

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.197 of 1993

(AGAINST THE JUDGMENT OF CONVICTION AND SENTENCE, DATED 20TH APRIL, 1993 PASSED BY SHRI LAXMAN ORAON, 1ST ADDITIONAL SESSIONS JUDGE, NAWADAH, IN SESSIONS TRIAL NO. 33 OF 1992/88 OF 1990, ARISING OUT OF WARISALIGANJ POLICE STATION CASE NO.103 OF 1989 DATED 21.5.1990).

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1. Balbhadra Singh, son of Bisheshwar Singh
2. Balmiki Singh, son of Bisheshwar Singh
3. Ram Nandan Singh, son of Shivdhar Singh
All are residents of Village-Kotchgawan, P.S. Warsaliganj, District Nawadah

.... Appellants

Versus

The State of Bihar

.... Respondent

Appearance :

For the Appellant/s : Mr. Suraj Narayan Prasad Sinha, Sr. Advocate
Mr. Jitendra Narayan Sinha, Advocate
Mr. Shambhu Sharan Kumar, Advocate
Mr. Rohit Kumar, Advocate
Smt. Vandana Kumari, Advocate

For the Respondent/s : Mr. Ajay Mishra, Addl. P.P.

MR. NIRAJ KUMAR @ SANIDH, ADVOCATE :- AMICUS CURIAE

CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

AND

HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 12-02-2015

The instant appeal was initially filed by three appellants, namely, Balbhadra Singh, Balmiki Singh and Ram Nandan Singh, against the judgment of conviction and sentence, dated 20.04.1993, passed in Sessions Trial No.33 of 1992/88 of 1990, whereby the learned 1st Additional

Sessions Judge, Nawadah, has convicted all the appellants under Section 302 read with Section 34 of the Indian Penal Code and sentenced them to suffer life imprisonment. During the pendency of the appeal, appellant No.3, namely, Ram Nandan Singh, aged about 70 years, passed away and, hence, the appeal stands abated against accused-appellant No. 3, namely, Ram Nandan Singh.

2. The prosecution's case, as made out in the *fardbeyan* of the informant, Sihanta Devi (P.W.4), wife of deceased Ramjee Singh, recorded, on 26.08.1989, at 01.45 AM, at her village Kotchgawn, by the Investigating Officer, Shri Chandra Mohan Jha (P.W.7), is, in short, as follows:

(i) On 25.08.1989, at village Kotchgawn, a small brawl took place between Manju Devi, daughter of Ramgulam Singh, and informant, Sihanta Devi, widow of deceased Ramjee Singh, who had gone to cut grass for cattle. Even when the deceased returned home at about 7 P.M., the informant did not disclose about her brawl with Manju Devi. The deceased, Ramjee Singh, thereafter, proceeded to have bath in the nearby pond. When he returned after taking bath, the accused, namely, Balbhadra Singh, Balmiki Singh, Bisho Singh, Lala Singh, Ram Nandan Singh (since deceased), Ramgulam Singh (since deceased), Karu Singh, Manju Devi (since deceased) and Umuda Devi, were heard castigating

Sihanta Devi saying that when the deceased, Ramjee Singh, goes to sleep in the bungalow of some other persons, she wanders around in the night at 12 o'clock. To the abuses so made by the accused persons, Chando Singh, elder brother of the deceased, Ramjee Singh, as well as deceased, Ramjee Singh, objected.

(ii) At about 8 P.M., on 25.08.1989, Ramjee Singh went to feed his cattle at the cowshed. The informant, Sihanta Devi, also followed her husband, Ramjee Singh, holding a lantern. She saw accused Balbhadra Singh and Balmiki Singh, both armed with *lathis*, Lala Singh, Kare Singh with bricks, Ram Nandan Singh and Ramgulam Singh armed with *lathis*, Manju Devi and Umuda Devi with bricks, standing on north of the cowshed. Accused Balbhadra Singh gave order to kill Ramjee Singh, whereupon all the accused persons assaulted him with *lathis* and bricks. Ramjee Singh and informant cried for help, but Balbhadra Singh and Balmiki Singh pressed the neck of Ramjee Singh, while others assaulted him. Manju Devi and Umuda Devi threw Sihanta Devi into nearby *Naad* (the vessel in which cattle eat) and assaulted her by means of bricks. On hearing shrieks of Sihanta Devi, Awadhesh Singh, Ram Nandan Singh, Chando Singh, Debu Singh, Arun Singh and their other co-villagers came, who witnessed the occurrence. On

arrival of the villagers, the accused persons fled away; but by that time, Ramjee Singh had died.

