

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.81 of 1992

Against the judgment of conviction dated 23.04.1992 and the order of sentence dated 25.04.1992 passed by the 3rd Additional Sessions Judge, Aurangabad in Sessions Trial No.29 of 1982/53 of 1991.

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1. Mithilesh Singh son of Bhagwati Singh
 2. Akhilesh Singh son of Bhagwati Singh
 3. Bhagwati Singh son of late Basudeo Singh
 4. Bhola Singh son of Balkeshwar Singh
 5. Umesh Singh son of Balkeshwar Singh
 6. Balkeshwar Singh son of late Basudeo Singh
 7. Suresh Singh son of Rajeshwar Singh
- All residents of Village Sattar, P.S. Nabinagar (Now Mali), District-Aurangabad.
8. Shiv Shankar Singh, son of late Bishundeo Singh
 9. Satyendra Singh, son of late Dharmdeo Singh
 10. Mahendra Singh son of late Dhramdeo Singh
 11. Sidheshwar Singh son of late Nagdeo Singh
- Appellants 8 to 11 residents of village Khiri, P.S.Nabinagar, District Aurangabad.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

With

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Criminal Appeal (DB) No. 189 of 1992

Against the judgment of conviction dated 23.04.1992 and the order of sentence dated 25.04.1992 passed by the 3rd Additional Sessions Judge, Aurangabad in Sessions Trial No.29 of 1982/53 of 1991.

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Lakshman Singh, son of Rajeshwar Singh, resident of Village-Sattar, Police Station Nabinagar (old), New Mali, District-Aurangabad.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (DB) No. 81 of 1992)

For the Appellant/s : Mr. Vishwanath Pd. Sinha, Senior Advocate
Mr. Ishwari Singh, Advocate
Mr. Rajesh Kumar, Advocate
Mr. Manish Kumar, Advocate

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

(In CR. APP (DB) No. 189 of 1992)

For the Appellant/s : Mr. S. N. P.Sinha, Senior Advocate
Mr. Rohit Kumar, Advocate
Mr. Ishwari Singh, Advocate
Mr. Prem Nath Singh, Advocate
Mrs. Sangeeta Sharma, Advocate
For the Respondent/s : Dr. Mayanand Jha, Advocate.

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 22-05-2015

As many as 13 persons were put to trial in Sessions Trial No.29 of 1982/ 53 of 1991 before the Court of 3rd Additional Sessions Judge, Aurangabad in relation to death of one Nageshwar Singh in an incident that took place on 04.11.1979. Through its judgment dated 23.04.1992, the trial Court convicted all the 13 accused and imposed punishments of imprisonment for life and other minor punishments.

Accused no.11 Rajeshwar Singh filed Criminal Appeal No.115 of 1992 and accused no.12 Lakshman Singh filed Criminal appeal No.189 of 1992. Rest of the accused i.e. A-1 to 10 and 13 filed Criminal Appeal No.81 of 1992.

Accused No.11 Rajeshwar Singh died during the pendency of the appeal. Hence, Criminal Appeal No.115 of 1992 has been dismissed as abated.

In Criminal Appeal No.81 of 1992, appellant nos.3, 4, 6 and 9 died. Appellant nos. 1 and 5 are said to be minors, at the

relevant point of time.

The proceedings against the appellants were initiated on the basis of the ferdbeyan, i.e. statement, recorded from Awadhesh Singh, P.W.4, son of the deceased. He stated that on 04.11.1979, A-1, i.e. Bhagwati Singh was getting foundation for construction of a house dug by the side of their land, and when his father Nageshwar Singh and his two brothers, i.e. P.Ws.3 and 4 objected to this; stating that there is boundary dispute, A-1 is said to have refused to stop the work. Some of the accused were said to be present, armed with lathi and danda, and on noticing the altercation, the remaining accused i.e. Suresh Singh, Balkeshwar Singh, Bhola Singh, Umesh Singh, Sidheshwar Singh and Mithilesh Singh also arrived at that place. All of them are said to have attacked the deceased as well as P.Ws. 2, 3 and 4, and large number of villagers have also gathered there. Nageshwar Singh is said to have been shifted in the hospital in a serious condition and while undergoing treatment he died.

The Station House Officer, Nabinagar of Aurangabad district registered P. S. Case No.3 (11)79 for the offences punishable under Sections 147, 323, 342 and 114 of the Indian Penal Code initially and took up the investigation. Negeshwar Singh died while undergoing treatment. Hence, the provision of law, in the F.I.R. was

altered to include Section 302/149 of the Indian Penal Code.

The inquest and postmortem on the dead body were conducted. After completion of the investigation, the charge sheet was filed and thereupon the trial Court framed charges.

All the accused pleaded not guilty. They have also stated that they too have been attacked by the party of the prosecution and though they were also treated for injuries in the same hospital, no case was registered at all.

In the trial, P.Ws.1 to 15 were examined on behalf of the prosecution, and the inquest report and the postmortem report were filed as exhibits. On behalf of the accused, DWs 1 and 2 were examined. The trial Court convicted all the accused and sentenced them to undergo imprisonment for life.

Sri Vishwanath Pd. Sinha, learned senior counsel for the appellants in Cr. Appeal No.81 of 1992, and Sri S.N.P. Sinha, learned senior counsel for the appellant in Cr. Appeal No.189 of 1992, submit that admittedly the accused were digging trenches on their land and it is the P.W.s 1 and 3, and their father that have come to that place and created a violent scene. They submit that when there is a case and counter case, the prosecution was required to be neutral and instead, a picture was presented as though the prosecution party was innocent and all the accused have acted

violently.

