

Shambhu Singh Vs.

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Court : Patna

Decided On : Aug-13-2013

Appellant : Shambhu Singh

Judgement :

IN THE HIGH COURT OF JUDICATURE AT PATNA Criminal Appeal (DB) No.358
of 1990

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Bajnath Mahto son of Sukul Mahto, resident of Mohalla Brhampura, Police Station
Brhampura, District- Muzaffarpur. Appellant/s Versus The State of Bihar
.... Respondent/s with Criminal Appeal (DB) No. 385 of 1990

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Sukul Mahto son of late Mishri Lal Mahto, resident of Mohalla Brhampura, Police
Station Brhampura, District Muzaffarpur. Appellant/s Versus The State of
Bihar Respondent/s

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[
Against judgment of conviction and sentence dated 24.8.1990 passed by Sri R. C.
Shrivastava, learned 4th Additional Sessions Judge, Muzaffarpur in Sessions Trial
No. 274 of 1989 arising out of Brahmapura P.S. Case No. 64 of 1988]

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Appearance : (In CR. APP (DB) No. 358 of 1990) (In CR. APP (DB) No. 385 of
1990) For the Appellant/s : Mr. Ashok Kumar Singh No. III, Amicus curiae For the
Respondent/s : Mr. Ajay Mishra, APP

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CORAM: HONOURABLE MR. JUSTICE SHYAM KISHORE SHARMA and
HONOURABLE MR. JUSTICE AMARESH KUMAR LAL ORAL

JUDGMENT

(Per: HONOURABLE MR. JUSTICE AMARESH KUMAR LAL) Date:

13. 08-2013 Both these appeals arise out of the judgment of conviction and sentence dated 24.8.1990 passed by learned 4th Additional Sessions Judge, Muzaffarpur in Sessions Trial No. 274 of 1989 arising out of Brahmapura P.S. Case No. 64 of 1988 by which the appellants have been held guilty under Section 302/34 IPC and both of them have been sentenced to Patna High Court CR. APP (DB) No.358 of 1990 dt.13-08-2013 2/10 imprisonment for life, as such both these appeals have been heard together and are being disposed of by this common judgment.

2. The prosecution case, in brief, is that the deceased Basudeo Mahto was full younger brother of the appellant Sukul Mahto. The other appellant Baijnath Mahto is the son of Sukul Mahto. There was a dispute between the deceased and the appellant Sukul Mahto relating to partition of landed property. On 4.6.1988 in the night Sukul Mahto was hurling filthy abuses on the deceased who asked him not to do so. The informant Chanda Kumari (P.W.

6) was also with her father. At about 11.30 p.m. near the house of Manoranjan Prasad Gupta on the pitch road in front of the godown Sukul Mahto aged about 50 years and his son Baijnath Kumar Mahto aged about 15 years quarreled with her father. The appellant Baijnath Mahto caught hold of the deceased Basudeo Mahto and the appellant Sukul Mahto caused the injury with chhura in the abdomen and chest of Basudeo Mahto, who after receiving injury fell down and succumbed to his injuries. The occurrence was witnessed by Brijnandan Mahto (P.W. 2), Shivji Mahto (not examined), Rudal Sahani (P.W. 7), Ashok Mahto (not examined) and others of Mohalla Brahmapura, Tola Noonpur. The mother of the informant Bimla Devi had Patna High Court CR. APP (DB) No.358 of 1990 dt.13-08-2013 3/10 gone to her relative at village-Goraul for 15 days. The fard beyan of the informant was recorded on 5.6.1988 at 00.45 hours at Mohalla Brahmapur.

3. On the basis of the fardbeyan Brahmapura P.S. Case No. 64 of 1988 was instituted against both the appellants for the offence punishable under Section 302/34 IPC. After investigation the case was found true, as such the charge-sheet was submitted, the cognizance was taken. The case was committed to the court of sessions. Charges were framed for the offence punishable under Section 302/34 against both the appellants to which they denied and claimed to be tried. After trial both of them have been convicted and sentenced as aforesaid.

