

Raj Kumar Oraon Vs. State of Bihar

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Court : Jharkhand

Decided On : Feb-09-2017

Appellant : Raj Kumar Oraon

Respondent : State of Bihar

Advocate for Pet/Ap. : Mr. Manoj Kumar

Judgement :

1 Criminal Appeal (DB) No. 123 of 1992 (R) WITH Criminal Appeal (DB) No. 137 of 1992 (R) WITH Criminal Appeal (DB) No. 157 of 1992 (R) WITH Criminal Appeal (DB) No. 160 of 1992 (R) ` Criminal Appeal (DB) No. 123 of 1992 (R) WITH Criminal Appeal (DB) No. 137 of 1992 (R) WITH Criminal Appeal (DB) No. 157 of 1992 (R) WITH Criminal Appeal (DB) No. 160 of 1992 (R) ` [Against the Judgment of conviction and sentence dated 13.07.1992, passed by the Additional Judicial Commissioner, Lohardaga in connection with Sessions Trial No. 57 of 1989/165 of 1990 (Lohardaga P.S. Case No. 41/1988 corresponding to G.R. No. 126/1988] Raj Kumar Oraon, son of Sukra Oraon, Resident of - Village - Bhakso, P.S. Lohardaga, District Lohardaga Appellant [In Criminal Appeal (DB) No. 123 of 1992 (R)] Rabindra Kumar Sinha alias Ravi Lal, son of Baleshwar Prasad Sinha, Resident of - Railway Crossing, Lohardaga, P.S. and District - Lohardaga. Appellant [In Criminal Appeal (DB) No. 137 of 1992 (R)] Balgobind Oraon, son of Bandhu Oraon, Resident of - Lohardaga, P.S. and District - Lohardaga. Appellant [In Criminal Appeal (DB) No. 157 of 1992 (R)] Ashok Kumar Singh, son of Prasad Singh, Resident of - Village - Nadi nagra, Lohardaga, P.S. and District -

Lohardaga. Appellant [In Criminal Appeal (DB) No. 160 of 1992 (R)] V e r s u s State of Bihar (Now Jharkhand) Respondent CORAM: HONBLE MR. JUSTICE H.C. MISHRA HONBLE MR. JUSTICE DR. S. N. PATHAK For the Appellant : Mr. Manoj Kumar, Amicus Curiae. For the State : Mr. Amaresh Kumar, APP C.A.V. On 09/01/2017 PRONOUNCED ON 09/02 /2017 Dr. S.N. Pathak, J.

Heard Mr. Manoj Kumar, learned counsel for the appellants and Mr. Amaresh Kumar, learned APP for the State. 2 Criminal Appeal (DB) No. 123 of 1992 (R) WITH Criminal Appeal (DB) No. 137 of 1992 (R) WITH Criminal Appeal (DB) No. 157 of 1992 (R) WITH Criminal Appeal (DB) No. 160 of 1992 (R) ` 2. All the four Criminal Appeals have been preferred against the Judgment of conviction and order of sentence dated 13.07.1992, passed by the Additional Judicial Commissioner, Lohardaga in connection with S.T. No. 57 of 1989/165 of 1990 (Lohardaga P.S. Case No.41/1988 corresponding to G.R.No. 126/1988 whereby the appellants Rabindra Kumar Sinha alias Ravi Lal [In Criminal Appeal (DB) No. 137/1992 (R)], Balgobind Oraon [In Criminal Appeal (DB) No. 157/1992 (R)] and Ashok Kumar Singh [In Criminal Appeal (DB) No. 160/1992 (R)] have been held guilty and convicted for the offence under Sections 396 of the Indian Penal Code and sentenced to undergo R.I. for life. The appellant Raj Kumar Oraon[In Criminal Appeal (DB) No. 123 of 1992 (R)] has been held guilty and convicted for the offence under Sections 216 of the Indian Penal Code and sentenced to undergo R.I. for 5 years. 3. Case of the prosecution in short is that on 09.04.1988, at 7:30 p.m., Sampurna Ramayan Cinema was being telecasted on the Television. The informant Baijnath Ram along with his father Jagdish Ram, uncle Naresh Ram, mother Shanti Devi, younger sisters, mother of Suresh Ram, neighbours Mahavir Baitha, Madan Mahto, wife and children of Havildar Chandradeo Yadav were watching the same at his house. There was power cut at about 7:15 p.m. which however restored after ten minutes and film resumed thereafter. At about 7:30 Havildar Chandradeo Yadav (since 3 Criminal Appeal (DB) No. 123 of 1992 (R) WITH Criminal Appeal (DB) No. 137 of 1992 (R) WITH Criminal Appeal (DB) No. 157 of 1992 (R) WITH Criminal Appeal (DB) No. 160 of 1992 (R) ` deceased) returned from duty along with constables Kailash Yadav and Ram Khelawan Paswan and went to house of the informant to call his wife to serve dinner. The door of the house was opened. The three entered front room of the house and

