

Ramanand Singh @ Ram Nandan Singh Vs The State of Bihar

Court: Patna High Court

Date of Decision: July 23, 2012

Acts Referred: Penal Code, 1860 (IPC) â€” Section 302, 435, 84

Citation: (2012) 4 PLJR 385

Hon'ble Judges: Vikash Jain, J; Shiva Kirti Singh, J

Bench: Division Bench

Advocate: Vindhya Keshri Kumar, Surya Bhushan Prasad Singh and Neeraj Kumar @ Sanidh, for the Appellant; Dilip Kumar Sinha, for the Respondent

Final Decision: Dismissed

Judgement

Shiva Kirti Singh & Vikash Jain, JJ.

The sole appellant has been convicted for offence u/s 302 of the Indian Penal Code and sentenced to

undergo rigorous imprisonment for life by the judgment and order under appeal dated 12.9.1989 passed by learned 4th Additional District and

Sessions Judge, Nalanda at Bihar Sharif in Sessions Trial No. 53/7 of 1983/83. The prosecution case is based upon fardbeyan of Laldeo Singh a

co-villager of the appellant recorded at 7.45 P.M. by S.I., K.M. Thakur of Telhara O.P. within Ekangar Sarai Police Station, District-Nalanda, on

the date of occurrence i.e. 20.3.1982. According to the fardbeyan, at about 6 P.M. the informant had returned after attending the call of nature

and was washing his mouth at the well of one Banwari Singh. His mother Sampatia Devi was carrying milk in a Katora (metal bowl) from the

house of one Mithu Das and was returning to her house. When she was in a Gali in front of house of the appellant then the latter came out of his

house with a Pasli in his hand. He caught informant's mother by her hair, pulled her towards Gohal and after felling her on the ground he cut her

neck with the Pasli. On hulla raised by the informant his son Surendra Sharma (P.W. 4) and some other persons such as Kailash Singh (P.W. 1)

and Banwari Singh (P.W. 5) came running and saw the appellant. When the accused saw others coming, alongwith his Pasli he fled away towards

north. Informant's mother died instantaneously due to cutting of the neck. Thereafter, the informant alongwith the local Dafadar, Hanuman Singh

went to the O.P. for giving his beyan. According to the fardbeyan the accused committed the murder of informant's mother because sometimes he

used to fall ill and had a suspicion that informant's mother was a witch and she was responsible for causing his illness by witchcraft. On the basis of

fardbeyan (Ext.-4) formal F.I.R. (Ext.-5) was recorded on the date of occurrence itself at 11 P.M. and was sent to the court of learned Sub-

divisional Judicial Magistrate, Hilsa and the same was perused by the learned S.D.J.M. on 21.3.1982.

2. The case was investigated by S.I. of Police Kashi Nath Thakur (P.W. 7). He visited the place of occurrence on 20.3.1982 at 9 P.M. and

prepared the inquest report (Ext.-6). The report shows cut injury on the neck of the deceased. The post mortem examination was conducted by

Dr. Atma Nand Kumar (P.W. 6) on 21.3.1982 at 10.45 A.M. Besides three incised injuries on the chin and near the mouth area he found the

neck cut by a clean incised wound running round the neck from below the hair line on right side below the angle of mandible cutting the vessels and

nerves on right side body of second vertebra and spinal cord 6" x 1 1/2" x 3". In the opinion of the doctor death was caused due to injury on neck

leading to shock and hemorrhage. The injury was caused by sharp cutting weapon such as Pasuli. Time elapsed since death was within 24 hours.

Post mortem report is Ext.-3.

3. After arresting the accused on 1.7.1982, the I.O. submitted charge-sheet on 2.7.1982. After cognizance the case was committed to the Court

of Sessions on 3.3.1983. Charge was framed u/s 302 of the I.P.C. on 28.11.1985 and on denial of the charge by the accused, he was put on trial

leading to his conviction as noted earlier. The trend of cross-examination suggests that a defence was sought to be taken that the victim lady was

suspected to be a witch and for that she might have been killed by some other persons. Besides the plea of false implication another plea appears

to be of insanity at the time of occurrence to claim benefit of Section 84 of the Indian Penal Code.

4. In course of trial the prosecution has examined and relied upon three witnesses namely Kailash Singh (P.W. 1), Laldeo Singh, informant (P.W.

