

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.16 of 1992

Against the judgment of conviction and order of sentence dated 25.2.1992 passed by 4th Additional District & Sessions Judge, Motihari in Sessions Trial No.309 of 1982 (68/1987).

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1. Bindaya Rai son of Panna Lal Rai
 2. Ram Dayal Rai son of Rameshwar Rai
 3. Sharma Rai son of Mushhar Rai
 4. Ram Sahay Rai son of Panna Lal Rai
 5. Bhairo Rai son of Mushhar Rai
 6. Amir Rai son of Panna Lal Rai
 7. Ramanand Rai son of Mushhar Rai

All are the resident of village Shantpur, Police Station Ghorashan, District-East Champaran.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rakesh Kumar Sinha, Advocate

For the Respondent/s : Dr. Mayanand Jha, A.P.P.

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 23-07-2015

This appeal is preferred against the judgment of the conviction and order of sentence dated 25.02.1992, delivered by the Court of 4th Additional District & Sessions Judge, Motihari, in Sessions Trial No.309 of 1982 (later renumbered as 68 of 1987).

The prosecution of the appellants was on the basis of statement recorded from P.W.6, Birendra Kumar Singh. It was to the effect that P.W.6 was sleeping in his house in the Village Santpur,



district East Champaran, and on 03.08.1982 at about 4 A.M., all the accused have proceeded to the house of P.W.5, Nag Narayan Singh, where his son Shambhu Singh was also present, and after bolting Nag Narain Singh inside the room, the appellants have attacked Shambhu Singh and went away. While going away, they are said to have declared that they killed Shambhu Singh, on account of previous enmity. P.W.6 further stated that himself, his father P.W.1, his servant P.W.2 and others proceeded to the scene of occurrence, and thereafter the matter was informed to the police.

A case was registered by the police on the basis of the information furnished by P.W.6. The postmortem and inquest of the dead body of Shambhu Singh was conducted, and thereafter investigation was taken up. On completion of the investigation, chargesheet alleging offences punishable under Section 302 of the Indian Penal Code was filed against the appellants.

All the appellants pleaded not guilty. Therefore, the trial was conducted wherein the prosecution examined 10 witnesses and filed the documents, such as inquest report and the postmortem report. Three witnesses were examined on behalf of the defence. Through its judgment under appeal, the trial Court convicted the appellants for the offence punishable under Section 302 of the Indian Penal Code and imposed sentence for imprisonment for life. Sentence of fine and

alternative sentence were also imposed.

Sri Rakesh Kumar Sinha, learned counsel for the appellants submits that there is clear variation in the version presented by P.W.6 himself in the *ferdbeyan*, on the one hand, and his deposition in the Court, on the other hand, and neither of them accorded with the evidence of other witnesses. He submits that while according to P.W.6, himself, his father, P.W.1, the servant, P.W.2 and other proceeded to the scene of occurrence, P.W.1 did not make even mention about P.W.6 or P.W.2. He further submits that while in the *ferdbeyan*, P.W.6 stated that P.W.5, father of the deceased, was bolted inside the room by the assailants, he stated in his evidence that he found P.W.5 in an unconscious condition. Learned counsel further stated that P.Ws. 2 and 3, the independent witnesses, have turned hostile, and the prosecution did not even make an attempt to explain as to how the so called assailants were identified at 4 A.M. Other contentions were also advanced.

Dr. Mayanand Jha, learned Additional Public Prosecutor, submits that the statement of P.W.6 had to be accorded, since P.W.5 was in a disturbed and unconscious condition, and minor variations in the statement, on the one hand, and the evidence, on the other hand, cannot be stretched beyond a point. He submits that P.W.1 was very much present on the scene of the occurrence, and the mere fact that he

did not mention the name of his son, P.W.6 is not detrimental to the case of the prosecution. He further submits that the prosecution has proved the case beyond any pale of doubt, and the contents of the postmortem report accorded to the injuries on the body of the deceased.

The incident is said to have occurred at 4 A.M. In his statement recorded by the police, P.W.6 mentioned as though all the appellants herein proceeded before him, and that he was able to recognize them. He did not even mention that there was any source of light to identify the appellants.

Another aspect to be taken note of is that in the *ferdbeyan*, P.W.6 did not mention that P.W.5, father of the deceased, had fallen unconscious. On the other hand, his specific case was that the appellants had bolted the door of the room in which P.W.5 was sleeping and then attacked the deceased. However, in his evidence, P.W.6 stated that P.W.5, the father of the deceased, has fallen unconscious. We find that this version was presented to explain as to why the statement of P.W.6 was recorded when P.W.5 was very much available.

Another serious contradiction we notice is that though P.W.6 stated that his father, P.W.1, and his servant, P.W.2, and others accompanied him to the scene of occurrence, P.W.1 did not mention

the presence of any of the witnesses. Added to that P.Ws 2 and 3 did not support the case of the prosecution and thereby they were declared hostile.

The sequence of events presented by P.W.1, on the one hand, and the P.W.6 on other, are totally different from each other. Added to that P.W.5 stated that by the time, he gained conscience, he had seen the dead body of his son and the appellants were proceeding. This belies the version of the P.W.6 in his evidence wherein he said that the appellants have bolted P.W.5 from outside the room. Apart from what is discussed above, there are several lapses in this case, which, we do not find it necessary to elaborate. When such is the matter, we do not find it safe to sustain the conviction of the appellants.

Therefore, we allow the appeal and set aside the conviction and sentence ordered by the trial court, against the appellants. They are discharged from the liabilities under bail bonds, executed by them.

(L. Narasimha Reddy, CJ)

(Sudhir Singh, J)

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