(iii) On hearing about the death, the Assistant Sub-Inspector of Police, C. M. Jha (P.W.7), arrived at the village and recorded *fardbeyan* of Sihanta Devi. Based on this *fardbayan*, Warisaliganj Police Station Case No.103 of 1989, under Sections 147/148/149/323/337/302 of the Indian Penal Code, was registered against eight accused persons. On completion of the investigation, police submitted *charge sheet* against the accused persons aforementioned.

3. At the trial, charge was framed against all the accused persons under Section 302 read with Section 149 of the Indian Penal Code. The accused Balbhadra Singh was further charged under Section 302 read with Section 114 of the Indian Penal Code, whereas accused Umuda Devi was further charged under Section 323 of the Indian Penal Code. Prior to framing of charge, Manju Devi died and after framing of charge, Ramgulam Singh also passed away. Six out of eight accused, thus, faced trial. To the charges so framed, the accused person pleaded not guilty and claimed to be tried.

4. In support of its case, prosecution examined altogether seven witnesses. P.W. 1 (Arun Singh) and P.W. 2 (Hakim Singh) have deposed that they were sitting at their

respective *dalan* (i.e., courtyard) and, on hearing *hulla*, they proceeded towards cowshed of Ramjee Singh, where they found that the two appellants, Balbhadra Singh and Balmiki Singh, were pressing the neck of Ramjee Singh. They saw other accused persons assaulting Ramjee Singh with bricks and *lathis*. P.W. 1 saw injuries on the head of Ramjee Singh. 10-12 villagers also gathered by then. P.W. 3 (Sunita Kumari), who is daughter of deceased Ramjee Singh, has also deposed that her father had gone to feed cattle in the cowshed, followed by her mother, Sihanta Devi (P.W.4), who had also carried lantern with her, and on *hulla* having been heard, P.W.3 went to the cowshed and saw the appellants pressing the neck of her father. She has also claimed to have seen other accused persons assaulting her father with bricks and *lathis*. The informant, Sihanta Devi (P.W.4), in her deposition, has reiterated the prosecution's case as narrated by her in her *fardebayan*. P.W. 5 (Dr. Deonandan Sinha), who conducted *post mortem* examination, on 26.08.1989, at 12 noon, found one diffused swelling measuring 9" x 6" on left side of head over *parietal* and *frontal aspect* and a diffused swelling over left eye lid as well. The doctor also found one abrasion of 5" x 2" on the back of the right thigh. On dissection, the doctor found *haematoma* between skull and skin. The brain was full of congestion. The stomach contained

undigested food particles, namely, rice. The doctor opined that the injuries were caused by hard and blunt substance and injury no.1 was sufficient, in ordinary course of life, to cause death, the injuries having been caused within 36 hours of the *post mortem* examination.

5. On the basis of the ocular and medical evidence on record, the prosecution argued that the guilt of the appellants, under section 302 read with 34 of the Indian Penal Code, stood proved beyond reasonable doubt.

6. The case of the defence was complete denial of the occurrence. The learned trial Court, on consideration of the materials on record, acquitted three of the six accused facing trial, namely, Kara Singh, Umuda Devi and Lala Singh, while it convicted the remaining three accused persons, namely, Balbhadra Singh, Ram Nandan Singh and Balmiki Singh under Section 302 read with Section 34 of the Indian Penal Code. Consequently, sentences were passed. During the pendency of the appeal, appellant, Ram Nandan Singh, has, as already indicated above, died and, as such, the appeal proceeds with the two surviving convicts, namely, Balbhadra Singh and Balmiki Singh, as appellants.

7. The Investigating Officer, examined as P.W.7, has deposed that on hearing rumour that one man was killed in village, Kotchgawn, he made a station diary entry to this



effect and proceeded to the village, where he recorded the *fardbeyan* of the informant, Sihanta Devi, which has been marked as Exhibit 3. Thereafter, he prepared *inquest report* (Exhibit 4) and also inspected the place of occurrence situated on the north of the cowshed, which was a lane from where water used to flow. The said lane was near the cowshed of the informant and was also five yards from the house of the accused. PW 7 sent the dead body of Ramjee Singh for *post mortem* examination.

