

Birendra Rao and Others Vs. the State of Bihar

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Court : Patna

Decided On : Mar-11-2014

Judge : Dharnidhar Jha

Appeal No. : Criminal Appeal (SJ) Nos. 202, 214 & 225 of 2002

Appellant : Birendra Rao and Others

Respondent : The State of Bihar

Judgement :

1. The batch of three appeals arises out of judgment dated 17.04.2002, passed by Fast Track Court, I, Bettiah in Sessions Trial No. 8 of 1986 by which each of the appellants of the three appeals was held guilty of committing offence under Section 364/34 of the Indian Penal Code and was directed to suffer rigorous imprisonment for seven years.

2. A petition of complaint was filed by P.W. 3 Sukai Raut before the Sub-divisional Judicial Magistrate, Bagaha, copy of which was transmitted to Lauria Police Station for investigation under Section 153(3) of the Code of Criminal Procedure. This was how the First Information Report of the case (Ext. 1) was drawn up and the investigation was proceeded with. The two accused persons, namely, Dhuri Ahir and Budhram Raut were sent up for trial while two others, namely, Motichand Koiri and Bhuneshwar Koiri were not sent up for trial and their names appeared in column no. 2 of charge-sheet. Budhram Raut died during the pendency of the trial

and proceedings as against him was dropped as appears from order dated 22.04.1999 passed by the trial Court. It further appears that after examination of three witnesses, two accused, namely, Birendra Rao and Ramdeo Rao were summoned under Section 319 Cr.P.C. and accordingly, they were also put on trial after being charged with committing offence under Section 364/34 of the Indian Penal Code.

3. As regards the contents of the complaint petition it was alleged that on 17.10.1981 at about 4 P.M. accused Motichand, Dhuri Raut and Ramdeo Rao came to the house of accused Birendra Rao. Budhram also arrived there and they all called Chandradeep Raut, the brother of the complainant, to the house of Birendra Rao on the pretext that his sister had fallen ill at village Patilar and he was required to go there. Accordingly, accused Motichand, Dhuri and Ramdeo accompanied Chandradeep Raut and proceeded to village Patilar whereafter the brother of the complainant, i.e., deceased Chandradeep Raut was never seen or heard of as he became traceless.

Hectic search for Chandradeep Raut was made and it was suspected that the accused persons had committed the offence and after the complaint petition being filed, the same was sent to the police under Section 156(3) of the Code of Criminal Procedure for investigation and the same having been concluded, the charge-sheet was laid for trial of the accused persons, namely, Birendra Rao and Dhuri Ahir and as noted above, the two others, who were also summoned under Section 319 of the Code of Criminal Procedure, bringing the total number of accused to four out of whom one Budhram Raut died during the pendency of the trial leaving the trial only against three persons, i.e., the three appellants one each in the three appeals.

4. I was taken through the evidence of the case and it appears that while the informant Sukai Raut had claimed himself to be the eye-witness to the occurrence and had also stated facts as if he were an eye-witness to the occurrence, but during cross-examination, as appears from paragraph 17, he gave evidence as if he had been told about the occurrence by his brother Shambhu Raut P.W. 1 who was grazing his buffalo near the canal. Not only that, what appears further from his

evidence in paragraphs 17, 18 and 19 was that in spite of either having seen the occurrence being committed in his presence or having learnt about the taking away of his brother by the accused persons and in spite also of the fact that P.W. 1 had gone to village Patilar where the sister of the informant was married to a person and in spite of Shambhu Raut having come back from there not finding the deceased Chandradeep Raut there at village Patilar, the informant P.W. 3 stated that he did not take any step to lodge a report or to file a complaint petition. He did not even talk to any person of the village about the incident and remained sitting tight in his house. Moreover, when the witness was pursued on his natural conduct of having not reported the case to the police or taken any steps for initiating the prosecution, as may appear from paragraph 15 of his cross-examination, he stated that he had gone to the police station after 15-20 days of the incident to lodge the report and prior to that he had not moved to any authority for lodging the information. The other conduct of the informant, which appears unnatural, was that the whole occurrence of taking away had happened in his presence, but he appears to be completely indifferent to the happenings of disappearance of his full brother and does not even appear moving out of his Darwaza or any place in search of his brother. These facts, which appear from his evidence, when viewed with the evidence of P.W. 1, i.e., Shambhu Raut from whom the informant derived the knowledge about the disappearance of his brother, one may find that the whole story was probably a hoax. P.W. 1 initially projected himself to be an eye-witness to the occurrence, having seen the accused persons taking his deceased brother Chandradeep Raut away with them, but in cross-examination in paragraph 7 what did he state was that he had seen his brother and the accused persons together from behind of their back and had guessed as if his brother had been abducted by the accused persons. As regards P.W. 2, the brother of the informant, he appears a forthright person when he admitted while reacting to a suggestion thrown at him, that the whole prosecution was false and that it had been framed at the instance of one Vidya Pandey who, as per his evidence in paragraph 8, was not only the architect of the whole prosecution story, but was also the chief financier of the prosecution of the accused persons.

5. This is the evidence upon which the learned trial Court was acting upon to convict the three appellants. On a bare perusal and consideration of the evidence

of the three witnesses what appears to me is that it was out and out a false prosecution lodged against the accused persons probably at the behest of one Vidya Pandey for any particular reason. Human mind and behaviour is too intricate to be appropriately understood and appreciated and one does not know how an innocent individual could be dragged into litigation, and that too to such a long litigation, which came up to this Court. There is no doubt from the evidence of the case that the charge was at all not established.

6. The three appeals are allowed. The judgment of conviction and the order of sentence are hereby set aside. The three appellants are acquitted of the charge, they had been found guilty of. They are on bail. They shall stand discharged from the liabilities of their respective bonds.

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