

**Biraj Bind and ors. Vs. the State of Bihar**

**Biraj Bind and ors. Vs. the State of Bihar**

**SooperKanoon Citation :** [sooperkanoon.com/119732](http://sooperkanoon.com/119732)

**Court :** Patna

**Decided On :** Sep-27-2002

**Judge :** M.L. Visa and B.K. Jha, JJ.

**Appeal No. :** Criminal Appeal No. 552 of 1987

**Appellant :** Biraj Bind and ors.

**Respondent :** The State of Bihar

**Disposition :** Appeal Allowed

**Prior history :** M.L. Visa, J. 1. This appeal is directed against the judgment and order dated 26.9.1987 convicting and sentencing all the three appellants to undergo rigorous imprisonment for life under Section 302/34, Indian Penal Code. 2. The case of prosecution in short is that on 11.8.1985 at about 7 a.m. deceased Sattan Bind taking a plough and pair of he-buffaloes, was going from his house to plough his field, through a village school when all the three appellants, armed with lathis came out running fro

**Judgement :**

**M.L. Visa, J.**

1. This appeal is directed against the judgment and order dated 26.9.1987 convicting and sentencing all the three appellants to undergo rigorous

imprisonment for life under Section 302/34, Indian Penal Code.

2. The case of prosecution in short is that on 11.8.1985 at about 7 a.m. deceased Sattan Bind taking a plough and pair of he-buffaloes, was going from his house to plough his field, through a village school when all the three appellants, armed with lathis came out running from their flour mill and assaulted Sattan Bind with lathis who fell down but the appellants even thereafter continued their assault on him. When informant Binita Devi (PW-6), wife of deceased seeing the occurrence, raised hulla and tried to rescue her husband appellant Jagdambi Bind removed her by pushing her and on her hulla her father-in-law Hajrangi Bind (PW-7), Baudhi Bind (PW-5), Mahavir Harijan (not examined), Manikant Jha (PW-3) and many other villagers came there running and they also saw the occurrence. The appellants fled away. After some time husband of informant died. About the motive of occurrence case of prosecution is that there was dispute between the appellants and deceased over a piece of land situate beside the house of deceased. The Fardbayan (Exhibit 4) of informant was recorded at her village on the date of occurrence at about 11 a.m. by Sub Inspector Satish Chandra Jha (PW-8). On the basis of Fardbayan (Exhibit 4) of informant, a case under Section 302/34, Indian Penal Code against all the three appellants was registered. The police after investigation submitted charge-sheet under Section 302/34, Indian Penal Code against all the three appellants and after taking cognizance the case was committed to the Court of Session where charge under Section 302/34, Indian Penal Code was framed against the appellants who denied the charge and they were put on trial and after trial they were found guilty under Sections 302/34, Indian Penal Code and were convicted and sentenced to undergo rigorous imprisonment for life.

3. The case of appellants is denial of charge against them and of their false implication in this case. Two witnesses on their behalf were examined during the trial.

4. In order to prove its case prosecution has examined eight witnesses. Dr. H.I. Ansari (PW-1) is the doctor who held autopsy on the dead body of deceased. Surendra Prasad Singh (PW-2) is a formal witness who has proved his signature

as well as signature of Nageshwar Bind on the inquest report prepared by police for the dead body of deceased and he has proved this inquest report which is marked Exhibit 2. He has also proved seizure list prepared by police after seizing the blood-stained soil from place of occurrence which bears his as well as signature of Lal Bahadur Singh (Exhibit 3). Manikant Jha. (PW-3) is a tendered witness. Basuki Bind (PW-4), Baudhi Bind (PW-5) informed Binita Devi (PW-6) and Hajrangi Bind (PW-7) are said to be eye-witnesses to the occurrence. Satish Chandra Jha (PW-8) is the Investigating Officer of this case.

