

Kanti Kumari Roy

Vs

Suresh Kumar Roy and Another

Criminal Appeal No. 4 of 1988

(A. M. Ahmadi, Smt. M. S. Fathima Beevi JJ)

04.04.1990

JUDGMENT

AHMADI, J.-

1. This appeal by special leave is directed against the order of acquittal passed by the High Court of Patna reversing the conviction recorded by the Sessions Court, Katihar. This is a case of patricide. Kritya Nand Roy, the father of respondent 1 was killed on May 3, 1981 at Village Rajwara, Police Station Korha, District Katihar, at about 11.00 a. m. The deceased had two sons, the respondent Suresh Kumar Roy (hereinafter called 'the accused') and PW 11 Ashok Kumar Roy. The accused was born to the first wife of the deceased whereas PW 11 Ashok Kumar Roy was born to his second wife PW 2 Kanti Kumari Roy, the appellant herein. The brief facts giving rise to this appeal are as under.

2. On the date of the incident at about 9.00 a. m., the deceased had called the panchayati of his near relatives PW 1 Basudeo Roy, PW 3 Ramanand Roy, PW 5 Laxmi Naryan Roy, PW 6 Nityanand Roy, PW 8 Parmanand Roy, PW 9 Sukhdeo Roy and PW 12 Satyanand Roy and others including the accused and PW 11, Ashok Kumar Roy for effecting partition of his Rajwara and Katihar houses and certain lands belonging to him between his two sons. This panchayati was called in the baithak of his house. The deceased suggested that the Rajwara house may be allotted to the accused and the Katihar house to PW 11. The accused, however, resisted the suggestion and claimed a share in the Katihar house also on the ground that his children were studying in Katihar and needed some place for their residence. The deceased responded to this demand by agreeing to allot a western room of the Kathiar house for the residence of his children till they completed their studies but insisted that the ownership of house would belong to PW 11 only. The accused demanded an extra room in that house for a kitchen but that demand was spurned. The accused then put up a demand for a share in the lands situate at Katihar. The deceased rejected this demand by stating that he had already given that land to PW 2, his stepmother, and none could get a share therein. This resulted in a heated argument between the deceased and the accused. As a result of this heated discussion the panchayati dispersed. The accused who was agitated pulled out his licensed revolver from the pocket of his bundi (jacket) and moved towards his father. PW 11, however, intervened by raising a shout to caution his father. The accused thereupon fired a shot at PW 11 saying he must die first. The shot hit PW 11 in the abdomen region. Thereafter the accused fired another shot at PW 11 which pierced through his arm into his chest. Thereupon PW 11 fell down. The deceased challenged the accused whereupon the latter fired a shot at him which pierced his chest. Two further shots were fired at the deceased resulting in his death. The accused thereafter went in search of PW 2 who was in the same house and was watching the panchayati proceeding from the adjoining room. In the meantime PW 11 slipped out of the house and went to the house of his uncle PW 1 Basudeo Roy. Maya and Raju,

daughter and son of PW 1 dressed his wounds. It is the prosecution case that when the accused went in search of PW 2, the latter ran out of the house and could not be traced. She ultimately took a bus and reached Katihar. The prosecution case is that thereafter the accused went to the Korha police station at about 2.45 p. m. and surrendered his licensed revolver along with seven live cartridges. He was taken in custody by the police and thereafter the police arrived at the scene of occurrence, recorded the statement of PW 12 Satyanand Roy and prepared the inquest panchnama Ex. 11. An offence under Sections 302 and 307 IPC and Section 27, Arms Act was registered against the accused. On the conclusion of the investigation, the accused was charge-sheeted and tried by the learned Sessions Judge, Katihar. The accused pleaded not guilty to the charge and contended that his stepmother PW 2, being on inimical terms with him, had falsely implicated him with a view to ensuring that her son PW 11 may assume possession of all the movable and immovable properties of the deceased. He further stated that since PW 2 had obtained a decree of divorce earlier she apprehended that the deceased may give a share to the accused from the lands mutated in her name and may also delete her name as a nominee from the insurance policy; so she took out his (accused) licensed revolver from under the pillow of his bed and shot the deceased therewith and fled away. The accused also examined witnesses in support of this version. In addition he pleaded alibi stating he had gone to Purnea to get his scooter repaired.