Havildar called his wife and told her to go home. At this time, four dacoits entered the room, two dacoits stood guard at the door and four remained outside the house. Five of them were armed with small pistols, one was armed with a big gun, two were armed with 'churas' and rest were armed with Lathies. The dacoits aimed pistols and churas at the people assembled there causing chaos and fear amongst them. Thereafter the dacoits entered the room, broke open the box and began to take out ornaments and good clothes. One of the dacoits aimed chura at Havildar when he caught hold of two dacoits standing by him and pinned them down but one of the dacoits fired at Havildar and another stabbed the Havildar due to which he fell down in injured condition in front of the door. One of the dacoits gave a blow with butt of gun on the head of the informant as a result of which the informant sustained bleeding injury. One dacoit also caused hurt to mother of the informant as a result she fell down. Constable Ram Khelawan Paswan caught hold of one dacoit while another dacoit having big gun, fired. The dacoits entered all the rooms of the house of the informant, removed his belongings and left from back door. Some dacoits had taken out sewing 4 Criminal Appeal (DB) No. 123 of 1992 (R) WITH Criminal Appeal (DB) No. 137 of 1992 (R) WITH Criminal Appeal (DB) No. 157 of 1992 (R) WITH Criminal Appeal (DB) No. 160 of 1992 (R) ` machine, a patromax and a suitcase from the front room and had kept the same adjacent to the main door but they could not take away these things. While the dacoits were ransacking the house, the inmates could not raise hulla out of fear but after their retreat, the inmates raised hulla. Thereafter, many persons assembled there. Dacoits were saying that when they could not get job, they were doing this job of dacoity. The dacoits were 10 - 12 in number, all were young and having full pants and bush shirts, were tall and dwarf, white complexioned, reddish white and black complexioned. The informant could identify each of them by seeing their faces. After the dacoits retreated, the injured Havildar was shifted to Sadar Hospital, Lohardaga but he breathed his last on the way to the hospital. During aforementioned incident, the dacoits fired thrice and one of the shot hit a dacoit too.

4. On the basis of fardbayan of the informant Baijnath Ram, recorded by Yadunandan Singh, Officer Incharge, Lohardaga P.S. Case No. 41/1985, under Section 396 I.P.C. was registered. The police party proceeded in the direction in

