

SUPREME COURT OF INDIA

Bikramaditya Singh

Vs.

State of Bihar

Crl.A.No.721 of 2004

(H. S. Bedi and Chandramauli Kumar Prasad JJ.)

06.10.2010

ORDER

1. This appeal arises from an order dated 26th August, 2003, passed by the High Court of Judicature at Patna in Criminal Appeal No. 477 of 1999, where by the conviction of the Appellant under Section 302/34 of the Indian Penal Code and sentence of imprisonment for life passed by the Third Additional Sessions Judge, Patna in Sessions Trial No. 549 of 1996 by order dated 4th October, 1999, has been upheld.

2. The prosecution commenced on the basis of a report given by informant Ramjee Singh (P.W. 4) before the Sub Inspector of Police on 9th August, 1985 at 9:15 p.m. in Vikram Government Hospital, Patna. According to the First Information Report, four years prior to the occurrence, the informant had purchased a house from one Ramanand Mistri which was adjacent to the house of accused Bali Ram Singh. The prosecution has alleged that the said accused Bali Ram Singh had demolished the wall of the purchased house and on 9th August, 1995, he had gone to the Rani Talab Police Station to lodge the report. While the informant was returning from the police station along with his brother Ashok Singh (deceased) and reached in front of the house of said Bali Ram Singh all the accused including the Appellant herein surrounded the deceased and the present Appellant is alleged to have exhorted to shoot them dead whereupon accused Bali Ram Singh fired from his pistol causing injury to the deceased Ashok Singh. Hearing the sound of shots, according to the prosecution, witnesses Kedar Singh (P.W. 1) and Lal Bahadur Singh (P.W. 3) came there and seeing them all the accused persons fled away from the place of occurrence. The injured Ashok Singh was brought on a cot to Vikram Government Hospital and was declared dead.

3. The police after usual investigation submitted the charge sheet and the Appellant was charged for commission of the offence under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act. The Appellant denied to have committed the offence, and claimed to be tried. Prosecution in order to bring home the charge altogether examined six witnesses out of which P.W. 1 - Kedar Singh, P.W. 2 - Shivendra Singh and P.W. 3 -Lal

Bahadur Singh claimed to be the eye witnesses to the occurrence. P.W. 5 Dr. Pramod Kumar Jha held the post mortem examination on the dead body of the deceased.

4. In the examination under Section 313 of the Code of Criminal Procedure, the Appellant besides pleading false implication has also pleaded alibi asserting that at the time of occurrence he was on duty as a night guard in the Commercial Taxes Office at Barh and in order to prove the same examined four witnesses.

5. The trial court on appraisal of the evidence came to the conclusion that the prosecution has been able to prove its case beyond all reasonable doubt and, accordingly, held the Appellant guilty under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act. Besides, the Appellant, two other persons namely, Bali Ram Singh and Ram Anuj Singh were also held guilty under Section 302/34 of the Indian Penal Code.

6. Aggrieved by their conviction and sentence all the aforesaid accused persons preferred separate appeals. All the appeals were taken up for consideration by the High Court together and by common judgment dated 26th August, 2003, the appeal preferred by Ram Anuj Singh was allowed and he was acquitted of all the charges. However, the appeal preferred by the Appellant herein was partly allowed and while maintaining his conviction and sentence under Section 302/34 of the Indian Penal Code, his conviction under Section 27 of the Arms Act set aside.

7. It is against the conviction and sentence under Section 302/34 of the Indian Penal Code that the Appellant has preferred this appeal by leave of the Court.

8. We have heard Mr. P.S. Mishra, the learned Senior Counsel for the Appellant and Mr. Chandan Kumar, the learned Counsel for the State of Bihar.

9. It has been contended by Mr. Mishra that the role attributed to the Appellant is that of an order giver which is not fit to be believed. He points out that according to the prosecution this Appellant was armed with a country made weapon but has not used the same. He submits that it is unbelievable that an accused armed with a weapon would have refrained from using the said weapon. Accordingly, he submits that the Appellant cannot be held guilty of offence under Section 302 of the Indian Penal Code with the aid of Section 34 thereof. In support of his submission, he has placed reliance on a judgment of this Court in the case of *Parshuram Singh v. State of Bihar*¹ and our attention has been drawn to paragraph 6 of the judgment which reads as follows:

“The role attributed to A-4 Parshruam Singh is that he had a pistol with him and he threatened the other persons who reached the scene. Here also, if A-4 Parshruam Singh had the common intention to murder the deceased, it is highly improbable that he would have refrained from using an inherently lethal weapon like the pistol which was in his possession. He would have threatened others from coming into the fray perhaps as a measure adopted by him to save them from receiving injuries.”

10. Mr. Chandan Kumar, learned Counsel for the State, however, submits that the Appellant having played a vital role, the High Court rightly upheld his conviction.

11. Having appreciated the rival submissions, we find substance in the submission of Mr. Mishra. The only role attributed to the Appellant is that he exhorted the accused persons to kill the deceased. It has come in the evidence of the eye witnesses that this Appellant was armed with country made weapon but its use by him has been disbelieved and his conviction under Section 27 of the Arms Act has been set aside. According to the prosecution, the Appellant was armed with a country made weapon. Prosecution has been unable to prove that the said Appellant has used the same. In our opinion, it is highly improbable that the Appellant would have refrained himself from using the lethal weapon which was in his possession. We are of the opinion that the prosecution has not been able to prove beyond all reasonable doubt the role attributed to the Appellant and he is entitled to be given the benefit thereof.

12. In the result, we allow the appeal, set aside the judgment and order of conviction and sentence of the Appellant. He is on bail. His bail-bonds stand discharged.