

(2003) 09 PAT CK 0125

Patna High Court

Case No: Criminal Appeal (DB) No. 349 of 1999

Shyamdeo Singh and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision: Sept. 5, 2003

Acts Referred:

- Arms Act, 1959 - Section 27
- Penal Code, 1860 (IPC) - Section 302, 34

Citation: (2006) 3 PLJR 325

Hon'ble Judges: S.N. Jha, J; B.N.P. Singh, J

Bench: Division Bench

Advocate: Brij Nandan Prasad and Janki Nandan Prasad, for the Appellant; Lala Kailash Bihari Prasad, for the Respondent

Final Decision: Dismissed

Judgement

B.N.P. Singh, J.

Deceased Savitri Devi and appellant Shyamdeo Singh, father of appellant Pappu Singh were agnates. Land disputes had been persisting between parties, for which evidences do suggest that litigations pending in the Court were sub-judice. Narrations of material facts of the case in brief, would be essential to consider the contentions raised. As Shyamdeo Singh had uprooted musoor crop from the field of Savitri Devi, she had been to his house when she questioned him for his acts, moreso when a title suit with respect to the land was yet sub-judice before the Court. Pappu Singh, son of Shyamdeo Singh and brother-in-law of Pappu Singh, namely, Sunil Singh, who happens to be other appellant, allegedly came there and abused her. It was, however, Shyamdeo Singh, who set the ball in motion, as on his exhortation, both Pappu Singh and brother-in-law fired shots on him. Allegedly, while shots fired by Pappu Singh had hit chest of Savitri Devi, who dropped injured, his brother-in-law fired successive shots behind the ear of the injured. The injured eventually succumbed to the injuries and one who took recourse to public authority

and set the criminal law in motion happens to be son of the deceased. Fardbeyan was recorded by Police at 11 hours on 23rd March, 1997 at village Tetri. As usual investigation commenced, in course of which, Police Officer, who took up investigation, recorded statement of witnesses, visited place of occurrence, noticed blood stains there, prepared inquest report over the dead body of the deceased, got autopsy held over the dead body of Savitri Devi, and on conclusion of investigation, laid charge-sheet before the Court. At trial, that followed, prosecution sought to establish guilt of the appellants with the aid of evidence of ten witnesses who happen to be family members of the deceased, neighbours, other witnesses who came from other village, the doctor and also the Police Officer.

2. Defence of the appellants was that since Savitri Devi was associated with many political organizations, she was killed by persons hostile to her some where else and her dead body had been dropped at the place of occurrence for implicating the appellants for no good reason. Some sort of plea of alibi had also been raised during trial on behalf of the appellants. However, defence had not chosen to examine any witness to counter accusation attributed to them and to give strength to their defence including that of alibi.

3. The trial court having given due consideration to the testimony of witnesses, some of whom had claimed to be ocular, and considering intrinsic value of the testimony, while negating plea of innocence of the appellants, recorded finding of guilt against the appellants u/s 302/34 of the Indian Penal Code (IPC) and sentenced them to suffer rigorous imprisonment for life. Though Pappu Singh and Anil Singh alias Sunil Singh also suffered conviction u/s 27 of the Arms Act, the trial court had not chosen to award sentence on that count to them.

4. The fact that all material witnesses were family members of the deceased was one of the submissions made by the counsel appearing for the appellants. However, regard being had to the fact that they happen to be neighbours, and also that presence of some of them at the place of occurrence, appears to be quite probable, there did not appear to be good reason to discard testimony of these witnesses who appear to be truthful and credible. Submissions were also made to the effect that parties were agnates and land dispute too had been persisting between them and in that backdrop false implication of the appellants was not a remote possibility and on this score, we find that what is required is closer scrutiny of testimony of witnesses with utmost care and caution, and trial court had taken pains to scrutinize evidences keeping well in mind the guidelines for testing testimony of witnesses, some of whom were interested, with the affairs of the prosecution.

