

PETITIONER:
JAG NARAIN PRASAD

Vs.

RESPONDENT:
THE STATE OF BIHAR

DATE OF JUDGMENT: 31/03/1998

BENCH:
G. T. NANAVALI, V.N. KHARE

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

NANAVALI, J.

The appellant, along with his son Om Prakash, was tried for the offence of murder of Prabhakar Kumar Martin in Sessions Trial No. 130 of 1985, in the court of the 1st Additional Sessions Judge, Arrah. The trial court convicted Om Prakash under Section 302, IPC and the appellant Jag Narain was convicted under section 302 read with Section 34/109, IPC. Both of them appealed to the High Court against their conviction but without any success. They then applied to this Court for special leave to file an appeal against the judgment of the High Court. This Court granted leave to appellant Jag Narain only and dismissed the special leave petition of Om Prakash.

The prosecution case was that on 5.9.1984 at about 8.30 a.m. Om Prakash was seen by Shailendra going on a cycle with high speed. As his nephew was playing in the lane and could have been hit by the cycle, he scolded Om Prakash by telling him not to drive cycle so speedily in the lane. Om Prakash replied by saying that the lane did not belong to Shailendra's father. That led to an exchange of words between Om Prakash and Shailendra. While leaving that place, Om Prakash threatened Shailendra that he would teach him a lesson. Within few minutes, Om Prakash returned with a gun followed by his father appellant Jag Narain and his younger brother Chhote. By that time Prabhakar and Regina had also come in the lane and they saw Om Prakash coming towards them with a gun. Regina tried to prevent him from coming near by holding him and his gun and it is at that point of time that the appellant exhorted Om Prakash not merely to look at their faces but to fire his gun. Thereupon, Om Prakash fired a shot which hit Prabhakar. Prabhakar died before he could reach the hospital. All the three accused were chargesheeted but as it was noticed that the third accused Chhote was aged about 15 years only, his case was separated and the trial proceeded against the appellant and Om Prakash only.

In order to prove its case, the prosecution had mainly relied upon the evidence of five eye-witnesses - PW- 1 Raj Kumar, PW-3 Martin Sarfin, PW-4 Regina Martin, PW-5 Shailendra Kumar Martin and PW-6 Agness Joseph. PW-6 did not

support the prosecution and she was declared a hostile witness and was also permitted to be cross-examined by the Public Prosecutor. The trial court believed the evidence of other four witnesses and convicted Om Prakash and the appellant as stated above.

The High Court was of the view that the evidence of PWs 3,4 and 5 was quite believable because they were the most natural witnesses as the incident had taken place just by the side of their house and their evidence was also consistent and convincing. In view of the infirmity noticed in the evidence of PW-1, the High Court thought it fit to ignore his evidence. Thus, relying upon the evidence of PWs 3,4 and 5, the High Court confirmed the conviction of the appellant of the Om Prakash.

What is contended by the learned counsel for the appellant is that the evidence of the four eye-witnesses is not at all consistent as regards the actual words spoken by the appellant before Om Prakash fired his gun. He also submitted that PWs 3 and 4 had made material improvements and, therefore, their evidence should not have been relied upon by the High Court. He also submitted that even though PWs 4 and 5 had consistently stated that appellant Jag Narain had exhorted his son to fire a shot, their evidence ought not to have been believed as it was improbable that for a trivial reason like scolding by a neighbour, he would have told his son to kill the neighbour and thus get involved in a serious offence of murder. On the other hand, it was submitted by Shri B.B. Singh, learned counsel appearing for the State that since the evidence of the prosecution witnesses has been found to be consistent and as their evidence has been believed by both the courts below, this court should not interfere merely because a different view on appreciation of their evidence is possible.

As stated earlier, we are now not concerned with the conviction of Om Prakash and the only question to be considered is whether the appellant had really exhorted his son to kill any one from the other side. According to PW-1 Raj Kumar, the appellant had stated: " why are you watching their faces, kill those persons". This witness was contradicted by his police statement wherein he had not stated that the appellant had exhorted his son to fire a shot. He was also contradicted by his police statement wherein he had not even referred to the name of appellant Jag Narain as one of the accused present at the time of the incident. PW-3 Martin Sarfin stated before the court that the appellant had given an order and upon his order Om Prakash had fired a shot. He did not refer to the exact words spoken by the appellant. Moreover, we find that he had tried to make an important improvement by stating that Arun had a pistol in his hand at the time of the incident. No other witness had stated like that. This deliberate improvement made by the witness indicates that he was not an impartial and truthful witness and had tried to falsely implicate Arun by ascribing a positive role to him by stating that he was carrying a pistol at the time of the incident. PW-4 Regina Martin had stated before the court that the appellant had told his son: " What are you seeing, fire." Apart from the other inconsistencies as regards the sequences of the events, we find that she had also tried to make an improvement by stating that she had tried to prevent Om Prakash from firing his gun but Om Prakash gave her push with the butt of his gun and had them fired at Prabhakar. PW-5 Shailendra deposed that the words uttered by the appellants were: " What are you seeing, shoot a bullet. " He had lodged the FIR. Therein what he had stated was that

the appellant had told his son "what were they seeing and to kill them" . From the above narration of what the witnesses had stated, it clearly appears that there is not consistency as regards the words spoken by the appellant before Om Prakash had fired his gun. PW-1 had not stated before the police that the appellant was present when Om Prakash fired a shot. Though there is no evidence to show that there was any previous enmity between the prosecution witnesses and the appellant and his sons, they having lost one of their family members had tried to implicate all the three accused. Their version also appears to be improbable and unnatural because the appellant being an aged person would not have told his son to fire a shot, kill the neighbour and get himself involved in a serious offence of murder. What appears to have happened is that having noticed that his son was going out with a gun, he followed him with a view to see what was happening and also to prevent him from committing any offence. There is no evidence to show that the appellant had started along with his son from his house. The evidence also discloses that houses of the prosecution witnesses and the accused were very close to each other. Possible believing that mere presence of the father at the time of the incident will not be regarded as sufficient to involve him, PWs 3 to 6 who are all family members appear to have attributed certain words to him.

All these aspects have not been considered by the High Court. We are of the view that the prosecution has not proved beyond reasonable doubt that the appellant had exhorted his son to kill Prabhakar and therefore the High Court was not right in confirming the conviction of the appellant. We, therefore, allow this appeal, set aside the judgment and order passed by the High Court and acquit the appellant of the charge levelled against him. His bail bonds are ordered to be discharged.