8. The appellants, in their defence, have totally denied the occurrence. In support of their defence, they submit that the ocular evidence is in conflict with medical evidence.

9. Mr. Suraj Narayan Prasad Sinha, learned Senior Counsel for the appellants, submits that the prosecution has failed to establish the charge, under Section 302 read with Section 34 of the Indian Penal Code, beyond all reasonable doubt. He submits that though the prosecution witnesses consistently deposed that all the six accused persons had assaulted the deceased by means of *lathis* and bricks, it is surprising that the deceased sustained only two injuries, namely, diffused swelling measuring 9" x 6" on left side of head over parietal and frontal aspect with a diffused swelling over left eye lid and one abrasion of 5" x 2" on the

back of right thigh. He further submits that though there were specific assertions of PW 1, PW 2, PW 3 and PW 4, in their respective depositions, that the appellants had pressed the neck, yet there was no sign of any external injuries on the neck of the deceased either in the *inquest report* or in the *post mortem* report. He further submits that lacerated injuries, measuring 9" x 6" on left side of head over parietal frontal region of the head, cannot be caused by *lathi*.

10. Mr. Ajay Mishra, learned Additional Public Prosecutor, appearing on behalf of the State, submits that the accused persons, with common intention to kill Ramjee Singh, gathered around his cowshed with *lathis* and bricks and, in furtherance of their common intention, murdered him.

11. We find substance in the submissions made on behalf of the appellants that the medical evidence cuts at the root of prosecution's case. The prosecution witnesses, namely, PW 1, PW 2, PW 3 (Sunita Kumari, daughter of the deceased) and PW 4 (the informant, Sihanta Devi), have consistently deposed that the accused persons, numbering eight, in total, assaulted the deceased by means of *lathis* and bricks. The appellants were also said to have pressed the neck of the deceased. However, there was no sign of pressing of neck, which creates doubt whether the witnesses



aforementioned had seen the occurrence at all and if they had seen the occurrence, they have not unfolded the truth in the Court as to how Ramjee Singh happened to die. Furthermore, eight persons were claimed to have assaulted the deceased; but surprisingly, the latter sustained only two injuries; one of which was an *abrasion* on the back of right thigh; whereas the other injury was the injury on head as described hereinabove.

12. It would be very difficult to comprehend that a person, who is assaulted by as many as eight persons with *lathis* and bricks, would have sustained only two injuries, which we have discussed above. Curiously enough, the Investigating Officer did not find any blood at the place of occurrence. Even the Sanha (i.e., General Diary Entry), recorded by the Investigating Officer, was not produced at the trial, which could have thrown light as to what the initial information was given to PW 7.

13. In the circumstances as mentioned above, this Court could have considered remanding the matter to the learned trial court for taking additional evidence by allowing an opportunity to the prosecution to produce the station diary entry on record. However, as more than 20 years have already elapsed since the impugned judgment was delivered by the learned trial Court, we refrain from

remanding the matter to the learned trial Court for taking additional evidence; more so, because even if the general diary entry, we direct to produce, it would not give any credence or lend any support to the prosecution's case.

14. In the light of the conflict in the ocular evidence on record, on one hand, and the medical evidence on record, on the other, the prosecution has failed and failed miserably to offer any logical explanation as to why the medical evidence ought to be ignored.

15. We also find very intriguing as to why the informant concealed the factum of fight between her and Manju Devi, wife of one of the accused, from the deceased. The informant concealed the aforesaid fact even after the husband of Manju Devi, with whom she had brawl, complained about her character to her husband at about 8 P.M. in the night of the fateful day. All these material aspects create a doubt whether the witnesses had actually seen the occurrence and have narrated the incident wholly and truthfully.

16. In the result and for the foregoing reasons, we allow this appeal. The impugned conviction of the accused-appellants and the sentences passed against them by the judgment and order, under appeal, are hereby set aside. The accused-appellants are held not guilty of the

offence, which they stand convicted of, and they are hereby acquitted of the same under benefit of doubt.

17. Since both the accused-appellants are on bail, their bail bonds are hereby cancelled and their sureties shall stand discharged.

18. Let the Amicus Curiae be paid a fee of Rs. 5,000/-.

19. Registry shall, forthwith, send a copy of this judgment and order to the learned trial Court along with the Lower Court Records.

(Samarendra Pratap Singh, J.)

I. A. Ansari, J.: I agree.

(I. A. Ansari, J.)

Md.Jamaluddin
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