5. Dr. H.I. Ansari (PW-1) has said that on 12.8.1985 he was posted as Associate Professor at Bhagalpur Medical College and Hospital and on that day at about 2.30 p.m., He held post mortem examination on the dead body of deceased and found the following ante mortem injuries on the dead body:

(i) One bruise on forehead 3' x 1',

(ii) One bruise on right temporal region 2-1/4' x 1',

(iii) One bruise on outer angle of right eye 2-1/2' x 1'

(iv) One bruise on upper part of chest 2-1/2' x 3/4'

(v) One bruise on left side of face 1-1/2' x 3/4' and

(vi) Multiple small bruises of different shapes and sizes on upper arm, abdomen and back.

He has further said that on dissection of bruises, the deeper tissues were found infiltrated with blood and on opening of skull it was found contused in the frontal and temporal region and there was fracture of frontal bone and there was extra-dural and sub-dural haemorrhage and clot and on opening of chest, blood clot was present on the sternum ribs and inter costal spaces in the upper portion. According to him the injuries were caused by hard and blunt substance which may be lathi and cause of death was intracranial haemorrhage and shock and time elapsed since death was about 30 to 48 hours and injuries No. (i) and (iv) were sufficient to cause death in ordinary, course of nature. He has proved his post

mortem examination report which is marked Exhibit 1. From his evidence it is established that death of deceased was homicidal.

6. Informant Binita Devi (PW-6) wife of deceased has said that on the day of occurrence she, along with her husband, was going to their field and she was moving with he-bullocks and her husband was moving a head of her with a plough and when he reached near school, all the three appellants came there with lathis and appellant Biraj Das gave a lathi blow to her husband who started running but appellant Jagdambi Bind and Bijoy Bind then assaulted her husband with lathis and he then fell down and when she raised hulla people came there and when she tried to save her husband appellant Jagdambi removed her by giving her a push and when Hajrangi (PW-7) Basuki (PW-4) Baudhi (PW-5); Mahavir Harijan (not examined) and others assembled there the appellants fled away. She has further said that her husband died there and -police was informed and police reached her village at about 10 to 11 a.m. and recorded tier statement which was read over to her and she then put her left thumb impression on it and she showed the place of occurrence to police. Basuki Bind (PW-4) has said that at the time of occurrence he was in his house when he heard hulla coming from southern side and he went there running and when he reached near school she saw the appellants assaulting the deceased with lathis and appellant Biraj Bind was abusing the deceased and on his reaching there the appellants fled away. He has said that at the place of occurrence, his father (PW-7), Baudhi (PW-5) and others also reached there. He has further said that deceased after receiving injuries died at the spot. In cross-examination, he has admitted that Baudhi Bind (PW-5) is his cousin. He has denied the suggestion of defence that on the day of occurrence, he was not in the village and had gone to Ghorpathiya for purchasing tandom. Baudhi Bind (PW-5) has said that at the time of occurrence, he was in his house and on hearing hulla, he went near a school where he found the appellants assaulting the deceased with lathis and appellant Biraj Das was abusing the deceased and after assaulting the deceased, appellants fled away and deceased died at the spot within ten minutes. In cross-examination he has said that first of all he had reached the place of occurrence and Basuki (PW-4) came after him and when he himself reached the place of occurrence, he saw deceased fallen unconscious on the ground. Hajrangi Bind (PW-7) has said that deceased was his nephew and at the time of

occurrence he was in his Bari situate at a distance of fifty cubits from a school and he saw the deceased with a plough and his wife with he bullocks going towards eastern side and when they reached near a mango tree, all the appellants came there and appellants Biraj gave a lathi blow to deceased and thereafter appellants Jagdambi and Bijoy also assaulted the deceased with lathis and he thereafter went near the place of occurrence and Basuki (PW-4) and Baudhi (PW-5) also came and deceased, after receiving injuries, fell down and appellants fled away and deceased, thereafter, died.

