

Patna High Court

Ramraj Singh And Ors. vs State Of Bihar on 5 August, 1999

Equivalent citations: 1999 (3) BLJR 1976

Author: M Visa

Bench: R Prasad, M Visa

JUDGMENT M.L. Visa, J.

1. All these three appeals have been heard together and are being disposed of by this common judgment because they arise out of the same judgment and order dated 28th March, 1987 passed in Sessions Trial No. 128/86 by Additional Sessions Judge, Xth, Patna, convicting and sentencing Ram Raj Singh, the appellant of Cr. Appeal No. 123/87 to undergo life imprisonment under Section 302/34 of I.P.C., Ravi Bhushan Singh, Awadhesh Singh and Satya Narain, Singh, the appellants in Cr. Appeal No. 124/87 to undergo life imprisonment under Section 302/34 of I.P.C. and Pramod Kumar Singh, appellant in Cr. Appeal No. 125/87 to undergo life imprisonment under Section 302/I.P.C.

2. Briefly stated, the case of prosecution is that on 12-9-84 at 10.15 p.m., informant Indradeo Singh (P.W. 8) gothis/ardbeyem(Ext. 6) recorded by S.I. Dudheshwar Singh (P.W. 10) at Referral Hospital, Naubatpur, P.S. Naubatpur, Distt. Patna stating therein that on the same date at about 7.00 p.m., his cousin deceased Sadhu Sharan Singh had gone towards south of the village to ease out and before him, he himself had gone for the same purpose and when he was returning and reached Dadan Pirbaba Asthan he found that four appellants, namely, Promod Kurnar Singh, Ravi Bhushan Singh, Awadhesh Singh and Satya Narain Singh surrounding the deceased Sadhu Sharan Singh and appellant Pramod Kumar Singh giving a dagger blow on the abdomen of the deceased whereas remaining three appellants had caught the deceased. Appellant Awadhesh Singh ordered for killing the deceased on which the deceased was again given dagger blow on his abdomen, face and hand. The informant raised 'hulla' and the deceased after receiving injuries fell down and became unconscious and on the 'hulla' raised by informant Mohan Singh (P.W. 2) and Subhas Singh (P.W. 3) came there and witnessed the occurrence. He stated that the deceased was still unconscious and was not in a position to give any statement. About the motive of occurrence, the informant stated that two days prior to the date of occurrence, an altercation had taken place between the deceased and appellant Pramod Kumar Singh on the matter of a shop. On the basis affardbeyan of informant, a formal F.I.R. (Ext. 9) against four appellants, namely, Pramod Kumar Singh, Ravi Bhushan Singh, Awadhesh Singh and Satya Narain Singh was drawn under Section 302/34 of I.P.C. S.I. Dudheshwar Singh (P.W. 10) took up the investigation of the case and he prepared requisites (Ext. 7) for examination of injuries of the deceased, recorded further statements of informant and statements of Hulash Singh (P.W. 1), Mohan Singh (P.W. 2) and Subhas Singh (P.W. 3) and on the same night at about 2.00 a.m. visited the place of occurrence from where he seized blood-stained soil. At the place of occurrence itself, the I.O. came to know that injured Sadhu Sharan Singh and succumbed to injuries. He then came to Hospital, prepared inquest report (Ext. 8) of the dead body and sent the dead body for post-mortem examination and filed a petition (Ext. 11) before the Court for adding Section 302, of I.P.C. in the F.I.R. and after receipt of postmortem examination report (Ext. 13) and after recording statements of other witnesses submitted charge-sheet against all the five appellants under Section 302/34 of I.P.C. cognizance of the case was taken and the case was

committed to the Court of Session where charge under Section 302 of I.P.C. was framed against appellant Pramod Kumar Singh and charge under Section 302/34 of I.P.C. was framed against other remaining four appellants and the appellants were put on trial and after trial, the appellants were found guilty and were convicted and sentenced as indicated above.

3. The case of appellants before the Court below was complete denial of charges framed against them and their false implication in this case.

