

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.362 of 1993

(Against the judgment of Conviction dated 26.07.1993 and order of Sentence dated 27.07.1993 passed by Shri Bihari Pandey, 2nd Additional Sessions Judge, Gopalganj, in Sessions Trial No. 177/1980, arising out of Mirganj P.S. Case No. 20(6) of 1979)

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- 1. Ram Bharosa Bhagat,
 - 2. Ganga Bishun Bhagat,
 - 3. Raj Bansi Bhagat
- All are sons of Nathuni Singh
- 4. Bhulani Bhagat son of Late Bishun Bhagat,
 - 5. Ram Das Bhagat son of Late Bhola Bhagat,
- All are residents of Village-Koirauli, P.S. Mirganj, O.P. Hathwa, District Gopalganj.

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

- For the Appellant/s : Mr. Dhananjay Kumar, Advocate
Mr. Sunil Prasad, Advocate
- For the Respondent/s : Mr. Ajay Mishra, A.P.P.
- For Amics Curiae : Smt. Anuradha Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI
and
HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)
Date: 19-02-2015

This appeal is directed against judgment and order, dated 26.07.1993, passed by the 2nd Additional Sessions Judge, Gopalganj, in Sessions Trial No.177 of 1980, whereby appellant No.2, namely, Ganga Bishun Bhagat, has been convicted under Section 302 of the Indian Penal Code and sentenced to undergo life imprisonment. However, other appellants, namely, appellant Nos. 1 and 3 to 5 stand convicted only under Section 147 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for

six months each.

2. The prosecution's case, as made out on the basis of *fardbeyan* of one Harihar Singh, son of Babu Ram Bhagat, resident of village Koirauli, P.S. Mirganj, District Gopalganj, recorded, on 29.06.1979, at 11.30 A.M., in Raj Hospital, Hathwa, by A.S.I. Shri Z.A. Khan, giving rise to Mirganj P.S. Case No.20 of 1979, under Sections 147/307/325/323 of the Indian Penal Code to which Section 302 of the Indian Penal Code was subsequently added, in short, is as follows:

(i) According to the informant, both the accused and the prosecution side have their agriculture field contiguous to each other. On 28.6.1979, a day prior to the occurrence, appellant No.2, Ganga Bishun Bhagat, drew water in his agriculture field from the canal till 10 P.M. After irrigating his field, he diverted the water of canal towards the field of the informant and, as a result thereof, the field of the informant got inundated by water and the *cabbage* vegetables grown therein were damaged. On the following morning (29.06.1979), when the informant, Harihar Singh, along with his brother, Ram Swarup (P.W.5), and his father, Baburam Bhagat (deceased), went to see their field, they witnessed the damaged vegetables. Around that time, Ram Bharosa Bhagat, appellant No.1, was also passing through their field on a cart. The deceased, Baburam Bhagat, was stopped and informed about the mischief of accused Ganga Bishun Singh, appellant No.2. Accused Ram Bharosa Bhagat retaliated by abusing and assaulting the deceased, Baburam Bhagat, with *fatta*. In the meantime, the informant and his brother, Ram Swarup (P.W.5), and some villagers, who had gathered by then,



intervened and succeeded in separating them. Co-accused, Bulani Bhagat, a relative of accused persons, who was also in the field with his plough, rushed to his house and came along with Ganga Bishun Bhagat, Raj Banshi Bhagat and Ram Das Bhagat (all appellants herein) and instigated them to kill the deceased. Thereupon, Ganga Bishun Bhagat hurled a lathi blow on the head of the deceased. On being so assaulted, Baburam Bhagat fell down. Co-accused, Raj Banshi Singh, assaulted the deceased with a *lathi*. The informant and his brother, Ram Swarup, too, when tried to save the deceased, were assaulted by Ram Das and his brother, Ram Swarup, by *lathi*. According to the informant, the occurrence was also witnessed by Indrajit Singh (P.W.4), Bishwanath Chaudhary (P.W.3) and others, who had arrived at the place of occurrence. The accused, thereafter, took to their heel. The deceased, Baburam Bhagat, who had become unconscious was taken to Hathua Hospital for treatment. On the same day, in the hospital itself, at about 11.30 A.M., the A.S.I. of Mirganj P.S., recorded the *fardebayan* of Harihar Singh (informant) giving rise to Mirganj P.S. Case No.20 of 1979 under Sections 147, 307, 325 and 323 of the Indian Penal Code. Later on, in the day, Baburam Bhagat succumbed to the injuries sustained by him and Section 302 of the Indian Penal Code was, consequently, added to in the First Information Report.

