

## **Bijoy Singh & Anr vs State Of Bihar on 17 April, 2002**

**Bench: R.P. Sethi, D.M. Dharmadhikari**

CASE NO.:

Appeal (crl.) 1339-1340 of 1999

PETITIONER:

BIJOY SINGH & ANR.

Vs.

RESPONDENT:

STATE OF BIHAR

DATE OF JUDGMENT: 17/04/2002

BENCH:

R.P. Sethi & D.M. Dharmadhikari

JUDGMENT:

(With Crl.A.No.1341/99) J U D G M E N T SETHI,J.

Though sad, yet it is a fact that people do not hesitate in resorting to vengeance even on the unfortunate deaths of their nears and dears. There is a tendency to rope in as many people as possible for facing the trial relating to the death or injuries to the unfortunate victims. Sometimes it is over-enthusiasm and many a times designed effort to harass the relations and friends of the real culprits. It has been found that on occasions innocent persons including aged, infirm, ladies and children are booked for standing at the dock and remain confined in jails till the pendency of the cases. Some are acquitted by the trial court and many by the appellate courts but only after their languishing in confinements for years. Such efforts of unscrupulous survivors of the crime or the relations of the victims invariably but unfortunately helps the real culprits as it becomes difficult for the court to sift the grain out of the chaff. Under such circumstances and in view of the prevalent criminal jurisprudential system in the country, the doctrine of presumption of innocence in favour of the accused makes the justice itself a victim which ultimately weakens the criminal justice dispensation system. Be that as it may, an onerous duty is cast upon the criminal courts in the country to ensure that no innocent is convicted and deprived of his fundamental liberties. However, in cases of group clashes and organised crimes, persons beyond the screen, executing the crime should not be allowed to get scot free. In cases involving number of accused persons, a balance approach by the courts is required to be insisted upon. Neither any innocent person should be convicted nor a guilty acquitted under the cloak and cover of the loose and liberal interpretations of

the statutory provisions and the technicalities of procedural wrangles. In cases of arson and murder where large number of people are accused of committing the crime, the courts should be cautious to rely upon the testimony of witnesses speaking generally and in an omnibus way without specific reference to the accused or the role played by them.

For the death of Vijay Singh aged 16 years and for attempting to murder Sanuj Singh (PW5) 12 persons including the appellants were tried for offences punishable under Sections 302, 149, 307 of the Indian Penal Code and Section 27 of the Arms Act. All the accused belong to one clan and very closely related to each other. The trial court convicted all of them under Section 302, 307 read with Section 149 IPC and under Section 27 of the Arms Act and sentenced them to rigorous imprisonment for life under Section 302 and 3 years rigorous imprisonment under Section 27 of the Arms Act. No separate sentence was passed for the offence under Section 307 in view of the life imprisonment. Appeals filed by the accused persons were dismissed by the High Court vide judgment impugned in this case. In these appeals all the accused persons, except Awadhesh Singh (A-

11) have challenged the judgments of the courts below.

