

Prashuram Bhuiyan and Ors Vs. State of Bihar

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Court : Patna

Decided On : Aug-13-2013

Appellant : Prashuram Bhuiyan and Ors

Respondent : State of Bihar

Judgement :

IN THE HIGH COURT OF JUDICATURE AT PATNA Criminal Appeal (DB) No.314 of 1991 ===== 1. Parashuram Bhuiyan son of Inderdeo Bhuiyan, resident of village Balia Tola Kumhar Bigha 2. Blkuwar Mahto son of Jagan Mahto, resident of village Parsa Tola Koiri Bigha 3. Baul alias Narad Nonia, son of Ganesh Nonia, resident of village Balia Tola Nonia Bigha 4. Satyendra Pandey alias Loha Singh son of Bhagwat Pandey, resident of village Pandey Bigha, all are within Kutumba Police Station, District Aurangabad Appellants Versus The State Of Bihar Respondent with Criminal Appeal (DB) No. 317 of 1991 ===== 1. Jagdish Prajapati son of Jamuna Prajapati 2. Rameshwar Bhuiyan son of Chandradeo Bhuiyan Both are residents of village Balia, Tola Kumhar Bigha, P.S.Kutumba, District Aurangabad Appellants Versus The State Of Bihar Respondent ===== Against the judgment of conviction dated 29.07.1991 and order of sentence dated 03.08.1991 passed by Shri Hari Shankar Prasad, 4th Additional Sessions Judge, Aurangabad in Sessions Trial No. 93 of 1983/32 of 1987.

===== Appearance : For
the Appellants: M/s Ashok Kr.Singh III and Akhilesh Kumar,Advocates (in both the
appeals) For the Respondent : Mr. Ajay Mishra, A.P.P (In CR. APP (DB) No. 314
of 1991) For the Respondent :Mr.Dilip Kumar Sinha,A.P.P. (In CR. APP (DB) No.
317 of 1991) =====
CORAM:HONOURABLE MR.JUSTICE SHYAM KISHORE SHARMA AND
HONOURABLE MR. JUSTICE AMARESH KUMAR LAL ORAL

JUDGMENT

Patna High Court CR. APP (DB) No.314 of 1991 dt.13-08-2013 2 (Per:
HONOURABLE MR. JUSTICE SHYAM KISHORE SHARMA) Date:

13. 08-2013 ----- Both the above appeals have been taken up together as they
have arisen out of one judgment dated 29.07.1991 delivered by learned 4th
Additional Sessions Judge, Aurangabad in Sessions Trial No. 93 of 1983/32 of
1987 whereby the appellants of both the appeals were found guilty under Sections
302/149 and 448 of the Indian Penal Code. Appellants of Cr.Appeal (DB) No. 317
of 1991) namely, Jagdish Prajapati and Rameshwar Bhuiyan were further found
guilty under Sections 148 of the Indian Penal Code and appellants of Cr.Appeal
(DB) No. 314 of 1991 namely, Parashuram Bhuiyan, Balkuwar Mahto, Baul alias
Narad Nonia and Satyendra Pandey alias Loha Singh, were further found guilty
under Section 147 of the Indian Penal Code. On 03.08.1991 for conviction under
Section 302/149 of the Indian Penal Code, all the six accused/appellants were
sentenced to undergo imprisonment for life whereas no separate sentence was
passed for conviction under Sections 448, 147 and 148 of the Indian Penal Code.
By the said judgment, one accused Arjun Kahar was acquitted. 2 Patna High Court
CR. APP (DB) No.314 of 1991 dt.13-08-201

2. For the occurrence in the midnight of 18/19th February,1983 in the house of
Marchhi Devi (P.W.1), her fardbeyan (Ext.5) was recorded by ASI Sheoji Singh at
village Parta Tola Chamar Bigha, P.S.Kutumba, District Aurangabad which was
the P.O. village which is the basis of prosecution case. The fardbeyan recorded on
19.02.1983 at 9.00 A.M. divulged the occurrence. The informant Marchhi Devi was
sleeping along with her husband Sita Ram Ravidas in a room. At about midnight,

the door plank was fallen down which disturbed their sleeping. The informants husband went near the door and he noticed 4 to 5 persons present there. They dragged the informants husband out of the door and one person pressed his mouth. When they started dragging her husband, she tried to raise alarm but she was forced to keep mum. When her husband was being taken away by the accused persons, she after lighting Dibiya followed up to darwaza where she found 8 to 10 persons. Out of them, one person was having balua in his hand whereas others were having torches in their hands. Two persons were catching hold of the informants husband, one person was catching his head and another was catching legs 3 Patna High Court CR. APP (DB) No.314 of 1991 dt.13-08-2013 4 and one person who was carrying balua used that weapon for cutting his neck. That person also hurled balua on the informant which caused injury on her right arm. Thereafter the accused persons escaped towards southern side of the village. The informant raised hulla, then the co-villagers came and saw the occurrence. At that time, her husband was writhing because his half neck was found cut. He was being carried to hospital but in the way he succumbed to his injury. The attesting witnesses of the fardbyan are Mithilesh Pandey (P.W.10) and Karamdeo Ram (P.W.3). The fardbeyan resulted into FIR being Kutumba P.S.Case No. 0022 of 1983 under Sections 147,148,448 and 302 of the Indian Penal Code against unknown. The investigation commenced. During investigation, statements of the witnesses were recorded, post mortem report (Ext.8) was obtained and injury report of the informant (Ext.7) was prepared. Both doctor and the Investigating Officer have not been examined as they are dead. The case diary has been marked as Ext.9. After completion of investigation, chargesheet was submitted against the appellants and one Arjun Kahar. Cognizance was taken and after completing all 4 Patna High Court CR. APP (DB) No.314 of 1991 dt.13-08-2013 5 paraphernalia the case was committed to the court of Sessions where charges were framed and explained to all the accused persons. All the accused persons pleaded innocence, so the trial proceeded.

