

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.120 of 1989

Arising Out of PS.Case No. -9(11) Year- 79 Thana -Katra District- Muzaffarpur

- 1. Md. Usman, son of Abdul Rahman
- 2. Md. Safique, son of Md. Indaz
- 3. Md. Moti, son of Md. Mozibul Rahman
- 4. Md. Kurban, son of Abdul Rahman
- 5. Kamre Alam, son of Md. Usman
- 6. Zafre Alam, son of Md. Usman
- 7. Sk. Mohibul, son of Abdul Samad
- 8. Muzibur Rahman, son of Abdul Samad
- 9. Md. Tahir, son of Md. Aziz, All of village Katai, P.S. Katra, District- Muzaffarpur

.... Appellants

Versus

The State of Bihar

.... Respondent

with

Criminal Appeal (DB) No. 121 of 1989

Arising Out of PS.Case No. -9(11) Year- 79 Thana -Katra District- Muzaffarpur

- 1. Karim Sah
- 2. Sattar Sah, both sons of late Hanif Sah
- 3. Akhtar Sah, son of late Yakub Sah
- 4. Md. Daud, son of late Hafiz Mohammad Jan
- 5. Md. Mustaque, son of Md. Daud
- 6. Md. Ashfaq, son of Md. Daud
- All resident of village- Katai, P.S. Katra, District- Muzaffarpur

.... Appellants

Versus

The State of Bihar

.... Respondents

(Against the judgment and order dated 28.2.1989 passed in Sessions Trial No.120/83/3/87, passed by the 1st Additional Sessions Judge, Muzaffarpur.)

Appearance :
(Both in CR. APP (DB) No. 120 of 1989 and CR. APP (DB) No. 121 of 1989)
For the Appellants : Mr. Neeraj Kumar @ Sanidh
For the Respondents : Mr. Dr. Mayanand Jha, APP

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 29-01-2015



These two appeals are preferred by the accused in Sessions Trial No.120/83/3/87 on the file of the 1st Additional Sessions Judge, Muzaffarpur. In all, 14 accused were tried for the offence punishable under Sections 302, 147, 148, 149 and 323 of I.P.C. Through its judgment dated 28.2.1989, the learned 1st Additional Sessions Judge convicted the appellants herein for the offence punishable under Sections 302 and 149 of I.P.C. and imposed sentence of rigorous imprisonment for life. The appellants were also convicted for offences punishable under Section-323 of I.P.C. and punishment of one year simple imprisonment was imposed. Though the appellants were also convicted for the offence under Section-147 of I.P.C., no sentence was imposed for that.

The facts, as presented by the prosecution before the trial court were that, P.W.6, by name Ayub Sah, his brother, by name Mahboob Sah and their father Saqoor Sah, residents of village Katai, in Muzaffarpur district had their dinner at about 8:00 p.m. on 29.1.1979 and were sitting in front of their house. At that time, all the appellants herein are said to have come in a group, armed with lathi, bhala and gadansa and the first appellant, Md.



Usman asked Mahboob Sah as to why he is not paying contribution for the festival in the village. On that, some altercation is said to have taken place. It was alleged that on the instigation of the first appellant, rest of the persons in the group attacked the three persons referred to above. On account of serious injuries received by him, Mahboob Sah, brother of P.W.6, is said to have died on the spot, whereas P.W. 6 and his father Saqoor Sah received some injuries.

The complaint in this behalf was submitted on the next day at 10:00 a.m. in the police station by P.W.6, and his statement, i.e. fardbeyan, was recorded. First Information Report was registered. The police reached the place of occurrence, caused inquest and took the body to the nearest government hospital for post mortem examination. Thereafter, the matter was intimated to the nearest Judicial Magistrate on 1.12.1979. Investigation was conducted and charge-sheet was filed.

On behalf of the prosecution, P.Ws.1 to 8 were examined and certain documents were exhibited. On behalf of the defence, D.Ws.1 to 5 were examined. The trial court convicted and sentenced the appellants herein, as mentioned in the preceding paragraphs.