3. Before we deal with the prosecution version regarding the crime, we may notice the physical condition of the house in which the incident occurred. The baithak of the house of situate in the south. Actually there is an inverted 'L' shaped verandah, the pillar of the inverted 'L' running from west to east and then turning to the north, making the base south north. In the north-south portion is the chowky where the dead body was found. According to the prosecution after the exchange of heated words between the accused and the deceased, the latter went towards the chowky, when the accused whipped out the revolver. When PW 11 saw him moving towards the deceased, he raised an alarm to caution the deceased whereupon the accused turned his wrath at him and fired two shots in quick succession at him and then went for the deceased who was coming towards PW 11 to stop the accused from killing him. The police found the corpse of the deceased lying in the chowky in the north-south portion of the verandah.

4. The fact that the deceased died a homicidal death is not in dispute. Apart from the direct evidence of PW 2 and PW 11, there is the evidence of PWs 1, 3, 5, 6, 8, 9 and 12, all of whom depose that the deceased died of bullet injuries. The inquest report Ex. 11 read with the evidence of PW 17, the Investigating Officer, and the post-mortem examination report Ex. 2 of PW 10 Dr. R. N. Choubey, support the ocular evidence in this behalf. The evidence of Dr. Choubey shows that the deceased had four circular wounds, each of 1/4" in diameter in the lower chest and abdomen regions and one lacerated wound 1/4" in diameter over the back of left side of lower chest. He has opined that death was due to bullet injuries. He had also examined PW 11 on the previous day, i. e. the day of the incident, and had noticed (i) a circular punctured wound with rugged margins on outer aspect of right upper arm 1/4" in diameter (entry wound), (ii) a circular punctured wound with rugged margins on the inner aspect of right upper arm 1/4" in diameter (exit wound), (iii) a circular punctured wound with rugged margins over right side of chest wall with inverted margins 1/4" in diameter with blood oozing out - exit wound was located on radiological examination in left lower chest - the bullet was recovered on June 12, 1981 and (iv) a circular punctured wound with inverted rugged margins just to the left of umbilicus 1/4" in diameter (entry wound), the bullet having travelled through abdominal wall puncturing the peritoneum and rupturing the urinary bladder and found lodged in the left buttock wherefrom it was recovered on May 20, 1981. In the opinion of the doctor injuries (i) and (ii) which were simple in nature and injury (iii) which was grievous were caused by a single shot while injury (iv) which too was grievous in nature was by a separate shot.

The condition of the patient was found to be very lower when he was examined at about 1.10 p. m. Thus the medical evidence lends corroboration to the prosecution case that the deceased died a homicidal death due to bullet injuries while PW 11 had sustained injuries on account of two shots fired at him.

