

Bobby Devi ? Boby and Ors Vs. State of Bihar

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Court : Jharkhand

Decided On : Jul-27-2017

Appellant : Bobby Devi ? Boby and Ors

Respondent : State of Bihar

Judgement :

1 CRIMINAL APPEAL (D.B.) No. 180 of 1992 (R) ----- [arising out of the judgment of conviction and order of sentence dated 25 th July, 1992 passed by the learned 1st Additional Sessions Judge, Gumla in Sessions Trial No. 86 of 1990] ----- 1.Bobby Devi @ Beby 2.Kalinder Gope 3.Charku Gope .. Appellants -versus- The State of Bihar (now Jharkhand) ... Respondent ----- PRESENT : HON'BLE MR. JUSTICE H.C. MISHRA HONBLE MR. JUSTICE ANANDA SEN ----- For the Appellants : Mrs. Nivedita Kundu, Amicus Curiae For the Respondent : Mr. Shekhar Sinha, A.P.P. ----- C.A.V. on 20.07.2017 Pronounced on 27.07.2017 Per Justice Ananda Sen, This appeal has been filed by Bobby Devi @ Beby wife of Charku Gope, Kalinder Gope, son of Tumpa Gope and Charku Gope, Son of Mohar Gope, challenging the judgment of conviction and order of sentence dated 25th July, 1992 passed by 1st Additional Session Judge, Gumla in Sessions Trial No. 86 of 1990, whereby they have been convicted for the offence under Sections 302/34 of the Indian Penal Code. After conviction they have also been sentenced to undergo imprisonment for life.

2. During pendency of this appeal, Charku Gope has expired, thus vide order dated 18.10.2016 this appeal stood abated so far as Charku Gope is concerned.

3. The prosecution case is based on the fardbeyan of Raghu Tatwa son of late Ramu Tatwa stating therein that on 16.10.1989 at about 5.30 p.m. his elder brother Jagdish Tatwa's (deceased) sister-in-law came and informed him that Jagdish Tatwa has been murdered. On receipt of the said information the informant along with his elder brother Dawarika Tatwa went to the place of occurrence. Upon reaching the place of occurrence he saw that 2 his brother lying dead in the field. It was seen that on the right side of his face and forehead there was injury and he was lying in a pool of blood. Wife of the deceased (sister-in-law of the informant) told him that after Karma festival the deceased along with his wife was returning from his in-laws house at sunset and Thepa Lohra was also with them. The wife of the deceased was walking at some distance behind the deceased. When they reached near Baratand field, Charku Gope with a dagger in his hand, wife of Charku Gope, Bobby Devi with a heavy stick in her hand and brother-in-law of Charku Gope, Kalinder Gope also with a dagger in his hand attacked Jagdish Tatwa and killed him. He stated that since the wife of the deceased is not in a position to go to the police station, the informant gave the information of the said murder to the police. He stated that how the incident happened, will be narrated in detail by the wife of the deceased. He stated that because of some previous enmity the accused has committed murder of the deceased.

4. On basis of the fardbeyan of Raghu Tatwa, Sisai P.S. Case No. 111/89 was registered under Sections 302/34 of the Indian Penal Code.

5. Police investigated the case and filed charge-sheet against all the three accused persons under Sections 302/34 of the Indian Penal Code.

6. After taking cognizance, the case was committed to the Court of Session and the same was registered as S. T. No. 86 of 1990. Charge was framed under Sections 302/34 of the Indian Penal Code against the appellants to which they pleaded not guilty and claimed to be tried.

7. To prove the case of the prosecution altogether 8 witnesses were examined. P.W.1 is Vijay Kumar Jha. P.W.2 is Smt. Munni Devi. P.W.3 is Lakhan Tatwa. P.W.4 is Dr. Krishna Prasad. P.W.5 is Smt. Pati Devi. P.W.6 is Raghu Tatwa.

P.W.7 is Durbal Tatwa. P.W.8 is Sri Krishna Singh.

8. After closure of the evidence, the statement of accused-appellants 3 were recorded under Section 313 of the Code of Criminal Procedure. On behalf of the defence one witness was examined being D.W.1, Ramesh Tiwari.

