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Cr1.A.No. 303 OF 1999

ITEM No.103

Court No.8

SECTION IIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO. 303 OF 1999.

ANANDI SINGH Appellant (s)

VERSUS

STATE OF BIHAR Respondent (s)

[With Office Report]

Date : 05/05/2005 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE P. VENKATARAMA REDDI

HON'BLE MR. JUSTICE P.P. NAOLEKAR

For Appellant (s) M/s RN Sharma, Jasbir Singh Malik,
SK Sabharwal, Advs.

For Respondent (s) M/s Kumar Rajesh Singh,
BB Singh, Advs.

UPON hearing counsel the Court made the following

O R D E R

The appeal is allowed in terms of the signed order. The conviction and sentence against the appellant is set aside.

The appellant is directed to be set at liberty forthwith, if not required in any other case.

[Naresh Kumar][Pushap Lata Bhardwaj]
Court Master Court Master

[Signed order is placed on the file.]

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 303 OF 1999

ANANDI SINGH... Appellant

Vs.

STATE OF BIHAR... Respondent

O_R_D_E_R

The appellant was charged under Section 302 read with 34 IPC along with one Ram Rattan Singh (since deceased) for committing the murder of one Jugal Poddar. The incident dates back to 12th October, 1976. Both the accused were convicted and sentenced to life imprisonment. The High Court affirmed the conviction. Hence the present appeal by the second accused Anandi Singh.

The prosecution case is as follows:

On 12th October, 1976 Jugal Poddar went to Khagaria to purchase sugar. As he could not procure sugar there, he was returning home with Rs.395/- in his pocket, accompanied by Inder Deo Gupta. At about 8.00 PM when they reached the Khagaria-Bakhari Road, the two accused started following them. Ram Rattan Singh then fired a shot from his 'pipe gun'

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which caused injuries to Jugal Poddar on the abdominal region. Anandi Singh, the appellant thereafter caught hold of the tuft of hair of the deceased. At that time a tractor was coming from the eastern side. On seeing it, the accused fled. Jugal Poddar could identify the accused with the aid of the light of the tractor. Inder Deo Gupta raised alarm whereupon the Sarpanch of the village and others came to the spot. The Sarpanch, PW-8 enquired from Jugal Poddar as to what happened and the words he had spoken were recorded in writing by PW8. While the victim was being taken to the hospital to Khagaria, he succumbed to the injuries. However, the money in his pocket - Rs.395/- remained intact. The FIR was lodged by PW12, a relation of the deceased, at 12.00 in the midnight at the Khagaria Police Station. The inquest of the dead body was held by the officer incharge of the Police Station at about 1.00 AM and the dead body was sent for post-mortem. The post-mortem was conducted by PW13 and the post-mortem report is Ex.5. Lacerated wounds were found on the left and right side of the abdomen near the iliac spine and the small intestine was found lacerated at two places. Both the wounds were found to be continuous. PW13 gave the opinion that the injuries could be caused by single fire arm shot and the victim died due to shock and haemorrhage caused by the injuries. In cross-examination, PW13 stated that the victim would have died immediately after injuries were caused and he might be in a position to speak for a minute or two.

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Based on the medical evidence, it was contended that it was impossible for the victim to speak out the particulars of attack after lapse of so much of time that would have taken for PW8 arriving at the scene and then getting the paper and pen. This contention was negated by the High Court. The High Court observed that even the witnesses declared hostile by the prosecution, supported the prosecution case on the point that Jugal Poddar was in senses and that he was speaking slowly to the Sarpanch. The contention that the appellant would not have shared the common intention with the actual assailant, namely, Ram Rattan Singh to murder Jugal Poddar was also rejected. These contentions have also been put forward by the learned counsel for the appellant before us. It is unnecessary to delve into the correctness of these findings as we are of the view that reliance cannot be placed on the dying declaration.

