

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.137 of 2006

Arising Out of Gopalpur PS.Case No.35 Year- 1991, G.R. No.1399 of 1991, District- GOPALGANJ,
giving rise to Sessions Trial No. 57 of 1992/ 170 of 2004

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Mahanth Ram, son of late Gajadhar Ram, resident of Village Lachhpur, Police
Station Gopalpur, District Gopalganj.

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : Smt. Rina Sinha, Amicus Curiae

For the Respondent : Shri Dilip Kumar Sinha, A.P.P.

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CORAM: HONOURABLE SHRI. JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 02-02-2015

The Solitary appellant was convicted by the learned Additional Sessions Judge-cum-Presiding Officer, Fast Track Court No.-V, Gopalganj, in Sessions Trial No. 57 of 1992/170 of 2004 of committing the offence under Section 302 of the Indian Penal Code and by the judgment dated 21st day of December, 2005 and by the order of sentence dated 24th day of December, 2005 he was directed to suffer rigorous imprisonment for life.. The appellant along with accused Bikrama Chauhan had also been charged under Section 323 of the Indian Penal Code but both were acquitted of that charge. The appellant has come up before this Court through the present appeal.

2. There is no dispute in that Ramjit Ram, son of P.W. Kishundeo Ram, the informant of the case, was sleeping at the verandah of his

house. He was assaulted and killed.

The allegation is that at about 12.30 A.M. in the night intervening 6th-7th of August, 1991, deceased Ramjit Ram was assaulted by this appellant Mahanth Ram with lathi. The informant (P.W. 5) woke up on the sound arising out of the blows and found that it was this appellant who was hitting his son with lathi. The informant raised an alarm which attracted persons of neighbourhood who saw the occurrence. It was stated that that when his other son Yogendra Ram (P.W.4) attempted to intervene, he was also given the blow with lathi on his shoulder by this appellant.

The informant stated that he put his son on a four wheeler and brought him to Sadar Hospital, Gopalganj with the help of Rajendra Kurmi (not examined) and Bijnath Ram (not examined), but no sooner the deceased had reached the Hospital, he died.

The reason behind the occurrence was that there was a dispute between the informant and the appellant in respect of the homestead land and, as such, the appellant committed the murder of Ramjit Ram.

3. In support of the charges, the prosecution examined as many as 7 witnesses, out of whom P.W. 3 Tileshari Devi was tendered for cross-examination while P.W. 1 Sima Devi, P.W. 2 Sukhali Devi and P.W. 4 Yogendra Ram, who was allegedly injured, supported the informant Kishundeo Ram who was examined as P.W.5 during the trial. P.W. 6 Dr. Ras Bihari Chaudhary had held post-mortem examination on the dead body of the deceased Ramjit Ram and had issued the post-mortem examination report Ext. i. P.W.7 Hira Lal Sah was a formal witness who had identified the writings of the case diary and the same was exhibited through his evidence due to non-examination of the Investigating Officer.

4. It is true that P.W. 1 Sima Devi, P.W.2 Sukhali Devi and P.W.4 Yogendra Ram have supported consistently the informant P.W. 5 Kshundeo Ram, but it is admitted by the witnesses, like, P.W. 2 in paragraph 3 of her evidence, P.W. 4 in paragraph 3 of his evidence as also the informant himself that it was a dark night. The evidence of P.W. 1 Sima Devi also raised an inference that the night was dark because she stated that she identified the accused in the light of torch flashed by her father-in-law P.W. 5. Thus, the question of identification of the accused who had committed the offence was and remains the

pivotal question to consideration as to who had committed the offence. We have the consistent evidence of P.Ws. 1,2 and 5, but what appears from their evidence is that P.W. 4 in spite of being injured was implicating co-accused Bikrama Chauhan who had not been named in the F.I.R.. In fact, the F.I.R. contained a story that it was this appellant Mahanth Ram who had given lathi blow to P.W. 4 but both P.Ws. 4 and 5 started implicating an innocent person who was not named by the informant in his F.I.R. This is one important aspect of the evidence of both P.Ws. 4 and 5 which has persuaded us to view their evidence with quite some amount of doubt. Besides, that particular line of evidence, which was an improvement upon the initial prosecution story, further raises a doubt that the witnesses had indeed identified the real culprit.

