

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.3 of 1992

Arising Out of PS.Case No. -264 Year 1989 Thana –Siwan District- SIWAN

Ajay Singh son of Baijnath Singh, resident of Village – Madhopur, PS Tarwara, District Siwan

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

Criminal Appeal (DB) No. 7 of 1992

Arising Out of PS.Case No. -264 Year- 1989 Thana Siwan District- SIWAN

- 1. Shailendra Singh @ Nilu Singh son of Manager Singh, resident of Village Khargi, Ps Mirganj, District Gopalganj
- 2. Kalendra Singh son of Guput Narain Singh
- 3. Kamlesh Singh son of Janardan Singh, Nos. 2 and 3 are residents of Madhopur, PS Gautam Budh Nagar, District Siwan
- 4. Sanjay Singh son of Dharam Nath Singh, resident of Village Jalalpur, PS Gautam Budh Nagar, District Siwan
- 5. Amarendra Singh son of Sheonath Singh
- 6. Sheonath Singh son of Gorakh Singh
- 7. Bishwanath Singh son of Ramadarath Singh ; Nos.5 to 7 resident of Village Sarsar, PS Siwan, District Siwan

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

Criminal Appeal (DB) No. 8 of 1992

Arising Out of PS.Case No. 264 Year- 1989 Thana Siwan District- SIWAN

Chander Sekhar Singh son of Sudisht Narain Singh, resident of Village Madhopur, PS Gautam Budha Nagar, District Siwan

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :
(In CR. APP (DB) No. 3 of 1992,
7 of 1992 and 8 of 1992)

For the Appellant/s : M/s Ansul, Anuj Kumar and Archit Rajpal
Advocates

For the State : Dr. Mayanad Jha, Addl. Public Prosecutor

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL JUDGMENT
(Per: **HONOURABLE THE CHIEF JUSTICE**)
Date: 10-07-2015

As many as 10 persons were put to trial in Sessions Trial No. 100 of 1990 in the court of 3rd Additional District & Sessions Judge, Siwan. They were alleged to have committed offences punishable under Section 302/34 read with 307/34, 147 and 427 of the Indian Penal Code, collectively or separately. Through its judgment dated 21.12.1991, the trial court convicted A-1 by name Ajay Singh, and A-2 by name Chandra Shekhar Singh @ Nilu Singh, for the offence of committing murder of Ramesh Kumar Singh and sentenced them to undergo imprisonment for life. They were also held guilty of other offences and punishments of different descriptions were imposed. A-3 was also held guilty of the same offence except some small variations and he too was sentenced to undergo imprisonment for life and of other descriptions. The sentences were directed to run concurrently. The rest of the accused were held guilty of minor offences and corresponding punishments were imposed upon them. These three appeals are preferred by A-1 Ajay Singh, A-2 Chandra Shekhar Singh and A-3 Shailendra Singh @ Nilu Singh.

The basis for initiating prosecution against the accused was the statement recorded from Shailendra Kumar Singh, PW 12, on 10 PM on 12.12.1989. He stated that Ajay Singh, A-1, Kalendra Singh, A-8, Kamlesh Singh, A-9, Bishwanath Singh, A-7, Amarendra Singh, A-5, and Chandra Shekhar Singh, A-2, were demolishing a shed situated in his land on the northern side of Manish Hotel at Siwan, and setting the same on fire, and on noticing it, he and his

brother Ramesh Kumar Singh proceeded to the place of occurrence. They were said to have been over-powered by A-1 and A-7, and that A-1 gave a knife blow to him in his back and another blow at the ear pit. Thereupon, he is said to have fallen down and when his brother Ramesh Kumar Singh came to his rescue, he too was assaulted with a knife on neck.

On receiving information, Siwan Town Police registered Case No. 264 of 1989 alleging offences punishable under Sections 147, 148, 149, 324 and 307 of the Indian Penal Code. The Police arranged for recording of statement by a Magistrate when Ramesh Kumar Singh was alive. Since Ramesh Kumar Singh died on the way to the hospital, in the FIR which was previously lodged alleging offence under Section 307 IPC, Section 302 IPC was added. Inquest and post mortem were conducted and after the investigation, charges were framed against the accused. On denial of charges, detailed trial was conducted, wherein the prosecution examined 23 witnesses and filed relevant documents. The trial court convicted and sentenced the accused as indicated in the preceding paragraphs.