5. Both the brothers are well educated. The accused is M. A., B. L. while PW 11 is a lawyer by calling. However, being step-brothers they had certain differences over the sharing of properties. The deceased was an affluent person and since he had brought a second wife, he seems to have transferred about 125 acres of land to PW 2, had retained only 11 acres for himself and had transferred 29 acres to the accused. It is also the prosecution case that the decree of divorce was only a ruse (sic ruse) to save the lands from the government. The deceased had also transferred certain other lands to his daughters and even PW 2 earlier. He had also named PW 2 as a nominee in the insurance policy. The evidence of PW 11 shows that he was at the Rajwara house since the last 8 to 10 days to prepare the details for the division or partition of the properties which his father desired. There is overwhelming evidence that the deceased had called the panchayati for that purpose. Even the hostile witnesses PWs 1, 3, 6, 8, 9 and 12 corroborate PW 2 and PW 11 on this point. Some of these witnesses also depose that they had heard gunshots soon after the panchayati dispersed. PWs 1, 3, 5, 6, and 8 depose to have returned to the baithak on hearing the gunshots and to have seen the deceased lying in the chowky and PW 11 in an injured condition. PW 9 also corroborates them partly. It is, therefore, clear that the revolver shots were fired soon after the panchayati dispersed. We have discussed this part of the evidence to point out that only three persons, i. e. the accused, the deceased and PW 11, remained in the baithak after the members of the panchayati had dispersed. They had hardly gone a few paces when this incident occurred and they returned on hearing the gunshots. Out of these three persons, one had passed away and the other PW 11 was injured. The only person who was unharmed was the accused. It was the accused who had reason to be annoyed on the deceased having refused to give him a share from the lands which he had gifted to PW 2. The evidence also shows that the accused was annoyed with his father as the latter had shown reluctance to give him a share in any part of the land transferred to the name of PW 2. The High Court's observation that the accused had no reason to kill the deceased since on PW 11's own admission the deceased was prepared to give him one-third share in his property although in law he was entitled to one-fourth only is clearly based on a non-appreciation of the totality of the evidence on record. The deceased had transferred a large part of his holding to PW 2 and her son and daughters. He was not prepared to give any share therefrom to the accused. What had remained with him was only a few acres of land and the two houses. Even there he was not prepared to give any part of the Katihar house to the accused except permitting him temporary use of one room till his children completed their education. So, even if he was prepared to give a larger share in his remaining estate to the accused, that could not satisfy him since what remained with him was just a few acres of land. Even the insurance policy taken out under the agency of the accused was not likely to fetch him anything. The High Court was, therefore, clearly wrong in thinking that the accused had no reason to be annoyed with the deceased.

6. The revolver No. 20981, Webly Scott, admittedly belonged to the accused. PW 17 Assistant Sub-Inspector Kirkitte, the Investigating Officer, says that on May 3, 1981 at about 2.45 p. m the accused surrendered this licensed revolver with seven live cartridges at the Korha Police Station which was attached under the panchnama Ex. 7. A copy of the panchnama was delivered to the accused and his signature was obtained in token thereof. The two panch witnesses were PW 16 Inderdeo Singh and PW 13 Panchanand Dass. The fact that the panchnama bears the signature of the accused is not in dispute. DW 1, Kaili Devi, was examined to prove that the accused's signature was obtained by force. She deposed that she had gone to the police station on the 4th at about 6.00 a. m.

when she saw that four policemen had surrounded one person and were forcing him to sign on some papers. She later learnt that person was the Mukhiya of Rajwar i. e. the accused. According to her, the policemen were asking him to put the date 3rd while the accused was insisting on putting the date 4th. PWs 13 and 16 turned hostile. PW 16 is the Mukhiya of Rantara Panchayat and, therefore, a close associate of the accused. Departing from his earlier statement to the police he stated that the weapon was surrendered by PW 2 at about 2.00 p. m. on May 3, 1981. It is, however, significant that he identifies the signature of the accused on the panchnama Ex. 7. If the accused signed in his presence on May 3, 1981, then he could not have signed the said document on the morning of the 4th as deposed by DW 1. This witness also signed the fardebayan Ex. 1/11. He, however, wants us to believe that he signed the panchnama and the fardebayan without reading the contents thereof, a statement not easy to accept when it comes from a person like a Mukhiya. He never complained till he came to give evidence that his signatures were obtained on the documents without disclosing their contents. Besides, PW 5 who too has turned hostile admits in cross-examination that the accused had surrendered his licensed revolver to the police. In the circumstances we do not see any reason for doubting the testimony of the Investigating Officer PW 17 in this behalf.