7. Satish Chandra Jha (PW-8) the Investigating Officer, in his evidence has said that on 11.9.1985, he was posted as Assistant Officer in charge at Bathe within the jurisdiction of Saultanganj Police Station and on that day, Chaukidar Poto Paswan informed him that murder of deceased had taken place and he recorded this information in station diary and at about 9 a.m. proceeded for the village of place of occurrence alongwith Constable Parmeshwar Paswan and he reached the village at about 10-10-30 a.m. where he recorded the Fardbayan of informant which he read over to her on which she put her left thumb impression and Surendra Prasad Singh also put his signature. He has proved this Fardbayan (Exhibit 4). He has further said that he in presence of witnesses, inspected the dead body of deceased and prepared an inquest report (Exhibit 2) which was signed by witnesses Surendra Prasad Singh and Nageshwar Bind, He has further said that he had inspected the place of occurrence which is a fallow land in front of a Lower Primary School and he found blood at the place of occurrence and seized blood-stained soil and prepared seizure list (Exhibit 3) and also found the plough of deceased at a distance of about three yards from the place where the dead body of deceased was lying. He has said that he forwarded the Fardbayan (Exhibit 4) of informant to police station and he has proved his endorsement (Exhibit 6) made on the Fardbayan (Exhibit 4).

8. Binita Devi (PW-6), the informant in her evidence has said that Bengali was father of her father-in-law and he had four sons, namely appellant Biraj Das, Bajrangi Das, Hajrangi Das and Ramswaroop and Bajrangi Das is her father-in-law. Hajrangi Das (PW-7) is brother of father-in-law of informant who in his evidence has admitted that deceased was his nephew. Basuki Bind (PW-4) is the

son of Hajrangi Bind (PW-7) and therefore, he is cousin of deceased. He has admitted that Baudhi Bind (PW-5) is his cousin. In this way we find that Basuki Bind (PW-4), Baudhi Bind (PW-5) and Hajrangi Bind (PW-7) who besides the informant are said to be eye-witnesses to the occurrence are closely related to informant and deceased because out of them Hajrangi Bind is own uncle of deceased whereas Basuki (PW-4) and Baudhi (PW-5) are cousins of deceased. Admittedly, informant is the wife of deceased. In short there is not any independent witness in this case although according to the evidence of eye-witnesses to the occurrence examined on behalf of prosecution the place of occurrence other persons had also come. We are quite aware of the legal position that the case of prosecution cannot be disbelieved only on the ground that witnesses examined are closely related with each other but then in this type of cases the evidence of such witnesses has to be scrutinized very carefully. The informant in her Fardbayan (Exhibit 4) has stated about the motive which according there was dispute on account of a land situate beside her house between appellant and deceased. In her evidence also, the informant has said that her father-in-law and his remaining brothers got twelve dhurs of land each in their respective shares and the land of the share of Ramswaroop was also purchased by her husband but appellant Biraj Das was claiming half share in that land to which she and her husband did not agree and that land is also called Khand. Basuki Bind (PW-4) has said that when he reached the place of occurrence, the appellants fled away and at the place of occurrence, Baudhi Bind (PW-5) and his father (PW-7) and others had also come but Baudhi Bind (PW-5), in his cross-examination, has said that he was the first man who had reached the place of occurrence and Basuki (PW-4) reached the place of occurrence after his arrival at there, He has further said that when he reached the place of occurrence, he found deceased lying unconscious. This evidence not only makes his earlier evidence that he saw the occurrence doubtful but also makes the evidence of Basuki Bind (PW-4) that he witnessed the occurrence doubtful because according to this witness Basuki Bind (PW-4) had reached after him. Hajrangi Bind (PW-7) has said that at the time of occurrence he was in his Ban from where he saw deceased with a plough and informant with he bullocks going towards northern side but the Investigating Officer (PW-8) in his evidence has said that this witness had not

stated that he had seen the informant at the place of occurrence. Similarly, informant Binita Devi (PW-8), in her evidence has said that at the time of occurrence she was going with her husband to plough the land whereas in her Fardbayan (Exhibit 4) she has not stated that at the time of occurrence she was with her husband and when her attention was drawn to her earlier statement by defence she has said that before Investigating Officer she had stated that at the time of occurrence she taking he-bullocks was going with her husband but the Investigating Officer (PW-8) has said that she had not stated before him that at the time of occurrence she was going with he-bullocks alongwith her husband. So, we find that there is serious doubt that PWs 4 and 5 had seen the occurrence and there are vital contradictions in the evidence of informant (PW-6) and PW-7 and in their earlier statement given before Investigating Officer.

