated thus:

The deceased Methur Dass was a night watch-man in the orchard of Mohan Lal in the area of village Phulwaria, P.S. Pipra, District Champaran. The appellant and his two brothers, Rajeshwar Pandey and Raghunath Pandey trespassed into the orchard to steal plantains. Ram Asrey Pandey was armed with a bhalla (spear) while his brothers were armed with garases. The deceased protested and thereupon the appellant assaulted him with the bhalla, while his two companions inflicted

injuries on him with their respective weapons. As a result, the deceased received 12 incised wounds. The occurrence took place at about 9 p.m. or sometime thereafter in the night between the 22rd and 24th of August, 1964. During the same night he succumbed to his injuries in the early hours of 24th August, 1964 in the Chakia Dispensary. The First Information Report was lodged on the basis of a statement (Ex. 1) made by Smt. Deoiharia (PW-4) the widow of the deceased, to Matuk Narain Singh, Officer-in-charge of Police Station, Pipra at village Ghangti on August 24, 1964 when he was there to investigate a charge of theft on the basis of a First Information Report lodged by the appellant. That FIR is Ex. 2/1. Therein the appellant had charged Sukhdeo Mahto (PW-1), Jagdish Raut (PW-2) and the deceased with the theft of his patua at about 8.30. p.m.

4. After investigation five persons namely, the appellant and his said two brothers and Goburdhan and Yogendra were sent up under a charge-sheet before the Magistrate who committed them for trial to the Court of Session. The Sessions Judge acquitted Gobardhan and Yogendra, but convicted the other three. The appellant was convicted under Section 302, Penal Code and sentenced to rigorous imprisonment for life. Rajeshwar and Raghunath were convicted under Section 304 with Section 34, Penal Code and sentenced to 10 years rigorous imprisonment, each.

5. The convicts appealed to the High Court which dismissed Ram Asrey Pandey's appeal and maintained his conviction but altered the conviction of Raghunath and Rajeshwar into one under Section 324 read with Section 34, Penal Code with a sentence of one year's rigorous imprisonment, each.

6. Special leave petition under Article 136 filed by Rajeshwar and Raghunath was rejected, but that of the appellant was granted by this Court. This is how Ram Asrey, appellant is now before us.

7. The conviction of the appellant rests on two types of testimony. Firstly, there is the evidence of the eye-witnesses. Sukhdeo, P.W. 1, and Jagdish. PW-2. Secondly, there is the evidence of an oral dying declaration alleged to have been made by the deceased before his family members.

8. We have examined the evidence on record and heard the Counsel on both sides. In our opinion, the evidence of both the types produced by the prosecution, was unreliable. The oral evidence rendered by the eyewitnesses was replete with material discrepancies and lies. Even the learned Judges of the High Court who have overlooked most of these faults, found that the prosecution story in regard to the genesis of the occurrence is not correct. It cannot be gainsaid that Sukhdeo (PW-1) Jagdish (PW-2) and Methur Dass. deceased had gone together to the nearby field of the accused to steal patua (cut jute), bundles of which had been kept immersed in water, there. The deceased and his companions took out one bundle from the water and started disembarking the same. Thereupon, the assailants who were lying in ambush assaulted them. On receiving the blows, the deceased fell to the ground while trying to run away from the scene of theft. Pws 1 and 2 were then marched away by the assailants and other villagers to the Darwaza of Raghunath and handed over to Krishna Deo

Rai (PW-14) an Assistant Sub-Inspector of Police, there.

9. PWs 1 and 2 were questioned with regard to the cause and origin of the occurrence. Their denials, equivocations and prevarications notwithstanding, sufficient telltale circumstances have been wrenched out from their unwilling lips to demonstrate that they are hiding the truth on material points. It is admitted by both the eye-witnesses that they were captured by the accused and other villagers and handed over to the Police who have sent them up for trial before a Magistrate on a charge of stealing patua of the appellant. Sukhdeo admitted that he had been convicted on that charge, and his appeal against his conviction was pending in Court at the time of his deposition. It was put to the witness that he and his companion had been captured by their assailants in the Kharor (bush land) at a distance of 20-25 laggis (210-260 if approximately) from the mango orchard of Mohan Lal. The witness denied this suggestion. However, his companion, Jagdish (PW-2) admitted in cross-examination, that he was assaulted in the Kharor, although he tried to wriggle out of it later.

10. Both the eye-witnesses radically changed the story that they had originally stated to the police during investigation. Before the police PW had denounced three persons, namely, Ram Asrey appellant, Rajeswhar and Raghunath as the assailants. At the trial he has named two more, viz., Gobardhan and Yogendra, who have been acquitted by the trial Court.

11. The eye-witnesses sharply contradict each other with regard to the identity of the persons who dealt the fatal blow on abdomen of the deceased with a bhalla. According to PW-1, it was the appellant who had caused this injury. Directly contradicting PW-1, the other eyewitness PW-2, stated that this injury was caused by Rajeswhar who was assaulting with a bhalla, while his brothers were causing injuries to the deceased with Farsas. This was a vital discrepancy which could not be ignored.