4. Learned amicus curiae submitted that it is apparent from the fardbeyan itself that the appellant Baijnath Mahto was aged about 15 years on the date of occurrence. On 13.8.1990 his statement has been recorded under Section 313 Cr.P.C. in which he has also stated his age about 16-17 years but the learned trial court has estimated his age 22/23 years. According to prosecution case, Baijnath Mahto was a child on the date of occurrence, as such he should not have been tried in this case. His trial should have been separated, since he was a child under the Children Act as such his whole trial is Patna High Court CR. APP (DB) No.358 of 1990 dt.13-08-2013 4/10 vitiated. Moreover, the allegation against him is to have caught hold of the deceased. There is evidence on the record to show that prior to the occurrence there was no intention to cause death of the deceased, as such the appellant Baijnath Mahto should not have been convicted under Section 302/34 IPC. It has further been submitted that no independent witness has supported the prosecution case. The whole conviction has been based on solitary evidence of the informant (P.W. 6), who is the daughter of the deceased and certainly an interested person.

5. Learned counsel for the State has submitted that the appellant Baijnath Mahto has caught hold of the deceased, thereafter his father Sukul Mahto gave several blows with chhura resulting into the death of the deceased. Secondly, the trial court has estimated his age 22/23 years on 13.8.1990 while recording his statement under Section 313 Cr.P.C. He has further submitted that the evidence of the informant is quite consistent and trustworthy and it inspires confidence, as such the learned trial court has rightly convicted the appellants Sukul Mahto and his son Baijnath Mahto.

6. This Court is required to reappraise the evidence to consider as to whether the prosecution has been able to substantiate its charge against the appellants beyond Patna High Court CR. APP (DB) No.358 of 1990 dt.13-08-2013 5/10 reasonable doubt.

7. The prosecution has examined the following witnesses to prove its charge:- P.W. 1 Dr. Mumtaz Ahmad who has held the post-mortem examination, P.W. 2 Braj Nandan Mahto, P.W.3 Triloki Prasad Gupta, P.W. 4 Ranjan Mahton, P.W.5 Bishundeo Mahton, P.W. 6 Chanda Kumari, P.W. 7 Rudal Sahni, P.W. 8 Shankar Dayal Ojha, and P.W. 9 Muneshwar Prasad.

8. P.W. 2, P.W. 3, P.W. 4, P.W. 5 and P.W. 7 have not supported the prosecution case and they have been declared hostile. P.W. 8 is a formal witness who has proved formal FIR (Ext.

3) and P.W. 9 is also a formal witness who has proved paragraph 5, 9, 10, 11 and 12 of the case-diary in the writing of Pramod Kumar Sinha, the then Officer-in-Charge of Brahmapur Police Station. Paragraph 5 has been marked as Ext. 4 and paragraph 9, 10, 11 and 12 have been marked as Ext. 4/1. Later on, on recall he has also proved Fardbeyan and Inquest Report as Court Ext. No. 1 and 2 respectively.

9. The only material witness is P.W. 6 Chanda Kumari, who is the informant and daughter of the deceased. She has supported the prosecution case. She has stated that at the time of occurrence she was at the road. There was quarrel Patna High Court CR. APP (DB) No.358 of 1990 dt.13-08-2013 6/10 between her father and Sukul Mahto. Baijnath Mahto was also present there. Baijnath Mahto caught hold of her father (deceased) and Sukul Mahto assaulted him with knife which caused injury in his chest, abdomen etc. and he fell down and died. She has further stated that her mother Bimla Devi had gone to village Goraul at the house of her relative. There had been land dispute between her father and the appellant Sukul Mahto. The officer-in-charge came there and recorded her statement. She put her signature which has been identified and marked as Ext. 1 / 2. She has further stated that Sukul Mahto is her uncle. She has been cross-examined at length. In paragraph 7 she has stated that there has been altercation between her

father and Sukul Mahto on her darwaja. Her father came out from his house and asked the accused not to abuse him. Baijnath Mahto caught hold of her father and Sukul Mahto assaulted him with knife. Five minutes prior to this occurrence, her father had gone to shop of Kapildeo to purchase cigarette. She was also following him. At the time of occurrence, no one was present there, except the accused, her father and herself. There was also a grinding mill, but no one was present there. After assault of her father she raised alarm, Daroga Mahto, Kapil (betel shop keeper), Jugul Mahto and several other persons came thereafter. Both the accused Patna High Court CR. APP (DB) No.358 of 1990 dt.13-08-2013 7/10 escaped. No one came from the house of Manoranjan Gupta. He put off the light of his house and closed the door. She told the witnesses that Baijnath Mahto caught hold of her father and Sukul Mahto assaulted him with Chhura. The evidence of P.W. 6 appears to be quite natural and convincing and her evidence has rightly been relied upon by the learned trial court.

