

PETITIONER:
SURAJDEO YADAV

Vs.

RESPONDENT:
STATE OF BIHAR

DATE OF JUDGMENT: 12/04/1996

BENCH:
MUKHERJEE M.K. (J)
BENCH:
MUKHERJEE M.K. (J)
KURDUKAR S.P. (J)

CITATION:
JT 1996 (6) 54 1996 SCALE (3)438

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

M.K. MUKHERJEE, J.

Surajdeo Yadav, the appellant herein, and three others were placed on trial before the Additional Sessions Judge, Aurangabad to answer a common charge under Section 302 IPC read with Section 149 IPC. Against the appellant a separate charge under Section 27 Of the Arms Act was also framed. The trial ended with an order of conviction and sentence recorded against the appellant under Sections 302 IPC and 27 of be Arms Act and of acquittal in favour of the others. As the appeal presented by the appellant before the High Court was dismissed he has filed the instant appeal, after obtaining special leave.

According to the prosecution case, on December 31, 1977 at or about 6.30 P.M. when Shamsher Singh, (the deceased) was sitting in the sehan of his house in village Jamhore, within the police station of Aurangabad and gossiping with Balmiki Sharma (PW 7), an employee of Magadh Gramin Bank, 5 or 6 persons suddenly came there and one of them, who was carrying a double barrelled gun, fired at Shamsher Singh twice resulting in his instantaneous death. Thereafter the miscreants fled away. After their departure Bhupinder Singh (PW 6), a cousin of Shamsher Singh, took the body to Aurangabad Hospital where the police recorded his statement and registered a case against unknown persons. In course of the investigation six persons including the appellant were arrested and placed in test identification parades wherein the appellant was identified by Bhagwan Singh (PW 4), Ramlakhan Kumar (PW 5), Bhupinder Singh (PWS 6), Balmiki Sharma (PW 7), Hari Singh (FW 8) and Others as the person who fired at the deceased. On completion of investigation police submitted charge sheet against all the six arrested. However, before commitment of the case to the Court of Session two of them died.

The appellant pleaded not guilty to the charges levelled against him and contended that he had been falsely

implicated on mere suspicion. He further contended that he was known to the witnesses who identified him as he had studied in v school of Jamhore and, therefore, if really he was one of the miscreants the eye-witnesses would have named him.

To prove its case the prosecution relied upon the evidence of Bhagwan Singh (PW 4), Ram Lakhan Kumar (PW 5), Bhupinder Singh (PW 6), Balmiki Sharma (PW 7) and Hari Singh (PW 8), all of whom gave ocular version of the incident and identified the appellant as the person who was carrying a double barrelled gun and fired at Shamsher Singh resulting in his death. To corroborate their evidence of identification in Court the prosecution examined Sri Vijay Bahadur Singh (PW 3), the Magistrate who had held the test identification parade. The appellant also, in his turn examined three witnesses in Support of his plea.

From the judgment of the trial Court we find that it has recorded a categorical finding that the defence did not challenge the prosecution case, as delineate by the above eye witnesses, so far as it sought to prove the place and the manner in which Shamsher Singh met with his death. In answering the moot question as to whether the four persons arraigned before it were responsible for the above murder the trial Court observed that there was practically no evidence to connect three of them, namely, Bindeshwar Yadav, Jagdish Yadav, Kameshwar Dusad with the crime. As regards the appellant the trial Court held, for reasons detailed in the judgment, that although all the five eye witnesses had identified the appellant as the person who committed the murder of Shamsher Singh and also identified him in the test identification parade, none of them, except Balmiki Sharma (PS 7), could be safely relied upon. In negating the contention of the appellant that he was known to he eye witnesses from before as he had studied in a sch 31 in the village in question, the trial Court held that the evidence given in support thereof was unworthy of credit and further held that even if the evidence adduced by the defence witness in this regard was accepted still then it could not be said that PW 7 knew him from before for he (PW 7) hailed from the district of Gaya and came to the village Jamhore only a few months before the incident. Besides, the trial Court observed that it was not even suggested to PW 7 that he was known to the appellant from before. With the above findings the trial Judge passed the impugned order.

While concurring with the finding of the trial Court as regards the credibility of PW 7, the High Court, however, criticized it (the trial Court) for not accepting the evidence of the other eye witnesses as, according to the high Court, they were natural and probable witnesses and the grounds put forth by the trial Court for disbelieving them were not sound and reasonable.

