

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.216 of 1992

Against the Judgment and order of conviction and sentence dated
29.06.1992 passed by Shri Birendra Kumar Sinha, 2nd Additional
District and Sessions Judge Muzuffarpur in Sessions Trial No. 69
of 1988

Arising Out of PS.Case No. -null Year- null Thana -null District- MUZAFFARPUR

1. Ram Karan Singh
2. Anup Lal Singh

Both sons of late Mahabir Singh, resident of village Jamin Kamtaul Tola Bal
Bahadpur, P.S. Kurhani, District Muzuffarpur.

3. Awadhesh Kumar, son of Ram Karan Singh
4. Ram Briksh Thakur, son of Ram Dhin Thakur

Both resident of village Jamin Kamtaul Tola, Bal Bahadurpur, P.S. Kurhani,
District – Muzuffarpur.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

Criminal Appeal (DB) No. 254 of 1992

Arising Out of PS.Case No. -null Year- null Thana -null District- -

1. Lal Bihari Thakur son of Bisheshwar Thakur
2. Ram Shobhit Thakur, son of Lal Bihari Thakur

Both resident of village Jamin Kamtaul Tola Balbahadurpur, P.S. Kurhani

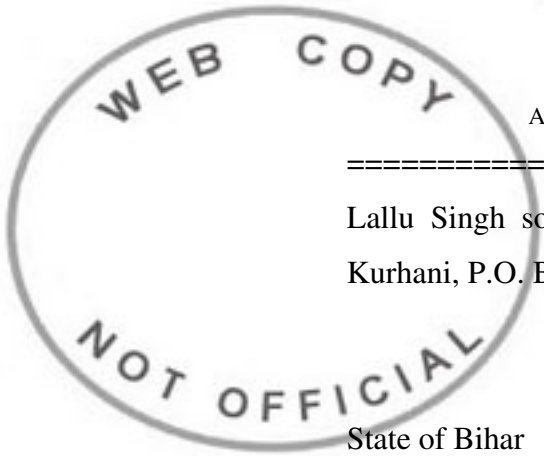
.... Appellant/s

Versus

State of Bihar

.... Respondent/s

with



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Criminal Appeal (DB) No. 307 of 1992

Arising Out of PS.Case No. -null Year- null Thana -null District- MUZAFFARPUR

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Lallu Singh son of late Mahabir Singh, resident of village Balbhadurpur, P.S.
Kurhani, P.O. Belaur, District Muzuffarpur.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Nirmal Kumar Sinha No. 3

Mr. Arun Kumar

For the State : Mr. Ajay Mishra, APP

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 30-01-2015

The seven appellants in these three appeals are aggrieved by the judgment and order dated 29th of June, 1992, passed by the learned 2nd Additional District and Sessions Judge, Muzaffarpur in Sessions Trial No. 69 of 1988, whereby appellant Lallu Singh having been found guilty for the offence under Section 302 of the Indian Penal Code, has been sentenced to undergo imprisonment for life. The rest have been

convicted and sentenced to imprisonment for a maximum period of seven years for the offence punishable under Section 307 of the Indian Penal Code. There are also convictions under other sections with lesser sentences, all of which have been directed to be run concurrently.

2. We have heard learned counsels for the appellants and Mr. Ajay Mishra, learned counsel for the State.

3. Learned counsel for the appellants submit that if the evidence on behalf of the prosecution is considered as a whole, it would be seen that the prosecution has failed to prove its case beyond the reasonable doubt. On the other hand, learned A.P.P. for the State submits that there are four witnesses to the occurrence, which included two injured witnesses. They are consistent in their evidence about the involvement of the appellants and as such, convictions and sentences cannot be interfered with.

