
Sunil Singh and Another Vs The State of Bihar

Criminal Appeal (SJ) No. 93 of 1992

Court: Patna High Court

Date of Decision: Sept. 16, 2004

Acts Referred:

Arms Act, 1959 " Section 27#Penal Code, 1860 (IPC) " Section 307, 34, 452

Citation: (2005) 3 PLJR 43

Hon'ble Judges: Chandra Mohan Prasad, J

Bench: Single Bench

Advocate: Surendra Kumar Singh, Prabhat Kumar Singh and Anirudh Kumar Singh, for the Appellant; Surya Deo Yadav and Gopesh Kumar, for the Respondent

Final Decision: Allowed

Judgement

C.M. Prasad, J.

The appeal is directed against the judgment dated 26th May 1992 of the 4th Additional Sessions Judge, Nawada passed

in S.T. No. 71 of 1991/20 of 1989 whereby appellant Sunil Singh has been convicted u/s 307 read with Section 34 and 452 of the Indian Penal

Code and also u/s 27 of the Arms Act and respectively sentenced to undergo rigorous imprisonment for seven years, rigorous imprisonment for six

months and rigorous imprisonment for one year. Another appellant Anil Singh has been convicted u/s 307 read with Section 34 and 452 of the

Indian Penal Code and respectively sentenced to undergo rigorous imprisonment for seven years and rigorous imprisonment for six months. The

fard-beyan of the informant Ram Rachha Pandey (PW3) was recorded by S.I. Ashok Kumar Singh, Officer Incharge, Hasua Police Station on

14th November 1987 at 4:30 AM. At Hasua Hospital where he (the informant) was lying in injured condition. The prosecution case, as unfolded

in the fard-beyan of the informant is that in the preceding night at about 12:10 AM., while the informant alongwith Arjun Pandey (PW1) and

Awadh Pandey (PW5) was sleeping in the room of the house, they felt that somebody was knocking the door from outside. He (the informant)

enquired as to who he was but immediately thereafter the door was thrashed from outside as a result of which the door broke and fell down inside

the room. The informant and P. Ws. 1 & 5 woke up and, in the mean time, two persons entered into the house and started assaulting them with

Lathi. They captured their Lathi and snatched it. Then one of the culprits fired shot which hit the informant on his left leg and left hand and PW.5

also received injury. In the mean time, Awadh Pandey (PW 5) who was behind the informant, flashed torch light from behind. The torch light fell

on the face of the criminals and in that light the informant identified appellants Sunil Singh and Anil Singh and two unknown persons were also there

and all of them fled away after the occurrence. About the cause of occurrence it was stated in the fard-beyan that the informant had purchased a

piece of land from one Barhan Koiri and that north of that land, land of Kameshwar Koiri situated. A rumour floated in the village, that the

informant was trying to purchase that land and that one Binda Singh of the village had prohibited the informant from purchasing the land and hence

the informant suspected that those persons got the occurrence done by the appellants and others.

2. As many as seven witnesses were examined by the prosecution. PW3 Ram Rachha Pandey is the informant himself. PW1 Arjun Pandey is the

brother of the informant and PW5 Awadh Pandey is the Sarhu of PW1. These three witnesses are said to be the eye witnesses to the occurrence.

PW2 Dr. Kishnaballabh Prasad had examined the injuries on P. Ws. 1 and 3. PW4 Raj Kumar Singh is a formal witness who had produced the

two Lathis and one Gamchha seized by the I.O. from the P.O. These three articles have been marked as Material Ext-I to Ext-I/1 and Ext-I/2.

P.W.7 Ramanand Prasad Sinha is also a formal witness who has proved the F.I.R. marked Ext/5. P.W.6 Ashok Kumar Singh is the I.O. of this

case.

3. P.W.3 (the informant) deposed that in the night of occurrence he, alongwith PWs. 1 and P.W.5 was sleeping in the room of his house. He heard

that somebody forcibly thrashed the door from the outside. Hearing this, he and P.W.1 tried to hold the door supporting it from inside but the door

broke and fell inside the room. Thereafter the two appellants started assaulting with Lathi as a result of which P.W.1 received injury on his left

armpit. He said that one Dhibri was also lightening in the room but it fell down and broke at that time. He further says that at the time of occurrence

P.W.5 had flashed torch light from behind and in that light, he identified the two appellants. He further says that the appellant Sunil had fired a shot

causing injury on his left thigh and right hand finger and that the right hand wrist of his brother (P.W.1) also received injury due to the fire shot. The

informant has stated about the cause of occurrence as he had stated in the fard-beyan.

4. P.W.1 who is an eye witness deposed on the similar lines of P.W.1. He also claimed the identification of the appellants in the light flashed by his

Sarhu Swadh Pandey (P.W.5). At Para-14 of his cross-examination he deposed that the torch light was of three cells.

5. P.W.5 who is also an eye witness deposed on similar lines as PWs. 1 and 3. He deposed that on being thrashed from outside the door had

broken and fallen down. He also deposed that he had flashed torch light and, in the meantime, a shot was fired as a result of which PWs. 1 and 3

received injuries. At Para-9 of his deposition he deposed that he had not identified as to who of the criminals had fired the shot. At Para-13 he

deposed that the torch which he had flashed belonged to the informant and he had flashed it since it was lying on his bed. At para-14 he deposed

that the Dhibri lying in the room had broken and hence put off at the time of occurrence. He also deposed at Para-16 that he had not seen as to

from which kind of firearm the shot had been fired.

