

CASE NO.:
Appeal (crl.) 1221 of 1998

PETITIONER:
Budhan Singh & Ors.

RESPONDENT:
State of Bihar

DATE OF JUDGMENT: 25/04/2006

BENCH:
S.B. Sinha & P.P. Naolekar

JUDGMENT:
J U D G M E N T

S.B. SINHA, J :

The Appellants have preferred this appeal being aggrieved by and dissatisfied with the judgment and order of the High Court of Patna dated 24.2.1988 affirming the judgment of conviction and sentence dated 29th November, 1986 passed by the Additional District and Sessions Judge, IV, Patna in Sessions Trial No. 401 of 1981.

The basic fact of the matter is not in dispute.

A First Information Report was lodged by one Md. Saudagar on 14.1.1979 at about 9 p.m. in regard to an incident which is said to have taken place at about 7 p.m. on the same day, alleging that when he along with his co-villagers Syeduddin Nut (PW-2), Alauddin Nut (PW-3), Deo Nath Paswan (PW-9) and Lakhan Paswan (since deceased) were returning from Rajghat Mela, the accused Devi Dayal Singh, Mathura Singh, Sarjug Singh and Chuta Singh met them at the Alang in Adpakhandia whereupon Syeduddin asked the accused as regard their identity to which one of them replied that he was his father. Altercations and abuses thereafter followed. Devi Dayal Singh and Sarjug Singh were said to be having countrymade pistols with them. Chuta Singh, subsequently named as Chandrika Singh, allegedly had a rifle with him and Mathura Singh had a double barrel gun. They threatened to shoot the informant and his companions whereafter they ran towards their village Neora raising alarm Chor-Chor. On hearing such alarm, Mister Mian (deceased), brother of the informant and several other villagers rushed whereupon Devi Dayal Singh allegedly ordered to fire shots pursuant whereunto four persons were said to have fired shots which hit the deceased Mister Mian. He fell on the agricultural field belonging to one Jalandhar Singh.

The accused persons thereafter were said to have fled away. The deceased was brought on a cot to the village by Deo Nath Paswan (PW-9), Md. Amanullah (PW-8), Jakiuddin (PW-7), Alauddin Nut (PW-3), Amiruddin (PW-10) and others at about 8 p.m. The accused persons snatched away the deceased Mister Mian along with the cot at the point of firearms whereupon people from village Shahpur including Mithila Sharan Singh (PW-1) arrived. An information is said to have been sent to the police station by telephone from a nearby Christian Mission at about 8.15 p.m. The dead body of Mister Mian was recovered from an open field situated about 750 yards away from the place wherefrom he had allegedly been taken away forcibly.

The learned Sessions Judge by reason of his judgment dated 29th November, 1986 convicted Devi Dayal Singh, Mathura Singh and Sarjug Singh for commission of an offence under Sections 302/34, 120B, 201 of the Indian Penal Code and Section 27 of the Arms Act. Chandrika Singh,

however, was acquitted. The Appellants \026 Rajendra Singh, Surendra Singh, Jagdish Singh, Arjun Singh along with Ram Yad Singh, Bikku Singh and Budhan Singh were, however, convicted only under Section 201 of the Indian Penal Code and were sentenced to undergo five years rigorous imprisonment.

On an appeal preferred by the Appellants thereagainst, whereas the conviction of all the accused persons were confirmed, the High Court reduced the sentence from five years to two years in respect of those who were found to be guilty only under Section 201 of the Indian Penal Code. One of the accused persons, Budhan Singh, is said to have died. He is not an Appellant before us. This Court dismissed the special leave petition of Devi Dayal Singh, Sarjug Singh and Mathura Singh by an order dated 9.11.1998.

Before the learned Trial Judge, the prosecution in order to prove its case examined 12 witnesses whereas the defence examined 8 witnesses on its behalf.