5. As regards the identification of the accused persons, the witnesses had stated that P.W. 5 flashed the torch and they identified the accused. P.W. 2, who happens to be the daughter of P.W. 5, stated that there was a wall in between the places her father and she was sleeping and that she saw the accused in the torch light which was flashed by her father. This evidence has come in paragraph 3 of the evidence of P.W. 2. The very presence of the wall which appears in the 4th line of paragraph 3 of the evidence of P.W. 2 renders it impossible for her to have seen the accused persons. That apart, what we find is that the witness P.W. 1 in paragraph 5 of her deposition stated that the torch was still lying in her house and that there does not appear any evidence coming from her that the torch had been handed over to the Investigating Officer. P.W. 2 Sukhali Devi did not also state as to what happened of that torch. In other words, whether the same had been handed over to the Investigating Officer or not. Further P.Ws. 4 and 5 both stated that the torch had been handed over to the Investigating Officer. P.W. 5 the informant himself stated that he had shown and handed over the torch to the Investigating Officer who had prepared a document in that behalf over which he had put his L.T.I. (P.W. 5, Paragraph 5). But, when we consider the evidence of P.W.5 in paragraph 7, we find the witness stating that he had only shown to the Investigating Officer the torch and had not handed over the same to him and further that the torch was shown to the Investigating Officer after 10-12 days of the incident. Thus, the fact that the torch was shown to the Investigating Officer and the same had not been seized and returned back to the informant after preparing a document in that behalf appears doubtful.

6. Another facet of the evidence of P.W. 5 on the point of production of the torch-light is as to when the investigation was taken up with urgency, it was supposed, that the torch, the only source of light, ought to have been produced before the Investigating Officer with ado and aplomb. Why it was produced after 10-12 days of the occurrence before the Investigating Officer, as appears from the evidence of P.W.5 itself, we could not appreciate. We may note that probably the implication of the appellant in absence of the source of light was not possible or probable, as such, the prosecution invented a torch so belatedly to place it in its evidence. Moreover, what happened of the document which was prepared by the Investigating Officer on its production before him still eludes an answer.

7. The evidence of P.W. 5, the informant himself in paragraph 9 further makes the question of identification. quite doubtful. The informant was cross-examined as to whether the accused persons had taken any precaution of concealing their identities. P.W. 5 stated that except appellant Mahanth Ram the other accused had concealed his identities by covering his face. It appears curious to us that the main assailant who was inimically disposed towards the informant and who was quite well known to him due to being the full brother of the informant, was not making any attempt to conceal his identity while the other accused whose name was not appearing in the F.I.R. was concealing his identity by covering up his face with a cloth. We have already mentioned in the earlier part of the judgment that except the present appellant Mahanth Ram, no other accused had been named in the F.I.R. to have participated in the occurrence. In fact, while considering the F.I.R. we found that there was no room left for adding up any person as accused except the present appellant. Thus, on account of these circumstances which we have from the evidence of the witnesses, we do not find it safe to place reliance upon the evidence of the witnesses to sustain the judgment of conviction and order of sentence.

8. In the result, the appeal succeeds and the same is allowed by setting aside the judgment of conviction and order of sentence passed upon appellant Mahanth Ram.

9. The appellant is in jail. He shall be released forthwith, if not wanted in any other case.

10. Smt. Rina Sinha has assisted us as Amicus Curiae and

we direct that she be paid a fee of hearing by the Patna High Court Legal Services Committee.

(Dharnidhar Jha, J)

(Gopal Prasad, J)

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