9. The trial Court after hearing the counsel for the accused persons and the learned Addl. P.P and after going through the records convicted the accused persons for committing offence under Sections 302/34 of the Indian Penal Code and sentenced them to undergo imprisonment for life.

10. Challenging the said judgment of conviction and the order of sentence dated 25th July, 1992 passed in S.T No. 86 of 1990, this appeal has been preferred by the convicts.

11. Learned counsel for the appellants submits that the conviction cannot be based upon the evidence of the sole eye witness who is highly interested one. She also argues that there was an enmity between the parties which resulted in the false implication of the appellants in this case. It is also submitted that Thepa Lohra who was along with the deceased and his wife has not been examined which create doubt about the prosecution case. She submits that on these grounds benefit of doubt has to be given to the accused.

12. Learned counsel for the State submits that P.W.2 is the eye witness and there is nothing in her evidence to discard her testimony. It has also been mentioned that the place was lonely and no one was present there which has come in the evidence. It is submitted that there is nothing on record to show that there was a previous enmity between the parties. It is argued that non- examination of Thepa Lohra is not fatal as because from the evidence of P.W.2 it is quite clear that he had not seen the occurrence.

13. Before analyzing the evidence in this case, it is pertinent to mention here that there is only one eye witness of the occurrence, who is the wife of 4 the deceased, namely Munni Devi (P.W.2). Munni Devi (P.W.2), in her evidence stated that it was Monday and at sunset she along with her husband was returning from her paternal

house. When they reached Baratand her husband was a few steps ahead of her, suddenly Charku Gope and Kalinder Gope came there armed with dagger in their hands and Bobby Devi came with a stick and all of them started assaulting the deceased. Charku Gope and Kalinder Gope gave dagger blows and Bobby Devi gave stick blows. This witness forbade the accused persons from assaulting her husband but they did not listen to her. As a result of the assault her husband died instantly and only after the death of her husband these assailants fled away. She stated that she thereafter, returned to her matrimonial home and narrated the story to her sister and again came back to the place of occurrence and sat beside the dead body of her husband. Her sister was sent by her to her in-laws house to give information of the incident. She further stated that her brother-in-law Raghu, Lakhan, Sakhu etc. reached the place of occurrence and thereafter, they all went to the police station to give information. She stated that her husband was assaulted on the head and his eyes were also damaged. She identified the assailants. In cross-examination, she stated that there was no person nearby the assault place. There were some persons present far away, but no one reached. She stated that Randhu Lohra and Thepa Lohra crossed them before the occurrence had taken place. She stated that from the place of occurrence her matrimonial home was nearer than her in-laws house. She stated that she does not know whether her husband Jagdish Tatwa had earlier committed murder of mother of Bobby Devi and for that reason he was in custody. She stated that at the first instant Charku Gope assaulted by giving dagger blow thrice. Bobby Devi also gave five or six blows on the head 5 and Kalinder Gope also assaulted the deceased. She denied the suggestion that the deceased was in inimical terms with several persons and these accused have been falsely implicated in this case. She also denied that the deceased was drunk. Thus, from her cross-examination, we find that nothing much could be extracted by the defence in their favour.

14. P.W.3 Lakhan Tatwa, has stated that he was in the market when at about 6.30 p.m. Raghu who was his brother-in-law came to him and told him that his brother has been murdered. Then Smt. Pati Devi (P.W.5), sister of P.W.2 came and informed that the deceased was murdered by Charku Gope, Kalinder Gope and Bobby Devi. On listening this, he, Raghu and Dawarika went to the place of occurrence and saw the deceased lying dead in the field and his wife Munni Devi

