

Bigan Thakur Vs. State of Bihar

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Court : Patna

Decided On : Mar-24-2014

Judge : Dharnidhar Jha

Appeal No. : Criminal Appeal (SJ) No. 79 of 2002

Appellant : Bigan Thakur

Respondent : State of Bihar

Judgement :

1. The present appeal arises out of judgment dated 07.02.2002 passed in Sessions Trial No.289 of 1998/91 of 2000 by the learned VIII Additional Sessions Judge, Gaya, by which the solitary appellant was held guilty of committing an offence under Section 326 of the IPC and was directed to suffer rigorous imprisonment for ten years.

2. The prosecution story emanates from Ext-5, the fardbeyan of Ram Binay Thakur (P.W.5), recorded in Magadh Medical College Hospital, Gaya, where the informant was admitted for being treated for the injury received by him. It was stated that after having taken his dinner at about 7 P.M. on 27.09.1997, the informant was going to his other house to sleep. When he had reached near the river, five persons surrounded him all on a sudden and started abusing him. They were also shouting that the informant be killed. Out of the five persons, the informant (P.W.5) could identify the present appellant Bigan Thakur, who as per

further allegation attempted multiple blows with fasuli upon him. Although the informant made attempts to escape, but in spite of that he received injury on his left arm, as a result of which bleeding cut injury was caused to him. The informant was rushed to Magadh Medical College Hospital, Gaya where he was admitted.

3. On the basis of Ext-5, the FIR of the case (Ext-6) was drawn up and the investigation was taken up by P.W.8, S.I. Sheo Dhaja Ram, who recorded the statements of the witnesses and obtained the injury report from Magadh Medical College Hospital, Gaya and after concluding the investigation sent up the present appellant for trial, which ended in the impugned judgment.

4. The defence of the appellant was that it was a case of false implication and further that the informant and others were ill-disposed towards him on account of the appellant having installed a barber shop at a site, which was somewhere around the shop of the informant, who resisted the installation of the shop by the appellant tooth and nail, but the appellant succeeded in establishing his shop and that gave a serious heart-burn to the informant and his companions who had assaulted the appellant and others for which a case had also been lodged vide Bodhgaya P.S. Case No.57 of 1998.

5. Eight witnesses were examined by the prosecution during trial of the case, out of whom, P.W.1 Neelam Devi, wife of the informant, P.W.3 Ashok Thakur and P.W.4 Promod Thakur, brother of the informant had given eye witness account to the occurrence. P.W.2 Rabindra Prasad, a local Dafadar had also come in support of the prosecution story by stating that after he had reached at the scene of occurrence, he had found the informant lying injured there. The defence did not examine any witness.

6. Sri Dinu Kumar, learned counsel appearing on behalf of the appellant, has referred to some of the important evidence of the prosecution, especially that of P.W.5, the informant to submit that it was a dark night and the identification was claimed in the flash of the torch light, but neither the torch was produced nor the same was seized during investigation. By referring to paragraphs 6 and 10 of the evidence of P.W.5, it was submitted that admission on the dispute for installing the barber shop was there in paragraph-6 and further admission was that the

relationship between the parties was quite strained and sour, raising a probability that it could be a case of false implication. Submission also was by reference to the evidence of P.W.5 in paragraph-10 that out of five accused persons, the four unknown had put Galmochha on their faces to conceal their identities, but curiously enough, this appellant who was quite known and ill-deposed towards the informant had gone there bare face to inflict the assault and thus, be recognized and be named in the FIR. Submission was that this situation alone could be the circumstance to falsify the prosecution evidence.

7. Sri Sujit Kumar Singh, the learned Additional Public Prosecutor has resisted the submission and had submitted that there was enmity and there was also motive to the appellant to settle the scores and the appellant was duly identified as the person who had inflicted the blows causing the injury which was testified to by P.Ws.6 and 7.