The prosecution case rests mainly on the dying declaration (Ex.3) said to have been recorded by PW8, the Sarpanch of the Village, soon after the incident. It is strange that I.O. has not been examined. The dying declaration reads as follows:-

"I, Jugal Poddar son of Dhani Poddar Village Olapur, P.S. Khagaria Distt. Munger- I went to purchase sugar to Ram Rattan Singh son of Ram Pyare Singh Village Chandpur P.S. Khagaria Distt. Munger. The price could not be settled and so I was coming back home. When I reached near Simana on the way I saw that Ram Rattan Singh son of Ram Pyare Singh and Anandi Singh son of Musheru Singh of Village Chandpura came behind me and Ram

Rattan Singh fired pipe gun on me and Anandi Singh caught my hair. A tractor was coming from behind in the light of which I identified both the persons and raised hulla. Inderdeo Gupta son of Pramod Gupta of Village Olapur was accompanying me. Having heard hulla and seeing the light both fled towards their village. They could not snatch my money. The shot hit my right hand and my waist towards ...(illegible). The firing was done only once. The paper was read over to me and I understood it and put my left hand thumb impression on it."

We have serious doubts over the truth and reliability of the dying declaration. The dying declaration was marked as an exhibit through PW8 when he was examined on 25.1.84. According to PW8 the dying declaration recorded by him was handed over by him to the Police Sub-Inspector (I.O.) on the next day. On a perusal of the charge sheet, it transpires that it was not one of the documents filed along with the charge-sheet though a mention was made in the charge-sheet that the dying declaration was recorded. If PW8 had handed over the dying declaration recorded by him to the I.O. it would not have remained in the custody of PW8. In fact, from whose custody Ex.3 has come on record is not at all clear from the evidence. It is unfortunate that neither the trial court nor the High Court adverted to this crucial aspect. It appears that even elementary care was not taken in conducting the prosecution.

Apart from that, there are certain facts which cast a cloud on the dying declaration and even the timing of complaint made to the Police. The report was shown to have been lodged at 12 midnight. In the Inquest Report which was prepared at 1.00 AM nothing was mentioned in Col.9 (relating to cause of death) about the involvement of the accused. Though it is not a legal requirement that the names of the accused should be shown in the Inquest Report, but when it was known by that time that the deceased was fired at by Ram Rattan, a known identified person, in the normal course, it could have found place in the Inquest Report. In this connection observations made in Meharaj Singh v. State of U.P. [(1994) 5 SCC 188] are quite apposite. Another important circumstance which doubts the credibility of the dying declaration is that it is seen from the evidence of PWs 6,7 and 10 that there was more than one Anandi Singh in the Village Chainpura to which the accused in the present case belongs. They further stated that the deceased while allegedly speaking to PW8 could not give out the name of the father of Anandi Singh and that the father's name was mentioned by somebody in the crowd. Even PW8 could not assert that the deceased himself mentioned the father's name. It is therefore difficult to establish the identity of Anandi Singh mentioned in the dying declaration. Whether he is accused himself or some other Anandi Singh is doubtful.

There is one more aspect which deserves notice. PW12, the first informant, while giving an account of the version said to have been given by the deceased in the presence of PW8 stated that according to the deceased two persons by name

Ram Rattan Singh and Ranjit accosted him from behind and then Ram Rattan Singh fired, but, a little later, the version given was that the deceased stated that the appellant caught hold of the deceased by his hair. This fact also throws doubt on the correctness of the dying declaration. That apart, one Sri Inderdeo Gupta, who, according to the dying declaration, was accompanying the deceased was not examined. He is a vital witness, yet he was not examined and no explanation was given therefor. In view of these infirmities, we are not inclined to place reliance on the prosecution version founded on the dying declaration allegedly recorded by PW8. The benefit of doubt is to be given to the appellant. The appeal is allowed and the conviction and sentence against the appellant is set aside. He shall be set at liberty forthwith, if not required in any other case.

.....J.

(P.VENKATARAMA REDDI)

.....J.

(P.P. NAOLEKAR)

New Delhi,
5th May, 2005.