Learned counsel further submit that P.W.1, who is none other than the son of the deceased, was declared hostile because he did not support the case of the prosecution, and the two independent witnesses, i.e. P.W.s 6 and 7 were just made to be physically present in the witness box, without eliciting even a word from them and still the trial Court had made comment in relation to the evidence referable to those witnesses. It is further pleaded that though the allegation was general in nature and the charge under Section 302/149 was framed, the trial Court convicted Lakshman Singh, i.e. the sole appeal in Cr. Appeal No.189 of 1992 for the offence punishable under Section 302 IPC alone. Reliance is placed upon the judgment of the Hon'ble Supreme Court in case of Suraj Pal Vs. State of U.P.¹. They ultimately submit that the prosecution miserably failed to prove even the postmortem report as required under law.

Dr. Mayanand Jha, learned Additional Public Prosecutor, on the other hand, submits that the incident was witnessed by several persons, including two sons of the deceased and the very fact that P.W.5 was an injured witness, becomes a factor to add credibility to his evidence. He submits that the law

¹ AIR 1955 SC 419

permits tendering of witnesses where their version is already contained in certain documents and it is for the defence to cross-examine such witnesses and the presence of P.Ws. 6 and 7 would certainly support the case of the prosecution. Other grounds are also urged.

The root cause for the incident that gave rise to the death of one person and injuries to several persons, is a land dispute. Even from the ferdbeyan recorded from P.W.4, it is evident that accused no.1 was making preparation for construction of his house and the deceased and his two sons, P.W.1 and 3 attempted to stop him. Naturally that gave rise to altercation between the parties. The plea of the appellants that there was a case and counter case in view of the fact that there was a free fight between both the groups, derives support from the record. From the doctor who treated the injured person, it was elicited that some of the accused were also treated for injuries that were received in the same altercation. Therefore, it becomes clear that the prosecution was far from neutral in dealing with a quarrel between the two groups. The trial Court, however, refused to take this aspect into account, on the ground that defence failed to prove that the injuries received by the accused were referable to the same incident, and that they were serious in nature. It is difficult to countenance such an approach.

Be that as it may, if the prosecution was able to establish that the death of the deceased occurred on account of an attack by the accused, the mere fact that some of the accused received injuries should not make much difference, except that the gravity of accusation may be a bit diluted or some score may exist for the plea of self defence.

The entire incident is narrated in the ferdbeyan, recorded from P.W.4. He stated that himself, his father, the deceased, and his brother P.W.1 raised objection for the digging of foundation, undertaken by the A-1, and at that time, about 5-6 accused were also present with lathi and other weapons and once there was some altercation between the parties, other accused have also reached armed with lathi and other weapons. This version was expected to receive support, at least from his brother, P.W.1. However, P.W.1 did not support the case of prosecution, and he was declared hostile. Nothing was elicited in the cross-examination from this witness by the prosecution to doubt the veracity of his statement.

In the ferdbeyan, it was also mentioned that large number of villagers gathered, when the incident has taken place in the morning. Naturally, one expects, at least, some of the villagers to be examined as witnesses and the version of such neutral witnesses

would add strength to the case of the prosecution. In this case, P.Ws. 6 and 7, namely Ramjanam Singh and Dipnarayan Singh were chosen by the prosecution as independent witnesses and they were presented before this Court. It is rather curious to note that not a word was elicited from these witnesses, but were tendered for cross-examination. As rightly, advised, the defence also paid in the same coin and did not cross-examine them. Curiously enough, the trial Court made a comment about this, which reads as under:

“ It is fact that all the villagers who have arrived either during the course or after the occurrence have not been examined. Only two villagers Ramjanam Singh and Dipnarayan Singh who are alleged to have seen the occurrence had been only tendered for cross-examination, but the defence did not have courage to put any question which would have either supported their version or demolished the prosecution version. The law requires that prosecution should not withheld the independent witnesses, they must produce the independent witnesses and at least two of the independent witnesses Ramjanam Singh and Dipnarayan Singh have been produced by the prosecution for cross-examination. Therefore, it cannot be said that the prosecution has withheld all the independent witnesses. At least two of the independent witnesses have been produced for cross-examination. Therefore, I do not find merit in this contention of the defence lawyer, of course some of the independent witnesses have not been produced by the prosecution and for that the defence may have some grievance. But now a days this fact must be borne out in the mind by the



Court that independent witnesses do not come forward to tell truth for various reasons. It is our common experience now that the independent witnesses keep away themselves and they do not dare to tell truth before the Court for various reasons. Therefore if the prosecution could not produce all the independent witnesses then it can not be said that the prosecution case is liable to be thrown out in its entirety.”

The least that can be said about the observation of the trial court is that it runs contrary to the basic concepts of proof particularly in criminal cases. For all practical purposes, the trial Court proceeded as though the burden is upon the accused to prove their innocence, and not for the prosecution to prove the guilt of the accused.

In the cross-examination of P.W.5 also, several contradictions were elicited.

Neither the postmortem report was made part of record initially, nor the doctor, who conducted the postmortem, was examined as witness, obviously, because there was long gap between the date of conducting the postmortem and the date of examination. It is stated that the said doctor died. An attempt was made to prove the postmortem report, by examining two doctors who were working in the said hospital. However, those two doctors admitted that they cannot make out anything from the postmortem

report. Thereafter, another doctor was examined, but nothing material was deposed by him. The net result was that even the trial court observed that the postmortem report is not proved.

The importance of postmortem report in a case of this nature hardly needs any emphasis. Each and every injury that is found on the dead body must be connected to one accused or the other. The allegation as to the nature of weapons said to have been held by the accused, must correspond to the type of the injuries found on the dead body. From the record, it is difficult to notice any injury on the dead body, much less it was connected to any of the accused. Therefore, it is difficult to sustain the conviction against such large number of persons.

Hence, 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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