3. After investigation, police submitted *charge sheet*, under Sections 147, 149, 302 and 325 of the Indian Penal Code, against all the five accused persons. The case was committed to the Court of Sessions and charges were framed under Section 302/149 of the Indian Penal Code against all the accused aforementioned for having committed murder of Babu Ram

Bhagat. Accused Ram Das Bhagat and Ram Bharosa Bhagat were additionally charged, under Section 323 of the Indian Penal Code, for voluntarily causing hurt to the informant, Harihar Singh, and his brother, Ram Swarup Bhagat. The accused appellants pleaded not guilty and claimed to be tried.

4. The prosecution examined altogether seven witnesses in support of its case. Out of whom, P.W. 1 (Anil Kumar) is a formal witness and has proved the writing and signature of Shri G.N. Tiwary, the then Officer In-Charge of Mirganj P.S., which is marked as Ext.1. P.W. 2 (Bhim Singh), P.W. 3 (Bishwanath Choudhary) and P.W. 4 (Indrajeet Singh), who were examined as eye witnesses, did not support the prosecution's case and were declared hostile. P.W. 5 (Ram Swarup Bhagat), who is brother of the informant and is said to have sustained injuries, is the only eye witness of the occurrence. P.W. 6 (Mazharul Haque) has proved the writing and signature of Dr. Indranand Jha on the *post mortem* report; which has been marked as Ext.2. P.W. 7 (Pashupati Singh) is Police Constable and has proved the writing and signature of Shri Z.A. Khan, the then ASI of Mirganj P.S., who recorded the *fardbeyan* (Ext.3) of the informant.

5. The defence did not choose to adduce evidence. However, a certified copy of the deposition of Bulani Bhagat (appellant No.4), in Case No. G.R. No.794 of 1978, was produced on record as Ext-A in support of his defence that he has been falsely implicated in the case, because he had deposed against the informant's uncle.

6. The defence of the accused, in their statements under Section 313 of the Code of Criminal Procedure, was a complete denial of the



prosecution's case. The learned trial Court, upon consideration of the materials on record, convicted appellant No.2 under Section 302 of the Indian Penal Code and sentenced him to suffer life imprisonment, whereas the other appellants, namely, appellant No.1 and 3 to 5 were convicted under Section 147 of the Indian Penal Code and sentenced to suffer six months' rigorous imprisonment each. Being aggrieved, the appellants have preferred the present appeal.

7. The appellants submit that the learned trial Court has erred in coming to the conclusion that the prosecution has succeeded in proving the charges against the accused persons. They further submit that the learned trial Court ought to have acquitted the appellants as the prosecution had failed to examine the Investigating Officer and the doctor, who performed the *post mortem*. Unfortunately, the informant also could not be examined as he, according to P.W. 4, died.

8. We have heard counsel for the parties and perused the materials on record. We find that the prosecution's case is based on the sole testimony of P.W.5 (Ram Swarup Bhagat), who is brother of the informant and son of the deceased. The other witnesses, produced by the prosecution, namely, P.Ws 2, 3 and 4 did not support the prosecution's case at the trial. P.Ws 1 and 7 are formal witnesses and have proved the F.I.R. (Ext.1) and *fardbeyan* (Ext.3) respectively. P.W. 6, like P.W.1 and 7, is a formal witness, who has proved the signature of Dr. Indranand Jha on the *post mortem* report, which has been marked as Ext.2. Thus, we find that the prosecution's case is substantially based on the testimony of P.W.5, who is son of the deceased.

