

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.204 of 1993

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1. Chandreshwar Rai
2. Ishwar Dayal Rai
Both sons of Radhe Kishun Rai, R/o village- Bathera, P.S.- Maner,
District- Patna Appellants

Versus

The State of Bihar..... Respondent

with

Criminal Appeal (DB) No. 260 of 1993

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1. Parmeshwar Dayal Rai
2. Om Prakash Rai
Both son sons of Late Radhe Krishna Rai
3. Gulab Chand Rai
Son of Sri Ram Anugrah Rai
4. Bijoy Rai son of Shri Ram Rup Rai
All R/o village- Bathehara, P.S.- Maner, District- Patna
.....Appellants

Versus

The State of Bihar..... Respondent

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Against the judgment/order dated 08.04.1993 passed by Sri S.N.
Chaudhary, Additional Sessions Judge IInd, Patna in Sessions Trial
No. 642 of 1987

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Appearance :

For the Appellant : Mr. Baxi S.R.P. Sinha, Sr.Advocate
Mr. Rahul Nath, Advocate

For the Respondent : Ms. S.B. Verma, APP
Mr. Ajay Mishra, APP

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE V.N. SINHA)

Date: 29-07-2015

Both these appeals arise out of judgment/order dated
08.04.1993 passed by Additional Sessions Judge IInd, Patna in
Sessions Trial No. 642 of 1987 whereunder these appellants in two
appeals have been convicted for the offence under Sections 302/149

of the penal code and directed to suffer sentence of rigorous imprisonment for life.

2. From the first information report it appears that 13 persons were named in the written report against whom chargesheet was submitted and charges were framed but case of two of the accused persons were separated and 11 were put on trial. Out of the 11 accused persons put on trial, 5 have been acquitted, rest six have filed these appeals assailing their conviction and sentence.

3. Prosecution story, as set out in the written report of the informant, PW 3, Laxmi Rai submitted before the Officer In-charge of Maner Police Station on 23.09.1986 is that on Sunday i.e. 21.09.1986 around 7:00 pm his brother was returning home from Goraiya Asthan Fair with milk and met the informant at Lodipur market, wherefrom informant was returning with vegetables and the two proceeded towards their home. No sooner, the two reached near the orchard outlet, saw 13 accused persons namely, Parmeshwar Dayal Rai, Ishwar Dayal Rai, Om Prakash Rai, Chandeshwar Rai, Gulab Chandra Rai, Shishu Rai, Anil Rai, Binay Rai, Indu Rai, Jagnath Rai, Ramroop Rai, Bijay Rai and Ajay Rai armed with Garansa, Bhala and Lathi waiting near the outlet. The accused persons assaulted his brother Prabhu Dayal. Informant concealed himself in the orchard. After assaulting Prabhu Dayal, accused persons ran away towards the village. The informant came to his brother and saw him injured in pool of blood having suffered head injury. Informant thereafter,



informed his family members at home and with the help of family members took the injured to Danapur Hospital where he was provided first aid and the attending doctor referred him to Patna Medical College & Hospital, Patna where he succumbed to the injuries. In the morning Sub-Inspector came from Pirbahore Police Station and recorded his statement, post mortem of Prabhu Daya was also conducted in PMCH. In the written report the informant also explained the delay caused in lodging the written report as he was engaged in the cremation of the deceased. In the written report the informant further submitted that there was dispute with regard to mangoes and for that reason Prabhu Dayal has been assaulted and killed by the accused persons. Perusal of the written report indicates that the same was scribed by Dhawal Rai (PW 2). In the light of the written report as also the inquest report dated 22.09.1986 received from Pirbahore Police Station, Patna and the post mortem report also dated 22.09.1986, further statement of the informant and police statement of other villagers including the son-in-law of the deceased, the Officer In-charge, Maner Police Station submitted chargesheet against 13 written report named accused persons, on the basis of which cognizance was taken and the case was committed to the court of Sessions. Charges were framed against 13 accused persons on 12.07.1990 to which all of them pleaded not guilty and claimed to be tried. The trial of Anil Rai and Ajay Rai was separated under order dated 13.08.1991.