Mr. Rakesh Taneja, learned counsel appearing on behalf of the Appellants would submit that the learned Trial Court as also the High Court committed a serious error in holding the Appellants guilty of commission of an offence under Section 201 of the Indian Penal Code particularly in view of the fact that they had not been charged under Section 120B thereof. The prosecution failed to show as to why they should commit the said offence. The Appellants had no motive therefor. There is furthermore nothing on record to show that they had known that an offence has been committed. The learned Trial Judge and for that matter the High Court did not record any reason nor analysed the evidences adduced by the prosecution to arrive at a finding that the ingredients of Section 201 of the Indian Penal Code were proved. Damage of standing crops itself is not a circumstance whereupon both the Trial Court as also the High Court placed strong reliance for arriving at the conclusion that they were guilty of commission of an offence under Section 201 of the Indian Penal Code.

The learned counsel appearing on behalf of the State, on the other hand, supported the impugned judgment.

The Trial Court inter alia framed the following points for its consideration which are relevant for this case:

"Point No. \026 3 Whether the first place of occurrence near the 'Alang' in Adhapa 'Khandha' and the manner of alleged shooting of Mister Mian there by the accused persons and charges against them u/s 302 & 302/34 have been satisfactorily proved by the prosecution?

Point No. \026 4. Whether the alleged snatching away of Mister Mian's body in between Gonpura Mission in the north and Hasanpura \026 Sahrpur village in the south by the side of Fulwari Hasanpura Kutchi Road and the charge u/s 201 I.P.C. has been proved?

Point No. \026 5. Whether the plea of alibi of accused Surendra Singh is believable?

Point No. \026 6. Whether the charge u/s 27 Arms Act and the charge u/s 120 I.P.C. stand proved against the accused persons?"

The Trial Court took up the said points No. 3,4,5 and 6 together for the purpose of appreciation of evidences adduced on behalf of the prosecution. PWs \026 1, 2, 3, 7, 8 and 11 are the witnesses whereupon

reliance has been placed both by the Trial Court as also by the High Court.

PW-9 claimed to be an eye-witness. His evidence, however, was not found to be reliable. He evidently was on inimical terms with the accused. His conduct during the course of investigation raised a great deal of suspicion as regard truthfulness or otherwise of his statements before the court.

The learned Sessions Judge as also the High Court did not discuss in details in regard to the second part of the occurrence for which the Appellants herein have been convicted. We would, thus, have considered the question of their involvement having regard to the materials available on records.

The Trial Court in its judgment merely observed:

"Now, the second part of the prosecution case and the second place of occurrence is about two kilometers north at Patela (the broader portion of the Hasanpur Fulwari Kutcha road going north-south near Sahpur-Hasanpur village in the land of one Ramyad Singh in which Tisi-Masuri were growing lying adjacent east to the said road. This place is about four hundred yards south from Gonpura Mission and about the same distance north from village Sahpur-Hasanpur. P.W.12 the I.O. while giving details of the second place of occurrence has also mentioned in para 8 to 10 that towards east from the road as well as towards west from the road the standing Wheat and Masuri crops has been very much trampled. All but accused Devi Dayal Singh and Sudhansu Singh have been named in Fardbeyans as persons who snatched away the body of Mister Mian. Here it may be mentioned that the clear intention of the accused persons had been in snatching away Mister Mian to cause disappearance of the evidence of his murder which has been committed to their knowledge for screening themselves from legal punishment. According to the evidence of the doctor P.W.4 the bullet injuries caused in his chest was sufficient in ordinary course of nature to cause his death. Apart from that, there is no evidence at all to show that they had any other object than snatching away his body and throwing it away clandestinely about four hundred yards south from village Hasanpur in Mohanpur Khandha. The charge u/s 120 B gets proved only against accused Devi Dayal and Mathura Singh and Sarjug Singh, regarding making conspiracy to commit murder of Mister Mian apart from the offences u/s 302/34, 201 I.P.C. and 27 of the Arms Act. The remaining eight accused (except Chandrika Singh and Sudhanshu Singh) can however be held guilty only for the offence punishable u/s 201 I.P.C."