2) and Surendra Sharma (P.W. 4) son of the informant. P.W. 3, Brahamdeo Singh is a formal witness and P.W. 5, Banwari Singh is a witness

who turned hostile. The remaining two witnesses are P.W. 6, Dr. Atmanand Kumar and P.W. 7 the Investigating Officer. The defence has also

examined Yogendra Prasad as D.W. 1 brother-in-law (wife brother) of the accused in order to prove the plea of insanity.

5. The presence of all the three witnesses i.e. P.Ws. 1, 2 and 4 at around the time of occurrence is indicated in the fardbeyan itself. P.W. 1 has

claimed to be sitting in his bungalow at about 6 in the evening of 20.3.1982. The house of the accused is situated adjacent to his house. This witness

saw the deceased lady coming with milk in a Katora. The informant P.W. 2 was washing his mouth at the well of Banwari Singh situated nearby.

When the deceased reached near the Gosala in front of the bungalow the accused came there with Pasuli in his hand. He caught her by her hair and

pulled her. She fell down and then the accused cut her neck with Pasuli and she died instantaneously. The accused ran away towards north. This

witness has disclosed that deceased was his brother's wife and there were no complaint against her during her lifetime nor she was considered to

be a witch by villagers. He has also deposed that the accused is Gotia and by that relationship his brother. He has also given the distance of houses

of different persons from the place of occurrence and from his, house. He has disclosed that the accused is joint with his brother Parma who has

grown up children and the children of accused are minor. He has denied the suggestion that on account of death of some persons in his family i.e.

mother, father and sister the accused had become insane (pagal). He has also denied that he was sent to Kanke Hospital. He was ignorant whether

the accused had gone to Ranchi for treatment after the occurrence or not. He has denied that he wanted to have the house of the accused for

expanding his own house.

6. P.W. 2, the informant is son of the deceased. He has fully supported his version in the fardbeyan. He has put his signature on the fardbeyan.

Nothing material has been elicited in his cross-examination. He has admitted that at the time when the assault was started upon the deceased only

he and P.W. 1, Kailash Singh were present but Kailash being an old man could not do anything to save his brother's wife. He also failed to muster

courage to save the deceased. According to him his son Surendra Sharma (P.W. 4) came on hulla and at that time the accused was in the process

of cutting the neck of the deceased. He also denied the suggestion that accused is insane and not capable of taking care of his own body. He had

no knowledge about treatment of the accused in Ranchi Mental Hospital. He denied the suggestion that he had falsely implicated the accused at the

instance of Kailash Singh or that the deceased has been killed some where else. He also denied the suggestion that there was complaint that the

deceased was a witch.

7. P.W. 4, Surendra Sharma is the son of the informant and grandson of the deceased. He has also supported the prosecution case by claiming

that on hearing hulla he ran and Coming out on the road (gali) he saw the accused cutting the neck of the deceased with Pasli and according to him

he gave a chase but could not catch the accused who threatened him by showing Pasli.

8. So far as the place of occurrence is concerned the evidence of the aforesaid three witnesses and that of the I.O. (P.W. 7) clearly support the

prosecution case. The I.O. visited the place of occurrence where he found the dead body lying there. He found and seized some blood-stained

earth and an aluminium bowl (katora) from there. The time of occurrence is amply supported by the time of recording of the fardbeyan soon after

the occurrence, visit of the I.O. to the place of occurrence as well as from the ocular statement of P.Ws. 1 and 2. No doubt in the deposition of

P.W. 4 the time of occurrence has been recorded as 8 O'clock in the evening but that appears to be a slip of pen or tongue because by any

standard 8 O'clock cannot be described as evening hour, especially in villages. Hence, the time and date of occurrence are also fully established

by the prosecution.

9. So far as the manner of occurrence is concerned, all the aforesaid eye witnesses have given consistent account in support of the prosecution

case in the fardbeyan. Although P.W. 1 has admitted to be the uncle of the informant by claiming that deceased was his Bhabhi but he has a house

separate from that of the informant as is evident from distance of their houses taken from P.W. 1 in cross-examination. P.W. 2 is son of the

deceased and P.W. 4 is son of P.W. 2. They may be criticised as relation witnesses but they cannot be said to be interested witnesses because

there is no material to indicate enmity between them and the accused rather being relations of the deceased they are expected to be truthful and

cannot be expected to implicate an innocent person and spare the real killer except for some very compelling reasons. Even if their deposition is

examined with care and caution because they are related to the accused, there is no material to disbelieve their testimony.