It was alleged by the prosecution that on the day of Shravan Purnima falling on 25th August, 1991 at about 5 p.m. the deceased Vijay Singh along with Sanuj Singh (PW5) had gone to Thakurbari situated at Tarawanna Khanda of Village Dhanawana for offering puja in the temple on the occasion of Raksha Bandan. While they were in the temple, all the accused persons, armed with fire arms, came firing from all the directions. On the extortion of Ram Nandan Singh (A1), Jawahar Singh (A-2) fired from his gun at Vijay Singh who was injured and fell near the well outside Thakurbari. When Sanuj Singh (PW5) started running towards South, he was also fired at by Upender Singh (A-3), in consequence of which he also fell in the field. Thereafter Upender Singh further assaulted Sanuj Singh by the butt of his fire arm. The occurrence is stated to have been witnessed by witnesses, namely, Kamala Singh (PW2), Bankey Singh (PW2) Gano Singh (PW4) and Brij Nandan Singh (PW7) who claimed to be working in nearby fields and had seen the occurrence from behind the "Punj" of husk near the Thakurbari. On commotion the accused persons ran away towards the village. Vijay Singh succumbed to his injuries on the spot and Sanuj Singh was taken to Hospital at Sarmera. After reaching the hospital, the witnesses came back to the place of occurrence where the dead body of Vijay Singh was lying. The police is stated to have come at the place of occurrence at about 2.30 a.m. when the statement of Brij Nandan Singh was recorded and FIR registered. Besides the five eye-witnesses, the prosecution examined six other witnesses. Dr.B.P. Verma (PW3) has conducted the post- mortem on the dead body of Vijay Singh and Dr.Anjani Kumar (PW9) examined the injured person Sanuj Singh. Dr.S.K. Jha (PW11) treated Sanuj Singh after he was referred to Biharsharif Hospital for treatment. The evidence of PW6 was tendered by the prosecution whereas PW8 is the Investigating Officer and PW10 is the X-Ray Technician.

Mr.U.R. Lalit, Senior counsel appearing for the appellants submitted that the prosecution has tried to implicate innocent persons as accused persons only on account of enmity with the object of taking revenge. It is submitted that except Accused Nos.2 and 3 no other accused person is proved to have done any overt act in furtherance of the alleged common object. It is submitted that there was a

delay in lodging the FIR and sending its copy to the Magistrate. The prosecution did not assign any reason for not recording the statement of Sanuj Singh (PW5), admittedly, the injured person in the occurrence for a period of about 9 days. No reliance can be placed upon the witnesses who are related with each other and interested in the success of the prosecution case. It is submitted that even though none of the aforesaid circumstance by itself was sufficient to discredit the testimony of the witnesses or making the prosecution unsustainable, yet the overall conspectus and the effect of those circumstances would make the involvement of all the accused persons except Jawahar Singh (A-2) and Upender Singh (A-3) in the commission of crime, doubtful.

The First Information Report is a report giving information of the commission of a cognizable crime which may be made by the complainant or by any other person knowing about the commission of such an offence. It is intended to set the criminal law in motion. Any information relating to the commission of a cognizable offence is required to be reduced to writing by the officer-in-charge of the Police Station which has to be signed by the person giving it and the substance thereof is required to be entered in a book to be kept by such officer in such form as the State Government may prescribe in that behalf. The registration of the FIR empowers the officer incharge of the police station to commence investigation with respect to the crime reported to him. A copy of the FIR is required to be sent forthwith to the Magistrate empowered to take cognizance of such offence. After recording the FIR, the officer incharge of the police station is obliged to proceed in person or depute one of his subordinate officers not below such rank as the State Government may, by general or special order, prescribe in that behalf to proceed to the spot to investigate the facts and circumstances of the case and if necessary to take measures for the discovery and arrest of the offender. It has been held time and again that the FIR is not a substantive piece of evidence and can only be used to corroborate the statement of the maker under Section 161 of the Evidence Act or to contradict him under Section 145 of that Act. It cannot be used as evidence against the maker at the trial if he himself becomes an accused nor to corroborate or contradict other witnesses. It is not the requirement of law that the minutest details be recorded in the FIR lodged immediately after the occurrence. The fact of the state of mental agony of the person making the FIR who generally is the victim himself, if not dead, or the relations or associates of the deceased victim apparently under the shock of the occurrence reported has always to be kept in mind.

This Court in *L/NK. Meharaj Singh v. State of U.P.* [1995 Criminal Law Journal 457] held that FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used as also the names of the eye-witnesses, if known to the informant. Delay in loding the FIR often results in embellishment, which is a creature of an afterthought.