10. The evidence of P.W. 6 has been corroborated by doctor-P.W. 1, who has held the post-mortem examination on the dead body of Basudeo Mahto aged about 35 years on 5.6.1988 at 2.30 p.m. while he was holding the post of Tutor in Forensic Medicine Department of S. K. Medical College Hospital, Muzaffapur and found the following ante-mortem injuries :- (i) One stabbed wound slit shaped with clean cut margin 4 Cms medial with left nipple, was found on left side of chest dimension 4 cms x 1 cms x chest cavity deep. (ii) One stab wound slit shaped with clean cut margin was found on the left side of chest 6 cms below the left nipple dimension 3 cms x 1.5 cms x upto rib bone. (iii) One stab wound slit shaped with clean cut margin was found on the left side of abdomen 17 cms below the left nipple, dimension 3 cms x 1.5 cms x 1 cms. Patna High Court CR. APP (DB) No.358 of 1990 dt.13-08-2013 8/10 (iv) One stab wound slit shaped with clean cut margin was found just by the side inferior angle of left scapula-2.5 cms x 1 cms x cms. (v) One stab wound slit shaped with clean cut margin was found on the back 13 cms below the inferior angle of left scapula 1.5 cms x cm. x cm. (vi) One stab wound slit shaped with clean cut margin was found 18 cms below the inferior angle of left scapula 1.5 cm x cm x cm. (vii) One stab wound slit shaped with clean cut margin was found on the right side of back just lateral to 8th thoracic spine 1 cm x cm x 1 cm. He has stated that the injuries were caused by sharp cutting weapon (double

edged may be by a dagger) and time elapsed since death was within 24 hours from the time of post- mortem examination. The injuries were sufficient to cause death in ordinary course of nature. The injury report has been marked as Ext.

2. 11. It appears that the evidence of P.W. 6 is trustworthy and reliable and his evidence has been corroborated by the medical evidence of P.W.

1. The evidence of P.W. 6 is sufficient for proving the prosecution case. It is settled principle of law that it is quality of evidence of the Patna High Court CR. APP (DB) No.358 of 1990 dt.13-08-2013 9/10 single witness whose testimony has to be tested on the touchstone of credibility and reliability. If the testimony is found to be reliable, there is no legal impediment to convict the accused on such proof. It is the quality and not quantity of evidence which is necessary for proving or disproving a fact. The decision in the case of Chittar Lal vs. State of Rajasthan, reported in (2003) 6 SCC 39.may be relied upon.

12. Considering the facts and circumstances stated above, we do not find any ground to interfere with the judgment of conviction and sentence passed by learned trial court so far the appellant Sukul Mahto is concerned, his appeal is dismissed. His bail bonds are cancelled and he is directed to surrender to serve out the sentence as imposed by learned trial court. The learned trial court is also directed to take him into custody.

13. So far the conviction and sentence of appellant Baijnath Mahto is concerned, learned trial court has erred in holding a joint trial, as according to the prosecution itself he was aged about 15 years at the time of occurrence. At the time of examination under Section 313 Cr.P.C., he has also disclosed his age 16/17 on 13.8.1990. The prosecution never controverted the age disclosed by the appellant or the age disclosed by the informant herself in the fardbeyan. According Patna High Court CR. APP (DB) No.358 of 1990 dt.13-08-2013 10/10 to case of prosecution itself he was a child at the relevant time, as such his trial has wrongly been held with a person, who was major. Moreover, there is no evidence on the record to show that there was ever meeting of mind with the accused prior to commission of the offence. The only allegation against him is to have caught hold of the deceased. The judgment of conviction and sentence passed by the learned

trial court so far the appellant Baijnath Mahto is concerned is not sustainable, and as such it is set aside. He is discharged from the liability of his bail bonds.

14. In the result, Cr. Appeal (D.B.) No. 358 of 1990 filed by appellant Baijnath Mahto is allowed, whereas, Cr. Appeal (D.B.) No. 385 of 1990 filed by the appellant Sukul Mahto is dismissed.

15. Let a copy of the first and last page of the judgment be handed over to the appointed Amicus Curiae Mr. Ashok Kumar Singh No. III, Advocate, who has assisted the Court satisfactorily and he is entitled to get the prescribed fees from the High Court Legal Services Committee, Patna (Shyam Kishore Sharma, J) A.F.R. Kanchan/- (Amaresh Kumar Lal, J)

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