4. In order to prove its case the prosecution has examined 15 witnesses. Indradeo Singh (P.W. 8) is the informant. Gobardhan Singh (P.W. 6) is a tendered witness. Lal Deo Shartna (P.W. 11), Arun Kumar Singh (P.W. 13), Baboo Chand Rai (P.W. 14) and Shashi Bhushan Prasad Singh (P.W. 15) are formal witnesses, who have proved formal F.I.R. (Ext. 12), signatures of Braj Nandan Sharma (Ext. 14) and of Prem Nath Kesari (Ext. 14/1), both advocates, on a vakalatnama, protest petition (Ext. 15) filed by the informant of this case during the course of investigation and a 'challan' of material exhibit (Ext. 17) in respect of a blood-stained dagger said to have been handed over by informant to the I.O. Nand Kishore Ambastha (P.W. 9) is the doctor who had examined the injuries of deceased when the deceased was alive. Miss, B.N. John (P.W. 12) is the doctor, who had conducted the autopsy on the dead body of the deceased. Manjari Devi (P.W. 5), the mother of deceased, is also a witness on the point of taking away the deceased from his house by appellant Ram Raj Singh. Ram Pukar Singh (P.W. 7) is a witness who had seen the appellant Ram Raj Singh talking with deceased and other appellants sitting at Dadan Pirbaba Asthan and had heard about the injuries by dagger on the deceased from the mother of Subhas Singh. Hulash Singh (P.W. 1), Mohan Singh (P.W. 2), Subhash Singh (P.W. 3) and Fulwasi Devi (P.W. 4) are the witnesses, who are said to have reached the place of occurrence after hearing 'hulla'. Dudheshwar Singh (P.W. 10) is the I.O. of the case.

5. Nand Kishore Ambastha (P.W. 9), the doctor who had examined injuries of deceased when the deceased was alive has said that on 12-9-84 at about 8.40 p.m., he examined the deceased and found three sharp-cut injuries on his right hand, lower lip and on right hypothenar besides one sharp penetrating injury $1\frac{1}{2}'' \times \frac{3}{4}''$ whole layer of interior abdominal wall communicating to abdominal cavity and all the injuries were caused by sharp-penetrating weapon which may be a dagger. Injury report granted by him is Ext. 5. Miss B.N. John (P.W. 12) is the doctor who had conducted the autopsy on the dead body of the deceased on 13-9-84 at about 2.00 p.m. and she found one stitched wound on right side of abdomen about 8" long, one stitched wound $1'' \times \frac{1}{2}''$ in front of left hand and one cut wound $1\frac{1}{2}'' \times \frac{1}{4}''$ on inner part of right hand. According to her, injuries were caused by sharp penetrating object which may be a dagger and injury on the abdomen was sufficient to cause death. According to her the time of death elapsed was within 24 hours from the time of post-mortem examination. The evidence of these two doctors shows that the deceased had received injuries by dagger and out of these injuries, the injury which was caused on his abdomen resulted into his death. Now, it has to be seen what evidence has been led by prosecution to prove that the appellants are responsible for causing the aforesaid injuries to the deceased.

6. Hulash Singh (P.W. 1), Mohan Singh (P.W. 2) and Subash Singh (P.W. 3) in their evidence have said that at the time of occurrence they heard 'hulla' coming from Dadan Pirbaba Asthan and when they ran towards that place on the way they found four appellants, namely, Pramod Kumar Singh,

Ravi Bhushan Singh, Awadhesh Singh and Satya Narain Singh running away towards village and they identified them in the light of torch and thereafter, when they went to Dadan Pirbaba Asthan, they found the deceased lying injured and they also found the informant present there pulling out a dagger which was stabbed on the abdomen of deceased. Hulash Singh (P.W. 1) has stated that informant told him that appellant Pramod Kumar Singh had stabbed the deceased by 'chura'. when appellants Awadhesh Singh, Ravi Bhushan Singh and Satya Narain Singh and caught hold of the deceased. Mohan Singh (P.W. 2) has not stated that informant told him anything about the assailants whereas Subash Singh (P.W. 3) has said that informant told him only about appellant Pramod Kumar Singh who had stabbed the deceased by 'Chura'. Fulwasi Devi (P.W. 4) has said that on the date of occurrence in the evening she had gone to an orchard for easing out and she had seen appellant Ram Raj Singh preparing 'khaini' (chewing tobacco) and talking with deceased and both were going towards orchard and 3-4 minutes thereafter, she had heard 'hulla' and when she went to Dadan Pirbaba Asthan, she found the deceased lying injured with bleeding injuries and informant told her that the appellants Pramod Kumar Singh, Ravi Bhushan Singh, Awadhesh Singh and Satya Narayan Singh had caught hold of deceased. She has clearly stated that she did not see appellant Ram Raj Singh there. She has not told that the informant told her the name of any appellant who had given dagger blow to the deceased. In this case, Indradeo Singh (P.W. 8), the informant is said to be the only eye-witness to the occurrence. He in his evidence has stated that on the date of occurrence at about 7.00 p.m. when he was returning after easing out, he saw all the five appellants at Dadan Pirbaba Asthan and further found that appellants Ravi Bhushan Singh, Satya Narain Singh and Awadhesh Singh had caught hold of deceased and appellant Pramod Kumar Singh was assaulting the deceased by means of a chura. According to him, he raised hulla on which all the appellants fled away and he found that the deceased became unconscious and blood was oozing out from the injuries and a dagger was stabbed on his abdomen and on his 'hulla' witnesses, namely, Hulash Singh (P.W. 1), Mohan Singh (P.W. 2) and Subash Singh (P.W. 3) came and he then pulled out the 'chura' from the abdomen of deceased and took him to Hospital where the police came and his fardbeyan was recorded. He has stated that the produced the dagger before the police and a production list was prepared on which also he put his signature (Ext. 2) and the witnesses, namely, Hulash Singh (P.W. 1) and Mohan Singh (P.W. 3) also put their signatures (Ext. 2/1 & 2/2). About the motive, he has stated that the deceased was running a shop and the appellant Prarnod Kumar Singh was also having a shop from before and both had dispute on the matter of shop and prior to the date of occurrence an altercation had taken place between them.