4. The prosecution case is based upon a Fardbeyan which was recorded on 20.02.1986, at about 11:30 a.m. at the Sadar Hospital, Muzuffarpur. The information was given by Birchand Singh (P.W.4), who is injured himself. It may be noted that the fardbeyan having been recorded at Sadar Hospital, Muzaffarpur was sent to Kudhani Police Station, where the place of occurrence is situated and was registered as a formal First Information Report on 21.02.1986, but it was made available to the Court only on 25.02.1986. In the fardbeyan, it



is alleged that while the informant, Birchand Singh (P.W.4) and his father Hardeo Singh (P.W.2) were resting in the Bathani at about 9:00 p.m. on 19.02.1986, they heard someone trying to steal paddy straw. They, immediately, got up and found appellant, Anup Lal Singh trying to steal their paddy straw. They protested. There was exchange of abuses, which resulted in altercation between Anup Lal Singh and the informant as well as his father. Anup Lal Singh then called out his friends and all the appellants then turned up variously armed with Lathi, Garasa, Bhala and Farsa. It is then alleged that Nanawati Devi, the mother of the informant, came protesting and was hit and succumbed to injury, and the wife of the informant, namely, Sunita Devi (P.W.3) also came on hearing the shouts. It is alleged that appellant-Lallu Singh gave a blow on the head of Nanawati Devi. She fell unconscious. Then Hardeo Singh was assaulted by Anup Lal Singh and then all the appellants pounced upon the informant, Birchand Singh, who was also assaulted. The result was that the informant, Birchand Singh, his father Hardeo Singh and his mother Nanawati Devi were grievously injured. In that state, they were taken to the Sadar Hospital, Muzaffarpur for treatment at about 10:00 p.m. on 19.02.1986. This statement had been recorded at 11:30 p.m. on 20.02.1986 and as noted above, it was sent to the concerned police station for registering First Information Report. Nanawati Devi died in the Hospital. The

informant and his father were examined in the Hospital. Police got post mortem report of Nanawati Devi and the injury reports of the informant and his father Hardeo Singh. After investigation of the case, police submitted a charge sheet against the seven appellants. Cognizance having been taken, the case was committed to the Court of Sessions. Charges were framed and after the trial, they were found guilty and were convicted.

5. It may be noted that originally, all the appellants were charged under Sections 149/302 of the Indian Penal Code and Sections 149/307 of the Indian Penal Code, apart from Sections 148 and 147 of the Indian Penal Code, but the Trial Court has found only appellant Lallu Singh to be guilty under Section 302 of the Indian Penal Code, independently, and the others were found guilty under Section 149 and 307 of the Indian Penal Code.

6. In order to prove its case, prosecution has examined altogether 8 witnesses. Biswanath Prasad (P.W.8) is a formal witness, who has come to prove the formal FIR. Pramod Kumar Sinha (P.W.5) is the Investigating Officer, who merely filed the charge sheet. He neither interrogated any witnesses nor investigated the case. Awadhesh Prasad Singh (P.W.6) and Sudhir Kumar (P.W.7) are the doctors. They are witnesses in respect of the post mortem report of Nanawati Devi and the two injury reports in respect of Hardeo Singh and Birchand



Singh (the informant) respectively. That leaves us with Vishwanath Singh (P.W.1), who claims to be a co-villager and an eye witness, Hardeo Singh (P.W.2), father of the informant and an injured witness Sunita Devi (P.W.3) wife of the informant and allegedly, an eye witness and Birchand Singh (P.W.4), the informant himself. Nanawati Devi is the mother of the informant and wife of Hardeo Singh (P.W.2). So far as Vishwanath Singh (P.W.1) is concerned, he claimed himself to be an eye witness. To us, he does not appear to be an eye witness because at many places during deposition, he states that when he reached the place of occurrence, Nanawati Devi was already lying injured. He also saw the informant lying injured. These clearly indicate that he reached at the place of occurrence after the occurrence. We would not rely on his evidence as an eye witness. We, then, come to the remaining three eye witnesses including the informant, his father and his wife. They are inconsistent with regard to the manner and the place of occurrence. A suggestion was given to them that there is a Bathani near their house and adjacent to it, there is an agricultural plot having fresh maize plants, in which, there was a lot of disturbed soil and blood which has been seen by the Investigating Officer. This is not disputed by the prosecution. Then suggestion is made to the informant, specifically, that actually in the maize field, the mother of the informant Nanawati Devi (deceased) was found by the villagers