9. According to defence on the day of occurrence Basuki Bind (PW-4) was not in his village and he had gone to Ghorpathiya for purchasing a tandom. Surya Narain Choudhary (DW-1) has proved a receipt (Exhibit A) showing purchase of tandom with a mare for a sum of Rs. 2500 on 11.8.1985. The Court below has not believed, this receipt on the ground that such type of receipt can easily be manufactured. We' also find that this receipt in no way helps the case of defence and besides this is only in respect of witness Basuki Bind (PW-4).

10. Hajrangi (PW-7) in para 5 of his evidence has stated the Poto Chaukidar had gone to Police Station for lodging informant and he had told him that appellants had assaulted the deceased. The Investigating Officer (PW-3) in his evidence has also admitted that he received the informant about the occurrence from Chaukidar Poto Paswan and has further stated that he entered this information in station diary. The prosecution has neither examined Chaukidar Poto Paswan nor has proved the station diary entry recorded on the basis of information given by Poto Paswan but defence has brought this station diary entry No. 144 dated 11.8.1985 on record and got it formally proved by Sub-Inspector B. Ram (DW-2) and this entry is marked Exhibit B. From the perusal of this entry, it appears that Chaukidar Poto Paswan went to police station on 11.8.1985 at about 9 a.m. and simply informed that deceased had been murdered. It does not contain the name of any assailant. Besides this evidence of Bauchi Bind (PW-5), in para 8, is that he had

accompanied the Chaukidar to Phanri (Sub Police Station) where Jamadar Saheb wrote about the incident and Chaukidarbatl told him all the details. This witness is claiming to be an eye witness to the occurrence and according to him he had gone Sub Police Station alongwith Chaukidar but no first information report was lodged either by him or Chaukidar. According to defence, till their arrival at Sub Police Station, they were not knowing the real assailants and when the police reached the village of place of occurrence, after due deliberation, the appellants were roped in this case. We further find that Dr. H.I. Ansari (PW-1), during his examination in Court as witness after externally examining appellant Jagdambi Bind admitted that right hand of appellant Jagdambi was not properly working and although he has said that his left hand was working but at the same time admitted that there were fractures in his both hands. Basuki Bind (PW-4), in para 1T of his evidence has admitted that both hands of appellant Jagdambi are broken. In this view of the matter also we find the evidence of prosecution witnesses who have claimed themselves to be eye-witnesses to the occurrence that appellant Jagdambi Bind alongwith other two appellants assaulted the deceased with lathis quite doubtful. As stated above, all the witnesses are closely related to deceased and enmity between deceased and appellants Biraj Bind is also admitted. Appellants Jagdambi Bind and Bijoy Bind are admittedly sons of appellants Biraj Bind. So considering the fact that names of appellants were not mentioned when information of occurrence to police at the earliest opportunity was given inspire of the fact that PW-4 and Chaukidar had gone to Sub Police Station and PW-4 is claiming himself as an eye-witness to the occurrence and Chaukidar was told the names of assailants by PW-7 before his going to Police Station, contradictions in the evidence of prosecution witnesses resulting in not inspiring confidence that they are eye-witnesses to the occurrence and the improbability for appellant Jagdambi Bind for his participating in the occurrence on account of his both hands being broken, the entire case of prosecution appears quite doubtful and it cannot be said that prosecution has proved its case beyond all reasonable doubts.

11. In the result this appeal is allowed and the appellants are acquitted. The judgment and order of Court below convicting and sentencing the appellants is hereby set aside. As the appellants are on bail, they are discharged from the liabilities of their bail bonds.

**B.K. Jha, J.**

I agree.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**