

# SUPREME COURT OF INDIA

Rama Shish Rai

Vs.

Jagdish Singh

CrI.A.No.1308 of 1999

(K. G. Balakrishnan and H.K.Sema JJ.)

17.11.2004

## JUDGMENT

### **H.K. Sema, J.**

1. Ten accused persons were put to trial for the offence punishable under Sections 302, 147, 148, 149 IPC and Section 27 of the Arms Act before the 2nd Additional Sessions Judge, Arrah in Sessions Trial No. 366 of 1982. After conclusion of the trial, the Trial Court convicted accused No.2 - Jagdish Singh Rai (the respondent herein) for the offences under Section 302/148 I.P.C. and under Section 27 of the Arms Act. He was sentenced to undergo R.I. for life under Section 302 I.P.C. and two years R.I. under Section 148 I.P.C. He was further sentenced to undergo R.I. for three years under Section 27 of the Arms Act. The remaining nine accused (not before us) were convicted under Section 302 with the aid of Section 149 and sentenced to undergo R.I. for life and two years R.I. under Section 148 respectively. Their sentences were, however, directed to run concurrently.

2. Aggrieved thereby, two appeals have been preferred before the High Court of Patna. Criminal Appeal No. 596 of 1986 was preferred by nine accused and Criminal Appeal No. 46 of 1987 was preferred by accused No. 2 - Jagdish Singh alias Jagdish Rai, separately. By a common Judgment, the High Court acquitted all the accused. Hence, the present appeal by special leave. The State has not filed any appeal. The present appeal has been filed by the brother of the deceased with permission to file the SLPs.

3. On 3.12.1999, this Court dismissed the SLPs against all the accused persons except the second accused - Jagdish Singh. This is how the present appeals is survived against accused No.2 - Jagdish Singh Rai.

4. We have heard the counsel for the parties. Briefly stated, the facts giving rise to the present appeal are as follows:

“The Officer-in-charge, Dumraon P.S. recorded the fardbeyan of Ramashish Rai alias Gana Rai (PW-10) to the effect - that on 21.3.1986 between 8 to 9 P.M. when the

informant was sitting alongwith his deceased brother Sudershan Rai, the FIR named accused persons came hurling abuses carrying lethal weapons like gun, rifle, bhala, country made gun etc. and accused No.2, Jagdish Singh was shouting that the score would be settled today, where after the deceased proceeded towards the accused persons with a view to pacify them and requesting them not to indulge into violence, whereupon the accused - Jagdish Singh Rai opened blank fire from his rifle twice. The accused Jagdish Singh also fired the third shot from his rifle which hit the deceased - Sudershan Rai and he died on the spot. Then and there the informant snatched away his rifle and the said was produced before the public officer who recorded Fardbeyan. On hearing the Hullah PWs, 1,2, 3, 5 and 8 also came in and witnessed the incident.”

5. In course of the trial, the prosecution examined as many as 12 witnesses out of which PWs, 1, 2, 3, 5, 8 10 were examined as eye witnesses to the occurrence. The Trial Court, on threadbare discussion of the eye witness account and medical evidence, convicted the accused as aforesaid.”

6. The High Court, by its order impugned, discarded the eye-witnesses account of the occurrence in paragraph 20 of its judgment as under:

"From over all scrutiny of evidence of prosecution witnesses it is apparent that there was long standing enmity between the two parties, for which civil as well as criminal cases were fought up to the High Court. Secondly, most of the eye witnesses have admitted that in counter case filed by the appellant Jagdish Singh either they or their sons and relatives were made accused. Thirdly, almost all the eye witnesses have deliberately tried to improve the prosecution case by deposing something, which are not to be found either from the FIR or from the evidence of the informant himself. So far means of identification is concerned, there is contradictory statement. The I.O. also did not found any light near about the place of occurrence. Thus, in between 8.30 P.M. to 9 P.M. in a village lane it was difficult for the so called eye witnesses to identify the appellants. The evidence of the informant himself that on hearing Hulla Kamakhya Rai, Ranjit Singh, Satyendra Narayan Singh, Murlidhar Sah, Ramdeni Singh came alongwith other villagers makes the very presence of the alleged eye witnesses at the time of occurrence doubtful. However, there is also contradictory evidence regarding so called happenings in the Ration shop. No witness is consisted with the fact as to whether the happenings in the Ration shop was in the morning of the day of occurrence or the previous day evening. Under these circumstances, it is very difficult to reply on the evidence of such witnesses, who were determined to implicate the appellants in the present case. Above all the conduct of the I.O. is also not above board. According to him on the basis of rumour he had proceeded to the village but he failed to enter the said fact in the station diary. He also admits that neither the chaukidar nor the Dafadar had informed him about the alleged occurrence. Moreover, he did not enquire as to whether electric bulb was fused or not as the same was a relevant fact inasmuch as P.W.8 the alleged eye witness has categorically stated that no bulb was hanging either from the pole or electric wire. The sketch map Ext. 8

has also been prepared in a slip shot manner, which does not indicate as to whether place of occurrence as suggested by prosecution was believable."

