

Ramagya Singh Vs. the State of Bihar

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Court : Patna

Decided On : Feb-04-1998

Judge : R.N. Prasad and P.K. Sarkar, JJ.

Appeal No. : Criminal Appeal No. 377 of 1986

Appellant : Ramagya Singh

Respondent : The State of Bihar

Disposition : Appeal Allowed

Prior history : 1. The appellant has preferred this appeal against the judgment and order dated 17.7.1986 passed by 1st Additional Sessions Judge Gopalganj in Sessions Trial No. 2/3 of 1985 whereby the appellant has been convicted for the offence under Section 364/149 of the Indian Penal Code and sentenced to undergo imprisonment for life. 2. One Phulwanti Devi gave her fardbeyan on 27.5.1981 at about 7.45 A.M. stating therein that yesterday night at about 8.30 p.m. she was at the door of her house. Her husba

Judgement :

1. The appellant has preferred this appeal against the judgment and order dated 17.7.1986 passed by 1st Additional Sessions Judge Gopalganj in Sessions Trial No. 2/3 of 1985 whereby the appellant has been convicted for the offence under Section 364/149 of the Indian Penal Code and sentenced to undergo imprisonment for life.

2. One Phulwanti Devi gave her fardbeyan on 27.5.1981 at about 7.45 A.M. stating therein that yesterday night at about 8.30 p.m. she was at the door of her house. Her husband, namely, Ram Nath Singh was taking meal in the Varandah of the house. After taking meal he was cleaning his teeth. Ramagya Singh, the appellant, came and caught her husband. She caught Ramagya Singh but the appellant pushed her. She fell down. In the meantime Bishwanath Singh, brother of Ramagya Singh and 12-13 others came out of whom 8 persons were carrying gun. They took her husband towards north. On alarm raised by her, Ram Bachan Singh, brother of her husband came and tried to rescue his brother but Ramagya Singh assaulted him from wooden portion of Farsa due to which he fell down. Ramagya Singh also took away ornaments from the boxes. While they were running away Ram Sakal Singh, Parsan Singh, Deba Singh came and saw them running away. Many persons of the village came but by that time the miscreants had fled away. While fleeing away they fired their guns.

3. On the basis of the fardbeyan Ext. 1 a formal F.I.R. (Ext. 2) was drawn up. Investigation was taken up and on completion of investigation charge-sheet was submitted, cognizance was taken and the case was committed to the Court of session for trial. The trial Court convicted the appellant as indicated above. However, the Court acquitted Bishwanath Singh from the charges levelled against him.

4. The defence of the appellant was that he was innocent and had not committed any offence. He has falsely been implicated in this case.

5. The prosecution, in support of its case, examined five witnesses, out of whom P.W. 2., has been declared hostile. P.W. 5 is Investigating Officer. P.W.s. 1 and 4 are eye-witnesses to the occurrence P.W. 3 is the informant and is also an eye-witness to the occurrence.

6. Altogether there are three eye-witnesses out of whom P.W. 3 is widow of the deceased P.W. 4 is brother of the deceased. P. W. 3, the informant, has supported the prosecution case in her examination in-chief. She has stated in her evidence that while her husband was cleaning his teeth after taking meal appellant Ramagya Singh came and caught her husband. She tried to rescue him but she