3. The defence of the accused persons was of false implication.

4. Before the trial court, the prosecution examined altogether 15 witnesses. They are : P.W.1 Marchhi Devi who is widow of the deceased and the informant of the

case, P.W. 2 Ram Pravesh Ram, P.W.3 Karamdeo Paswan, P.W.4 Nagdeo Ram, P.W.5 Rajdeo Ram, P.W.6 Shyam Deo Ram, P.W.,7 Awadh Bihari Ram, P.W.8 Suresh Ram, P.W.9 Haribansh Pandey, P.W.10 Mithileshwar Pandey, P.W.11 Gauri Shankar Lal, P.W.12 Jai Govind Singh, P.W.13 Syed Aftab Ahmad, P.W.14 Devendra Kumar Singh and P.W.15 Binod Kumar Singh.

5. P.Ws. 5, 6, 7 and 8 were tendered by the prosecution. P.Ws. 3 and 10 are the persons whose names are in the fardbeyan as attesting witnesses. P.Ws.11, 12 and 13 are the Judicial Officers who either got the statement recorded under Section 164 Cr.P.C. or got test identification parade of the accused persons held. P.W.9 has been examined as 5 Patna High Court CR. APP (DB) No.314 of 1991 dt.13-08-2013 6 seizure witness. The material witnesses were P.Ws. 1,2 and 4.

6. The trial court after considering the evidences on record and after hearing arguments of the learned counsel for the parties opined that the prosecution has succeeded in proving the charges against these appellants beyond the shadow of all reasonable doubts whereas accused Arjun Kahar was found not guilty.

7. This Court is required to reappraise the evidences on record to see as to whether there was material on record to prove the charges against the appellants beyond the shadow of all reasonable doubts or not.

8. P.W.2 is cousin of the deceased but he has been declared hostile and he has merely stated that his cousin Sita Ram Ravidas was killed about 7-8 years ago. This witness has been declared hostile as he has not supported the prosecution case.

9. P.W.4 is the uncle of the deceased who has stated nothing about the occurrence. Therefore, his evidence was not useful for the prosecution.

10. The only witness who has supported the 6 Patna High Court CR. APP (DB) No.314 of 1991 dt.13-08-2013 7 prosecution case is P.W.1. She is none else than the widow of the deceased who was the sole witness of the occurrence. She has narrated the entire occurrence. She stated that at about midnight when she along with her husband was sleeping, the door plank of the room fell down which

disturbed their sleeping. She along with her husband got down from the cot. Her husband went out to see what had happened but he was dragged by the persons standing there. She tried to rescue but she also received dagger injury upon her shoulder. She has participated in the test identification parade and identified all the appellants. The prosecution has linked the role of the accused persons on the basis of identification by the informant at the test identification parade. This witness has stated in paragraph 19 of her cross-examination that these appellants were not amongst the killers. She has further stated in paragraph 20 of her cross-examination that the accused persons were known from before and they were not the persons who were responsible for causing death of her husband. The only evidence which has been brought on the record by the prosecution is that of P.W.1. Except this, there is no 7 Patna High Court CR. APP (DB) No.314 of 1991 dt.13-08-2013 8 material witness which could have led evidence having corroborative value. No doubt, statement of P.W.2 under Section 164 Cr.P.C. was recorded but that statement itself is not a substantive piece of evidence which can be relied upon for passing order of conviction. The statement under Section 164 Cr.P.C. is of corroborative value and cannot be used a substantive piece of evidence. Similarly, T.I.P. Chart is also of corroborative value and it cannot be used as substantive piece of evidence. It can be relied as corroborative evidence in case the witnesses come out with the version that the accused persons have committed the occurrence. P.W.1 initially supported the prosecution version but later on demolished the entire prosecution case by her evidence and declined the role of the accused persons/appellants. In that view of the matter, the statement under Section 164 Cr.P.C. and the T.I.P. chart become meaningless as P.W.1 has not supported the initial version in the latter part of her cross-examination. That was the only witness which is worth discussion. There is no other witness which needs to be discussed. The death of Sita Ram Ravidas is not in dispute. It is not in 8 Patna High Court CR. APP (DB) No.314 of 1991 dt.13-08-2013 9 dispute that his neck part was cut and injury was caused by sharp cutting weapon. It is not in dispute that Sita Ram Ravidas was murdered on account of attack by the persons at about midnight on 18/19th February, 1983. That part of allegation has been fully substantiated by the witnesses and on that fact this stands established that Sita Ram Ravidas has been killed in the midnight of 18/19 th February, 1983 and the

killing was by a sharp cutting weapon but it has not been proved that the killing was by the accused persons/appellants. Only evidence of P.W.1 is not worth reliance to establish the charges under Sections 302/149,448, 147 and 148 of the Indian Penal Code.

11. From the discussions made above, we are of the view that there is no evidence at all from which it can be inferred that the prosecution has been able to prove the charges beyond the shadow of all reasonable doubts. Thus, the appellants deserve to be acquitted.

12. In the result, both the above appeals are allowed. The judgment of conviction and order of sentence is set aside. The appellants are acquitted of 9 Patna High Court CR. APP (DB) No.314 of 1991 dt.13-08-2013 10 the charges. Since the appellants are on bail, they are discharged from the liabilities of their respective bail bonds. (Shyam Kishore Sharma, J) (Amaresh Kumar Lal, J) Patna High Court, Patna Dated, the 13th August, 2013 Tahir/-(NAFR) 10

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