was sitting there. Munni Devi narrated the story to them by saying that while they were returning from her matrimonial home and they reached Bartand suddenly Charku Gope, Kalindar Gope and Bobby Devi came and attacked the deceased. Charku and Kalinder assaulted with Bhujali and Bobby Devi assaulted him with heavy stick. This witness called the chaukidar and went to the police station and thereafter, the statement of Raghu was recorded which is the fardbeyan. He also signed the fardbeyan which was marked as Exhibit-2 and signature of Raghu was marked as Exhibit-2/1. On the next day the police again came to the place of occurrence and the inquest report was prepared which was also signed by him. He also identified the appellants. He stated that Munni Tatwa is the second wife of the deceased and denied the suggestion that she is not related to the deceased. He stated that he was informed by Raghu about the occurrence and when they reached the place of occurrence they saw the dead body lying in a pool of blood. The deceased received injuries on the head. He gave the description of the place of occurrence. He denied of having knowledge about any case against the deceased Jagdish Tatwa and also denied that he had murdered mother of Bobby Devi. He also showed his ignorance on the suggestion that the deceased once was confined because of teasing girls.

15. P.W.5 Smt. Pati Devi, is the sister of P.W.2. She stated that her sister and her brother-in-law left their house after celebrating festival at sun- set but after some time her sister returned and informed her that Charku Gope, Kalinder Gope and Baby Devi assaulted and murdered the deceased. She stated that Charku Gope and Kalinder Gope gave dagger blow and Bobby Devi struck on head with a heavy stick. On receipt of the information she along with P.W.2 went to the place of occurrence and saw the dead body. She stated that P.W.2 sent her to her in-laws house to give the information. She went to the in-laws house of P.W.2 and informed the matter to Raghu then Dwarika and Raghu came to the place of occurrence. In her cross-examination, she admits that she had given statement before police and stated about the facts and she also stated that she told the police that she saw blood oozing out from the dead body. She also described the place of occurrence.

16. P.W.6 Raghu Tatwa, is the informant and the brother of the deceased who also narrated that Pati Devi came and informed them that the deceased was murdered by the accused persons. He stated that on receipt of the information they went to the place of occurrence and saw the dead body and found wife of the deceased sitting there. He stated that P.W.2 narrated the entire story as to how the occurrence had taken place by stating that while they were returning from their matrimonial home, near the field, Kalinder Gope, Charku Gope and Bobby Devi assaulted the deceased with dagger and gave several dagger blows and Bobby assaulted with heavy stick resulting in death of the deceased. He stated that he went to the police station and got his fardbeyan recorded and acknowledged that he has signed the fardbeyan. He showed ignorance of the suggestion that his brother was involved in a case of teasing girls. He also showed his ignorance on the suggestion that his brother was an accused in the murder of mother of Bobby Devi.

17. P.W.7 Durbal Tatwa, is the inquest witness. He acknowledged that he had signed the inquest report. He stated that blood stained earth was also seized and the seizure list was signed by Lakhan and himself.

18. P.W.1 Vijai Kumar Jha, is the formal witness who only exhibited the charge-sheet.

19. P.W.4 Dr. Krishna Prasad, is the doctor, who had conducted the postmortem of the deceased. He stated that following injuries were found on the person of the deceased:- (i) Incised wound at rt. side of occipital bone going upper the lateral marginal rt. ear lob. under lying occipital bone cut 3"x1"x1/2" brain matter coming out of the wound. (ii) Lacerated wound over rt. front occipital junction under lying skull bone fractured 2"x1 1/2"x2". (iii) Incised wound of 3"x1/2" x 1/2" at about 2" medial to injury no.2 (iv) Lacerated injury over rt. supra orbital region 1" x 1" x 1/2". (v) Incised wound at the middle of both frontal bone 2" x 1/4"x ". He opined that all the injuries were ante mortem and injury No.1 was caused by sharp cutting weapon and injury No.2 was caused by hard and blunt weapon. He opined that the injury No.1 is the cause of death. He opined that injury nos. 2 and 4 may be caused by Lathi (heavy stick). He exhibited the postmortem report which is marked

as Exhibit 4.

