

Vs.

Vs.

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Court : Patna

Decided On : Aug-14-2013

Judgement :

IN THE HIGH COURT OF JUDICATURE AT PATNA ***** Criminal Appeal (DB)
No.116 of 1991

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Ramakant Singh, Son of Late Parmeshwar Singh, Resident of Village -
Mukundpur, Bhath, Police Station - Jandaha, District - Vaishali. Appellant
Versus The State of Bihar Respondent

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Appearance : For the Appellant : Mr. Rakesh Kumar Sinha, Advocate. For the
Respondent : Mr. Ajay Mishra, APP.

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CORAM: HONOURABLE MR. JUSTICE SHYAM KISHORE SHARMA and
HONOURABLE MR. JUSTICE AMARESH KUMAR LAL C.A.V. JUDGEMENT
(Per: HONOURABLE MR. JUSTICE SHYAM KISHORE SHARMA) Date:

14. 08-2013 ***** Ramakant Singh has assailed the judgment of conviction dated
05.02.1991 and order of sentence dated 06.02.1991, passed by the learned 2nd
Additional Sessions Judge, Vaishali at Hajipur in Sessions Trial No.
168/1977/49/1982, arising out of Jandaha P.S. Case No. 33 of 1975, whereby the
appellant was convicted for the offence under Section 302 of the IPC and was
sentenced to undergo R.I. for life.

2. Short facts involved in the appeal is with regard to an occurrence of about 38 years earlier on 23.09.1975 at 02.00 P.M. The informant was returning after ploughing his field. His brother P.W. 5 Biju Singh was following after ploughing. When they came near the field of Maheshwar Singh then Ramakant Patna High Court CR. APP (DB) No.116 of 1991 dt 14-08-2013 2 Singh (the appellant) and Mahesh Singh with Farsa, Rajendra Singh, Kusheshwar Singh, Surendra Singh, Maheshwar Singh and Suresh Singh armed with Lathi suddenly came out and started indiscriminately assaulting the informant with Lathi. As a result thereof his head was broken and injury was caused on the left hand. Ramakant Singh gave two Farsa blows upon the informants head. As a result thereof blood oozed out. The informant was crying for his rescue and in the meanwhile the informants brother Biju Singh P.W. 5, Harischandra Pd. Singh P.W. 1, Shambhu Singh P.W. 2, Maheshwar Rai P.W. 8 and Uttim Rai P.W. 4 and others came. The informant fell down and was brought to hospital. The motive behind the occurrence was that Shradh of mother of Maheshwar Singh was performed four years ago and this informant and his caste persons were invited but plates were cleared by some persons of Dom caste which was not being tolerated by the informant and his castemen. Ten days earlier in the Shradh of Ramchandra Singh the informant and his castemen were invited but that was refused. The fardbeyan was witnessed by Baleshwar Mahto and Ramanand Gupta. It was recorded at Jandaha State dispensary and on the basis of fardbeyan (Ext. 2), formal FIR was drawn up. In course of investigation one dying declaration (Ext.

4) was recorded. The injured died. The post- Patna High Court CR. APP (DB) No.116 of 1991 dt 14-08-2013 3 mortem report (Ext.

5) was obtained. Statement of the witnesses was recorded, place of occurrence was investigated. The case was found to be true. So chargesheet was submitted. Cognizance was taken. The case was triable by the Court of Sessions so it was committed.

3. Charge under Sections 147, 302/149, 326/149 and 323 of the IPC was explained to Maheshwar Singh, Rajendra Singh, Kusheshwar Singh, Surendra Singh, Suresh Singh, Awadhesh Singh and Upendra Singh and charge under

Sections 302, 326/148 of the IPC was explained against Ramakant Singh. The accused persons pleaded innocence so the trial proceeded.

4. The defence was of false implication and also that the manner of occurrence was suppressed and the accused persons were roped in with a false and concocted case.