6. P.W.2 Dr. Krishnaballabh Prasad is the doctor who had examined the injuries on Arjun Pandey (P.W.1) and found the following injuries on his

person :

1. One pea-size rounded pillet mark with burnt margin-bleeding wound on right base of middle finger, one in number on palmer portion of right

index finger one in number on left dorsum of palm caused by firearm. Nature of injury preserved till X-ray.

2. Abrasion-2""x1/2""x1/4"" on left lower chest with contusions caused by hard blunt object like Lathi. Opinion preserved till X-ray. Age of injury

within 12 hours.

He further deposed that after obtaining opinion the injuries were found to be simple.

The doctor further examined Ram Rachha Pandey (P.W.3) and found the following injuries on his person:--

1. Multiple pea-sized circular pillet mark with burnt margin-bleeding wound on left thigh, left knee joint and left upper leg, left forearm, left elbow

joint and right ring finger, right wrist joint-caused by firearm.

Opinion reserved till X-ray. After X-ray it was opined to be simple in nature.

Age of injury within 12 hours.

7. The I.O. (P.W.6) deposed that he had recorded the fard-beyan in Hasua Hospital at 4:30 AM. On 14th November 1987. The fard-beyan is

marked Ext.-4. He further deposed that he had sent the fardbeyan for recording of the F.I.R. He also deposed that he issued requisition for the

examination of the injuries on the injured. He further deposed that he inspected the place of occurrence. He stated that he found some pieces of

clothes scattered in the room and he also found one stick (Bamboo Lathi) and blood soaked Gamchha. He seized the same which have been

marked Exts-I. 1/1 and I/2. At Para-16 of his cross-examination he stated about Janardan Pandey, Chhotu Pandey and Uma Pandey saying that

their houses situated in the boundary of the P.O. house. At Para-20 of his cross-examination, he deposed that he had also conducted a search of

the house of the appellants but nothing incriminating was found there.

8. During argument, learned counsel for the appellants assailed the case of prosecution on two counts. Firstly, it was argued that in this case PWs.

1, 3 and 5 who are all relations and inmates of the house have been examined by the prosecution and that none of the villagers had come to

support this as independent witness. The claim of identification of the appellant was also challenged on the ground that the means of identification

i.e. torch light was neither seized by Police nor produced in court.

9. The learned counsel for the appellants referred to the evidence of P.W.1 at Para-1 where he stated that during the occurrence, he and the

others in the room had raised hulla as result of which the villagers had assembled and then the accused persons fled away. Learned counsel argued

that P.W.1 admits that several villagers had come during the occurrence but the prosecution has not examined any of them to support PWs. 1, 3

and 5 who all are members of the same family and interested, witnesses. The prosecution has no explanation for the non-examination of the

villagers. The learned A.P.P. submitted that now-a-days people in general avoid giving evidence in criminal cases in order to escape the

displeasure of the accused persons but only this much is not the sufficient explanation. When several persons are said to have assembled

examination of some of the persons as independent witness is expected to find corroboration to the evidence of the other witnesses who are all

family members.

10. In this case, the identification of the appellants is claimed in the light of torch flashed by P.W.5. Learned counsel for the appellants submits that

the identification is claimed in moments when the torch light was flashed during the occurrence. It was also argued that the I.O. visited the P.O. and

he found several things like-Lathi, which was used as weapon of assault and which had been snatched by P.Ws. 1 and 3 and he also found blood

stained Gamchha which was seized but the I.O. does not say anywhere that he had seen any torch light there. Any kind of torch has also not been

seized by the I.O. nor it was produced before the trial court. Learned counsel for the appellants says that the very presence of torch light is

doubtful and therefore, a reasonable doubt is entertained over the claim of P.Ws. 1, 3 and 5 that they had identified the criminals in torch light. The

learned counsel preferred to the decision of this Court in the case of Mangal Singh vs. State of Bihar reported in 1990 PLJR 755. In that case, the

torch light which was the only means of identification was not produced before the court, hence, it was held that the accused were entitled to

benefit of doubt. In that case, reliance was placed on the judgment of the Hon"ble Supreme Court in the case of The State of Uttar Pradesh Vs.

Hari Prasad and Others, . In the case before the Hon"ble Supreme Court, murder was committed in dark night. The allegations of the prosecution

were that the accused had motive to commit the murder of the complainant but mistook the deceased for the complainant and murdered him and

that the witnesses identified the accused in the light of lantern burning near the P.O. Under these facts, the Hon^{ble} Supreme Court held that the

existence of lantern was doubtful and if it was there, it was highly unlikely that the accused could commit a mistake of such a grave nature, hence,

the accused were entitled to benefit of doubt. Considering the ratio as laid down in the above cited authorities, it is clear that when identification is

claimed through any means or source of light the existence of such means or source during the occurrence must be proved beyond doubt. In the

instant case, identification is claimed in the light of torch flashed by P.W.5. According to the evidence of P.W.5, the torch belonged to the

informant. The I.O. has not found any torch light when he visited the P.O. The I.O. had seized some other articles which were used as weapon of

assault and snatched by the P.Ws. 1 and 3 from the criminals and also blood stained Gamchha. These things were seized by him but any kind of

torch was not seized by him. Any torch light was also not produced before the trial court. In such view of the matters, I find that the very existence

of torch light becomes doubtful. In the circumstances, a grave doubt is entertained over the claim of P.Ws. 1, 3 and 5 that they had identified the

two appellants as assailants during the occurrence. Therefore, the two appellants are entitled to benefit of doubt. Hence, giving the benefit of

doubt, I acquit the two appellants of the charges.

11. In the result, the order of conviction and sentence as awarded by the trial court is hereby set aside. The appellants are discharged from the

liability of bail bonds executed by them. The appeal is allowed.