5. Those who claim to be ocular witnesses to the killing of Savitri Devi by Pappu Singh and Anil Singh alias Sunil Singh, happen to be Arvind Kumar (P.W. 4), Parvati Devi (P.W. 7), Madhuri Devi (P.W. 8) and Satya Narain Singh (P.W. 9). Since narrations made by these witnesses have been fairly spelt out in the judgment of the court below, we wish to discuss them with brevity to consider their reliability and

credibility and also to judge the circumstances which brought them at the place of occurrence at the material time of incident.

6. We can begin our exercise with analysis of evidence of Arvind Kumar (P.W. 4). Though the witness hails from village Nandpura where Savitri Devi has her parents, village Nandpura is only at a distance of three miles from village Tetri, the place of occurrence. The witness had been to the house of his sister only on the day of incident and on his own showing his statement was recorded by the Police Officer at the place of occurrence itself. However, presence of this witness at the place of occurrence was not expressly questioned at trial and regard being had to the insignificant distance between two villages and emphatic assertion made by this witness to be at house of his sister on the day of incident, presence of this witness appears to be quite probable, making him ocular witness to the incident. Parvati Devi (P.W. 7) resides in the neighbour of the deceased and she too claims to have witnessed killing of Savitri Devi by two appellants on exhortation made by father of Pappu Singh. Though this witness did not have cordial relation with the deceased, as it would appear from acknowledgment made by her at trial, yet she was a witness in the matter of killing of the deceased and that too seems to be good ground for reliability of this witness. Madhuri Devi (P.W. 8) too resides there and she too claimed to have witnessed Shyamdeo Singh indulged in altercation with the deceased which followed her killing, on exhortation made by said Shyamdeo Singh by Pappu Singh and Sunil Singh. In view of this witness being neighbour and no such question having been put to her which could impair her credibility, she too appears to be credible. We may take notice of the evidence of Satyendra Singh alias Naga Singh (P.W. 2) also, who happens to be the husband of Parvati Devi (P.W. 7) and for the reasons assigned in case of Parvati Devi, presence of this witness too by virtue of her being neighbour of the deceased could not possibly be questioned. Similar was the case with Satya Narain Singh (P.W. 9) also who claimed to have witnessed wordy duel between deceased Savitri Devi and Shyamdeo Singh and the later reprimanding the former for removing crop from the field, notwithstanding pendency of title suit in the Court. Then on exhortation of his father, namely, Shyamdeo Singh, Pappu Singh and Sunil Singh resorted to successive firings causing injury on temporal region and also behind ear of Savitri Devi who dropped dead. Though Chandrika Sharma (P.W. 3) had knowledge of death of Savitri Devi, but he could not know cause of death, and as for Uday Kumar (P.W. 6), contention raised on behalf of the State is that though he was a witness before the Police with knowledge of names of the assailants of the deceased, he turned volte face to the State at trial. Though his attention had been drawn by the State to impeach his credibility when the Investigating Officer was in the dock, no question was ever put to him about this witness not making parallel statement before him during investigation.

7. Though Dr. Ansur Kumar Yadav (P.W. 5) held autopsy over the dead body of the deceased at 3.30 p.m. on 23rd March, 1997 when he noticed rigor mortis in the leg. The doctor found two firearm injuries on the deceased lady, one near right ear and

the other near eye. He also recovered 15 pieces of pellets from injury, near eye. As for nature of injuries, the doctor was of the opinion that it was grievous, danger to life and also ante mortem.

8. Though first hand information about incident was received by Mudrika Prasad, the Investigating Officer (P.W. 10) from chowkidar, however, the names of assailants had not been disclosed to him by the messenger. The Police Officer shortly on receipt of information about incident in village Tetri and also on recording sanha entry in the Police record, visited village Tetri where fardbeyan of Arun Kumar was recorded by him at 11 hours on 23rd March, 1997. The fardbeyan was sent to the Police Station for instituting a case and drawl of the first information report. He prepared inquest report over the dead body of the deceased and noticed dead body of Savitri Devi with copious blood at the place of occurrence.