5. Before the trial court the prosecution has examined altogether 17 witnesses they were Harischandra Pd. Singh P.W. 1, Shambhu Singh P.W. 2, Baijnath Singh P.W. 3, Uttim Rai P.W. 4, Biju Singh P.W. 5, Baijnath Singh P.W. 6, Bishwanath Singh P.W. 7, Maheshwar Rai P.W. 8, Surendra Pd. Singh P.W. 9, Mohan Prasad P.W. 10, Bager Singh P.W. 11, Maksudan Singh P.W. 12, Mahesh Tripathi P.W. 13, Brijnandan Singh P.W. 14, Dr. P.N. Singh P.W. 15, Akhileshwar Prasad Patna High Court CR. APP (DB) No.116 of 1991 dt 14-08-2013 4 Singh P.W. 16 and Murli Manohar Tewari P.W.

17. The informant of the case is deceased. P.Ws. 3, 9, 10, 13, 14, 16 and 17 were formal witnesses. P.Ws. 6, 7, 11 and 12 were tendered by the prosecution. P.Ws. 1, 2, 4, 5 and 8 are named witnesses of the FIR and they have been examined as eye witnesses. P.W. 15 has held the post-mortem upon the dead body of Jogi Singh. The I.O. has not been examined. The scribe of fardbeyan was a Jamadar. He has also not been examined.

6. The learned Additional Sessions Judge after considering the evidence on record came to the opinion that the prosecution has succeeded in proving the charge against the appellant beyond shadow of all reasonable doubts. Other accused persons Awadhesh Singh and Upendra Singh - both non FIR accused as well as Surendra Singh, Suresh Singh, Rajendra Singh and Kusheshwar Singh were found not guilty and they were acquitted. The appellant alone was found guilty against which the appeal has been filed.

7. This Court has to see as to whether the prosecution succeeded in proving the charge against the accused beyond shadow of reasonable doubts or not.

8. Before discussing the ocular evidence it would be appropriate to go through the post-mortem report and see the Patna High Court CR. APP (DB) No.116 of 1991 dt 14-08-2013 5 injuries of the deceased. On 25.09.1975, P.W. 15 while being posted at Sadar Hospital Hajipur as Civil Assistant Surgeon at 02.15 P.M. held the autopsy on the dead body of Jogi Singh and found the following anti-mortem injuries: (I). One incised wound 2 x 1/2 x skull deep on the upper part of the right temporal region. A portion of bone was cut and depressed. (II). One incised wound 1 x 1/2" x skull deep on the head just above the occipital bone. A portion of bone was cut. (III). One incised wound 1 x 1/2" x skull deep on the left temporal bone. (IV). One scratch mark on the left thumb. The death was due to haemorrhage and coma and shock resulting from above injuries. Time elapsed since death was 48 hours. The injury nos. I to III were caused by sharp cutting weapon may be Farsa. Injury Nos. I to III was grievous in nature and sufficient to cause death. Injury No. IV was simple in nature caused by hard and blunt substance may be Lathi.

9. The doctor has been examined and his version has proved that Jogi Singh had died on account of injuries which he Patna High Court CR. APP (DB) No.116 of 1991 dt 14-08-2013 6 received on account of attack by Farsa on the date and time as indicated by the prosecution.

10. Once it has been proved that Jogi Singh met an unnatural death and was murdered then it has to be seen as to whether the prosecution has succeeded in proving the murder was committed by the appellant beyond shadow of all reasonable doubts or not.

11. The fardbeyan of deceased Jogi Singh mentions that his brother Biju Singh P.W. 5 was coming behind him at the time of occurrence so evidence of P.W. 5 is being discussed firstly. Biju Singh P.W. 5, the brother of the deceased has stated that on a Tuesday at 02.00 P.M. he was returning after ploughing his tobacco field along with his deceased brother Jogi Singh. P.W. 5 was ahead of the deceased. When he reached near the field of Maheshwar Singh then he heard cry of Jogi Singh coming from behind. The informant rushed and found Jogi Singh was being indiscriminately assaulted. Ramakant Singh namely the appellant hurled Farsa whereas others assaulted by Lathi. On account of impact of assault Jogi Singh fell

down. The injuries were covered through Gamcha. The injured was taken to Jandaha hospital where his statement was recorded. But on the next day he lost his brother Jogi Singh. Ten days prior to the occurrence the informant Patna High Court CR. APP (DB) No.116 of 1991 dt 14-08-2013 7 received invitation on the eve of Shradh but that was denied. One of his castemen Jugehswar Singh has participated in Shradh so he was imposed fine Rs. 5/-. Five years earlier mother of Maheshwar Singh died but the plates were cleared by the persons of a particular caste which was disliked by P.W.