12. In his statement before the Police, Jagdish PW-2, had admitted that he and PW-1 had accompanied Methur Das deceased to steal Patua, that when they took out Patua from water and started disembarking the same, the villagers, who were lying in ambush assaulted, Confronted with this previous statement, witness brazenly disowned it altogether. On further questioning however, he admitted that the villagers assaulted him as well as Sukhdeo and Methur with lathi. He further admitted that many people armed with lathi and bhala had assembled. They were raising shouts: "Thief/Thief" and "they were the persons, who started committing assault."

13. From the above discussion, it is manifest, that these eye-witnesses have not only lied about the genesis of the occurrence and the place of the incident, but also irretrievably mutilated the truth with regard to the number of the assailants and the author of the fatal blow. In short, they have unscrupulously spoken the untruth on all vital points, which has polluted their testimony to the core.

14. Having seen that the ocular account of the eye-witnesses in this case was utterly unreliable, we pass on to examine the evidence with regard to the oral dying declaration alleged to have been made by the deceased.

15. The prosecution examined four witnesses to prove this statement. They are PW-4 the widow; PW-5, the mother, PW-6 the nephew and PW-9, the son of the deceased.

16. Bigu Das (PW-9) stated in cross-examination that the Police Assistant Sub-Inspector had recorded the statement of the deceased and the latter had thumbmarked the same. Either the witness is telling a lie or the dying declaration of the deceased recorded by the police has been purposely withheld from an oblique motive. If the latter is the case, the inference is that the recorded statement, if produced, would completely demolish the prosecution case. Further, these four witnesses speak with discordant voices with regard to the number of persons named as his assailants by the deceased. If the mother (PW-2), is to be believed, the deceased had named only three persons viz., Ram Asrey, Rajeshwar and Raghunath as his assailants. In variance with it, PWs 4, 6 and 9 stated that the deceased had named all the five accused, including the appellant, as his assailants.

17. These four witnesses, also contradicted their statements which they had made to the police. In her statement Ex. 1, which is supposed to be the First Information Report, PW_4 stated that on being asked, her husband said that "Ram Asrey Pandey assaulted him on the abdomen with a bhala, while Rajeshwar, Raghunath and two associates of theirs whom he could not recognize, assaulted him with girasas while raising the hulla; Thief Thief. The cause of occurrence as stated by the informant in this report is as under:

"...last year my son Bigu caught Raghunath Pandey cutting my Khaira tree on account of which there was dispute between my husband and Raghu Nath. During the night some thief stole patua of Raghunath Pandey as we heard and Pandey's (persons having titles of Pandey), suspected that Methur Das also participated in the theft of patua caught hold of him in the plantain orchard, dragged him to the orchard and assaulted (?) him."

18. It is noteworthy, that the FIR which was lodged after an inordinate, unexplained delay of about 20 hours of the basis of information purportedly derived from the deceased. PW-4 did not name Yogendra and Gobardhan as assailants of the deceased. At the trial, she added these two persons also to the list of assailants named by the deceased.

19. PW-3 Nathuni Sah testified that soon after hearing the hulla he saw people running to the other bank of the Lakhna. Thereafter witness also accompanied the Assistant Sub-Inspector of Police to the orchard where Methur lay injured. Witness found the son, the wife and mother of the deceased

there. But he did not find the nephew (PW-6) there. The witness further stated that in his presence, Methur did not name any of his assailants. The witness did not hear anybody saying as to who had committed the assault.

20. PW-3 Nathuni Sah was an independent witness. There was no reason to disbelieve him. He discounts the presence of PW-6 and thus falsifies the claim of PW-6 to his being a witness of the alleged dying declaration made by the deceased. By implication PW-3 further discounts the version of PWs 4, 5 and 9 about the alleged dying declaration.

21. PW-7 Birju Das was another independent witness. In cross-examination, he stated that Methur Das did not mention the name of his assailant in his presence.

22. All the four witnesses (PWs 4, 5, 6 and 9) of the alleged dying declaration were not only highly interested in the prosecution but were inimically disposed toward the accused. In cross-examination, PW-4, had admitted: "we have got enmity with Ram Asrey Pandey and others." There was therefore every reason to suspect that the story of the alleged dying declaration made by the deceased had been falsely introduced in the inordinately belated FIR after due deliberation, after the death of Methur Das.

23. Thus the evidence with regard to the alleged oral dying declaration of the deceased was also hopelessly contradictory and unbelievable.

24. To sum up, there was no credible evidence on record to bring home the charge to the appellant. The Court below were clearly in error in convicting the appellant on the basis of this manifestly unbelievable evidence produced by the prosecution. Accordingly, we allow this appeal, set aside the conviction of the appellant and acquit him of the charge levelled against him.

Appeal allowed.