The findings of the High Court, on the other hand, on the said count are as under:

"\005The prosecution has been able to prove the charge under Section 201 of the Indian Penal Code against the remaining accused appellant also and

they have been rightly convicted by the trial court under section 201 of the Indian Penal Code..."

Section 201 of the Indian Penal Code reads as under:

"201. Causing disappearance of evidence of offence, or giving false information to screen offender.\027Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, [if a capital offence] shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; [if punishable with imprisonment for life] and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; [if punishable with less than ten years' imprisonment] and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both."

Whereas Sections 193 to 195 of the Indian Penal Code are aimed at the offence of procuring conviction of an innocent person by false evidence, Section 201 is intended to reach positive acts on the part of an accused who intend to screening of a guilty person from punishment.

The ingredients of Section 201 of the Indian Penal Code are as under:

- (1) that an offence has been committed;
- (2) that the accused knew or had reason to believe the commission of such offence;
- (3) that with such knowledge or belief he \026
 - (a) caused any evidence of the commission of that offence to disappear, or
 - (b) gave any information respecting that offence which he then knew or believed to be false;
- (4) that he did as aforesaid, with the intention of screening the offender from legal punishment;
- (5) if the charge be of an aggravated form, as in the present case, it must be proved further that the offence in respect of which the accused did as in (3) and (4) was punishable with death, or with imprisonment for life or imprisonment extending to ten years.

It is not in dispute that the deceased Mister Mian had been injured. Whether he was dead at that point of time or not is of not much importance inasmuch when the second incident took place an offence had already been committed.

The question, however, would be as to whether the Appellants before us had the requisite knowledge of the commission of the said offence or they had a reason to believe that an offence had been committed.

Both the learned Trial Judge as also the High Court arrived at a finding of fact that such an offence had been committed. The commission of the offence relates to snatching away of Mister Mian along with the cot at the point of firearms.

Mithila Sharan Singh is PW-1. He belonged to village Mauza Shahpur within the police station of Phulwari. He was present at the time of occurrence. He in his evidence, as regard the second part of the occurrence categorically stated that Rajendra Singh was armed with rifle, Jagdish Singh and Arjun Singh were carrying the cot and Surendra Singh was seen with a gun. He is although said to be an interested witness, there is nothing to show that he in relation to the second incident would implicate the Appellants falsely. His presence is not disputed, as against him also a case was registered by the accused. He was arrested by the Superintendent of Police on the same day.

PW-2 is Syeduddin Nut. He also named all the four Appellants. He categorically stated that the Appellants and others came from the western ridge of the field and rounded them up. In relation to the first part of the incident also, his statement has been believed by both the courts. In the cross-examination, he categorically stated that all the persons named by him including the Appellants herein were those who had taken possession of the injured person forcibly.

PW-7 in his deposition stated:

"When we reached towards north ahead of Shahpur village taking injured Mister, Chandrika Singh, Bakhauri Singh, Budhan Singh, Sarjug Singh, Mathura Singh, Ramyad Singh, Rajendra Singh, Surendra Singh, Jagdish Singh, Arjun Singh, Bikku Singh, Sudhamsu Singh and 3 to 4 unknown persons appeared suddenly and rounded us up. Mathura Singh was armed with the gun. Surendra was armed with the rifle, Rajindra was armed with pistol and Chandrika was armed with country made pistol. They threatened us. They took possession of the cot forcibly on which we were carrying the injured Mister and told us to run away otherwise they would shoot us. They had taken away the cot with injured Mister. They carried the cot with injured Mister. They carried the cot with injured Mister towards the west Khandha. Saudagar and Amiruddin were having torch in their hands. It was moonlit night. It was quarter to eight. I had recognized the accused persons in the light of moonlit and the light of torch."

In his cross-examination, he categorically stated that although they had not been assaulted, but were threatened. According to him, the Appellants and others took the cot away from their shoulders.

PW-8 is Md. Amanullah. He was brother-in-law of the deceased Mister Mian. He also in his deposition named the Appellants. According to him, after the cot of Mister Mian was taken away, they fled from the place of occurrence out of fear.