Sending the copy of the special report to the Magistrate as required under Section 157 of the Criminal Procedure Code is the only external check on the working of the police agency, imposed by law which is required to be strictly followed. The delay in sending the copy of the FIR may by itself not render the whole of the case of the prosecution as doubtful but shall put the court on guard to find out as to whether the version as stated in the Court was the same version as earlier reported in

the FIR or was the result of deliberations involving some other persons who were actually not involved in the commission of the crime. Immediate sending of the report mentioned in Section 157 Cr.P.C. is the mandate of law. Delay wherever found is required to be explained by the prosecution. If the delay is reasonably explained, no adverse inference can be drawn but failure to explain the delay would require the court to minutely examine the prosecution version for ensuring itself as to whether any innocent person has been implicated in the crime or not. Insisting upon the accused to seek an explanation of the delay is not the requirement of law. It is always for the prosecution to explain such a delay and if reasonable, plausible and sufficient explanation is tendered, no adverse inference can be drawn against it.

In the instant case the copy of the report referred to in Section 157 Cr.P.C. is shown to have been received by the Magistrate on 27th August, 1991. Even though there is a mention in the FIR that its copy was sent through special messenger, yet no date or time of sending the said report is mentioned. The Magistrate, receiving the copy of the report, has also not noted the time of its receipt on 27th August, 1991. We are of the opinion that the Magistrates receiving reports under Section 157 Cr.P.C., particularly when it relates to the commission of heinous crime are required to note not only the date but also the time of the receipt of the copy thereof. Mr.B.B. Singh, learned counsel appearing for the State has pointed out the existence of various circumstances which may perhaps be the cause of delay in sending the copy of the report and its receipt by the Magistrate but surely there is a difference between the "may be" and "must be". The prosecution has apparently failed to explain the delay in sending the copy of the said report in terms of Section 157 Cr.P.C. to the Magistrate of the area. This aspect has been highlighted by the learned counsel for the appellant to contend that many of the accused were innocent and wrongly roped in the case allegedly on account of enmity existing between the complainant and the accused party. There is some substance in such a submission.

We have no doubt in our mind regarding the involvement of Jawahar Singh (A-2) and Upender Singh (A-3) in the commission of the crime which resulted in the death of Vijay Singh and injuries to Sanuj Singh (PW5). However, there are circumstances which, when taken together, cast a reasonable doubt in our mind regarding the involvement of the other accused persons in the commission of the crime for which they have been charged, convicted and sentenced. Such circumstances are as under:

- i) After the occurrence injured Sanuj Singh (PW5) was taken to Primary Health Centre at Sarmera by Shiv Nandan Singh, Kamala Singh and Gano Singh but no report was lodged in the police station which is stated to be 100 yards away from the Health Centre. The explanation offered is that as the doctor on duty had informed the police station about the arrival of the injured in the Hospital, no necessity was felt for reporting the matter in detail at the police station. Be that as it may such a conduct would put the court on alert to find out whether time was bargained by the relations of the deceased and the injured to deliberate before lodging the report or not. The injury to Sanuj Singh (PW5) and death of Vijay Singh being not in dispute, the only possibility of not getting the matter reported is the doubt regarding the involvement of the other accused persons.

