

RAM PRASAD SHARMA

A

v.

THE STATE OF BIHAR

July 30, 1969

[S. M. SIKRI, G. K. MITTER AND K. S. HEGDE, JJ.]

B

Evidence Act, s. 35— Conditions of admissibility under—Entries must be made by public official in the discharge of his duties.

Evidence—Appreciation of—Name of murdered man wrongly mentioned in F.I.R.—Does not lead to conclusion that he was not murdered when identity established by other evidence, and mistake in F.I.R. satisfactorily explained.

C

The appellant was tried for an offence under s. 302 I.P.C. as well as for other offences in connection with an incident in which two persons were killed and several injured. The allegation against the appellant was that he caused the death of one K by shooting him with a gun in the course of the alleged incident. The Additional Sessions Judge who tried the case convicted the appellant for offences under ss. 326/149, 324/34, 201 and 148 I.P.C. but acquitted him in respect of the murder of K. In so doing he relied upon an attested copy filed by the defence which purported to be the copy of an entry in the Chaukidar's *hath chitha* according to which K died three days before the alleged incident. He also relied on the fact that the name of K was not mentioned as a victim in the First Information Report of the incident. In appeal the High Court convicted the appellant under s. 304 I.P.C. for causing the death of K, holding that the alleged entry in the *hath chitha* had been wrongly admitted in evidence by the trial judge and that the deficiency in the F.I.R. was sufficiently explained. Appeal against the High Court's judgment was filed by special leave.

D

E

HELD : (i) The attested copy of the Chaukidar's *hath chitha* was not admissible in evidence because the entry in question was not proved to have been made by a public servant in the discharge of his duties. [699 E]

Sanatan Senanati v. Emperor, A.I.R. 1945 Pat. 489 and *Brij Mohan Singh v. Priya Brat Narain Sinha*, [1965] 3 S.C.R. 861, relied on.

F

(ii) K's death at the time and place alleged by the prosecution was established by sufficient evidence and the High Court was right in accepting the explanation of the maker of the F.I.R. for the absence of K's name therein. [699 F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 208 of 1966.

G

Appeal by special leave from the judgment and order dated February 22, 1966 of the Patna High Court in Criminal Appeal No. 530 of 1962 and Government Appeal No. 44 of 1962.

A. S. R. Chari, M. K. Ramamurthi, G. Ramamurthy and Vineet Kumar, for the appellant.

H

B. P. Jha, for the respondent.

A The Judgment of the Court was delivered by

Sikri, J. Fourteen persons were tried by the learned Second Additional Sessions Judge, Bhagalpur, on various charges. Out of these 14 persons Sheo Prasad Sharma and Ram Prasad Sharma were charged under s. 302, I.P.C. Sheo Prasad Sharma was charged under s. 302 for having intentionally caused the death of
B Quadrat Mian by shooting him down with his gun whereas Ram Prasad Sharma was charged under this section for having shot down with his gun Kaleshwar Yadav and thus having caused the murder of this person.

C The Second Additional Sessions Judge, Bhagalpur, convicted Sheo Prasad Sharma under ss. 304, 324/34, 201 and 148 and sentenced him to seven years rigorous imprisonment. The appellant, Ram Prasad Sharma was convicted under ss. 326/149, 324/34, 201 and 148, I.P.C. and sentenced to four years rigorous imprisonment. Seven other accused were also convicted but it is not necessary to mention the sections under which they were convicted. Five of the accused persons were acquitted by the learned Second
D Additional Sessions Judge.

Two appeals were filed before the High Court, one by the State and the other by the nine convicted persons, including Ram Prasad Sharma. Both the appeals were heard together. The High Court accepted the appeal of the State as far as Ram Prasad Sharma was concerned and convicted him under s. 304, I.P.C., in connection
E with the shooting and causing the death of Kaleshwar and sentenced him to rigorous imprisonment for seven years. The convictions of seven others were altered from under ss. 326/149 to one under ss. 304/149 but the sentence of four years rigorous imprisonment was maintained. In other respects the convictions were maintained. The High Court, however, quashed the convictions under s. 201, I.P.C.
F

The nine convicted persons filed petition for special leave to appeal. This Court by its order dated October 4, 1966 rejected the petition except as regards Ram Prasad Sharma and his appeal is now before us.