7. It is evident from the evidence of PWs 1, 3, 5, 6, 8, 9 and 12 that the deceased had called the panchayati at his baithak for partitioning his properties amongst his two sons. Even these witnesses who have departed from their earlier version before the police, support the prosecution to the limited extent that both the accused and PW 11 were present at the panchayati. As there was no agreement on partitioning the properties, the panchayati dispersed and soon thereafter gunshots were heard. Some of the members of the panchayati rushed back and found PW 11 injured and Krityanand Roy lying dead in the chowky. It is, therefore, obvious that after the panchayati dispersed only three persons, namely, the deceased, PW 11 and the accused remained in the baithak. There is no question of the deceased or PW 11 having used the weapon in view of the injuries sustained by them. Only the accused emerged unhurt. It was his revolver. The needle of suspicion, therefore, points towards the accused. However, in the cross-examination of PW 2 it was suggested that PW 11 had handed over the pistol to her to hide it somewhere. In the cross-examination of PW 11 also a similar suggestion was made. These suggestions imply that the defence case up to that stage was that it was PW 11 who had used the accused's revolver and had thereafter handed it over to PW 2 to hide it but she handed it over to the police. PW 16 has tried to support this defence version. However, on realising that PW 11 was seriously injured, that case was given a go-by and instead defence witnesses were examined to prove that it was PW 2 who had fired the shots. DW 2 deposed that after the panchayati there was some talk between the deceased and PW 11 when PW 2 entered with a gun and fired a shot at PW 11 and thereafter at her husband. DWs 3, 5, 6 and 7 have deposed that they had seen PW 11 grappling with his mother while she was in the process of shooting the deceased. The accused stated that PW 2 had removed his licensed revolver from below the pillow of his bed and had used the same in the commission of the crime. We find it difficult to believe this part of the defence version for the simple reason that PW 2 had no reason, whatsoever, to fire at her son PW 11 or at the deceased since the latter had tried to protect her interest by refusing a share to the accused in the lands transferred to her name.

8. The accused has stated in his statement that his step-mother had killed his father with his revolver and PW 11 received the injury when he tried to intervene. It is, therefore, obvious from this statement that even according to the accused the weapon of attack was his revolver. The report of the Director of Forensic Science Laboratory confirmed that it was the same weapon from which the extracted bullet was fired. According to PW 17 the accused surrendered his revolver along with seven live cartridges. If PW 2 had, in fact, removed the revolver as alleged and had used it, it is difficult to understand how she came in possession of seven live cartridges also because it is not the

case of the accused that he had left the live cartridges also under his pillow. Therefore, the story that PW 2 removed the revolver belonging to the accused and used it in the commission of the crime is, to say the least, thoroughly got up and imaginary.

9. The High Court has taken the view that both PW 2 and PW 11 are highly interested witnesses and the conduct of PW 11 in getting himself admitted to the Purnea Hospital is somewhat strange. The High Court has also criticised the conduct of PW 2 in not approaching the PW 2 was no ordinary woman, she was the retainer of her husband's gun and had shown great capacity at maneuvering. There is no doubt that PW 2 and PW 11 are mother and son, respectively. It is also true that PW 2 was the retainer of her husband's gun kept at Katihar. After the death of her husband she has retained his weapons. She had to run for the life from the Rajwara house after her son was injured and her husband was killed. She reached Purnea and from there she took a bus to Katihar. She has explained that she did not go to the Katihar Police Station because Rajwara did not fall within the jurisdiction of that police station. She was so terrified and shocked that she did not even wait to nurse her injured son. It was only after she reached Katihar that she collected herself and returned in her car to Rajwara. She then took her husband to the hospital. By that time PW 11 had reached the Purnea Hospital and was given treatment by Dr. R. N. Chobey. The conduct of PW 11 in going to Purnea Hospital has been criticised by the High Court but we do not see anything unusual in PW 11 having chosen to go to a hospital where he knew his sister's friend Dr. Shanta Roy was serving. His statement was not recorded by the police immediately because even according to Dr. Chobey his condition was very low when he was admitted to the hospital. He remained in the hospital for over a month and a half. The statement of PW 2 was recorded on the next day as she was not immediately available since she too had gone to the hospital with the body of her husband. There is, therefore, nothing unusual about the conduct of PW 2 and PW 11. Although they are mother and son, we do not see any reason to doubt their testimony since it stands corroborated in material particulars not only by medical evidence but also by the evidence of the prosecution witnesses and to some extent even by the defence witnesses. Therefore, the presence of the accused and PW 11 at Panchayati cannot be doubted. If the deceased and PW 11 could not have used the weapon and if the accused's effort to implicate PW 2 has failed, the only inference that can be drawn is that the accused had fired the shots. The evidence of PW 2 and PW 11 is consistent with this line of reasoning.

