

PETITIONER:
YAMUNA SINGH & ORS

Vs.

RESPONDENT:
STATE OF BIHAR

DATE OF JUDGMENT: 28/08/1996

BENCH:
FAIZAN UDDIN, S.P.KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S.P KURDUKAR, J

These four Criminal Appeals are filed by the appellants -accused challenging the legality and correctness of the judgment and order dated April 25, 1986 passed by the Patna High Court dismissing these appeals and confirming the judgment and order dated 25.3.1981 passed by the Additional Sessions Judge, Patna convicting each of the appellants for offences punishable under Sections 120B/302 and 302/34 IPC. Since these appeals arise out of a common judgment and order, they are being disposed of by this Judgment.

2. The prosecution has unfolded its story as under:

Yamuna Singh (A-1) owned a double storeyed building situated in a lane called Langertoli in Patna town. The ground floor consisted of three tenements out of which a tenement of two rooms, interconnected by a door, was in possession of Prof. Maheshwar Prasad Sharma (since deceased), another tenement was occupied by Hari Mangal Prasad Singh (the absconding accused) and the third tenement was in possession of Chamari Prasad (P.W.20). On the second floor there was one room and an open terrace which was in occupation of Yamuna Singh (A-1).

3. The deceased was a Professor of Sanskrit in Government Sanskrit college Rajinder Nagar, Patna. He was a very orthodox and religious minded person. At the material time his son, Sri Prakash (PW 10) was staying with him.

4. The other appellant-accused persons were close associates and friends of Yamuna Singh (A-1). It is alleged by the prosecution that Yamuna Singh (A-1), since last two months had kept Meena Kumari (P.W.22) and Phulia Devi (P.W.28) in his room. Both these ladies were of easy virtues. All the appellants and the absconding accused used gather at the place of

Yamuna Singh (A-1) and shared cheap Jokes with these two ladies. At times they were found screaming. by such annoying behaviour of the appellants Prof. Maheshwar Prasad used to tell them to behave properly and not to bring ladies of such easy virtues in the premises. Once the deceased told them, "you are running a brothel" and this will have a very bad effect on the youngsters and other residents in the

locality. The appellants and in particular Yamuna Singh (A-1) got upset by this remark made by the deceased and told him that if he is unhappy in the premises he may find out some other accommodation. In fact deceased was very keen to find out another tenement hut unfortunately before the incident in question which took place on 26.1.1979 he could not secure another premises. At one time deceased told the appellants that such behaviour in the building would cause serious trouble including murder. On hearing this comment from the deceased, Yamuna Singh (A-1) retorted by saying, "why anyone it could be your's". Because of such threats given by A-1 the deceased had stopped coming out of his room during night time even for urination. This fact was known to the appellants.

5. Yamuna Singh (A-1) and his associates were waiting for a chance to teach a lesson to the deceased. On 26.1.1979 sometime in the afternoon A-2 to A-4 and Hari Mangal (hereinafter called 'the absconding accused' because his trial is pending and prosecution has to prove his complicity) came to the room of Yamuna Singh (A-1). At that time Meena Kumari (P.W.22) and Phulia Devi (P.W.28) were preparing the meals in the varandah. All the appellants again started enjoying cheap jokes with loud screams which annoyed the deceased. It is alleged by the prosecution that the deceased came out of his room on the road and shouted at the appellants. The appellants again retorted to the deceased saying that he may vacate the room as early as possible.

6. It is alleged by the prosecution that on 26.1.1979 the appellants worked out a conspiracy to eliminate Prof. Maheshwar Prasad Sharma. It was decided that Ramayan Singh (A-2), a Sanskrit teacher who was known to Prof. Maheshwar Prasad and was a his confidence would sleep during the night in his room as in the past he had slept once. During night when the door would be knocked, Ramayan Singh (A-2) would open the door, and utter the word "Bap Re Bap" and on such utterances Prof. Maheshwar Prasad would come out of his room and then he would be killed. It was also decided that during night the lower gate of the stair case would be kept open to facilitate free entry. This conspiracy was heard by Meena Kumari (P.W.22) and Phulia Devi (P.W.28). Both of them tried to desist Yamuna Singh (A-1) from committing any such illegal act. Yamuna Singh (A-1) told these ladies to keep quiet otherwise they will have to face dire consequences.

7. On 26.1.1979 as conspired in the afternoon Chitradeo Prasad Singh (A-3) at about 10,30 p.m went to the house of Ashok Kumar Singh (P.W.1) and told him that he was wanted by the absconding accused. Abyay Kumar Suing (P.W.23) the brother of Ashok Kumar Singh (P.W.1) overheard this talk. All these accused then came to the house of A-1, absconding accused was then carrying a Gupti Chitradeo Singh (A-3) was made to stand in the lane in front of the door of the deceased and Ram Babu (A-4) was standing at the junction of the lane.

