

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.44 of 1990

(preferred against the judgment dated 15th December, 1989, rendered by the court of 3rd Additional Sessions Judge, Arrah, Bhojpur in Sessions Trial No.449/88)

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1. Degree Singh (abated vide court order dated 14.3.2015)

2. Kanhaiya Singh, son of Dhawajadhari Singh, resident of village Chhotaki
Sasaram, Police Station Udwantnagar, District- Bhojpur

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : Mr. Vikramdeo Singh, Adv.

Mrs. Rina Sinha, Adv.

For the Respondents : Miss. Shashibala Verma, A.P.P.

Mr. Surendra Kr. Singh, Adv.

Tulika Singh, Adv.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 14-05-2015

This Appeal is preferred against the judgment dated 15th December, 1989, rendered by the court of 3rd Additional Sessions Judge, Arrah, Bhojpur in Sessions Trial No.449/88. The appellants herein figured as accused 3 and 2 respectively in that case. In all, 5 persons were put to trial for the offence of committing murder of Ramkaj



Singh on 3.10.1987 at 7:00 p.m. at Chhotki Sasaram within the limits of Gajrajganj Police Station. The trial court convicted four persons, i.e. two appellants herein and two others namely Harendra Singh (accused No.4) and Gorakh Singh (accused No.5). The 1st accused by name Dharichan Singh was acquitted. The trial court sentenced all the four accused to undergo imprisonment for life and to pay fine.

Criminal Appeal No.12/90 was filed by Harendra Singh and Gorakh Singh and both of them died during the pendency of that Appeal. Therefore, the Appeal was closed as abated on 18.1.2013. In this Appeal also, the 1st appellant i.e. Degree Singh died and through order dated 14.3.2015, this Court directed that the Appeal, insofar as it concerned him, shall be treated as abated. Now the Appeal is only in respect of the 2nd appellant i.e. Kanhaiya Singh.

The case of the prosecution was based upon a fardbeyan i.e. the statement recorded from P.W.5. She was the sister-in-law (Bhabhi) of the deceased. According to her, all her family members went to a place of worship in a neighbouring village at 10:00 a.m. on the day of occurrence and after completion of worship and lunch at



that place, they returned in an improvised vehicle locally called as 'trekker' to the village and when they were alighting from the vehicle at Gajrajganj, all the accused surrounded the deceased and some of them fired bullets at him. She is said to have raised hue and cry and she could recognize them in the moonlight. The fardbeyan was signed by P.W.4, the nephew of the deceased. P.W.9, the S.H.O. of Gajrajganj P.S. arranged for inquest and post mortem of the dead body and thereafter the investigation was taken up. On the basis of the final report filed by the prosecution, charges were framed. Since the accused pleaded not guilty, the trial was conducted.

On behalf of the prosecution, P.Ws. 1 to 9 were examined and the documents, such as post mortem report, inquest report, were filed. The trial court convicted accused Nos.1 to 4 and sentenced them to undergo imprisonment for life whereas accused No.1 was acquitted.

Heard Shri Vikramdeo Singh and Mrs. Rina Sinha, learned counsel for the appellant and Miss. Shashibala Verma, learned A.P.P. for the Respondent.

The 1st aspect which needs to be taken into account is the manner in which the information about the death of the deceased reached the police and the time at



which the fardbeyan was recorded. The evidence on record discloses that the distance between the place of occurrence and the police out post was just 400 to 500 yards. Even if it is a place not connected with any modern transport, the place can be reached by walk hardly within five minutes. However, no one has gone to the police outpost to furnish the information about the incident. It is nearly two hours thereafter i.e. at about 9:00 p.m. that P.W.9, the S.H.O., is said to have come to the place of occurrence and recorded the statement of P.W.5. Not only the failure to report the incident to the police, but also the delay involved in the matter are the factors to be taken into account. The courts have taken the view that the delay in furnishing the information or filing complaint in matters of this nature, particularly when there is rivalry between the parties, is likely to be utilized in framing the case or to meditate upon, to implicate any persons inimically disposed.

Assuming that the P.Ws.4 and 5, the nephew and the sister-in-law of the deceased respectively, were in a sense of shock and they did not proceed to the police outpost, what was elicited from them assumes significance. P.W.5 stated that she was able recognize the assailants i.e. the accused, in the moonlight. Though she

made an attempt to state that the accused attacked the deceased on account of their pending land-dispute, she was not able to furnish the details thereof.

The version presented by P.W.4 is equally important. Though it is mentioned that his statement was also recorded at the same time as that of P.W.5, it was not made part of the record. Had it been made part of the record, the defence would have been in a position to point out the discrepancies, if any, in the statements.

For all practical purposes, the evidence of P.W.4 was a repetition of what was stated by P.W.5. The version presented by P.W.4 was summed up by P.W.8 the investigating officer in his chief examination. However, when P.W.8 was cross-examined point by point, he has simply stated that P.W.4 did not tell him about the incident or his ability to recognize the assailants and the manner in which the incident has occurred.

If P.W.4 was able to see the assailants leaving from the place, it was equally possible for others to see. It is a different matter that P.W.8 stated that P.W.4 did not inform him that he has seen the accused leaving the place after the incident. Not a single disinterested witness was examined.

When all these factors are put together, we find it difficult to sustain the conviction ordered by the trial court. At any rate, out of the five accused, one was acquitted and three died during the pendency of the Appeals.

We, therefore, allow the Appeal, set aside the conviction and sentence passed against the 2nd appellant. The appellant is already on bail. The bail bonds executed by him shall stand cancelled.

(L. Narasimha Reddy,CJ)

(Sudhir Singh, J)

K.C.jha/-
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