9. Learned counsel seeks to highlight seeming inconsistencies in the prosecution version and drawing our attention, it is submitted that since occurrence took place at 7 a.m., the doctor who held autopsy over the dead body of the deceased at 3.30 p.m. had noticed that rigor mortis had appeared only in legs and that feature appearing on the dead body of the deceased would belie the prosecution version about death of the deceased at 7 a.m. in the morning, as by that time rigor mortis was expected to have developed in all the limbs and to buttress his argument, learned counsel would urge that it was quite consistent with the defence of the appellants that the deceased who was associated with many political organizations was killed much later some where by persons, hostile to her. Though this argument appears to be attractive, was bereft of value as it is well known that rigor mortis which are post mortem changes in the dead body was of slightest use in estimating time since death, since its lack of accuracy is so great as to make it only a check on other calculations of the time of death, notably from the temperature. We may profitably quote the view of H.M.V. Cox who is of the view that rigor mortis appears quite quickly in case of those who are under great physical strains before death, and that apart, speed of on set of rigor mortis is very much variable, and depends upon a number of factors. In average condition, in temperate climates, though not in India, stiffening of muscles usually begins to appear after 2-5 hours of death which is fully established in 8-12 hours. However, in case of India, such rigor mortis are not visible normally within two hours. We do not have any evidence about physical built of the deceased and as such merely appearance of rigor mortis on the legs after 8 hours of death of the deceased would not make time of death of the deceased inconsistent with the prosecution version.

10. Contentions are raised, which appears to us feeble, that though the Police Officer stated to have noticed blood stains on the place of occurrence, neither there was any document about seizure of blood stained earth by the Police Officer nor there was any report of the chemical examiner and hence the court is yet to gauge as to whether the blood noticed, was human blood and on this score too we may

negate contention, as this flaw, even if it be so, is not a serious flaw to constitute infirmity in the investigation made by the Police Officer. If there are lapses on part of the investigating Officer, even then fairness of investigation was not impaired on that count. Though majority of witnesses who claimed to be ocular were either family members of the deceased or neighbours, there appears to be good cause for others to be not witness of the incident. As was stated by Madhuri Devi neighbour of the deceased, that though a large number of persons had flocked to the place of occurrence from the village, they happened to come there only after the incident was over, and that seems to be a good excuse for other villagers being not ocular witness to the killing of the deceased.

11. Ocular testimony of the witnesses who testified their presence at the place of occurrence during incident witnessing killing of Savitri Devi gets amply corroborated from positive findings of the doctor also and hence he have no doubt about homicidal death of Savitri Devi, for which express accusations are attributed to the appellants. Though Anil Singh alias Sunil Singh did not hail from village Tetri, there has been no evidence on the record that the family members of the deceased had any animus with him to falsely implicate him in the incident, as has been noticed, the evidences suggest that both Pappu Singh and Anil Singh alias Sunil Singh had resorted to firing in quick succession causing injuries on vital part of Savitri Devi who instantaneously dropped dead. Though Shyamdeo Singh was not killer of the deceased but it was he who set the ball motion exhorting the assailants to kill the deceased and he too was vicariously liable for accusation attributed to the assailants which makes him answerable for conviction u/s 302/34IPC. Considering nature of evidences that we have come across, we are of the view that finding recorded by the court below was on due appreciation of them leaving no scope for interference. Finding of guilt as well as sentence recorded by the court below are accordingly upheld and the appeal being meritless is accordingly dismissed. Since Shyamdeo Singh is on bail, his bail bonds are cancelled and it is directed that trial court shall take all coercive steps for his apprehension and to consign him to custody to serve out the remainder of sentence.

S.N. Jha, J.

I agree.