5. Though he has been crossed on all the aspects of the case but nothing came out which could have discarded the version of the defence. P.W. 5 has been wholly supported by other FIR named eye witnesses namely P.Ws. 1, 2, 4 and 8. No doubt, P.W. 1, a chance witness was crossing through that area but his evidence has remained consistent that on the date and time he had occasion to go through the area where he saw the assault being perpetuated on Jogi Singh by the accused. All the eye witnesses namely in the FIR has witnessed the occurrence have remained consistent that it was on account of assault by this appellant by Farsa which proved fatal. Therefore the eye witnesses account regarding manner of assault has been fully supported by the doctor and it has been established that the death was on account of assault by Farsa upon the head.

12. Learned counsel for the appellant has submitted that the I.O. has not been examined and so the place of occurrence has not been fixed. No witness has come to say that he has seen the tobacco field being ploughed. It has also been submitted that Patna High Court CR. APP (DB) No.116 of 1991 dt 14-08-2013 8 the initial version was that Jogi Singh became unconscious but it is surprising that his dying declaration was recorded subsequently. The doctor who initially treated the injured Jogi Singh was not examined and so this aspect has remained unexplained. The deceased was initially treated at Jandaha hospital but not even a chit has been brought on record as to who treated the injured. The dying declaration was recorded by Circle Officer of Jandaha block but the author of the dying declaration (Ext.

4) has not been examined. Learned counsel for the appellant has also submitted that the manner of assault has got no corroboration to the post- mortem.

13. P.Ws. 1, 2, 4, 5 and 6 are on the point of assault by Lathi by accused Awadhesh Singh, Surendra Singh, Suresh Singh, Upendra Singh and Kusheshwar Singh that was not supported by the doctor P.W.

15. On this basis, it has been submitted that once a part of narration of occurrence is disbelieved then whole case becomes doubtful.

14. The courts are required to remove the grain from chaff. The general tendency of the witnesses is to add the embroidery to the prosecution story and they add the embroidery to give the occurrence a more reliable version. The entire deposition cannot be accepted and the courts duty is that the truth Patna High Court CR. APP (DB) No.116 of 1991 dt 14-08-2013 9 has to be separated from falsehood. The enhancement of the case on indiscriminate assault by Lathi was claimed but there was no medical corroboration and the corroboration only remained so far as assault to the appellant is concerned. The eye witnesses account has remained consistent so far as manner of assault by the appellant is concerned. The minor contradictions are bound to come and they come invariably in majority of the cases. The major contradictions affect the prosecution case and go to the root of the matter and makes the entire prosecution version shabby and doubtful. If such contradictions are apparent on the record then the prosecution case has to be thrown away. A prosecution case cannot be thrown away because there are some inconsistency or incoherence in the evidence of some of the witnesses. The case has to be considered on its own merit and general rule of prudence has to be followed in appreciation of evidence. The evidence in the present case is consistent that the assault upon the head by the appellant has proved fatal to Jogi Singh.

15. We have heard the submissions and have scanned the entire records but on proper appreciation of the evidence come to the conclusion that the prosecution has succeeded in proving that indiscriminate assault by the appellant by Farsa have proved fatal for Jogi Singh. Patna High Court CR. APP (DB) No.116 of 1991 dt 14-08-201

16. In the result, this appeal is without merit and it is accordingly dismissed. Hence, we see no reason to differ with the finding and we hold the appellant guilty under Section 302 and 326 of the IPC. For the offence under Section 302 of the IPC the appellant has already been given life imprisonment and there cant be less sentence than that so his conviction is maintained and no separate sentence has been awarded under Section 326 of the IPC so we also uphold the conviction.

17. The sole appellant Ramakant Singh is on bail, his bail bonds are cancelled, he is directed to surrender before the court below to serve out remaining period of sentence. Learned court below is directed to take steps for taking him in custody. (Shyam Kishore Sharma, J.) I Agree. (Amaresh Kumar Lal, J.) KKSINHA/-N.A.F.R.

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