10. The medical evidence available on record, the Post Mortem Report and the deposition of the doctor, P.W. 6, clearly support the manner of

the occurrence as contained in the earliest version, the fardbeyan.

11. On proper consideration of the entire evidence and materials on record, we find ourselves in agreement with the findings of the learned trial

court that the accused i.e. the appellant caused death of the deceased by cutting her neck with Pasuli at the time and place alleged by the

prosecution.

12. However, the other defence of the appellant on the basis of sanity remains to be examined. As noticed earlier D.W. 1, Yogendra Prasad has

been examined in support of this plea. He is president of another Village-Maghra, P.S.-Deepnagar and claims to be in service at Bihar under

police station Bihar (Nalanda). He has admitted that he is brother of appellant's wife. He has come to depose that appellant has remained in poor

health. According to him he is insane since 8 or 9 years. The reason for the same is given out as death of his mother, father and one sister within

one year. He has claimed that accused was initially treated by some Ojha and then by a doctor Ram Chandra Prasad who practises at Telhara and

has examined the accused on 28.12.1981. A prescription of that doctor has been proved as Exhibit-A. Prescriptions of another doctor, Divakar

Prasad dated 4.2.1982 and 5.3.1982 have been proved as Exhibits-A/1 and A/2. He has further deposed that since the accused did not recover,

therefore, he was taken to Ranchi Mental Hospital and shown there. No records of treatment at Ranchi Mental Hospital have been brought on

record except a small slip (Ext.-C) which shows that a doctor of Sadar Hospital, Bihar Sharif referred the appellant to Kanke Mental Hospital on

29.7.1982. A money receipt and some information from Mental Hospital, Kanke are also available on record but they have not been exhibited. As

per evidence the accused was treated at Kanke Hospital for some time but the nature of his ailment and treatment are not available. Exhibit-A, the

prescription of Dr. Ram Chandra Prasad dated 28.12.1981 shows that he was treated for depression and dysentery. The prescriptions of Dr.

Vidya Dhar Prasad dated 1.2.82 and 5.3.1982 also do not disclose his ailment. None of these doctors or the doctors of Mental Hospital, Kanke,

Ranchi have been examined to throw light regarding the alleged mental illness of the appellant.

13. So far as deposition of D.W. 1 is concerned, it is not in dispute that he is related to the appellant and interested in supporting the defence.

Except a general statement that accused was not keeping good health, he has not given details as to what behaviour of the accused created the

impression that he was insane. He has only given his opinion that the accused was insane. As a layman he was not entitled to give such opinion and

at best he could have given evidence of behaviour of the accused and on that basis court could have formed its opinion regarding the mental health

of the accused prior to the occurrence.

14. Learned counsel for the appellant has placed reliance upon two judgments of the Supreme Court reported in Ratan Lal Vs. The State of

Madhya Pradesh, and Shrikant Anandrao Bhosale Vs. State of Maharashtra, . On the basis of judgment in the case of Ratan Lal (supra) it was

submitted that even if the accused on account of poverty is unable to examine a doctor, other evidence on record and circumstances showing

mental health of the accused earlier to the occurrence and after the occurrence can be considered by the Court for appreciating the plea of

unsoundness of mind available u/s 84 of the Indian Penal Code. In that case the Supreme Court reiterated the law that the crucial point of time at

which unsoundness of mind should be established is the time when the crime is actually committed and the burden of proving this lies on the

accused. It was, however, clarified that there is a rebuttable presumption that the accused was not insane when he committed the crime and the

accused may rebut such presumption by placing before the court all the relevant evidence oral, documentary or circumstantial. It was further

clarified that the burden of proof upon the accused is no higher than that which rests upon a party to a civil proceeding. After noticing the law as

indicated above, in that case the court found that there was no good reason to disbelieve the defence witness who had deposed that since prior to

the occurrence the accused was in such a condition that if he was sitting he remained sitting for long and if he wished to fall in the river then he

actually did fall. His condition since last 2-3 years was such that he set fire to his own house. On the date of incident also the accused had not