trying to steal the young maize plants and she was assaulted by the villagers for committing theft and, it is under those circumstances, the others received injuries. The prosecution case is false. Obviously, this was denied by the informant. If the evidence was, as noted above, we would have no hesitation in upholding the conviction, but what comes thereafter changes the whole picture. Firstly, both Hardeo Singh (P.W.2) and the informant (P.W.4) have said that having been brutally injured alongwith their injured mother, they were taken by villagers to Sadar Hospital, Muzuffarpur. Both of them are consistent that upon examination the mother of the informant, Nanawati Devi was found dead. They were then admitted and treated in the hospital. They had reached the hospital at about 10:00 p.m. on 19.02.1986 . If this being the correct story, then prosecution has failed in proving facts, which now we will notice.

7. The prosecution case is that the three were brought to the hospital at about 10:00 p.m. on 19.02.1986. Injury reports were prepared in respect of P.Ws. 2 and 4 by the doctor of the hospital, which injury reports are exhibited as Exhibit 4 and 4/1. It shows that those were prepared at 12:30 a.m. i.e. the mid-night intervening 19-20.2.1986 but this injury report also indicated one more thing that the two patients i.e. P.W. 2 and P.W. 4 were brought with bandage on heads. This clearly shows that they have been medically attended, prior to the injury report being prepared. They have not so stated in



their deposition. This becomes more important and relevant when we come to the post mortem report of Nanawati Devi. The post mortem was performed at about 2:30 p.m. on 20.02.1986. As noted above, the evidence is consistent that she was brought to the hospital and declared dead, meaning thereby, she was declared brought dead but the doctor, who performed the post mortem examination found that her wounds on the head had been stitched. In the post mortem report, which is Exhibit-3, it is clearly reported that detailed reports of original injuries could be obtained from the Surgeon, who had earlier attended to her. Then we tried to look in as to what time she was reported dead. On the one hand, there is the evidence of the son of the husband that she was declared dead on being brought to the hospital and on the other hand, it is the surgical inference of the Doctor who stitched the wounds and bandaged her head. She had surely been attended by doctor earlier. But the time of death is not certain. If she was brought dead at about 10:00 p.m. on 19.02.1986 alongwith other injured then why the statement of these witnesses was not recorded at that time. If P.Ws.2 and 4 were medically examined for injuries at about 12.30 a.m. in the mid night intervening 19-20.2.1986, again, why was not their statement taken. The fardbeyan was recorded for the first time, allegedly, at 10:30 p.m. on 20.02.1986 i.e. almost 12 hours after they had been admitted to the hospital in injured condition. Prosecution has not

brought on record the inquest report which would have shown as to where the body was taken charge of by the police and at what time. The inquest report is on the record but has not been proved. We would not like to examine the same. Prosecution evidence has not sought to rely upon it. We can only draw the adverse inference in this regard as against the prosecution.

8. Be that as it may, the post mortem report clearly reveals that they were attended by the doctors before they were brought to the hospital. The deceased was surgically interfered with. All this was concealed by the prosecution. Why, there is no answer. Why there was inordinate delay in recording fardbeyan, there is no answer. These lead us to believe that the prosecution is not putting up a true case before the court. The manner and the place of occurrence are changed. The natural consequence of all this is that the entire prosecution story becomes seriously suspected and that being so, it cannot be said that the prosecution has succeeded in proving its case against the appellants beyond the reasonable doubt.

9. Let it be noted that we have no manner of doubt that the mother of the informant, or for that matter, the informant and his father did receive injuries, but we are constrained to hold that the manner in which, they received the injuries and who is responsible for it, has not been truthfully stated. That doubt being there, we cannot uphold the conviction of the appellants under any provision of law.

10. Thus, these appeals are allowed, the judgment of conviction and sentences, as passed by the learned Sessions Judge, is set aside. The appellants are already on bail. The appellants are directed to be released from the liability of their bail bonds.

(Navaniti Prasad Singh, J)

(Anjana Mishra, J)

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