Notwithstanding the concurrent finding of the learned Courts below that the appellant is guilty of the charges levelled against him we hate, for ourselves, perused the relevant evidence to ascertain whether the findings can be sustained or not as a grievance was raised on behalf of the appellant before us - which we found to be a genuine one - that the High Court, did not at all advert to the defence case, much less, discuss the evidence adduced in support thereof.

Coming first to the evidence of Balmiki Sharma (PW 7), we get that only few months before the incident he joined the Jamhore branch of Magadh Gramin Bank, the office of which was located in the house of the deceased. He used to reside in the same building as also the deceased. In

detailing the incident he testified that in the evening of December 31, 1977 when he was sitting in the sehan in front of the house of Shamsher Singh and was talking to him, 6/7 miscreants came there According to PW 7 the deceased's cousin Bhupinder Singh (PW 6) was also sitting there while his munim Ram Lakhan Kumar (PW 5) and two others were sitting in the verandah of the house. He next stated that one of the miscreants, who was wearing trousers and a jacket and was armed with a double barrelled gun, fired two shots at Shamsher Singh as a result of which he fell down dead. He claimed to have recognized the miscreants in the electric light which was then burning there. He identified the appellant as the person who was wearing jacket and trousers and had fired at Shamsher Singh with the gun which he was carrying. He further stated that he had identified him in the test identification parade held earlier. In cross examination it was elicited from him that the person whom he had seen wearing jacket and trousers was of slightly darker complexion; and, he volunteered, that the appellant was of such complexion. The only suggestions that were put to him in cross examination which were denied by him - were that he had wrongly identified the appellant because of the influence deceased's family and that he was deposing falsely. Keeping in view his evidence, which remained unshaken in cross examination and the fact that being a resident of the building, in the precincts of which the incident took place, he was a natural and probable witness we m-e of the opinion that both the learned Courts below were fully justified in relying upon the same.

As regards the evidence adduced on behalf of the appellant in his defence we find that the trial Court discussed the same threadbare to conclude that it was wholly unreliable. As already stated the principal reasons which weighed with the trial Court for drawing such conclusion were that it was not even suggested to PW 7 that he knew the appellant from before, that, admittedly, PW 7 was a resident of District Gaya and not of Aurangabad and that he came to Jamhore only in the year 1977. In dealing with the evidence of DW 2 who stated that the appellant had read in a primary school of the village the trial Court observed that it could not be accepted, firstly because admittedly he was a professional witness, secondly because he had no occasion to read or teach in that school, thirdly because he was not competent to prove the entry in the school record, which indicated that one Surajdeo Yadav was a student of the school, and lastly because while it was suggested to PW 4 that Surajadeo Yadav read in a primary school, the entry in question related to the middle school, and not the primary school. Finally, the trial Court observed that even if it was accepted that Surajdeo Yadav (the appellant) had read at Jamhore middle school there was nothing to show that any of the witnesses who have participated in the test identification parade had ever read in the school with him. Since each of the grounds canvassed by the trial Court for discarding the evidence of the defence witnesses are cogent and convincing we find no reason whatsoever to accept the defence contention.

That brings us to the evidence of the other eye witnesses which was rejected by the trial Court. On perusal of the reasons put forward by the trial Court for such rejection we are in complete agreement with the High Court that none of them is sustainable. part from the fact that the trial Court itself recorded a finding - which we have mentioned earlier - that their evidence as to the manner in which the incident took place remained unchallenged and

uncontroverted, the clinching evidence of PW 7 clearly proves that at least Bhupinder Singh (PW 6) and Ram Lathan Kumar (PW 5) were sitting with him when the firing took place. In such circumstances the trial Court ought not to have rejected their evidence, more so when the rejection is primarily on the basis that PW 5 being the munim of the deceased was not an independent witness and PW 6, who lodged the FIR, could not say the colour of the pant (trousers) the appellant was wearing and that he was a relation of the deceased. Be that as it may, this aspect of the matter need not detain us as we are in complete agreement with both the learned Courts below that the evidence of Balmiki Sharma (PW 7), who was a natural, probable and disinterested witness, clearly establishes the guilt of the appellant.

The appeal is, therefore, dismissed. The appellant, who is on bail, will now surrender to his bail bonds to serve out the remainder of the sentence.