8. There could not be any doubt that P.W.5 Ram Binay Thakur had received injury of the dimensions as deposed to by P.W.6 Dr. Tarak Bakhla. P.W.6 had stated that the injury measuring 10x4?, muscle and bone deep was found on the left upper/arm of P.W. 5 extending from just above the elbow to the forearm in its upper 2/3rds of the length. P.W.6 further stated that due to the injuries, the underlying muscles, vessels and nerves were found severed with loss of finger movement of left arm. It appears that the informant due not getting back the sensitivity in his fingers and thus not regaining the movement in the left upper limb, was referred to Moulana Azad Medical College and Lok Nayak Hospital, New Delhi and was treated by P.W.7 Dr. V.K.Gautam and was discharged on 28.11.1997 after being admitted in that hospital on the 20th November, 1997. The definition of grievous hurt as per Section 320 of the IPC and the description of the injury given by P.W.6 could itself be sufficient to hold that indeed this case could be falling under Section 326 of the IPC, because the very injury received by the informant had caused the cession of the movements in his fingers and fractured the vessels and nerves which was the main reason for causing the disfunction in the fingers of the left arm which could be covered by clause fifthly of Section 320 of the IPC. But then, that could never be the solitary and only consideration for holding the accused guilty of the offence under Section 326 of the IPC. The crux of

the matter could be as to who had indeed inflicted that injury.

9. For determining that issue, the evidence of prosecution witnesses, especially, of P.W.5 appears the relevant material. Witnesses, like, P.Ws.1, 3 and 4 have indeed given evidence indicating as if it were this appellant Bigan Thakur who had given blows with fasuli, a sharp cutting and dangerous weapon and had inflicted the injury, but as per their own evidence, it was a dark night and identification of the appellant was possible only in the flash of torch light. The record does not show as may appear from the evidence of P.W.8, the investigating officer that any torch which was flashed at that particular time was either produced before him or was in the Court during evidence. Thus, the availability source of identification remains in the realm of doubt. Besides, the evidence of P.W.5 itself makes the whole case doubtful as regards the identification of this appellant Bigan Thakur. P.W.5 has stated in paragraph 10 of his evidence that he was surrounded by five accused persons, out of whom four were unknown to him and it was only this appellant Bigan Thakur who could be identified by him and who dealt multiple blows with fasuli aiming at his neck, but on account of his attempt to escape the blows, one fell on his left arm and he was injured. While describing the identity and features of the assailant, P.W.5 stated that the four unknown accused had put Galmochhas on their faces so as to concealing their identities and only due to that attempt by the four unknown accused, he could not identify any of them. However, in the very next line, P.W.5 stated that this appellant Bigan Thakur had not put anything on his face to conceal his identity and was rather bare face. Paragraph 6 of evidence of P.w.5 was rightly referred to the Court to point out that the relationship between the present appellant and the informant was quite strained and bad due to the fact that the appellant having set up his barber shop just by side of the shop of the informant, had resisted the setting up of the shop by the informant, but the informant had succeeded in establishing his shop. The shop was not far off from that of the appellant that the resistance of establishment of barber shop by the appellant had come to the informant. It was only ten days back that the appellant had resisted the establishment of shop by the informant. If the relationship was so sour and strained as appears from paragraph-6 of P.W.5, then it was supposed that the present appellant ought to have taken serious precaution in concealing his identity especially when four unknown persons accompanying him had already

taken such precaution. This fact alone appears sufficient enough to create a serious doubt on the claim of the informant that he had identified the appellant and further that the appellant had bared his face while he had attacked P.W. 5.

10. I have already noted that there was a doubt regarding sufficiency of source of identification and when there was insufficiency or absence of source of light at the scene of occurrence where the offence was being committed, and if it is considered with the evidence of P.W.5 in paragraph-10 which has just been discussed, then it becomes very difficult for any reasonable person to hold that the informant had come out with a clean hand and had set up a true story as to how he had been assaulted.

11. The case suffers from serious doubt as regards the identity of the appellant and on that account it was a case in which the appellant ought to have been acquitted after being given benefit of doubt.

12. Accordingly, the appeal is allowed by setting aside the judgment of conviction and order of sentence. The appellant is acquitted of the charges for which he had been held guilty of. The appellant is on bail. He shall stand discharged from the liabilities of his bail bond.

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