

SUPREME COURT OF INDIA

Kameshwar Singh

Vs.

State of Bihar

Crl.A.Nos.443 and 444 of 1990

(S.Ratnavel Pandian, R. M. Sahai and S. P. Bharucha JJ.)

12.08.1992

ORDER

1. The above two appeals are preferred by Appellants 1 to 10 who were arrayed as accused Nos. 1 to 3, 6 to 12 respectively before the trial Court alongwith two others namely, Nand Kishore Singh (who has not preferred any appeal) and Guruki Singh alias Chandradeo Singh who is now stated to be dead. These Appellants were placed on trial to answer the charges for offences punishable Under Sections 147, 148, 302, 302 read with Sections 149, 307, 379 of the Indian Penal Code and Under Section 27 of the Arms Act on the allegations that on 26-11-1980 at about 1.00 p.m. at village Majhaulia, Police Station Bathnaha, District Sitamarhi, they all formed themselves into an unlawful assembly alongwith 40 to 60 persons and in prosecution of the common object of the said unlawful assembly, committed theft of paddy worth about Rs. 1100/- and in the course of the same transaction they committed rioting during the course of which Appellant Nos. 10, 1 and 2 were armed with gun, garasa and Bhala respectively while the rest were armed with sticks. It is further stated that during the course of rioting Appellant No. 10 before this Court shot at the deceased Dinesh Singh and caused injury to which Dinesh Singh succumbed instantaneously and that Dinesh Singh's brother, PW 8 who is the complainant in this case received gun shot injuries.

2. To substantiate these charges the prosecution examined PWs 1 to 16 of whom the eye witnesses are PWs 1 to 5, 8 and 16. PW 16 did not support the prosecution case. PW 7 is the medical officer who conducted the autopsy on the dead body of the deceased and PW 10 is another medical officer who examined PW 8. DW 10 (on being recalled) has testified to the fact that he examined the 5th Appellant, Bhavesh Jha and found injuries on his person. (Vide Ex. B and Ex. D).

3. It appears from the records that there was a deep-rooted animosity between the two groups for a quite length of time. PW 8 was the Manager of the Western Temple of Sri Laxmi Narayan Thakurji since 1972. The deceased in this case is the brother of PW 8. The temple was owning a very extensive land and there was a dispute relating to two pieces of land comprised in Survey Nos. 350, 360, 361 and 621. The two fields in which the harvest took place on the date of occurrence are known as Birar field and Dori field which are to an area of one acre and two third acre respectively. While PW 8 claimed that the cultivation of the land was under his supervision, the Appellant party put up the defence that they were cultivating the land subject to the liability of share croppers. It transpires from the evidence that there was a criminal proceeding Under Section 144 of the Code of Criminal Procedure in which Guruki Singh (since dead) was on one side and PW 8 was on the other. The dispute relates to the same Survey Numbers. The Sub Divisional Officer passed the following

order on 11-10-1980 in respect of the disputed land:

In this connection there is no question of unfaith on the first party for the so cause on the acceptance of the so-cause of the first party. I dismiss the order of not trespass against the first party because the land is under dispute and the first party is the share cropper of the disputed land. The second party should not dismiss the possession of first party on the land till the dispute of share cropping decided.

4. It may be noted, in this connection, that the first party was the Appellant party headed by Guruki Singh, since dead. There was also a proceeding Under Section 107 of the Code of Criminal Procedure between the parties. Thus it is shown demonstrably that all was not well with the parties and each one was out for the blood of another.