Shri Neeraj Kumar, learned counsel for the appellants, submits that there was unexplained delay between the alleged date of occurrence and the date of submission of the complaint, not to speak of the date on which the matter was placed before the Court, and the case filed against the appellants was the result of due deliberations, with the sole object of implicating the appellants. He submits that though P.W.6 is said to have received injuries, neither any medical certificate was filed, nor the Doctor who treated him was examined. He further submits that except making omnibus allegation that all the four appellants have attacked the deceased, no specific act were mentioned, much less the fatal injury was attributed to any particular appellant. It is also pleaded that the failure of the prosecution to examine the investigating officer is fatal to their case. He further submits that the father of P.W.6, deceased Saqoor Sah, was not examined and failure in this behalf is a serious matter. He contends that there was no justification for the trial court for convicting such large number of persons on the basis of the hopelessly weak evidence.

Dr. Mayanand Jha, learned A.P.P., submits that the attack on the deceased, P.W.6, and their father was by



a mob comprising of the appellants herein and in such cases it is difficult to attribute any particular injury to any specific individual. He submits that the injury certificate filed by the prosecution establishes the factum of P.W.6 receiving injuries and the evidence of an injured witness deserves to be taken into account without any hesitation. He contends that the failure to examine the investigating officer was on account of the fact that the concerned officer was no more.

This is not a case where the prosecution attributed any specific motive for the accused to cause the death of the deceased. Even according to it, all the accused came to the house of the deceased where himself, his father and brother (P.W.6) were sitting after dinner and the appellants have raised the issue of the contribution for a festival. No previous animosity between the parties was suggested.

It is not uncommon that in the context of demanding contribution, there may be disagreement between the parties. For an incident leading to murder, the situation must be extra ordinary. Therefore, it needs to be seen as to what result would ensue even if the version of P.W.6, the key witness for the prosecution case, is to be

taken as true.

According to P.W.6, himself, his deceased brother and father were said to be sitting in their house at about 8:00 p.m., after taking dinner and shortly thereafter, the appellants came to that place. Thereafter, the incident is said to have followed. It was stated that the death of the deceased has taken place about one hour, after he took dinner. It is fairly well known that on the death of a person, the digestive process comes to standstill and the food substance in the stomach would remain in the same condition as it was, at the time of death. The post mortem in this regard was conducted at about 10:00 a.m. on 1.12.1979. The post mortem report in relation to abdomen reads as under:

“In abdomen, viscera looked pale. Stomach and urinary bladder are empty.”

Therefore, the theory of the deceased sitting in the house soon after dinner and having been killed by the appellants becomes virtually unacceptable. No effort was made by the prosecution to examine any person connected with the investigation. Even if it is a fact that the investigating officer was no more, any officer working in that place could have spoken from the record.



The attack was said to be by the entire mob comprising of all the appellants herein. It was not even mentioned in the fardbeyan as to which of the appellants had attacked the deceased, and if so, with what weapon. The post mortem report has also revealed that only two injuries were noticed on the body of the deceased; one is on the scalp and the other on the shoulder in the form of a bruise. The only serious injury can be one on his scalp. Unless the prosecution was clear as to who caused the fatal injury, it was not at all permissible to convict all the appellants *en bloc* for the offence punishable under Section 302 of I.P.C.

P.W.6 was, no doubt, projected as an injured witness. However, the Doctor, who is said to have treated him, was not examined as a witness. Added to that, the father of P.W.6 and the deceased was said to be present, was not examined. Failure in that behalf would certainly be a factor that would weaken the case of the prosecution.

The distance between the place of occurrence and the nearest police station is said to be 11 kilometers. However, the incident was reported about 14 hours after the occurrence. When delay of even one hour is treated as fatal to the case of the prosecution in a given case, such

inordinate delay is certainly a serious matter to be taken into account. This is particularly so when the allegation is omnibus in nature and not of any specific overt act to the accused, nor any previous enmity or other motive is suggested. Added to this, the information about the incident was brought to the notice of the Judicial Magistrate after about 3 days. In our view, the prosecution miserably failed to connect the death of the deceased to any acts or omissions on the part of the appellants herein.

We, therefore, allow the appeals and set aside the conviction and sentence ordered by the trial court against the appellants. The appellants were released on bail during the pendency of the appeal. Since they are acquitted, their bail-bonds will stand cancelled.

(L. Narasimha Reddy,CJ)

(Gopal Prasad, J)

K.C.jha/-
A.F.R.

U		T	
---	--	---	--