

SUPREME COURT OF INDIA

Radha Kumar

Vs.

State of Bihar

CrI.A.No.1480 of 2003

(B.N. Agrawal and H.K. Sema, JJ.)

14.07.2004

ORDER

B.N. Agrawal , J.

1. Heard learned counsel for the parties.

2. The sole appellant was convicted by the trial court under Section 304 Part II of the Penal Code and sentenced to undergo imprisonment for a period of eight years. On appeal being preferred, the High Court confirmed the 9 conviction and sentence. Hence this appeal by special leave.

3. As this appeal is bound to succeed on a short question, there is no necessity to narrate the facts. Suffice it to say that the allegation against the appellant was that he fired two shots which hit one Salo Devi who succumbed to injuries. The first information report was lodged by PW 7 who ^ having not supported the prosecution case in court was declared hostile. Other witnesses who claimed to be eyewitnesses are PWs 2, 3, 4 and 6 out of whom PW 3 has been disbelieved by the trial court itself. As such there a remains evidence of PWs 2, 4 and 6. The occurrence is said to have taken place on 19-3-1993 and these witnesses were examined in the Sessions Court between 12-8-1994 and 11-1-1995 i.e. after several months of the date of the alleged occurrence. Undisputedly, these witnesses have not disclosed complicity of the appellant in the crime in their statement made before the police inasmuch as they have not even disclosed the name of the appellant as b the accused in their statement made before the police and for the first time in the Sessions Court after several months they have disclosed complicity of the appellant in the crime. No reason has been assigned by the prosecution for non-disclosure of the name of the appellant before the police by these witnesses. This being the position, we are of the view that it would not be safe to place reliance upon the statement of these witnesses made for the first c time in the Sessions Court after several months of the alleged occurrence without there being any reasonable excuse for not naming the accused before the police especially when the prosecution case has not been supported by the informant who also claimed to be an eyewitness.

(2005) 10 SCC 216

4. For the foregoing reasons, we are of the view that the prosecution has ^ failed to prove its case beyond reasonable doubt and the High Court was not justified in upholding conviction of the appellant and, accordingly, the appeal is allowed, conviction and sentence of the appellant are set aside and he is acquitted of the charge. The appellant is directed to be released forthwith, if not required in connection with any other case.