G The prosecution case as accepted by the High Court was, in brief, as follows. On August 15, 1960, at about 1.30 or 2 p.m., by the side of a *Danr* (water channel) known as Chaksafia *Danr* at village Bindi about five miles away from Police Station Banka, a serious occurrence took place. The Chaksafia *Danr* runs between village Bindi which is to its east and Banki which is to its west and then goes further north to village Bhadrar and other
H villages. Lands of several villages, namely, Bhadrar, Nayadih, Uprama, Basuara, Jitnagar, Majhiara, Banki, etc. are irrigated from the water of this *Danr* and there are detailed entries regard-

ing the respective rights of the different villages in the *Fard Aonashi* which was prepared at the time of the last survey. It appears that the villagers of different villages who enjoy the above rights go in in a body every year during the rainy season for clearing this *Danr* in order that there may not be any obstruction in the flow of water therein. On the date of occurrence, i.e. August 15, 1960, a number of persons of villages Bhadrar, Nayadih, Uprama, Basuara, Jitnagar and Bhatkunki went along with spades to clear this *Danr* in the usual course and some of them had lathis also with them. The total number of persons were estimated to vary from about 150 to about 400. When they reached the brick kiln, which exists in Malmala Tikar they were confronted by a mob of 40 to 50 persons including all the convicted persons. Sheo Prasad Sharma and Ram Prasad Sharma were armed with guns and Patel Thakur was armed with a pharsa and the remaining accused except Dhanusdhari Mehta were armed with bhalas.

It may be mentioned that in the First Information Report Dhanusdhari Mehta was alleged to have been armed with a pistol but this allegation was subsequently given up. Dhanusdhari Mehta was a retired inspector of police; his son Ram Prasad Sharma was a practising lawyer at Bhagalpur at the time of the occurrence in question.

On seeing this crowd of villagers, Sheo Prasad Sharma directed them to return and threatened to shoot them if they failed to do so. There was some exchange of hot words and brick-bats were thrown by both sides. Sheo Prasad Sharma thereafter fired one shot towards the sky but the villagers did not disperse. Then Dhanusdhari ordered his two sons Ram Prasad Sharma and Sheo Prasad Sharma to open fire on the villagers. On this both Ram Prasad Sharma and Sheo Prasad Sharma opened fire with their guns on the villagers. One shot fired by Sheo Prasad Sharma hit one Qudrat Mian and he fell down and died on the spot. One other villager was alleged to have been shot by Ram Prasad Sharma and he died on the spot. A number of villagers sustained gun shot injuries and as a result of the firing by Sheo Prasad Sharma and Ram Prasad Sharma, who are estimated to have fired about 12 rounds, the villagers dispersed. Sobhan Mandal, one of the injured persons went to the Police Station with three other injured persons, namely, Chotan Rai, P.W. 5, Jagdeo Choudhary, P.W. 8 and Kishori Prasad Singh, P.W. 12, who had also sustained gun shot injuries.

The learned Additional Sessions Judge had rejected the prosecution story that Kaleshwar Yadav was shot and killed during the occurrence. He had come to the conclusion that Kaleshwar Yadav had died prior to the date of occurrence. The High Court has accepted the prosecution version and it is this finding which is

- A being seriously challenged by the learned counsel for Ram Prasad Sharma, appellant.

The learned Additional Sessions Judge had rejected the version of the prosecution regarding the shooting down of Kaleshwar Yadav mainly on the basis of entries in an attested copy of the Chaukidar's *hath chitha* (Ext. D) according to which the death of Kaleshwar took place in Gopalpur mauza on August 12, 1960, that is, three days prior to the occurrence. The learned Additional Sessions Judge had also relied on the First Information Report in which the name of Kaleshwar Yadav does not find mention.

- C Two points arise before us, first, whether the *hath chitha* is admissible in evidence, and secondly, whether on the evidence on record it is otherwise proved that Kaleshwar Yadav was shot down by the appellant Ram Prasad Sharma.