7. The informant has not named the appellant Ram Raj Singh in his fardbeyan which he has admitted in his evidence also. According to the informant in his further statements, he had named appellant Ram Raj Singh also but later on, he found that the I.O. did not record the name of Ram Raj Singh and he, therefore, filed a protest petition. He has not given any explanation that why he did not name Ram Raj Singh while getting his fardbeyan recorded. Hulash Singh (P.W. 1), Mohan Singh (P.W. 2) and Subash Singh (P.W. 3) said to have reached the place of occurrence on hearing 'hulla' raised by informant have not stated that the informant had told them the name of Ram Raj Singh. So I find that so far Ram Raj Singh is concerned, except the informant no witness has stated that he also took part in the occurrence. As stated earlier, informant has not named him in the fardbeyan and his name has figured for the first time in the evidence of informant but then informant has not stated about any overt act committed by him.

8. About the remaining appellants, I find that Dudheshwar Singh (P.W. 10), the I.O. in his evidence has stated that Ext. 12 is the F.I.R. of Naubatpur P.S. case No. 180/84 lodged by appellant Ram Raj Singh in which he had stated that on the date of occurrence he and deceased went to a orchard where he told the deceased that being his friend, he (deceased) had committed rape upon his wife and he would, therefore, call a meeting of villagers and disclose them about the fact on which the deceased made an attempt to kill him with a 'chura' but he anyhow managed to snatch the 'chura' from the deceased and thereafter he gave a 'chura' blow to the deceased thinking that the deceased who was physically strong than him may kill him and the deceased received injuries and thereafter, he straightway went to the Police Station and lodged the F.I.R. This F.I.R. was lodged on 12-9-84 at 7.00 p.m. where as the fardbeyan of the present case has been recorded on 12-9-84 at 10.15 p.m. Admittedly, F.I.R. by appellant Ram Raj Singh was lodged earlier,

9. Now, the question arises if the occurrence took place in the manner as stated by prosecution why appellant Ram Raj Singh went to police station for lodging information that he alone had given 'chura' blow to the deceased. Admittedly, at that time, no case had been instituted for assaulting the deceased by means of 'chura'. Even in the fardbeyan of present case which was lodged after three hours from lodging the F.I.R. by appellant Ram Raj Singh, the name of Ram Raj Singh was not there. So I find no reason that without any basis Ram Raj Singh will go to the police station and lodge the F.I.R. taking the responsibility of inflicting 'chura' blow to the deceased. This earlier version explaining the manner in which the deceased had received 'chura' blow makes, the case of prosecution quite doubtful. The omission of name of appellant Ram Raj Singh in the fardbeyan of informant is another circumstances which makes the prosecution case more doubtful. The possibility that after lodging the case against remaining appellants when the informant found that appellant Ram Raj Singh had already lodged an F.I.R. earlier explaining the circumstance in which the deceased received 'chura' injuries, he by filing protest petition got the name of appellant Ram Raj Singh also included in the list of assailants cannot be ruled out. Apart from other contradictions such as non-mentioning of production of dagger before the police in fardbeyan and absence of source of identification of appellants in the admitted dark night when the occurrence took place either in the fardbeyan or the statements of witnesses recorded during the course of investigation, I find that Ext. 12 (the F.I.R.) lodged by appellant Ram Raj Singh demolishes the entire case of prosecution and in this view of the matter, the solitary evidence of informant cannot be said to be reliable and the conviction and sentence of the appellants cannot be sustained in the eye of law. The question of upholding the conviction of appellant Ram Raj Singh on the basis of Ext. 12 does not arise because he has challenged his conviction and sentence in the appeal preferred by him which is based on the case lodged by informant. He has not been prosecuted on the basis of F. I. R. which was lodged by him and besides this the F.I.R. is not a substantive piece of evidence.

10. In the result, the appeal is allowed and the judgment and order of Court below convicting and sentencing the appellants is hereby set aside. All the appellants, who are on bail, are discharged from the liability of their bail-bonds.

R.N. Prasad, J.

11. I. agree.