8. The absconding accused as per the conspiracy at about mid night knocked the door of the deceased and thereupon Ramayan Singh (A-2), who was sleeping inside the room opened the door and shouted "Bap Re Bap". As anticipated by the conspirators. the deceased came out of his room. Yamuna Singh Chitradeo Prasad Singh (A-3) and Ashok Kumar Singh (P.W.1) caught hold of the deceased who tried to struggle and get out of their clutches, however, he could not succeed. In the meantime the absconding accused took out his Gupti, and forcibly hit on the left shoulder of the deceased who thereafter a fell down on the and rolled down in the

lane. Accused persons then fled away. After a short time Yamuna Singh (A-1) came back in the lane near the telephone pole, fired a shot from his gun in the air and ran away towards the southern side of the lane from where he entered in his house.

9. After hearing the fire arm shot, residents in the locality woke up and came on the road. They noticed the dead body of Prof. Maheshwar Prasad Sharma, lying on the road in front of his room. After a short time, the absconding accused, came there and a little later he himself went to the police station and lodged the report stating that some unknown persons have committed the murder of Prof. Maheshwar Prasad Sharma.

10. After registering the offence investigation commenced. Since local police did not show any progress in the investigation, it was handed over to CBI. During investigation the statements of various witnesses were recorded. After completing the investigation the charge-sheet under Sections 120B/302, 308/34 IPC against all the appellants including the absconding accused was submitted.

11. The accused denied the charges and claimed to be tried. According to them they have been falsely implicated in the present crime. They pleaded that in the early morning of 27.1.1999 they heard a sound of fire arm and at that time probably some unknown persons might have committed the murder of Prof. Maheshwar Prasad Sharma. They pleaded that they are innocent and they be acquitted.

12. The prosecution case mainly rests on the evidence of Ashok Kumar Singh (P.W.1), the approver. In order to lend corroboration to the approver's evidence, the prosecution drew support from the evidence of Meena Kumari (P.W.22) and Phulia Devi (P.W.28). In addition to this evidence the prosecution also relied upon several other circumstances to prove the guilt of the accused. At the trial the absconding accused could not be apprehended and, therefore, his trial was separated.

13. The trial court on appreciation of ocular evidence and other materials on record found all the appellants guilty under Sections 120B/302 and 302/34 IPC and convicted each one of them to suffer imprisonment for life. The appellants preferred four separate appeals to the High Court of Patna and on reappraisal of entire evidence on record the High Court dismissed all these appeals. It is against this Judgment and order of the High Court the appellants have filed the present appeals.

14. At the outset, it may be stated that the learned counsel appearing for the appellants did not and could not challenge the fact that Prof. Maheshwar Prasad Sharma met with a homicidal death. The main question that survives for our consideration is as to whether any of the appellants/accused or all were responsible for the murder of Prof. Maheshwar Prasad Sharma.

15. It was contended on behalf of the appellants/accused that the evidence of Ashok Kumar Singh (P.W.1), the approver is totally untrustworthy and does not find corroboration in material particulars from the other evidence on record. It, is, therefore, contended that the conviction based upon the evidence of approver is unsustainable. In support of this contention strong reliance was placed on the reported decision of this Court in Suresh Chandra Bahri vs. State of Bihar (1995 (suppl.) 1 SCC 80). We have carefully gone through this judgment.

16. We may now proceed to consider the evidence of approver (P.W.1). With the assistance of learned Counsel for the parties we have Carefully gone through the evidence of Ashok

Kumar Singh (P.W.1), the approver and we find that his evidence is trustworthy. Moreover this evidence finds corroboration in all material particulars from the evidence of Meena Kumari (P.W.22) and Phulia Devi (P.W.28). The evidence of Ashok Kumar Singh (P.W.1), the approver apart from being reliable does not suffer from any omission or contradiction vis-a-vis his statement recorded under Section 164 Cr.P.C. Ashok Kumar Singh (P.W.1) has given all minor details about the conspiracy hatched on 26.1.1979.

17. Ashok Kumar Singh (P.W.1) while disclosing the conspiracy on oath has stated that on 26.1.1979 it was decided that Ramayan Singh (A-2) would sleep during the night in the room of Prof. Maheshwar Prasad, when the door would be knocked, he would open it and will say Bap Re Bap. It was also decided that Yamuna Singh (A-1) would keep the lower gate of the first floor open to facilitate other accused to come quietly to his room.