9. We may point out, at this juncture, that conviction can be sustained even on the evidence of a solitary witness if the testimony is wholly reliable and, otherwise, free from any doubt. In the light of the aforesaid settled positions of law, we would, now, examine whether testimony of P.W. 5 is wholly reliable and whether conviction of the appellants can safely be sustained on his evidence.

10. P.W. 5, in his examination-in-chief, has stated that on the alleged date, at 6 A.M., he was also in the *cabbage* field along with his brother, Harihar Singh (informant), and his father, Baburam Bhagat. A day prior to the occurrence, the appellant, Ganga Bishun Bhagat, after completing his irrigation, mischievously diverted the canal water towards their field and as a result thereof, the *cabbage vegetables* got damaged. Around that time, appellant, Ram Bharosa Bhagat, was also passing through the field (Rasta) on his cart. The informant's father complained to him about the conduct of accused Ganga Bishun Bhagat. On hearing the complaint, Ram Bharosa Bhagat got down from his cart and he abused and assaulted P.W. 5's father (Babu Ram Bhagat) with *fatta*, whereupon P.W.5 and his brother intervened. However, accused Bulani Bhagat, who was also around with his plough and bullocks, went home and came with the other accused, Rajbanshi Bhagat, Ram Das and Ganga Bishun Bhagat, all armed with *lathis* and, on the order of accused Bulani Bhagat, Ganga Bishun Bhagat gave blow with *lathis* on the head of P.W.5's father; as a result of which, P.W.5's father (Baburam Bhagat) fell down on the ground. Thereafter, Raj Banshi Bhagat hurled *lathi* blow on P.W.5's father. When P.W.5 along with his brother, Harihar Singh, tried to

save his father, they, too, were assaulted by Ram Bharosa Bhagat and Ram Das Bhagat. On *hulla* being raised, witnesses came there, whereafter the accused took to their heel and, with the help of the villagers, injured Baburam Bhagat was taken to Hathwa Hospital, where he succumbed to his injuries. P.W. 5 has also deposed that the accused side damaged their crops and when his father protested, he was fatally assaulted. Further-more, when he, along with the informant, tried to save their father, they, too, were assaulted.

11. The appellants have argued that the evidence of P.W. 5 suffers from contradiction and does not even find support from the *post mortem* report and inquest report. We find substance in the submission of the appellants. The *post mortem* report is on record as Ext.3. The doctor, conducting the *post mortem*, did not find any external injuries on the person of the deceased, which could have been caused by *lathi*. The inquest report does not refer to any visible injury on the person of the deceased. Further-more, the reports of the injuries sustained by the informant or P.W. 5, too, have not been brought on record. P.W. 5, in paragraph 3, has deposed that it was on the morning of 29.6.1979 that he found the cabbage crops damaged. However, in paragraphs 5, 6 and 7 of his depositions, he stated that his father and his brother (informant) were present, when accused were diverting canal water in their field on 28.6.1979. Besides this, P.W. 5 stated, in paragraph 5, that his father had sustained injuries at *cabbage* field, whereas in paragraph 14, he has stated that his father sustained injuries in the field of one Tildhari.

12. We find that the evidence of P.W. 5 is not even corroborated either by *post mortem* report or the inquest report. Besides this,

the evidence of P.W. 5 also suffers from contradictions and is not one, which is clinching in nature and free from doubts.

13. Situated thus, it would not be safe, in our view, to uphold the conviction of the appellants solely on the testimony of P.W.5. Furthermore, we have already noticed, in the preceding paragraphs, that other witnesses, namely, P.W.2, P.W.3 and P.W.4 did not support the prosecution’s case.

14. In the result, this appeal is allowed. The impugned judgment of conviction dated, 26.07.1993, and order of sentence, dated 27.07.1993, passed by the learned 2nd Additional Sessions Judge, Gopalganj, in S.T. No.177/1980, arising out of Mirganj P.S. Case No.20(6) of 1979, are hereby set aside. As the appellants are already on bail, they are discharged from the liability of their bail bonds.

(Samarendra Pratap Singh, J.)

(I. A. Ansari, J.)

(I. A. Ansari, J.)

Md.Jamaluddin Khan

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