which the dacoits had retreated. The police party went to the dispensary of accused Raj Kumar Oraon where Sita Ram Oraon (since deceased) had gone in an injured condition for removal of a bullet. Accused Raj Kumar Oraon had made an effort to extract bullet from the stomach of Sita Ram Oraon as a result of which his condition deteriorated. The 5 Criminal Appeal (DB) No. 123 of 1992 (R) WITH Criminal Appeal (DB) No. 137 of 1992 (R) WITH Criminal Appeal (DB) No. 157 of 1992 (R) WITH Criminal Appeal (DB) No. 160 of 1992 (R) ` Police seized two empty cartridges of revolver from the dispensary. Seeing critical condition of Sita Ram Oraon, his dying declaration was recorded and thereafter, he was admitted to Sadar Hospital, Lohardaga where he died. The dying declaration transpired the names of Ashok Kumar Singh, Ravi Lal @ Ravindra Kumar Singh, Mathura Oraon, Anil Prasad and others. All the accused were arrested and put on TIP. During investigation the appellants were remanded and after due investigation chargesheet was submitted and accordingly, cognizance was taken and case was committed to the Court of Sessions. However, the case of Ram Dayal Oraon was split up as S.T. No. 57A/89A. Charge was framed to which the appellants pleaded not guilty and claimed to be tried. 5. The prosecution in order to substantiate charges, examined altogether 19 prosecution witnesses. P.W.1 Pratima Kumari, P.W.4 Mahavir Baitha, P.W.5 Baijnath Ram (informant), P.W.7 Shanti Devi, P.W.10 Kailash Yadav (Sepot), P.W.11 Ram Khelawan Paswan (sepoy) and P.W.13 Sheela Devi (wife of deceased Chandradeo Yadav) have deposed that they were witnessing the cinema Sampura Ramayan on television at the house of Baijnath Ram when Havildar Chandradeo yadav and two sepoy P.Ws. 10 and 11 visited house of Baijnath Ram. These witnesses have admitted that the dacoits were armed with gun and chura etc. and entered house of Baijnath Ram and removed house hold articles. 6 Criminal Appeal (DB) No. 123 of 1992 (R) WITH Criminal Appeal (DB) No. 137 of 1992 (R) WITH Criminal Appeal (DB) No. 157 of 1992 (R) WITH Criminal Appeal (DB) No. 160 of 1992 (R) ` The dacoits also took away cash and watches from the people watching cinema. These witnesses further deposed that since Havaldar Chandradeo Yadav caught hold of and pinned down two dacoits, so he was fired which missed the target but hit a dacoit. Thereafter Havildar was stabbed resulting fatal for his life. P.W.7 Shanti was stabbed in back. These witnesses further deposed that the dacoits took away

ornaments and cloths from the house. However, the P.W.2 Prabha Kumari and P.W.3 Kalawati Kumari, who are also members of the informant house and are the witnesses of occurrence, have been tendered. P.W.15 S.I. Yadunandan Singh, the Investigating Officer of the case, has deposed that the dacoit who was hit by the bullet was Sita Ram Oraon and was arrested from the dispensary of accused Raj Kumar Oraon from village Bhakso. The dying declaration of said Sita Ram Oraon was recorded by P.W.18 L. Kunga, the Sub Divisional Magistrate, Lohardaga. The Executive Magistrate, i.e. P.W.16 I.A. Beg had held Inquest on dead body of Sita Ram Oraon. The Inquest report clearly mention death of Sita Ram Oraon due to gun shot injury. P.W.19 S.I. Yadunandan Singh, held inquest on the dead body of Late Hav. Chandradeo Yadav. P.W.17 is Dr. Dinesh Prasad Bhadani, who examined P.W.7 Shanti Devi . P.W.6 is Dr. Ganesh Prasad who had held autopsy on the dead body of Hav. Chandradeo Yadav. P.W.8 and 9 are Judicial Magistrates who had conducted Test Identification Parade of 7 Criminal Appeal (DB) No. 123 of 1992 (R) WITH Criminal Appeal (DB) No. 137 of 1992 (R) WITH Criminal Appeal (DB) No. 157 of 1992 (R) WITH Criminal Appeal (DB) No. 160 of 1992 (R) ` accused persons. P.W.12 Prem Kumar Gupta is the Judicial Magistrate who had recorded the statement of witness Ganesh Sahu under Section 164 Cr.P.C.. 6. The learned Additional Judicial Commissioner, Lohardaga vide Judgment of conviction and sentence dated 13.07.1992, held the appellants Rabindra Kumar Sinha alias Ravi Lal, Balgobind Oraon and Ashok Kumar Singh guilty and convicted for the offence under Sections 396 of the Indian Penal Code and sentenced them to undergo R.I. for life and further held the appellant Raj Kumar Oraon guilty and convicted for the offence under Sections 216 of the Indian Penal Code and sentenced to undergo R.I. for 5 years 7. The appellants have assailed the impugned Judgment on the ground that none of the seized articles have been produced in Court. Even the bullet that was extracted from the stomach of Sita Ram Oraon has not been produced. The appellants have further assailed the impugned Judgment on the ground that the prosecution has not been able to prove that the bullet extracted from the stomach of Sita Ram Oraon could be fired from the gun seized. It is further argued that Sita Ram Oraon who had bulled embedded in his stomach, could not make dying declaration. The patient was not in a fit state of mind to make any statement which could be relied upon. Learned