5. On the date of occurrence, according to the evidence of the witnesses, PW 8 on being informed that the Appellants' party was harvesting in the disputed land, went alongwith his deceased brother Dinesh Singh to the field called 'Doriwala' where PW 8 found these Appellants alongwith 50 others harvesting the paddy in the land and removing the paddy. Thereafter, all the accused persons and the mob consisting of 50 in number went to the other land called Birar land. It was at that point of time, PW 8 and his brother prevented the mob from entering the land and harvesting the paddy which led to the occurrence. It transpires from the evidence of the eye witnesses that when PW 8 and Dinesh Singh prevented them from harvesting the paddy, at the investigation of Appellant No. 10, the rest of the people started attacking the two brothers. Appellant No. 10 was armed with a gun and shot at the deceased and caused an injury. As a result of this injury, Dinesh Singh fell down. PW 8 moved a little away and hit himself behind a ridge but the Appellant No. 10 fired another shot-as against PW 8 which caused injuries round the mouth of .PW 8. After the deceased, Dinesh Singh fell down, it is the case of the prosecution that Appellant Nos. 1 and 2 who were armed with garasa and bhala attacked him and all the rest of the accused joined with Appellant Nos. 1 and 2 and attacked the deceased Dinesh Singh indiscriminately. As a result of the ruthless attack perpetrated on Dinesh Singh, he died instantaneously at the spot. After the Appellants left the scene of occurrence carrying the harvested paddy, other witnesses went near Dinesh Singh and found him dead. PW 8 was lying with bleeding injuries. PW 8 was taken to the hospital. Ex. K. 1 was recorded from PW 8 and the investigation proceeded with. The investigating officer after completing the investigation filed the charge-sheet against the named 12 persons in the FIR. The learned trial Judge convicted all the 12 accused Under Sections 147, 148, 379, 302 and 302 read with 149 IPC and sentenced each of them to the maximum of life imprisonment in addition to the various terms of imprisonment for other offences.

6. On being aggrieved by the judgment of the trial Court, all the 12 accused preferred Criminal Appeal Nos. 628 and 685; in that the Appellant No. 10 herein who was arrayed as accused No. 1 before the trial Court preferred the appeal No. 686/82 and the rest of the accused filed Criminal Appeal No. 628/82.

7. The High Court by its common judgment dated 13-5-86, for the reasons given, allowed both the appeals and acquitted all the accused holding that ;

In view of the aforesaid facts and circumstances appearing in the case find and hold that the prosecution has not succeeded in proving the charges beyond any reasonable doubt. Accordingly the Appellants are entitled to get benefit of doubt. Accordingly both the appeals are allowed and the Appellants are acquitted of all the charges.

8. It appears that the State had not preferred any appeal against the order of acquittal, but the complainant, PW-8 preferred Criminal Appeal No 236/88 before this Court challenging the correctness of the order of acquittal passed by the High Court. This Court, observing that the High Court without properly considering the evidence and discussing the materials on record has disposed of the appeals, set aside the judgment of the High Court and directed the matter to be reheard and disposed of according to law.

9. In pursuance of the order of remand, the matter went back to the High Court, where it was reheard by a different Bench which took a contrary view from the one taken by the High Court on the earlier occasion. Agreeing with the judgment of the Trial Court, the High Court found that the prosecution has proved its case beyond all reasonable doubts and consequently dismissed both the appeals. The present appeal is filed by accused Nos. 1 to 3 and 6 to 12. It appears that Guruki Singh alias Chan-dradeo Singh who was arrayed as accused No. 5 before the Trial Court died before the filing of this appeal. Accused No. 4 before the Trial Court, namely, Nand Kishore Singh did not prefer any appeal. During the course of the hearing of the appeal it has been represented by Mr. Govind Mukhoty, the learned senior Counsel that Appellant No. 9 before this Court, had died. The net result is that this appeal now is in respect of the accused Nos. 1 to 3 and 6 to 12.

10. Mr. Govind Mukhoty after taking us very meticulously and scrupulously through the recorded evidence has forcibly contended that the conviction recorded by the High Court cannot be sustained in view of the various infirmities appearing in this case. According to the learned Counsel there has been a considerable delay in lodging the first information report and that there are telling circumstances showing that there was a deliberation on account of which the names of the 12 persons have been chosen and introduced in the FIR and that the evidence of the eye witnesses is irreconcilably in conflict with oral evidence. At any rate, the evidence of the eye witnesses is not supported by the medical evidence. Last but not least the prosecution has not placed the entire truth before this Court, but on the other hand has suppressed certain material facts which if had been brought on record the case would have ended in an acquittal. Now let us examine the above contentions, scrutinise the evidence and see whether prosecution has satisfactorily established its case.