ii) Statement of Sanuj Singh (PW5) was not recorded till 4th September, 1991. No reasonable explanation has been assigned for not recording the vital and important statement of PW5 who was concededly injured in the occurrence. The delay has been tried to be explained on the ground of his being unconscious when brought to the Hospital at Sarmera. Assuming that PW5 was unconscious or under shock at the time when brought in the Hospital, there is nothing on the record to show that he continued to be unconscious thereafter or the investigating officer tried to find out about his health or his mental condition to make the statement. Dr. Anjani Kumar (PW9) who examined PW5 at Primary Health Centre, Sarmera has stated that he examined the patient and sent the DO slip to the police station. He noted the injuries on the person of PW5 but states that "I have also not mentioned in the report regarding the condition of the patient". In his cross examination he has stated that in the injury report it is not mentioned as to whether the injured was conscious or not. Dr. Shanker Kumar Jha, (PW11), who was Medical Officer in Sadar Hospital, Biharsharif where Sanuj Singh (PW5) was taken from Primary Health Centre, Sarmera for treatment has stated that in the bed-head ticket of Sanuj Singh it is stated that he was conscious. In reply to a question as to whether doctor at Primary Health Centre, Sarmera had sent him a report as to whether the patient was unconscious, the witness had replied, "such reports are not sent normally. No report of such type was received by me". The nature of the injuries on the person of Sanuj Singh (PW5), as noticed by Dr. Anjani Kumar (PW9) would also indicate that the injured could not have remained unconscious for such a long period. The injuries found are lacerated injury on the forehead, left side of the scalp, bruise on the forehead, bruise on the left hand above wrist joint etc., and also multiple small irregular wounds on lateral aspect of left side of buttock and also small irregular wounds on left side of back and left forearm. The delay in recording the statement of Sanuj Singh (PW5), the most material witness has cast a cloud of suspicion on its credibility in so far as involvement of persons other than Jawahar Singh (A-2) and Upender Singh (A-3) are concerned. In cases of party factions and group rivalries there is a tendency on the part of the prosecution witnesses to implicate some innocent persons also along with the guilty ones. Generally in such cases the witnesses of the prosecution cases are prone to exaggerating the culpability of the actual assailants and to extend the participation in the occurrence of some possible innocent members of the opposite party as well. In such cases, as noticed earlier, a duty is cast upon the court to sift the evidence and after a close scrutiny with proper care and caution to come to a judicial conclusion as to who out of the accused persons can be considered to have actually committed the offence. This Court in *Deep Chand v. State of Haryana* [1969 (3) SCC 890] pointed out that the maxim "*falsus in uno falsus in omnibus*" is not a sound rule to apply in the conditions in this country and, therefore, it is the duty of the court in cases where a witness has been found to have given unreliable evidence in regard to certain particulars, to scrutinise the rest of his evidence with care and caution. If the remaining evidence is trustworthy and the substratum of the prosecution case remains intact, then the court should uphold the prosecution case to that extent. To the same effect is the judgment of this Court in *Ranbir & Ors. v. State of Punjab* [AIR 1973 SC 1409]. We are, therefore, of the opinion that non recording of the statement of Sanuj Singh (PW5) for about 9 days left the said witness with no option but to make statement according to the already tailored FIR. Though his testimony is trustworthy and cannot be totally brushed aside, yet after sifting the grain out of the chaff we find the exaggerated version regarding the involvement of accused persons except A-2 and A-3.

iii) In his statement recorded in the court, Brij Nandan Singh (PW7) has stated that Ramnandan Singh (A-1) had ordered Jawahar Singh (A-2) to fire bullets on Vijay Singh and Upender Singh (A-3) to fire bullets on Sanuj Singh (PW5). However, in his fardbayan, the basis of the FIR, the witness nowhere stated that the bullets were fired at the behest of Ramnanandan Singh. Had it been a fact, such an omission could not have occurred at the time of lodging the FIR. The improvement made at the time of deposition in the court is suggestive of the fact that the prosecution witnesses including PW7 had attempted to implicate some persons other than the real culprits as accused persons responsible for the death of Vijay Singh and injuries to Sanuj Singh.

iv) Failure on the part of the officer-incharge of the police station to register the case despite receiving information in the form of DO from Dr.Anjani Kumar (PW9) at about 10.30 p.m. on 25th August, 1991 also casts a doubt about the involvement of some of the accused persons in the commission of the crime.

v) No other accused excepting A-2 and A-3 is shown involved in the commission of the crime for allegedly having come on the spot armed with fire arms and indulging in indiscriminate firing. Concededly no fire allegedly shot by those accused has hit any person, building or structure. No fire-arm used, cartridge, splinters and wads have been recovered by the prosecution. The prosecution has also not assigned any reason for not effecting the recovery of the fire arms from the aforesaid persons. It appears that such an evidence was led only to implicate the aforesaid persons but in the absence of any proof regarding their participation in the commission of the crime, they are entitled to the benefit of reasonable doubt in their favour.