Shri Archit Rajpal, learned counsel for the appellants submits that there is hardly any consistency between the versions contained in the FIR on the one hand, and the one presented before the trial court, on the other hand. He submits that PW 12, the key witness and the one who is said to have received injuries at the scene of occurrence, gave an indication in the statement that himself and his brother Ramesh Kumar Singh proceeded to the place on their own accord, whereas in his evidence he stated that one of their servants came to their house, knocked at the door at night and informed about the burning of the shed and it is then, that they proceeded to the place. Learned counsel further submits that in the FIR it is mentioned that

the deceased Ramesh Kumar Singh came to the rescue of PW 12, whereas in the evidence it is stated that people in the 'barat' rescued him.

It is also argued that though not even a single eye-witness was mentioned in the Fardbeyan and corresponding FIR; as many as six persons were mentioned as eye-witnesses in the course of trial. It is also pleaded that though a dying declaration was said to have been recorded, the same does not receive support from the deposition of the Investigating Officer, PW 8, and that PW 16 the Magistrate who recorded the statement did not take precautions, that are required to be followed while recording of dying declaration. He further submits that one of the prosecution witnesses, i.e. PW 13, stated that the incident occurred at 1 PM on 12.12.1989 and it demolishes the entire case of the prosecution. It is urged that the post mortem report and other medical evidence do not support the case of the prosecution, particularly as regards the number and nature of the injuries on PW 12 or the deceased. Ultimately, he contends that conviction and sentence are liable to be set aside.

Dr. Mayanad Jha, learned Additional Public Prosecutor, on the other hand, submits that ghastly incident occurred in the night of 12.12.1989 and the statement of PW 12 was recorded at a time when he was undergoing treatment in the hospital. He further submits that it is a rare case in which dying declaration was recorded and the officer, who recorded it, was examined as PW 16. Learned counsel further submits that mere failure to mention the names of other witnesses by an injured person would not in any way shake the credibility of the witnesses. Learned counsel submits that the prosecution has examined as many as 22 witnesses, the trial court has analyzed the oral and documentary evidence before it and arrived at a

correct conclusion. He submits that the judgment of the trial court does not warrant any interference.

If one takes into account, the number of accused that were put to trial or the number of witnesses that were examined, it becomes clear that the trial in this case was, a marathon, in its real sense. The prosecution related to death of one individual, i.e. Ramesh Kumar Singh, and injuries to PW 12. The root cause of the incident, is said to be burning of a thatched shed by the side of a hotel, in Siwan town. No specific written information was given the Police, much less the injured persons were shifted to the hospital by the Police. By the time the information reached the Police, the incident has already taken place and PW 12 and his brother Ramesh Kumar Singh were brought to the hospital. According to the version of PW 8, one of the Investigating Officers, he came to the hospital receiving intimation from the hospital.

The statement was recorded at 10 PM by PW 8, ASI. The first version about the incident was furnished by PW 12. He stated that accused Ajay Singh, Kalendra Singh, Kamlesh Singh, Bishwanath Singh, Amarednra Singh and Chandra Shekhar Singh were burning the thatched shed, and when himself and his brother reached there to protest, A-1 Ajay Singh and A-2 Chandra Shekhar Singh caused injuries to them. He stated that A-1 attacked him with knife whereupon he fell down, and when his brother tried to rescue him, he too was dealt stab injuries. He stated that many people assembled, but he did not name any individual as eye-witness. A procession of marriage is also said to have been passing through the road. No source of illumination was mentioned.

PW 8 stated that an attempt was made to record the statement of Ramesh Kumar Singh also, but he was not in a position



to speak. One of the key witnesses of the prosecution was PW 13 Braj Kishore Prasad. He deposed that the incident took place at 1 AM in the night. According to him, he closed his shop and came out to participate in the marriage procession which was passing by the side of Manish Hotel. At that time, he is said to have seen the accused persons setting at fire the structure by the side of the hotel and that he has seen the PW 2, the deceased and other persons at that place. He gave a detailed account about the incident, such as, that PW 12 was attacked first and on his falling down, the deceased tried to rescue him and he too was stabbed by A-2 in the neck. In the cross-examination, several contradictions were elicited from him. He stated that PW 12 and the deceased were regular visitors to his sweet shop and beyond that he is not aware of the version that was presented by PW 12 in his statement. Whatever be the contents of the evidence of this witness, it virtually deals a serious blow to the case of the prosecution, since according to him, the incident occurred at 1 AM.