D According to the entries in this document, Ext. D, Kaleshwar Yadav died on August 12, 1960, in Gopalpur Mauza and in the remarks column of this register he is described as "Bahanoi (brother-in-law) of Asarfi Yadav." We looked at the attested copy produced in Court and we were unable to ascertain the date on which the attested copy had been obtained by the defence. The only dates this document bears are the date of attestation (October 15, 1960) by the District Statistical Officer, the date September 22, 1960, next to the signature of one Shukdeo Chowdhary, and the date of admission by the Additional Sessions Judge (June 25, 1962). As rightly pointed out by the High Court the learned Sessions Judge took this copy on record in an extraordinary manner. The prosecution evidence closed on June 21, 1962 and on June 25, 1962, this attested copy was admitted in evidence without any proof. On the same day an order was passed calling for the original. On the very next day the public prosecutor filed a petition objecting to the admission of this document and alleged that the document was bogus. The hearing of the argument thereafter proceeded on July 4, 1962. The Public Prosecutor again filed a petition that this document be not taken in evidence. The learned Additional Sessions Judge disposed of this petition with the following order :

- G "Let the petition be placed with the record. The original has once again been called for. The matter will be discussed in the judgment."

H It is pointed out by the High Court that there is no further reference to the document in the order sheet. After the arguments concluded on July 7, 1962, the case was adjourned for judgment. The judgment of the learned Additional Sessions Judge shows that the original was subsequently received by him with letter dated July 10, 1962, and he observed that he was satisfied about

its genuineness. The High Court rightly pointed out that the Additional Sessions Judge should have dealt with the question of the admissibility of the document. The High Court, following *Sanatan Senanati v. Emperor*⁽¹⁾ and *Brij Mohan Singh v. Priya Brat Narain Sinha*⁽²⁾, held that the document was inadmissible in evidence.

We agree with the conclusion arrived at by the High Court. Section 35 of the Evidence Act provides :

"An entry in any public or other official book, register or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record is kept, is itself a relevant fact."

In this case it has not been proved that the entry in question was made by a public servant in the discharge of his official duties. As observed by this Court in *Brij Mohan Singh v. Priya Brat Narain Sinha*,⁽²⁾ "the reason why an entry made by a public servant in a public or other official book, register, or record stating a fact in issue or a relevant fact has been made relevant is that when a public servant makes it himself in the discharge of his official duty, the probability of its being truly and correctly recorded is high." No proof has been led in this case as to who made the entry and whether the entry was made in the discharge of any official duty. In the result we must hold that Ex. D, the *hath chitha*, was rightly held by the High Court to be inadmissible.

The High Court then dealt with the other evidence on the record and came to the conclusion that Kaleshwar was actually shot down by the appellant, Ram Prasad Sharma. The learned counsel for the appellant has tried to assail these findings but he has not been able to show in what way the High Court has gone wrong in coming to the conclusion. The High Court states that ten witnesses have named Kaleshwar being the second person who was shot. Further, Kaleshwar's son and widow, P.Ws 24 and 34, Chamak Lal Yadav and Karma Devi, deposed that on the day of occurrence Kaleshwar had left his house with a *kudal* and had gone to Chaksafia *Danr* alongwith others. They further deposed that on the next day they learnt from Nandai Lal Singh, P.W. 17, that Kaleshwar had been killed. The High Court further accepted the explanation of P.W. 1, who had made the F.I.R., that he had named Gholtan as being the person shot and killed by Ram Prasad because he had heard a *hulla* that Gholtan had been murdered. It seems to us that the High Court came to a correct

(1) A.I.R. 1945 Pat. 489.

(2) [1965] 3 S.C.R. 861, 864.

A conclusion and was right in accepting the explanation of P.W. 1.

The learned counsel further contends that it was doubtful that 12 rounds would have been fired. He points out the number of injuries received by the villagers. But these injuries support the prosecution story. From the injuries on the various persons examined by Dwarka Nath Prasad, P.W. 41, apart from the

B persons who had died and whose bodies had been held to have been cremated by unidentified persons, it appears that 20 persons had received gun shot injuries; one of them had as many as 14 lacerated wounds and another had 10 lacerated wounds. Apart from that there is no reason to doubt the oral evidence given in this case that a number of rounds were fired.

C In the result the appeal fails and is dismissed.

G.C.

Appeal dismissed.