counsel further submits that the dying declaration was taken in Hindi which was later on transcribed in English, but who was the 8 Criminal Appeal (DB) No. 123 of 1992 (R) WITH Criminal Appeal (DB) No. 137 of 1992 (R) WITH Criminal Appeal (DB) No. 157 of 1992 (R) WITH Criminal Appeal (DB) No. 160 of 1992 (R) ` author is suspicion and, therefore, the same cannot be relied upon. Learned counsel by placing reliance in para10, 29 and 30 of the Judgment in the case of Kashi Vishwanath Vs. State of Karnataka reported in (2013) 7 SCC 162 submits that dying declaration recorded in language not spoken/ known by deceased and if no proof of proper translation into language in which dying declaration was recorded or of the same having been read over and explained to deceased, it has been held that the contents of dying declaration are doubtful as possibility of deceased being influenced by somebody in making dying declarations cannot be ruled out. Learned counsel further submits that Sheela Devi (P.W.13) who is wife of the informant, has turned hostile. Learned counsel further raised doubts on the admissibility of Test Identification Parade as the witnesses have deposed that the dacoits who had entered the room, had covered their faces. Learned counsel further contends that from the injury report also it is not clear that who had given fatal blow on the deceased and without appreciating these facts, the Court below convicted the appellants illegally without any evidence. Learned counsel further submits that it is a clear case where manner, time and place of occurrence is missing and as such the appellants are liable to be acquitted. Learned counsel further submits that in the circumstances, it can be safely concluded that the case is of no evidence. 9 Criminal Appeal (DB) No. 123 of 1992 (R) WITH Criminal Appeal (DB) No. 137 of 1992 (R) WITH Criminal Appeal (DB) No. 157 of 1992 (R) WITH Criminal Appeal (DB) No. 160 of 1992 (R) ` 8. Per contra learned APP has opposed the prayer and submitted that the appellants have been rightly convicted for the offences alleged. He further submits that the prosecution has been able to prove its case beyond reasonable doubts and the accused persons committed dacoity in the alleged house and further committed murder of the deceased. Hence, the accused persons have been rightly convicted by the court below. 9. On a careful perusal of the materials on record, we are unable to come to the conclusion that the prosecution in this case has established its case beyond reasonable doubt to base a conviction of appellants. The identification of the

convicts are doubtful as the P.W.5 has clearly stated in his evidence that the dacoits had covered their faces and hence their identification are doubtful. Hence we are of the opinion that the Court below has erred in coming to the contra conclusion and as such, the appellants deserve to be acquitted. 10. Considering all these aspects, the impugned Judgments of conviction and orders of sentence passed against the appellants is not sustainable. Accordingly, the impugned judgment of conviction and order of sentence dated 13.07.1992, passed by the Additional Judicial Commissioner, Lohardaga in connection with Sessions Trial No. 57 of 1989/165 of 1990 is hereby set aside and the appellants are given benefits of doubt and are acquitted of the charges. The 10 Criminal Appeal (DB) No. 123 of 1992 (R) WITH Criminal Appeal (DB) No. 137 of 1992 (R) WITH Criminal Appeal (DB) No. 157 of 1992 (R) WITH Criminal Appeal (DB) No. 160 of 1992 (R) ` appellants are on bail, are discharged from the liabilities of their bail bonds and set at liberty. In the result, this appeal stands allowed. Let the lower court record be sent back forthwith. (Dr. S.N. Pathak, J) H.C. Mishra, J. (H.C. Mishra,J.) Dated the 09 February, 2017 High Court of Jharkhand at Ranchi RC/A.F.R.

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