7. We are clearly of the view that the findings of the High Court were erroneous, resulting in grave miscarriage of justice. The eye-witnesses - PWs. 1, 2, 3, 5, 8 and 10 consistently supported the case of the prosecution throughout. They were subjected to lengthy cross-examination but nothing could be elicited from their mouth so as to discard the creditworthiness of their statements. The ocular evidence of the eye-witnesses were corroborated in material particulars with the medical evidence. In our view, therefore, the acquittal recorded by the High Court on the aforesaid reasoning is perverse. The High Court discarded the eye witness account, branded them as inimical witnesses. This is not the requirement of law. The requirement of law is that the testimony of inimical witnesses has to be considered with caution. If otherwise the witnesses are true and reliable their testimony cannot be thrown out on the threshold by branding them as inimical witnesses. By not, it is well settled principle of law that enmity is a double edged sword. It can be a ground for false implication. It also can be a ground for assault. Therefore, a duty is cast upon the Court to examine the testimony of inimical witnesses with due caution and diligence. In the present case the High Court rejected the otherwise creditworthy testimony of eye-witness account merely on the ground that there was enmity between the prosecution party and the accused party.

8. In the present case the accused-Jagdish admitted that the offending rifle belongs to him. In fact he had made an attempt to make a report to the police that his rifle was being snatched away by the prosecution party. There is also no dispute that he was present at the place of occurrence with the rifle. It is also undisputed that the shot was fired from the said rifle which killed the deceased. The defence set up by the accused before the Trial Court, before the High Court and before this Court is that the fire went off accidentally when the prosecution party tried to snatch away the said rifle from his hands. Apart from this plea there is no evidence at all to substantiate his defence. It is the evidence on record that the rifle was snatched away by the informant after the fire was shot at the deceased. The statement of the informant - PW.10 is corroborated by other eye-witnesses including PW-8. The High Court also completely overlooked the testimony of PWs-8 and 10 with regard to the burning of electric light at the relevant time. Both the PWs 8 and 10 categorically stated that there was electric light burning at the relevant time in the lane and they could identify the accused by the electric light. The High Court has also overlooked the fact that the prosecution party and the accused party were not stranger to each other. They are from the same village and there would be no difficulty to identify them even otherwise.

9. The plea of accidental fire has been rejected by the trial court in paragraph 20 of the Judgment:

"The defence version of the occurrence has not been proved by producing the complaint petition said to have been filed by the accused Jagdish Rai. However, the defence version as is gathered from Ext. A/1 does not appear to be probable at all for the simple reason that it is neither supported by any evidence worth the name nor

from the facts and circumstances obtaining in the case. We have seen above that there is competent and satisfactory evidence of the prosecution towards proving the prosecution version of the occurrence. The defence version that when the accused Jagdish Rai was going along with his rifle, he was surrounded by the present prosecution witnesses and his rifle was snatched, does not appear to be probable also in view of the fact that no reasons have been assigned as to after all why the prosecution witnesses would have all on sudden surrounded him and snatched away his rifle. Then the defence version that in process of snatching away the rifle, the trigger of the rifle was pressed resulting in accidental fire causing injury to some person also, does not appear to be probable at all. The medical evidence regarding the nature of the injury also goes against the defence plea. Further, in view of the prosecution evidence discussed above, this defence version of accidental fire is rendered quite unbelievable in character and at no rate reliance can be placed on this. This defence plea seems to have been concocted with view to explain the seizure of the rifle from the possession of accused Jagdish Rai. We have seen above that there is positive evidence of the prosecution that the rifle in question was snatched away from the possession of the accused by witness Gana Rai and it was produced before, the I.O. It is difficult to believe the defence plea in view of this positive evidence of the prosecution."

10. We entirely agree with the reasoning recorded by the Trial Court. The plea of accidental fire in the face of positive evidence was inherently improbable and justly rejected.

11. The contention of the counsel for the respondent that the prosecution has failed to establish the motive is also untenable. When the prosecution evidence is so strong and positive, as in the present case, the motive becomes inconsequential.

12. The further contention of the counsel for the respondent that the offending rifle was not sent to the ballistic expert and thereby caused prejudice to the accused, is of no avail. As already noticed, the firing from the offending rifle was not disputed, albeit accidentally. Counsel also argued that there are certain discrepancies in the prosecution witnesses. Every discrepancy in the prosecution witness cannot be treated as fatal. The discrepancy which does not affect the prosecution case materially does not create infirmity.

13. In the result, the appeal against accused No.2 - Jagdish Singh Rai is allowed. The impugned order of the High Court under challenge is hereby set aside. The order of the Trial Court, dated 16.12.1986, regarding the conviction of accused No. 2 - Jagdish Singh Rai, under sections 302/148 IPC and under Section 27 of the Arms Act is restored.

14. The accused is on bail. His bail bonds shall stand cancelled. He is directed to be taken into custody forthwith.