

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.331 of 1991

Arising Out of PS. Case No. 92 Year- 1986 Thana -Bhagwanpur District- Begusarai

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1. Ram Kripal Mahto son of Kari Mahto
 2. Rajo Mahto son of Suraj Lal Mahto,
Both residents of village Bagaras, P.S. Bhagwanpur, District Begusarai.
 3. Ayodhya Mahto son of Sagat Mahto, resident of village Bhardiha, P.S.
Bhagwanpur, District Begusarai (since dead)

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellants : Mr. Ravindra Kumar, Advocate

For the Respondent: Dr. Mayanand Jha, APP.

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 06-02-2015

The accused nos.1, 2 and 3 in Sessions Trial No. 258 of 1987 (renumbered as Sessions Trial No.47 of 1990) on the file of the 2nd Additional Sessions Judge, Begusarai are the appellants herein. Out of them, the second accused i.e. the third appellant, by name, Ayodhya Mahton, died during the pendency of this appeal and the case against him abated. The appeal is only in respect of appellant nos.1 and 2, i.e. Ram Kripal Mahton and Rajo Mahton.

2. The F.I.R. in this case was registered based upon the statement recorded from P.W.4 by name Hurpulwa Devi, in the midnight intervening between 12/13.08.1986, in Bhagwanpur Police Station.



3. The statement was to the effect that P.W.4 stated that when her husband was cutting fodder in the evening, the accused no.3 Rajo Mahton, a neighbour in the rear backyard, called Ram Chandra Mahton with a request to accompany him to the agricultural field of the neighbouring village, and Ram Chandra Mahton is said to have asked P.W.4 to put the fodder to the cattle, while going out. She further stated that when Ram Chandra Mahton did not return, even by 9 O' clock, she, along with her Devar and Gotini are said to have gone to search and when she reached the school, they met Ayodhya Mahton, all of them were proceeding to search. They are said to have heard the sound of gun shot and several villagers raised hue and cry that a murder had taken place. P.W.4 and other persons, who accompanied her, are said to have gone to the place from where sound of firing emitted and they found Ram Chandra Mahton lying in a pool of blood struggling for life. Immediately thereafter they are said to have proceeded to the police station and gave the statement.

4. The motive for the murder of the deceased was said to be the strained relationship between him and accused no.4 Kari Mahton. P.W.4 stated that the deceased arranged the marriage between Nirmala Devi, her sister with the son of Kari Mahton to the dislike of the latter. She has also stated that on earlier occasion, accused 4 Kari Mahton implicated the deceased when former

received a pellet injury on his arm. At the end she has stated that she suspected the involvement of accused no.4 and his family members for the death of her husband.

5. After completing the set terms of inquest and post mortem, the police took up investigation and filed a charge sheet where appellants and Kari Mahton were alleged to have committed the murder of the deceased.

6. The prosecution examined P.Ws.1 to 7 and filed inquest report and post mortem report. No evidence whatsoever was adduced by the defence.

7. Through the judgment under appeal, the trial court acquitted Kari Mahton, accused no.4, and convicted the accused nos.1 to 3, the appellants herein, for the offences punishable under Section 302 read with Section 34 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for life. Hence, this appeal.

8. Sri. Ravindra Kumar, learned counsel for the appellants, submits that even in her complaint, P.W.4 did not mention the names of accused nos.1 to 3 i.e. the appellants herein and the only person, who was named as suspect i.e. Kari Mahton, was acquitted by the trial court, and that there was miscarriage of justice. Learned counsel further submits that except the fardbeyan there was no other

basis for the prosecution and no inkling of evidence existed for implicating the appellants herein.

9. Dr. Maya Nand Jha, learned APP for the State, submits that though P.W.4 suspected the accused no.4 alone in course of investigation, the involvement of the appellants herein was noticed on record and not only they were charged but after hearing them the trial court was satisfied with the evidence and accordingly it convicted and sentenced them.

10. The wife of the deceased i.e. P.W.4 is the complainant. She narrated the events that are said to have taken place from the late evening of 13.08.1986 till midnight. Since her husband did not come back till 9.00 P.M., she herself and her brother-in-law are said to have gone in search. She has also stated that on the way, near the school, accused no.2 Ayodhaya Mahton joined them and all the three proceeded to search for Ram Chandra Mahton. Therefore, the question of implicating Ayodhaya Mahton, who is since no more, did not arise.

11. P.W.4 further stated that they reached the place from where they heard the sound of gun firing and found the deceased struggling with profuse bleeding. The statement is not clear as to whether Ram Chandra Mahton breathed his last by the time P.W.4 and others reached there, or he was still alive. The statement

is also silent as to what steps were taken after noticing the deceased.

12. At the end of her statement, P.W. 4 has simply expressed suspicion against accused no.4 Kari Mahton and even she was not sure about his involvement. She did not name accused nos.1 to 3 at all muchless suspected and stated anything against them, definitely.

13. It is quite possible that though the statement which is in the form of complaint and the resultant FIR contains some basic facts, the identity of the actual culprit may come out as to how and when investigation progresses. In such cases, the persons, who were not named in the FIR, are included later and the FIR is accordingly altered. Heavy duty rests upon the Investigating Officer to satisfy the court as to the basis for including the names of the persons as accused, though they are not named at all in the FIR.

14. In the instant case, the evidence of P.W.7 the Investigating Officer is so incomplete, cryptic and casual, if not callous, that except stating that he took up the investigation from the Sub-Inspector of Police who recorded the complaint and submitted the charge sheet, he did not utter a word as to how, and on what basis he mentioned the names of accused nos.1 to 3 in the charge sheet. Another serious aspect is that he said to have recorded another statement from P.W.4 apart from the one, on the basis of which the

FIR was registered. However, that did not form part of the record. It only shows that every effort was made to improve the case and to implicate the innocent persons. The curious part is that the trial court has chosen to acquit the only one person whose name was mentioned as suspect, in the fardbeyan and convicted three persons regarding whom not a single word was stated either by P.W.4 or P.W.7. There is a clear miscarriage of justice.

15. We, therefore, allow this appeal and set aside the judgment of conviction and sentence ordered against the appellants. The bail bonds furnished by the appellants shall stand cancelled since they are on bail.

(L. Narasimha Reddy, CJ)

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(Vikash Jain, J)