allowed anybody to enter his house and by putting a lock he prevented his children to take their food in the house. He did not talk to anybody. He

had been taken to Bhopal for treatment of his mind. Materials on record showed that prior to the setting of fire to grass belonging to the

complainant, involving an offence u/s 435 of the I.P.C., the accused was referred to Civil Hospital for observation and treatment and as per

medical report, soon after the occurrence it was noted that he remained alone and did not talk, was a case of mental depression and psychosis and

needed treatment. The manner of the occurrence showed that after setting the grass on fire the accused had remained present in the Khalihan

throughout and did not try to run away. Thus, in the peculiar facts of the case the court found the accused of that case to be entitled to protection

of Section 84 of the Indian Penal Code.

15. In the case of Ratan Lal vs. State of M.P. (supra) the same principle of law was enunciated in the context of Section 84 of the Indian Penal

Code. After clarifying the law and noticing the nature of the burden required to be discharged by the accused to get the benefit of Section 84 of the

I.P.C., on the basis of evidence adduced the relevant facts and circumstances were noted under seven distinct heads in paragraph-19 of the

judgment of the Apex Court. On that basis the Court held that the accused of that case was entitled to the benefit of Section 84 of the I.P.C. The

seven circumstances which were found proved in that case indicated that the accused had family history of psychiatric illness; according to the

medical jurisprudence when the cause of ailment was not known, heredity would play a part; the accused was being treated for unsoundness of

mind since two years before the alleged occurrence and had already been diagnosed as suffering from paranoid schizophrenia; soon after the

occurrence he was taken for treatment of his ailment 25 times to hospital; he had been under regular treatment for mental ailment; there was hardly

any motive for him to kill his wife and after committing the murder in daylight the accused made no attempt to hide or run away. Facts of the

present case are quite different. So far as the case of this appellant is concerned, in the fardbeyan itself the prosecution disclosed that after the

occurrence the appellant ran away with the weapon. The fardbeyan also discloses a motive that the appellant suspected the deceased to be witch.

The injuries on the deceased show a determined assault made to cause death. The medical prescriptions i.e. Exts.-A and A/1 have already been

discussed earlier. They do not show that the doctor had treated him for any mental illness. The appellant was never hospitalized for treatment of

mental ailment any time before the occurrence. As per submission, if he was arrested on 4.7.1982 i.e. after a more than three months of the

occurrence, it shows that he had full power of comprehending the effect of the crime committed by him and could manipulate to avoid arrest by

absconding for more than three months. There is no evidence to show that he was in need of or availed medical treatment during this period. When

the stage of framing of charge reached after the case was committed to the Court of Sessions in March, 1983, for the first time an application for

provisional bail was filed on behalf of the appellant on 22.7.1983 by his wife and therein the plea of mental ailment was raised. The Civil Surgeon

submitted no report disclosing the mental ailment of the appellant and he was simply referred to Kanke on 29.7.1993. The treatment records of

Mental Hospital at Kanke, Ranchi have not been proved nor any medical expert has been examined to disclose to the Court the nature of the

ailment and whether such ailment could have been existing on the date of occurrence i.e. 20.3.1982.

16. So far as D.W. 1 is concerned, he does not inspire confidence not only because he lived elsewhere separately, and is related and interested

witness but because he has not given any details of what kind of abnormal behaviour of the appellant induced him to believe that the appellant

suffers from mental disorder. Further, the wife of the appellant or his children had better opportunity to depose about his behaviour but they have

not been examined. Hence, considering the entire facts and circumstances, in our considered view the appellant has failed to discharge the burden

of establishing necessary facts and circumstances to create a reasonable doubt that he might have been suffering from such mental disorder at the

time of occurrence which rendered him incapable of knowing the nature of his act or that he was doing something wrong or contrary to law. In this

case the defence had questioned P.W. 1 and P.W. 2 regarding mental illness of the appellant but they categorically denied the defence suggestion.

Admittedly, these witnesses had no enmity with the appellant and P.W. 1 has disclosed that he is Gotia and by that relation a brother of the

appellant. In the facts of the case, we find no merit in this appeal. The same is accordingly dismissed. Since, the appellant is on bail, his bail bonds

are cancelled. He shall be taken into custody to serve out the remaining sentence in accordance with law.