

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.369 of 1992

Against the judgment of conviction and order of sentence dated 31.08.1992 passed by the learned Sessions Judge, Muzaffarpur in Sessions Trial No.69 of 1989.

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1. Dinanath Gupta, son of Sri Raghunath Prasad Gupta.
 2. Ashok Kumar, son of Mungalal Sah.
 3. Prabhu Sah, son of Mungalal Sah.

All resident of village-Bokhra, P.S.-Saraiya, District-Muzaffarpur.

.... Appellants.

Versus

The State of Bihar.

.... Respondent.

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Appearance :

For the Appellants : Mr. Dhaneshwar Prasad Gupta, Adv.

For the Respondent : Mr. Ajay Mishra, A.P.P.

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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: 07-01-2015

The present appeal by the three appellants have been filed upon being convicted for an offence punishable under Section-302/34 of the Indian Penal Code (hereinafter in short IPC) and sentenced to rigorous imprisonment for life in Sessions Trial No.69 of 1989 by the learned Sessions Judge, Muzaffarpur being the judgment of conviction and order of sentence dated

- 2 -

31.08.1992.

The incidence had taken place on 11.05.1987 at 10 pm outside the village Bakhra, P.S. Saraiya, District Muzaffarpur where Deo Narain Sah, the father of the informant Anil Kumar Sah (P.W.3) is supposed to have been killed by the three appellants while the informant and his father were returning on a TVS moped after attending a marriage ceremony from the near by village. There are two fardbeyans on record. The first was recorded at about 6 am at Sadar Hospital, Muzaffarpur at the behest of the informant Anil Kumar Sah (P.W.3), which was not registered as an F.I.R. but forwarded to Saraiya Police Station for necessary action. The second statement, which has been taken note as a fardbeyan and on basis whereof the case has been registered, was recorded at 9 pm in the house of the deceased at village Bakhra, P.S. Saraiya, District Muzaffarpur. There is not much relevance of the two statements because they are virtually the same and by the same person but we would discuss them at appropriate stage later.

In the fardbeyan, it is alleged that the informant Anil Kumar Sah (P.W.3) and his father, the deceased Deo Narain Sah had gone to the village of Sheo Chandra Thakur (P.W.1) to attend the marriage ceremony of his daughter in the night on a TVS

- 3 -

moped. When they were returning, the deceased was driving the moped and informant was sitting on the back. When they were at the outskirts of their village three persons came from the front and surrounded the moped and started assaulting the informant's father. The informant, who was sitting on the back, managed to escape. When he reached near the temple at the outskirts of the village and called for help many people including Upendra Prasad Sah (P.W.5) and Shatrughan Prasad (P.W.6), who were there at the temple, accompanied the informant back to the place of occurrence. Upon returning to the place of occurrence, allegedly, the informant and others saw the three appellants fatally assaulting the deceased. On seeing these persons coming, the assailants allegedly escaped. After seeing his father grievously hurt and unconscious, the informant loaded him in a jeep and brought him to the Sadar Hospital, Muzaffarpur for treatment where the doctor declared him dead. This statement was first given and recorded at about 6 am at the Sadar Hospital, Muzaffarpur by Sri Birendra Singh Chandel (P.W.13). Accordingly, after recording the statement and sending it to Saraiya Police Station within whose jurisdiction incidence had taken place, the inquest report was prepared clearly mentioning that the dead body was recovered from the jeep which was parked in the Sadar Hospital compound.

- 4 -



The body was sent for postmortem which was performed by Dr. Binod Kumar Mehta (P.W.11) at about 10:30 am on 12.05.1987. Thereafter, the second statement was recorded at 9 am in the house of the deceased. This time, it was recorded by Sri A.K. Sinha, the Officer-in-Charge of Saraiya Police Station who has not been examined. Upon this statement being recorded, a formal F.I.R. was then registered at about 9:35 pm against the three appellants for an offence under Section-302/34 IPC. Sri A.K. Sinha, the Officer-in-Charge of Saraiya Police Station, then took up investigation but, after sometime upon his transfer, the investigation was handed over to Shobha Kant Pathak (P.W.12) who took the statement of the last witness to be interrogated being P.W.1-Sheo Chandra Thakur and thereafter submitted the charge-sheet. The Magistrate having taken cognizance of the offence as alleged committed the case to the Court of Sessions against the three appellants who pleaded not guilty, were accordingly tried and convicted as aforesaid. Hence, this appeal.

In order to establish the prosecution case, the prosecution has examined in all 13 witnesses. It may not be necessary to refer to each of them individually for there are only two alleged eye-witnesses. We may also refer to some other witnesses for certain attending circumstances. In the F.I.R. itself,

- 5 -

it is stated that Upendra Prasad Sah (P.W.5) and Shatrughan Prasad (P.W.6) were amongst the two persons who had returned to the place of occurrence along with the informant and had allegedly seen the three appellants fatally assaulting the deceased. In trial Shatrughan Prasad (P.W.6) was declared hostile because he did not support the prosecution. His evidence is material to the case. As alleged in the fardbeyan, from the place of occurrence the informant is supposed to have run seeking help to a temple (Mandir) which is at a distance of about 1 to ½ Kms. In this temple the marriage party of daughter of this witness Shatrughan Prasad (P.W.6) had assembled in the night for send off. It is to attend this marriage ceremony Upendra Prasad Sah (P.W.5) was also allegedly present at the temple at that time of the night. In his deposition, he states that when he along with others reached the place of occurrence he had not seen any of the assailants there. That leaves us only two alleged eye-witnesses, i.e., the informant Anil Kumar Sah (P.W.3) and Upendra Prasad Sah (P.W.5). We may deal with both together on the question of identification.

