

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 305 of 1991

Arising Out of Bhadaur PS. Case No. 01 Year- 1985 Thana Bhadaur District- -Patna

Against the judgment dated 30.07.1991 passed by learned Additional Sessions Judge –II, Barh, Patna in Sessions Trial No.283 of 1986

- 1. Sheo Chauhan, son of Basudeo Chauhan
- 2. Bundela Chauhan, son of Basudeo Chauhan
- 3. Binda Chauhan, son of Basudeo Chauhan
- 4. Jageshwar Chauhan, son of Basudeo Chauhan
- 5. Mathura Yadav, son of Moulavi Yadav
- 6. Surendra Yadav, son of Moulavi Yadav
- 7. Ganesh Dhanuk, son of Jagdish Dhanuk
- 8. Amak Paswan, son of late ---Paswan
- 9. Uchit Paswan, son of Mang Paswan
- 10. Suresh Paswan, son of Dular Chand Paswan

All resident of Village Bathoi, Police Station Bhadoh, District Patna.

.... Appellants

Versus

The State of Bihar

.... Respondent

with

Criminal Appeal (DB) No. 354 of 1991

Arising Out of Bhadaur PS. Case No. 01 Year- 1985 Thana Bhadaur District- -Patna

Chando Chauhan, son of Basudeo Chauhan, resident of village Bathoi, Police Station Bhadoh, District Patna.

.... Appellant

Versus

The State of Bihar

.... Respondent

Appearance:

(In CR. APP (DB) No. 305 of 1991)

For the Appellants : None

For the Respondent : Dr. Mayanand Jha, APP

(In CR. APP (DB) No. 354 of 1991)

For the Appellant : None

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

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These two criminal appeals are preferred by the accused in Sessions Trial No. 283 of 1986 on the file of Additional Sessions Judge-II, Barh, Patna. All the 11 appellants herein figured as A-1 to A-11 in the case were accused of committing murder of Kedar Paswan at 7.00 P.M. on 10.01.1985 at village Bhadoi. Through its judgment dated 30.07.1991 the trial Court convicted all the appellants herein for the offences punishable under Sections 302, 149 and 201 of the Indian Penal Code and sentenced them to undergo imprisonment for life.

The facts, as revealed in the fardbeyan (statement) recorded from PW-2, Umesh Paswan constituted the basis for trial of the appellants. The contents of the fardbeyan are as under :-

The informant, PW-2 is the nephew of the deceased, Kedar Paswan. The deceased was employed with one Dwarika Mahto in the neighbouring village Kazichak and he used to go to the place of work in the morning and return to his house in the evening, every day. On the day of incident PW-2 was proceeding to look after the crop at about 7.00 P.M. holding a torch in his hand. He is said to have noticed his uncle coming from the place of employment and that in



the meanwhile all the accused herein came in a group and attacked the deceased. He gave particulars of the manner in which each of the appellants are said to have attacked the deceased. It was stated that Chando Chauhan, A-10 slit the throat of the deceased and caused death and thereafter all the accused taken away the dead body with them. PW-2 said to have cried for help and on hearing the same one Kameshwar Paswan (since dead) and Suresh Paswan, PW-1 are said to have came to the place of occurrence.

PW-2 and his other family members are said to have searched for the dead body on the next day and not being able to find it they have proceeded to the Police Station at 4.00 P.M. on 11.01.1985 and the fardbeyan was recorded from him. He alleged that the appellants had grudge against the deceased since the latter had kept some bricks in the land of the appellants.

After the First Information Report was registered on the basis of statement, the investigation is said to have taken up. Dead body was recovered about 8-10 days after the incident and post mortem was conducted. After completion of the investigation the prosecution filed charge sheet alleging offence against the appellants. The trial Court found all the appellants guilty of the offence of committing murder of Kedar Paswan and sentenced all of them to undergo imprisonment for life.



None appears for the appellants. We have gone through the records of the case and expressed our views to the Learned Additional Public Prosecutor, Dr. Mayanand Jha. He submits that though there are certain extraordinary features in this case, the prosecution was able to prove the involvement of the appellants in the murder of the deceased.

This is a typical case in which several extra ordinary features are noticed. PW-2 is said to be the nephew of the deceased Kedar Paswan. According to the version presented by him in the fardbeyan as well as the chief examination in the Court he said to have seen and identified all the appellants with the help of a torch light. He has given a detailed account of the incident and attributed one act or the other on all the appellants. From his own narration, it is evident that the incident took place nearby the village. In his statement before the Station House Officer he mentioned that on hearing of his cries PW-1 Suresh Paswan and Kameshwar Paswan came to the place of occurrence. However, in his evidence he stated that in spite of his cry and alarm, no one from the village has turned up.

In case PW-2 has seen the occurrence of the ghastly murder of his uncle, it was expected of him to go to the Police Station along with his family members and report the incident. It was only on



the next day, that too in the evening that he said to have gone to the Police Station and his statement was recorded. The gap between the alleged occurrence and recording of statement is 21 hours. Courts give extreme importance to the timing of reporting of the instant case. The reason is that the version of a complainant can be taken as true if only it is revealed to the police, without any loss of time. With the intervention of each hour, if not minute, the possibility of pondering over the situation and tendency to implicate the persons who are inimical to the complainant, increases. There are instances where delay of even one hour from the occurrence in submitting the complaint was treated as fatal to the case of the prosecution. This is particularly so, when there exist previous enmity between the complainant/deceased and the accused. One does not have to hesitate to seriously doubt the veracity of the statement of PW-2 which was recorded 21 hours after the incident.

Another serious flaw we noticed is that no trace of blood stains was found in the place of occurrence. To cover that up PW-2 stated in his evidence that the murder was committed after spreading a bed sheet and the blood was confined to that. That was not his case, in his statement. There cannot be a better instance of concoction of facts, than this.

In his statement as well as the evidence of PW-2 stated



that the fatal blow was caused by Chando Chauhan, A-10, the rest of the accused were mentioned only as bystanders and obviously to implicate them it was alleged that one caught hold his hands, another legs and the third one kept cloth in the mouth and so on. It is only through the light of the torch PW-2 is said to have identified as many as 11 accused. However, the torch was not marked as an exhibit. He has stated that the torch light was not handed over to the Station House Officer since he refused to take it.

It is not difficult to imagine the condition of a body which is said to have been recovered after 8-10 days. No part of it would be available for verification or scrutiny. We do not find any genuinity in the version presented by PW-2.

The entire evidence on record is silent about the reaction from the wife and children of the deceased. If in fact the incident has taken place nearby the village there would be a lot of commotion and the village officers would be under obligation to report the matter to the Police even no formal complaint is made. The reason given by PW-2 in this regard is that the house of the Mukhiya of the village is about one and half miles away. Even if he could not go to him during night, at least in the next morning he could have reported the matter.

The evidence of PW-1 is still wavering and unreliable. In fact his evidence makes his presence, and for that matter evidence of

PW-2 at the alleged place of occurrence, doubtful. The trial Court however, convicted all the accused just on the basis of imagination, we do not find any basis for the judgment of the trial Court.

We, therefore, allow these appeals and set aside the conviction and sentence ordered against all the appellants. The appellants are on bail. They are discharged from the liabilities of their bail bonds.

(L. Narasimha Reddy,CJ)

(Vikash Jain, J)

A.F.R.

Chandran/Md.Ibrarul

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