20. P.W.8 Sri Krishna Singh, is the investigating officer of this case. He 8 stated that after receiving the first information report from Raghu Tatwa he drew the F.I.R. The formal F.I.R. is marked as Exhibit-5. He further submitted that the police case being Sisai P.S. Case No.111/89 was registered and he started investigation. He stated that he went to the place of occurrence and saw the dead body which was lying in the field. He stated that the inquest report was prepared. He also stated that he seized the blood stained earth. In cross-examination, he stated that no seizure list was prepared for blood stained earth. He had recorded statement of Raghu Tatwa who stated that Munni Devi (P.W.2) narrated the entire occurrence to him. He also recorded the statement of Lakhan Tatwa. He stated that the place of occurrence was a very lonely place.

21. Defence examined one witness namely, Ramesh Tiwari who is the bench clerk of the then Judicial Magistrate, 1st Class, Gumla. He stated that on that date the Magistrate recorded statement under Section 164 Cr. P.C. of Ranthu Lohra, he was present in the Court. He stated that the statement was recorded in his presence and the statement was read over to Ranthu Lohra who after finding the same correct, had put his thumb impression. The statement of under Section 164 Cr. P.C. is marked as Exhibit-A.

22. Thus, from the evidence recorded in this case, it is established that there is only one eye witness of the said occurrence i.e. P.W.2., who stated about the manner in which the deceased was murdered. She stated that Charku Gope and Kalinder Gope had given dagger blows to the deceased and Bobby Devi gave Lathi blows. She stated that she had seen the occurrence and thereafter, she went to her matrimonial home and informed P.W.5. From the statement of P.W.5 the aforesaid fact is corroborated. P.W.5 stated that P.W.2 directed her to inform the matter to her in-laws. This fact is also corroborated from the evidence of P.W.2. The informant P.W.6 also said 9 that P.W.5 came and informed him about the murder of the deceased and when he went to the place of occurrence P.W.2 narrated about the incident. The version of all these P.Ws are consistent on the point of assault by these appellants. The medical evidence also corroborates their

version. The arguments of the counsel for the appellant that because of an earlier dispute between the parties these appellants have been falsely implicated in this case has got no legs to stand because of simple reason that there is nothing on record to show that there was an earlier dispute. Further argument of the appellant that Thepa Lohra who left the matrimonial home of P.W.2 along with them has not been examined also has got no relevance. The eye witness i.e. P.W.2 has clearly stated that no one was present when the assault had taken place, rather she says that Thepa Lohra crossed them before the assault had taken place. The place of occurrence was a very lonely place which is also supported from the evidence of the investigating officer. P.W.2 though, she is the wife of the deceased, yet there is nothing in her evidence to disbelieve her. More so she was the only person who was accompanying the deceased and there was no other person nearby. Thus, from what has been discussed above it is felt that the prosecution has been able to prove the guilt of these appellants without reasonable doubt. We find that there is no illegality in the impugned judgment of conviction and order of sentence. Thus there is no merit in this appeal and the same is, thus dismissed. The judgment of conviction and order of sentence passed by the court below are confirmed.

23. The appellants are on bail. Their bail bonds are hereby cancelled. They are directed to surrender before the trial Court within a month, who will take them in custody for serving the rest of the sentence. The Court below is directed to take all necessary steps for taking the appellants in custody, if they do not surrender. 10

24. It is to be mentioned that the Amicus curiae Mrs. Nevedita Kundu has very ably assisted this Court. The secretary HCLSC, Ranchi is directed to make payment of her fees as per the schedules. Let a copy of this judgment be sent to the Secretary, HCLSC, for the needful.

25. A copy of this judgment and the entire Lower Court Records be sent to the Trial Court forthwith. (Ananda Sen, J.) H.C. Mishra, J.

I agree (H.C. Mishra, J.) High Court of Jharkhand, Ranchi The, 27th July, 2017 Amar/AFR11CRIMINAL APPEAL (D.B.) No. 180 of 1992 (R) ----- 1. Bobby Devi @ Beby 2. Kalinder Gope 3. Charku Gope Appellants -versus- The State of Bihar (now Jharkhand) Respondent ---- HEARD BY : HON'BLE MR. JUSTICE H.C.

MISHRA HONBLE MR. JUSTICE ANANDA SEN ---- For favour of perusal and consideration. (Ananda Sen, J.)

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