

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.76 of 1990

**(Against the judgment dated 22nd February, 1990
in Sessions Trial No.78/89, on the file of the 6th
Additional Sessions Judge, Arrah)**

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1. Bhagwan Yadav
2. Chandeshwar Prasad Singh
3. Rohan Yadav
4. Bindeshwar Yadav, All sons of Madari Yadav
5. Erwar Yadav, son of Khaderan Yadav, All residents of village Pathrahat, Police
Station Dhanaura, District- Patna

.... Appellant

Versus

The State of Bihar Respondent

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Appearance :

For the Appellants : Shama Sinha, Adv.
For the Respondent : Dr. Mayanand Jha, 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 under Section-374(2) of Cr.P.C. is directed against the judgment dated 22nd February, 1990 in Sessions Trial No.78/89, on the file of the 6th Additional Sessions Judge, Arrah. The five appellants herein were tried for the offence of committing murder of one Kundan Sharma on 21.11.1985. The trial court convicted them, for the offence punishable under Section-302/34 of I.P.C. and sentenced them to undergo imprisonment for life.

The facts presented by the prosecution before

the trial court were as under:

P.W.7, Chaukidar of village Parsa, in the limits of Phulwarisharif Police Station of Patna District filed a complaint stating that at about 8:00 a.m. on 21.11.1985 he heard a rumour in the village that a dead body is lying in the village paddy field and he, accordingly, proceeded to that place, and noticed the dead body. On the basis of the complaint, F.I.R. was registered and investigation was taken up. In the meanwhile, the P.W.1, the father of the deceased, is said to have come to know about the dead body and furnished the information. According to P.W.1, himself and his son were traveling in Palamu Express from their village Nadwa to reach Patna and when the train reached the Parsa Bazar at about 7:30 a.m., five persons entered the compartment and dragged Kundan Sharma. It was stated that by the time the assailants dragged Kundan, the train moved and P.W.1 could not alight and thereafter he reached Patna. In the evening, he is said to have returned to his native village and there he shared the information with his other son, P.W.5 Ramanuj Singh. At a time when they were searching for Kundan Sharma they are said to have come to know about the dead body of Kundan at Parsa. The formalities of conducting inquest and post mortem were

completed. The statements of those witnesses were recorded, investigation was taken up and the accused was arrested.

According to the prosecution, the appellants are the persons who dragged Kundan Sharma from the train on account of caste rivalry and committed the murder by taking him to their village. Charges were framed and the appellants pleaded, not guilty, in the court of the 7th Additional Sessions Judge, Patna.

Before the trial court, P.W.1 to P.W.9 were examined and inquest report and post mortem report were filed as documents. When the trial was half way through, it was transferred by this Court through its order in Cr. Misc. No.687/99, to the court of Sessions Judge, Arrah. The rest of the trial was conducted there and after hearing both the parties the trial court convicted the appellants and sentenced them to undergo imprisonment for life.

The appellants were released on bail by this Court through order dated 1.3.1990. Obviously, because a quarter of century has elapsed, the appellants have lost interest in the matter, and their counsel is present. Therefore, we requested Smt. Shama Sinha, learned counsel, to assist the Court as an *amicus curiae*. She has



gone through the record and advanced arguments. She submits that from the very beginning the case was in a mystery and except stating that dead body of an unknown was lying P.W.5 did not furnish any relevant information at all. She further contends that if at all P.W.1, the father of the deceased, had seen his son being dragged from the train, the natural conduct would have been to submit a complaint instantly either in the same station or at Patna station where he reached, but the record discloses that not only at Patna, but even after he reached his native place, he did not feel like submitting a complaint. She submits that there was absolutely no basis for the prosecution to implicate the accused. It is also urged that motive suggested is unbelievable by any standard, if not ridiculous. She contends that if in fact the incident had taken place in a busy place like railway station, that too in morning hours, the question of its not having been noticed by the officials of the railway station or the G.R.P. does not arise and that failure to examine the investigating officer is fatal for the prosecution.

Shri Maya Nand Jha, learned A.P.P., on the other hand, submits that though the case lacked any clue at the initial stage, the mystery was cleared and the



appellants were arrested with the progress in the investigation. He submits that one after the other the witnesses being P.Ws. 1 to 6 have categorically stated that there was a rivalry between Yadavs, on the one hand, and Bhumihars on the other hand and in addition to that the villagers of Nadwa and Parsa villages had animosity against each other to such an extent that one side tried to kill the other side whenever they get occasion.

It is rather unfortunate that a young person by name Kundan Sharma met a mysterious death. His dead body was found in the fields of Parsa village and till the rumour about the dead body reached P.W.7, no one cared for it. As soon as he came to know about the incident, P.W.7 submitted a complaint. That, however, did not take the matter any further.

Some headway in the case took place with the examination of P.W.1, the father of the deceased. According to him, the deceased and himself were traveling in the train to reach Patna and when the train reached Parsa, the 5 miscreants or assailants dragged his son out of the compartment. One can certainly understand the agony of a father if his son was dragged right before him. The natural conduct of P.W.1 would have been to raise hue and cry in



the station itself if the incident has occurred. Assuming that the train moved, by the time he became alert, there is a facility of alarm chain and even the other passengers would have come to his rescue. The fact that he traveled all the way to Patna without feeling any disturbance and there also he did not inform anyone, would only suggest that his evidence was not reliable. Added to that, even after he went to his house in the evening, he did not feel like submitting a complaint. It is not as if he was groping in dark. The incident is said to have taken place right in front of his eyes, that too in a railway station. The identity of the assailants should not have been at all difficult for P.W.1 and the assailants could have been shown as unknown persons. The omission on his part to submit a complaint, is serious set back for the prosecution.

P.Ws.2 to 6 are said to be the passengers in the same train. Even they did not submit a complaint after the incident. Their evidence is such that their presence itself is subject to serious doubt.

Notwithstanding the infirmities referred to above, one can certainly believe the version of the prosecution if the accused had any definite grudge or grievance against the deceased. It was not suggested that because there was a

serious grievance against the deceased that the appellants were watching his every activity and movement and waiting at a particular place. The commission of a murder, that too in day light in a railway station would be possible if only the motive is so serious in nature. In the instant case, the only motive suggested is that there was rivalry between the residents of two villages. Even if that is true, one cannot just understand as to how the accused were waiting at a railway station other than the one in their village, and the choice had fallen upon the deceased. The caste was also brought into picture, but hardly any one examined on that aspect.

We find it difficult to sustain the conviction and sentence ordered by the trial court, and allow the Appeal. The conviction and sentence passed against the appellants are set aside. The bail bonds executed by the appellants shall stand cancelled.

(L. Narasimha Reddy,CJ)

(Sudhir Singh, J)

K.C.jha/-
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