The informant Anil Kumar Sah (P.W.3) states that when he found three persons had approached and surrounded the TVS moped on which he and his father were traveling and started assaulting his father, he managed to escape and run to the village

- 6 -

Mandir from there he shouted that people were killing his father. Upendra Prasad Sah (P.W.5) clearly admits that the informant did not name any person at that time.

The first thing to be noted here is that in that situation it is to be held that at the first instance neither the informant had identified the appellants nor any other miscreants. Then the evidence of both goes to suggest that they along with others then came out of the temple and rushed to the place of occurrence, which, as noted above, is about 1 km. It is about 10 pm in the night when they reached the place of occurrence. It is alleged that the three appellants were still there fatally assaulting the deceased, who had fallen to the ground, and they were able to identify the three appellants who then escaped from there. There no one tried to conceal the identity. We have difficulty in accepting this part of evidence as true and correct. The reason being, that even if there was a motive or an intention to kill on the part of the three appellants, there was ample time available to them to kill as they were variously armed and escaped, especially when they had seen the son of the deceased escaped to the village. It is curious that it is not alleged that the informant was at all chased or prevented from escaping any manner. This is more relevant because the identity of all persons were known to each

- 7 -

other. They were of the same village. This is a very unnatural sequence of events. First the informant does not recognize them. It is only later when they come back the assailants are still there and they offered themselves for identification without trying to escape. Thus, in our view, the manner in which the occurrence is said to have taken place cannot be said to be established beyond reasonable doubt.

Now, we may refer to some other witnesses. Rajkali Devi (P.W.8) is the wife of the deceased. In her deposition in the Court, she clearly states that in the night she had seen the three appellants along with some others feasting at the instance of her elder brother-in-law who was instigating them against her husband and who clearly told them that the work must be finished this night itself. If this is to be believed then in normal course the police ought to have investigated, if not charge-sheeted, the elder brother-in-law of this witness, i.e., the elder brother of the deceased for having instigated the murder. This has not at all been investigated much less he was charge-sheeted. This evidence also shows that the three appellants were not alone. There were many more but only three have been named by the informant and other witnesses. This raises doubt again about the complicity of the appellants.

- 8 -

We may then come to the evidence of Sri Ram Sah (P.W.4), the eye witness. He admits that the informant is his own nephew (sister's son). Meaning thereby that he is the brother of Rajkali Devi (P.W.8). He was in the village from 10.05.1987 itself and was staying not at his sister's place but with Shatrughan Prasad (P.W.6) and was at the temple in connection with the marriage of Shatrughan Prasad's daughter. This is strange.

Then, we have Ram Chandra Choudhary (P.W.7). He is not a witness to the occurrence but he has been brought in to give evidence to the fact that the three appellants and several others were seen moving in the village in suspicious manner at about 10 pm on the date of occurrence. He asked the appellant-Dinanath Prasad as to where he was going, upon which, he got reply that they were going to attend the marriage ceremony of daughter of Shatrughan Prasad (P.W.6). He is supposed to have said that appellant-Dinanath Prasad had strained relations with Shatrughan Prasad (P.W.6) then why was he going there at that time of the night. There was no reply. From these two things are clear. The three appellants were allegedly not alone and they were seen in the village at about 10 pm. This is about the same time when the incidence had taken place more than a kilo meter outside the village. There is surely something for the prosecution to

- 9 -

explain.

We then have the evidence of Sheo Chandra Thakur (P.W.1) from whose daughter's marriage the deceased and the informant were returning. He is not a witness to the occurrence because he belongs to another village but he states that it was on the next day that he was informed that Deo Narain Sah had been killed by at least five named persons including three appellants. From these evidences, it would appear that different people are giving different versions. Some are naming 5 to 6 persons. Some are identifying that there were more than the three appellants. The informant maintains that there were only three appellants. This shows that there was more than it what was the prosecution sought to establish.

Further, so far as identification of the three appellants is concerned, from the evidence of Anil Kumar Sah (P.W.3) the informant and Upendra Prasad Sah (P.W.5) his uncle, it is clear that the informant had not identified them before he escaped or at the time when he escaped and reached the village. This again appears strange because if what is said is correct the appellants could have seen them from the head light of the TVS moped because allegedly they are said to have come from front, then they are identified when after running for some distance reaching the

- 10 -

temple, calling for help, they returned to the place of occurrence. The appellants are waiting to be identified without concealing their identity and only after being identified they escaped. This is wholly unnatural sequence of events which cannot be believed. All are of the same small village. It is not in dispute that all are known to each other. In such a manner the crime cannot be committed.

For the reasons aforesaid, we are unable to hold that the prosecution has succeeded in proving its case beyond reasonable doubt. That being so, we have no option but to set aside the judgment of conviction and order of sentence and allow this appeal. The appellants are freed from their liabilities of bail bonds.

Accordingly, this appeal is allowed.

(Navaniti Prasad Singh, J.)

(Anjana Mishra, J.)

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