18. Accordingly during the mid-night Chitra Deo Prasad (A-3) went to call Ashok Kumar Singh (P.W.1) and told him that about 10.00 a.m. he was wanted by the absconding accused. This talk was overheard by Abhay Kumar (P.W.23), the brother of Ashok Kumar Singh (P.W.1) and he has corroborated this part of the conspiracy. The absconding accused (A-3) came to the house of Yamuna Singh (A-1) and went in his room. Yamuna Singh (A-1), the absconding accused, Chitra Deo Prasad (A-3) made to stand in the lane in front of the door of the deceased. Ram Babu (A-4) was standing at another junction of the lane. The absconding accused knocked the door of Prof. Maheshwar Prasad and thereupon it was opened by Ramayan Singh (A-2), who uttered the words Bap Re Bap. Upon hearing this, Prof. Maheshwar Prasad came out of his room. Yamuna Singh (A-1) Chitra Deo Prasad (A-3) and Ashok Kumar Singh (P.W.1) caught hold of Prof. Maheshwar Prasad who although struggled but could not get himself rescued. In the meantime the absconding accused took out his Gupti and gave a forcible blow on the left shoulder of Prof. Maheshwar Prasad, who screamed loudly and fell on the path. Thereafter he rolled down in the lane. All the accused then fled away. After some time Yamuna Singh (A-1) came back to his house and while standing near the telephone pole he fired a shot, and then entered in his house from the southern side.

19. Meena Kumari (P.W.22) and Phulia Devi (P.W.28) narrated as to how the conspiracy was cooked up by the appellants on 26.1.1979. Meena Kumari (P.W.22) claims to have overheard the entire conspiracy when she was cooking the meals in the verandah. She further stated that she told Yamuna Singh (A-1) not to commit any such offence, but thereupon he told her to keep quiet. She then stated that she remained very much uneasy during the whole night and was also eager to see the entire episode. She further stated that she saw the entire incident from the gallery, including the assault on Prof. Maheshwar Prasad by the absconding accused. Meena Kumari (P.W.22) then stated that Yamuna Singh (A-1) came back to his premises after the incident and told her to wash his blood stained Ganji. Being a maid servant, she did it. She further deposed that after some time the absconding accused came and washed the blood stained Gupti, and when it was shown to Yamuna Singh (A-1) he asked him to re-wash it so that no blood could be detected. Phulia Devi (P.W.28) has narrated the entire story in the same sequence and manner as it is, therefore, not necessary to reproduce her evidence. The evidence of both these witnesses, in our opinion, fully corroborates the evidence of the approver in all material particulars and, therefore, the irresistible conclusion which must follow is that the appellants were the active

members of the conspiracy and committed the murder of Prof. Maheshwar Prasad Sharma in pursuance thereof.

20. Learned counsel for the appellants vehemently challenged the evidence of Meena Kumari (P.W.22) and Phulia Devi (P.W.28) on various grounds. They urged that both these ladies were of easy virtues and they were also co-conspirators for not disclosing the conspiracy to others. It was also contended that both these witnesses were under the control of investigating agency and, therefore, their evidence is tailor made and be rejected. We do not see any merit contention.

21. It was contended that Meena Kumari (P.W.28) refers to firing but Phulia Devi (P.W.28) did not say anything about it. It is, a major discrepancy in their evidence and, therefore, the evidence of both these witnesses should be discarded as unreliable. But this submission does not appeal to us because on record there is evidence of Raghubansh Kumar Singh (P.W.9), Vijay Kumar Singh (P.W.17) and Ajay Singh (P.W.32) who referred to the sound of fire arm and their evidence supports the evidence of the approver as well as Meena Kumari (PW 22).

22. It was then contended on behalf of the appellants that it was totally improbable to expect that A-1 would fire from the gun in the air after committing the offence and would attract the attention of the residents in the locality. This submission is again devoid of any merit because the appellants wanted to mislead the residents of the locality that some unknown persons have committed the murder of Prof. Maheshwar Prasad Sharma.

23. It was then contended that no identification parade was held and, therefore, the identity sought to be established through the evidence of Meena Kumari(P.W.22) and Phulia Devi (P.W.28) be not accepted. This submission needs to be stated and rejected because these witnesses were quite familiar to the appellants.

24. it was then contended that it is impossible to believe that deceased would allow Ramayan Singh (A-R) to sleep in his room when he was apprehending danger to his life. We see no substance in this contention because the evidence of approver (P.W.1), Meena Kumari (P.W.22) and Phulia Devi (P.W.28) is quite unimpeachable on this aspect.

25. We have carefully gone through the evidence on record and we find no substance in their appeals and, therefore, stand dismissed. The appellants who are on bail shall surrender to their bail bonds forthwith to serve out the remainder of their respective sentences.