Normally, in the State of Bihar, we do not come across the recording of dying declarations. This is a rare case in which an attempt was made in that behalf. After Fardbeyan was recorded from PW 12, the Police procured the presence of PW 16, the Judicial Magistrate. Before undertaking any discussion on this aspect, we refer to one fact, viz. that PW 8 stated that they could not record the statement of Ramesh Kumar Singh deceased, since he was not in a position to speak. PW 16 stated that he recorded the statement of PW 12 and of Ramesh Kumar Singh between 11-11.30 PM on 12.12.1989. Since PW 12 was in somewhat a stable condition, the statement recorded from him deserves to be taken as one under Section 164 CrPC, whereas the one recorded from Ramesh Kumar Singh be treated as dying declaration.



A dying declaration has its own significance in a criminal case. On the one hand, it has to be taken as true, since the person who is about to die cannot be said to have spoken any falsehood; on the other hand, it needs to be examined carefully, inasmuch as the person who made the statement, is not available for cross-examination. Obviously, for this reason, law insists that it is always safe to accept a dying declaration if only there is adequate corroboration to it.

Secondly, certain precautions are required to be taken by the Judicial Officer before he records the dying declaration. The first is that he must ascertain from the medical officer as to whether the person from whom the statement is being recorded, is in a coherent condition and is able to speak. Secondly, he must reveal his identity to the injured person as well as the purpose of his visit. Thirdly, he must ensure that no person connected with that person is present to avoid the possibility of issuing signals or tutoring him. Fourthly, the declaration must be in the form of answers given by the person to the questions posed by the Magistrate. As a matter of fact, rules are framed and guidelines are issued in this behalf.

In the case on hand, we have carefully gone through the declaration said to have been recorded by PW 16. He did not ascertain the condition of the patient from the doctor. This becomes more important in view of the fact that PW 8 stated that the deceased Ramesh Kumar Singh was not in a position to speak at 10 PM, and it was not the case of the prosecution that his condition improved by 11.30 PM. The only mention about the doctor is at the end of the declaration, where he certified "recorded before me". Barring that, PW 16 did not ascertain the condition of the patient and there is no other information from the doctor as to the condition of the patient.

Secondly, the text of the declaration does not indicate any question whatever, was put to the patient or the Magistrate has revealed his identity.

Even if the aspects mentioned above, though important, are ignored, it has to be seen whether the dying declaration receives corroboration from other evidence. The declaration is very brief and hardly in a half of page. The person did not mention the name of PW 12 at all. It proceeds as though the attack was directly upon him. One may attribute this to the precarious condition of the patient. However, substantial portion of the statement is devoted to the factum of the assailants coming in a vehicle. He was so meticulous that he has furnished the full registration number of the vehicle as well as its make. Out of the 21 witnesses examined by the prosecution, no one made the mention about the vehicle or its number. Therefore, we find it very difficult to accept the dying declaration. Further, it was elicited from PW 16, that PW 12 mentioned in his statement that he was lifted by Ramesh Kumar Singh and that he has also stated that he has been rescued by the persons in the barat party, i.e. the members of the marriage procession.

PW 12 furnished the details of injuries received by him as well as the deceased. The post mortem report, however, does not support that. For example, in the post mortem report, it was mentioned that two injuries were noticed on the deceased, and one of it might have been caused with sharp cutting weapon like knife and other, with a stick. There is no mention about any injuries with stick by PW 12. Similar inconsistency exists with respect to the injuries said to have been received by PW 12.

Learned counsel for the appellants has taken us through the evidence of individual witnesses and attempted to demonstrate as

to how the version presented therein is inconsistent with the Fardbeyan, on the one hand, and the depositions of other witnesses, on the other hand. We do not intend to deal with the same in detail since we are satisfied that the discussion undertaken by us in the preceding paragraphs is sufficient to hold that the prosecution fails to prove its case.

Therefore, we allow the appeals and set aside the conviction and sentence against the appellants herein. Since the appellants were released on bail, their bail bonds shall stand cancelled.

(L. Narasimha Reddy,CJ)

(Sudhir Singh, J)

mrl

A F R

U		T	
---	--	---	--