10. The accused has put up the defence of alibi. In his statement he stated that he had gone to Purnea by bus on the morning of May 3, 1981 to get his scooter repaired and while he was returning by bus at about 5.00 p. m., he was arrested by the police at Paltania bridge. In support of this statement he examined DWs 4, 6, 7, 8 and 10 all of whom have deposed that the accused has gone to the garage to get his scooter repaired but as the same could not be repaired by evening he returned by bus to Paltania bridge where he was arrested by the Police. DW 6 claims to have met the accused at about 8.30 a. m. at Paltania bridge from where he boarded the bus to Purnea. DW 7 says he had seen the accused near Paltania bridge at about 9.30 a. m. while he was on the way to the house of one Inayat Milan. DW 8 says that the accused had brought his scooter for repairs at 10.00 a. m. and as the same could not be repaired till 5.00 p. m. the accused had returned by bus and when he alighted from the bus he was apprehended by the police. DW 10, an advocate and an ex-MLA of Raniganj, says that on May 3, 1981 at about 1.30 p. m. while he was returning from the office of Shridhar Babu Vakil his motorcycle went out of order and he took it to Kalyant Motors for repairs. His motorcycle was repaired by about 4.30 p. m. During that period he claims to have met the accused at the said garage. These defence witnesses were examined to serve a twofold purpose, namely to show that the accused was not at the place of occurrence that morning when the shots were fired and that he could not have produced the weapon at the police station at 2.45 p. m. on May 3, 1981. These witnesses claim that they had seen the accused going towards the bus stand

between 8.30 and 9.30 a. m. If these witnesses are right, the accused could not be at the Panchayati that morning. But the evidence of the prosecution witnesses discussed earlier leaves no doubt that he had attended the Panchayati. As regards his arrest in the evening the evidence of DW 9 and PW 16 establishes beyond any manner of doubt that the accused was at the Korha Police Station that afternoon. If he was required for the commission of the offence he would have been arrested then. He could not, therefore, be at the garage till 5.00 p. m. or thereabouts. This shows that the defence witnesses are not telling the truth. All the defence witnesses came forward to give evidence on being requested by the accused. None of them was summoned. Many of them are from Rajwara of which the accused has been the Mukhiya for the last several years. It is, therefore, not surprising that they have tried to support his version.

11. From the above evidence it seems clear to us that the High Court reversed the order of conviction on thoroughly unsustainable grounds. The accused was annoyed with his father as he refused to grant him a share in the lands transferred in the names of PW 2 and her children. Although PW 2 and PW 11 are mother and son, they had not reason to falsely implicate the accused. On the contrary the accused attempted to falsely implicate the accused. On the contrary that accused attempted to falsely implicate PW 2 in the commission of the crime. The weapon of attack admittedly belonged to the accused. There is convincing evidence that the accused had produced the weapon at the police station soon after the occurrence. The evidence of the Director of Forensic Science Laboratory shows that the extracted bullet was fired from the barrel of this weapon. As only three persons were present at the scene of occurrence after the panchayati dispersed, the needle of suspicion turned towards the accused. Once the theory that PW 2 used the weapon is brushed aside, it become obvious that it was the accused and the accused alone who fired from his revolver. The High Court has doubted the evidence of PW 2 and PW 11 on flimsy grounds placing reliance on a minor contradiction in the fardebayan as regards the sequence of injuries caused to PW 11 and the deceased overlooking the fact that they were not the authors of the fardebayan. We are, therefore, satisfied from the totality of the evidence on record that the learned trial Judge had rightly concluded that the accused was responsible for the death of his father and for the injuries to PW 11, and the High Court's interference was totally unjustified, being against the weight of evidence. We would not have interfered with the decision of the High Court if the view taken by the High Court was a possible view but we are satisfied beyond any manner of doubt that the High Court thoroughly misdirected itself and failed to appreciate the evidence in the correct perspective. In our view there is overwhelming evidence on record pointing to the guilt of the accused and the High Court committed a grave error in lightly brushing it aside. Besides, the High Court case unwarranted aspersions in regard to the conduct, character and role of PW 2 which cannot be allowed to stand. She was virtually compelled to approach this Court to have her name cleared. This is an additional reason necessitating our interference.

12. In the above view we allow this appeal, set aside the order of the High Court and restore the order of the trial court. The accused who is on bail will surrender to his bail and serve the sentence.

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