PW-11 is Saudagar Mian. The said witness also named the Appellants herein. According to him, the accused came and told them to

leave the cot otherwise would be shot at. Thereafter, they took away the cot in which Mister Mian was lying. The accused had abused them. His presence is also not disputed as against him also a first information report was lodged.

From the conspectus of events, as noticed hereinbefore, and the manner in which the Appellants are said to have taken part in the commission of crime, there cannot be any doubt that they had the requisite knowledge about the commission of an offence. The very fact that an injured person was being carried out to the hospital in a cot and the Appellants not only assisted the main accused persons in snatching away the cot, two of them carried the cot themselves and two others were armed with firearms clearly establishes their knowledge about commission or the likelihood of offence.

We may at this juncture notice the decisions relied upon by the learned counsel for the Appellant.

In Nathu and another v. State of U.P. [AIR 1979 SC 1245], the accused, only on the basis of a presumption that they were brothers and, thus, presumably had knowledge about the murder of deceased by her husband were found guilty for commission of an offence under Section 201 of the Indian Penal Code. Such is not the case here.

In Ram Saran Mahto and Another v. State of Bihar [(1999) 9 SCC 486] only the dead body of the deceased was recovered from the well situated in the compound of the Appellants' marital home and that the cremation was hurried through, was although held to be giving rise to suspicion, the same circumstance being isolated and unconcatenated with any other circumstance, they were found to be not guilty.

In Wattan Singh and Others v. State of Punjab [(2004) 3 SCC 700], following Palvinder Kaur v. State of Punjab [AIR 1952 SC 354], this Court held:

"This Court in Palvinder Kaur v. State of Punjab has held that in order to establish the charge under Section 201 IPC, it is essential to prove that an offence has been committed; mere suspicion that it has been committed is not sufficient. It has to be proved that the accused knew or had reason to believe that such offence had been committed, and with the requisite knowledge and with the intent to screen the offender from legal punishment caused the evidence thereof to disappear or gave false information respecting such offence knowing or having reason to believe the same to be false\005"

In that case also, there was no proof about the knowledge of the accused as regard commission of an offence and only because they were present at the cremation ground was not found to be sufficient for arriving at a conclusion that they were guilty of commission of an offence under Section 201 of the Indian Penal Code.

In Rajbir Singh v. State of U.P. & Anr. [JT 2006 (3) SC 372], it is stated:

"The prosecution case that one of the accused handed over his rifle to Akhilesh Chauhan (respondent no. 2) and thereafter he ran away from the scene of occurrence prima facie shows commission of an offence under Section 201 IPC. Since two persons have been killed there should be separate and distinct charge for each murder besides the charge under Section 3(2)(v)SC/ST

Act. The charges framed against the accused who are alleged to have restored to firing should be amended accordingly."

The learned Trial Judge as also the High Court in their respective judgments dealt with the second stage of the occurrence, along with the first stage. Each of the contentions raised before the learned Trial Judge as also the High Court on behalf of the Appellants and other accused persons had specifically been dealt with. We, however, wish that the judgments of the courts below were a bit more elaborate. The High Court has also considered the contention that some of the prosecution witnesses including PW-1 had enmity with the accused persons.

In view of the concurrent finding of fact by both the Courts, we are of the opinion that no case has been made out for exercising of this Court's jurisdiction under Article 136 of the Constitution of India.

It is, however, not in dispute that all the Appellants before us are aged more than 70 years. Rajendra Singh had been in custody for about five months. Surendra Singh is said to have been in custody for about three months fifteen days. Jagdish Singh was in custody about seven months whereas Arjun Singh was in custody for about four months. Having regard to the fact that all the Appellants before us are above 70 years of age and furthermore in view of the fact that as they were not connected with the first part of the occurrence, in our considered view, interest of justice would be subserved if they are sentenced to the period already undergone by them. The Appellants are on bail. They shall be discharged from their bail bonds. The appeal is allowed in part and to the extent mentioned hereinbefore.