11. The occurrence took place at 1.30 P.M. on 26-11-1980. The distance of the police station from the place of occurrence is about 8 Km. but the FIR is stated to have been lodged only at 11.30 A.M., that is by a delay of more than 10 hours. There is absolutely no explanation as to why such a delay had occasioned in lodging the FIR.

12. Though the prosecution has come forward with a specific case that beside these 12 named accused there was a mob of 40 to 60 persons participating in the occurrence. Admittedly, the prosecution was not able to secure evidence even in respect of a single person out of the 40-60 persons who are said to have participated in the occurrence and who are also said to have attacked the deceased. The only inference that can be drawn and the failure of the investigating officer to secure even the single person out of the unnamed accused persons indicates that the investigating agency has not bestowed any attention in getting the names of the unnamed accused, but they are quite satisfied only with the named 12 accused and proceeded with the prosecution.

13. According to the evidence of eye-witnesses after Dlnesh Singh had fallen down he was ruthlessly and indiscriminately attacked not only by the rest of the named accused persons, but also

by the entire mob. If the above evidence of the eye witnesses is true, then the deceased should have received many more injuries on his body. PW-7, the Medical Officer who conducted autopsy on the dead body of the deceased found only 8 injuries, of which injury Nos. 1 and 5 were lacerated injuries; injury Nos. 3, 4 and 5 were oval shaped injuries, injury No. 2 was bruise with swelling and injury Nos. 7 and 8 were abrasions. According to the Medical Officer, the injury Nos. 3, 4 and 5 should have been caused by fire arm and they were all fatal and the rest of the injuries might have been caused with lathi or brick bats. Since there was only one shot fired the injury Nos. 3, 4 and 5 which are all found on the left side of the chest should have been as a result of one shot. The absence of any other injury barring these injuries mentioned above is indicative of the fact that the evidence given by the eye witnesses is not worthy of acceptance. To put in other way, the medical evidence is not supporting the direct oral evidence.

14. Coming to the injury found on PW-8 it is stated by the medical officer (PW-10) that there were five tattoo markings of pea size around the mouth of PW-8 besides a scratch on the neck and a lacerated injury on the forefinger. PW 8 had also complained of pain all over his body. In the opinion of the medical officer the tattoo marks should have been caused by fire arm injury. A pertinent question was asked by the learned Counsel appearing for the Appellants as to whether it would have been possible for PW 8 to give the full details as contained in the FIR, after having sustained such injuries especially the injuries around his mouth. We see more force In that submission.

15. It is found from the earlier judgment of the High Court that Appellant No. 5 had sustained some pellet injuries on his person. The very presence of the injuries on Appellant No, 5 would go to show that Appellant No. 5 should have been present in the occurrence. But the very fact that he had sustained injuries clearly shows that he must have been one among the crowd and he must have received the injuries on account of some gun shot evidently from the opposite side, namely, the prosecution party. Of course, Appellant No. 5 did not go to the hospital on the very same day, but he was examined by the medical officer, DW-1 four days after the occurrence, namely on 30-11-1980. Presumably Appellant No. 5 might not have gone to the hospital for treat-ment fearing his arrest and inculpation in the crime. Be that as it may, the fact remains the prosecution has not explained as to how Appellant No. 5 had received the injuries By no stretch of imagination it can be said he should have self-inflicted these injuries after the occurrence.

16. All the above telling facts and the impelling circumstances appearing in this case compel us not to accept the evidence of the prosecution witnesses. At any rate it cannot be said that the prosecution is free from any doubt. In our opinion, the prosecution has not come forward with the whole truth, but has suppressed ed the material part of the occurrence nd projected only the materials that are favourable to the prosecution.

17. Since we have come to the conclusion that the prosecution has not satisfactorily proved its case, notwithstanding the fact that Nand Kisrore Singh who was accused No 4 before the Trial Court and against whom also the same set of evidence is let in by the prosecution is also entitled for the same benefit of donbt and the consequential acquittal. therefore. even though Nand Kishore Singh has not preferred any appeal, we set aside his conviction and the sentence imposed therefore and acquit him also along with the other Appellants.

18. In the result. the appeal is allowed and the conviction and sentence of all the Appellants and Nand Kishore Singh are set aside and as indicated above. Appeal allowed.