We are not in agreement with the arguments of Mr.U.R. Lalit, Senior Advocate appearing on behalf of the appellants that all the witnesses being related to each other and interested in the success of the prosecution cannot be relied upon for holding the appellants guilty for the commission of the offence. For merely being relatives of the deceased or the injured is no ground to reject the testimony of the witnesses who are otherwise found to be trustworthy and reliable. In the instant case two courts have rightly found that the presence of prosecution witnesses being PWs 1, 2, 4, 5 and 7 on spot at the time of occurrence is established. Despite ignoring their exaggerated version, we feel that their testimony inspires confidence to hold the real culprits guilty for the commission of the crime. The whole of the case of the prosecution cannot be discarded and all the accused are not entitled to be acquitted.

There is no denial of the fact as it has been proved beyond any shadow of doubt that Jawahar Singh (A-2) and Upender Singh (A-3) had come on spot with fire arms and had actually fired at the deceased and Sanuj Singh as a consequence of which Vijay Singh died and Sanuj Singh was injured. Whereas A-2 is held guilty for the commission of offence under Section 302 and 307 read with Section 34, A-3 is held responsible for the commission of the offence under Section 307 and 302 read with Section 34. The conviction and sentence awarded to Jawahar Singh (A-2) and Upender Singh (A-3) by the trial court and upheld by the High Court is confirmed. So far as the presence of other accused persons are concerned, the same being doubtful, they cannot be convicted on the ground of sharing common object as held by the courts vide the judgments impugned in these appeals. Merely because the aforesaid accused persons are related to A-2 and A-3 and were on

inimical terms with the deceased and the injured is no ground to hold them guilty despite the fact that their presence on spot is not free from doubt. There is reasonable doubt in our mind regarding the involvement of rest of the accused persons in the commission of crime in which Vijay Singh died and Sanuj Singh was injured. Giving the benefit of doubt, to Ramanandan Singh (A-1), Chulhan Singh @ Ramswarath Singh (A-4), Kamta Singh (A-5), Mahendra Singh (A-6), Ashok Singh (A-7), Navin Singh (A-8), Devendra Singh (A-9), Manoj Singh (A-10) and Vijay Singh (A-12), their conviction and sentence as awarded by the trial court and confirmed by the High Court is liable to be set aside.

Awadesh Singh (A-11) who was also convicted with the aid of Section 149 IPC has not filed an appeal in this Court. In view of the judgments of this Court in *Raja Ram & Ors. v. State of M.P.* [1994 (2) SCC 568], *Dandu Lakshmi Reddy vs. State of A.P.* [1999 (7) SCC 69] and *Anil Rai v. State of Bihar* [JT 2001 (6) SC 2001] he is also entitled to the benefit of this judgment. This Court has set up a judicial precedent that where on evaluation of the case if the court reaches the conclusion that no conviction of any accused is possible, the benefit of that decision must be extended to the co-accused, similarly situated, though he has not challenged the order by way of an appeal.

Under the circumstances the appeals are partly allowed. The conviction and sentence awarded to Jawahar Singh (A-2) and Upender Singh (A-3) is upheld. Giving them the benefit of doubt Ramanandan Singh (A-1), Chulhan Singh @ Ramswarath Singh (A-4), Kamta Singh (A-5), Mahendra Singh (A-6), Ashok Singh (A-7), Navin Singh (A-8), Devendra Singh (A-9), Manoj Singh (A-10), Awadesh Singh (A-11) and Vijay Singh (A-12) are acquitted. The acquitted persons shall be set at liberty forthwith unless required in some other case.

.....J. (R.P. Sethi) .....J. (D.M. Dharmadhikari) April 17, 2002