4. In support of the charges the prosecution examined as many as 6 witnesses, namely, PW 1 Basudeo Rai, brother of the deceased who came to the place of occurrence and saw the accused persons running away, PW 2 Dhawal Rai, son-in-law of the deceased. Perusal of the evidence of PW 2, son-in-law of the deceased, indicates that he learnt about the occurrence and is not an eye witness, PW 3 Laxmi Rai, informant and brother of the deceased, is an eye witness as he claims that no sooner the accused persons appeared on the scene from beneath the culvert, he concealed himself in the orchard and saw the occurrence from the orchard, PW 4 Satya Rai also claims himself to be an eye witness of the occurrence but from the evidence of the Investigating Officer it is evident that his police statement was not recorded. PW 5 Pasupati Upadhyay is the Investigating Officer of the case, PW 6 Dr. R. P. Srivastava served as Tutor in Forensic Medicine Department of Patna Medical College and Hospital and conducted the post mortem on the person of the deceased. From his evidence and the post mortem report it is evident that the deceased suffered as many as 10 injuries but the cause of death was injury no. 1 on the right side of scalp.

5. Learned counsel for the appellants submitted that from the inquest report of the deceased (Ext. 4), it is evident that inquest proceedings on the dead body of Prabhu Dayal Rai was conducted in Surgical Emergency, Patna Medical College and Hospital, Patna on 22.09.1986 at 8:30 pm by A.S.I. of Pirbahore



Police Station. It is submitted with reference to Ext. 4 that before conducting inquest proceedings on the dead body of Prabhu Dayal Rai on 22.09.1986 at 8:30 am, fardbeyan of informant Laxmi Rai was recorded by the same A.S.I. at 8:00 am who conducted the inquest proceedings on the dead body half an hour later at 8:30 am. It is further submitted that fardbeyan of Laxmi Rai recorded by A.S.I. of Pirbahore Police Station Sri B. Upadhyay is also brought on record vide Ext. 6 on 18.03.1993 but the ordersheet of that date does not indicate that fardbeyan scribed by A.S.I., B. Upadhyay was brought on record in accordance with law and opportunity was given to the accused persons to cross-examine either the maker of the said fardbeyan or its scribe. It is further submitted that as the said document Ext. 6 has been brought on record, the defence is entitled to use the same for its advantage and it is submitted that if the fardbeyan recorded on 8:00 am on 22.09.1986 is perused then, this Court will have to appreciate that no sooner the accused persons appeared on the scene from beneath the culvert where they were waiting in ambush, the informant ran for his life towards his village and kept waiting in the village until others informed him, thereafter, he came, having found his brother injured brought him to Danapur Hospital wherefrom Prabhu Dayal Rai was referred to Patna Medical College & Hospital, Patna where he succumbed to the injuries in the night during treatment. It is submitted that if the written report (Ext. 1) is read together with the fardbeyan Ext. 6 scribed by A.S.I.,

B. Upadhyay at 8:00 am on 22.09.1986 then, there will be no difficulty for this Court to accept that informant also is not an eye witness of the occurrence.

6. Having perused the fardbeyan of PW 3 Laxmi Rai scribed by A.S.I., B. Upadhyay of Pirbahore Police Station and the written report dated 23.09.1986, we are satisfied that the informant of this case PW 3 is not the witness of the occurrence. The other prosecution witnesses namely, PW 1 and PW 2 also do not appear to be the eye witness of the occurrence. PW 4 having not been examined by the Police, as such, it may not be safe for us to rely on his deposition. We have no option but to grant the appellants the benefit of doubt and their conviction for the offence under Sections 302/149 of the penal code and sentence for rigorous imprisonment for life is set aside and these appeals are allowed. The appellants are discharged from the liabilities of their bail bonds.

(V.N. Sinha, J)

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(Jitendra Mohan Sharma, J)

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