was pushed by the appellant. Thereafter, Bishwanath Singh, who has been acquitted, Ram Dayal, Jagdhari, Krishna and 8-9 persons came there. They had gun in their hands. P.W. 4 tried to rescue but he was assaulted with the wooden portion of the Farsa due to which he fell down. Thereafter, her husband was taken away by the miscreants. They also fired their gun. Ramagya also took away their ornaments. She identified accused persons in the light of the torch and lamp. P.W. 3 Ram Sakal, P.W. 1 Ram Prasad Singh and many others came there. P.W. 4 Ram Bachan Singh was taken by Maqubul Mian and Vidya Sager to hospital. In her cross-examination, she has given a completely different picture of the occurrence. She has stated in her cross-examination that her husband was killed at the door of her house. The dead body of her husband was taken away by the miscreants. She has further stated that Ramagya fired at her husband while her husband was sitting, from distance of two steps. All the accused persons fired at her husband causing his death. She further stated that blood had fallen at the place of occurrence. She had shown blood to the Investigating Officer. The evidence of the witness, as stated above, completely changed the story of the occurrence as mentioned in the fardbeyan, In the fardbeyan there is nothing about killing of Ram Nath Singh the door of the house, rather it has been categorically stated that the appellant and others took away her husband towards north. The Investigating Officer, P. W. 5 has given detailed picture of the place of occurrence but he has not stated in his evidence that he was shown blood at the place of occurrence.

7. Similar is the evidence of P. W. 1. He has stated in his evidence that on hearing sound of firing he went to the house of Ram Nath Singh and saw 10-12 persons taking away the deceased. He claimed to identify Anurag Ahir Bachan Ahir, Krishna Awadhya and Ramagya Awadhya in the light of the torch, but in his corss-examination the witness has stated that the culprits were concealing their face. He knew Ramagya Singh from before. He had suspicion that the man was Ramagya Singh as his face was concealed. He had seen the culprits from behind from a distance of 25 feet but he did not flash torch on them. He had enmity with Ramagya Singh. He did not say to the police with regard to the torch. The evidence of the witnesses as discussed above, does not inspire confidence as in the cross-examination he has stated that he had seen the culprits including the

appellant from behind who were concealing their face. Besides, the witness has not stated in his evidence that in fact Ram Nath Singh was killed at the (sic) has been stated by P.W. 3.

8. P.W. 4 is brother of the deceased. The witness has stated the details of the occurrence and claimed to have identified the culprits in the light of lantern. The witness has further stated that he was assaulted by the appellant from wooden portion of the Farsa causing injury on his head. The witness, however, in cross-examination has stated that he had gone to the police station but did not name any of the culprits as he was not in a fit condition. The witness has stated that he was sent by the police to the hospital for treatment. However, no document has been brought on the record to show that witness was treated anywhere or any injury report was prepared.

9. The Investigating Officer (P.W. 5) has stated in his evidence that witness P.W. 4 had come and informed about the occurrence. He tried to record his statement but he left the police station on a motor cycle. The Investigating Officer has not stated in his evidence that he sent Ram Bachan Singh (P.W. 4) to any hospital for treatment nor has he stated that he found injury on the person of Ram Bachan Singh (P.W. 4).

10. Thus, from the discussions, made above, it is evident that in the fardbeyan (Ext. 1) there is nothing to show that Ram Nath Singh was killed at the door of his house but the informant in her corss-examination has completely changed the story of the occurrence. She has stated that Ram Nath Singh, her husband was killed at the spot and the dead body was taken away by the appellant and others. She has given details in her cross-examination as to how her husband was killed, although there was no such case of the prosecution in Ext. 1. In such circumstances, the evidence of P.W. 3 does not inspire confidence. Similarly, the evidence of P.W. 1 cannot be relied upon as he has stated in his cross-examination that he saw the culprits from behind while running away. Culprits were concealing their face and he had suspicion that the man was the appellant. The evidence of P.W. 4 is also not worthy of reliance as he admitted that he had gone to the police station but did not disclose the name of any culprits. The

Investigating Officer has also stated that P.W.4 had informed him but he left the place when he tried to record his statement. Further more, P.W. 4 claimed that he was assaulted in the occurrence and was treated in the hospital but no such injury report was brought on the record. P.W. 3 claimed that her husband was killed and blood had fallen at the spot but the Investigation Officer has not stated that he found blood at the spot. In such a situation, we do not find that conviction of the appellant can be upheld.

11. Accordingly, this appeal is allowed. The judgment and order of conviction and sentence by the trial Court is hereby set aside. The appellant is acquitted. He is on bail and as such he is discharged from the liability of the bail bonds.

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