

Devendra Paswan and ors. Vs. State of Bihar

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Court : Patna

Decided On : Oct-12-2004

Judge : Chandra Mohan Prasad, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 147, 304 and 323

Appeal No. : Criminal Appeal (SJ) Nos. 126 and 147 of 1992

Appellant : Devendra Paswan and ors.

Respondent : State of Bihar

Advocate for Def. : D.D. Sanjay, G.A. and Gopesh Kumar, APP

Advocate for Pet/Ap. : Anjana Prakash and Juhi Kumari, Advs.

Judgement :

Chandra Mohan Prasad, J.

1. The two appeals arise out of the judgment and order dated 9th June, 1992 of the 1st Additional Sessions Judge, Munger passed in S.T. No. 29 of 1987 whereby appellant Gokul Paswan has been convicted under Sections 304, Part II and 148 of the Indian Penal Code and respectively sentenced to undergo rigorous imprisonment for 10 years and rigorous imprisonment for 2 years. Each of the three remaining appellants, namely, Devendra Paswan, Ravindra Paswan and Rambali Paswan has been convicted under Sections 147 and 323 of the Indian

Penal Code and respectively sentenced to undergo rigorous imprisonment for 1 year and rigorous imprisonment for 1 year. The sentences are, however, to run concurrently.

2. The fardbeyan of the case was recorded on statement of informant Ram Nandan Das (PW 5) on 20th August, 1986 at 6.30 a.m. at Barbigha Police Station. The prosecution case, as unfolded in the fardbeyan of the informant is that on 19th August, 1986 at about 12.00 noon while his (informant's) daughter Kiran Kumari was grazing shegoat it grazed into the field of Ahmad Mian and that due to this, the appellants being variously armed came to his (informant's) house and started abusing him. Govind Paswan stated that the shegoat had grazed paddy crops in his field and he blamed the informant that he kept the cattle unfastened. The informant replied that the appellants were at liberty to capture the cattle and get it closed in a cattle pond. Appellant Gokul Paswan was carrying garasa, Anandi Paswan (since dead) had a khanti and the remaining appellants had lathi in their hands. It is alleged that appellant Gokul Paswan assaulted his (informant's) brother Gorelal (the deceased) on his head. The deceased, receiving injury on his head, fell down unconscious. Seeing the deceased falling, the informant went there but he (the informant) was assaulted by appellant Anandi Paswan (since dead) by means of khanti on his head and thereby causing bleeding injury on the head. It was further alleged that the remaining appellants had assaulted them with lathi. Witnesses, Ramashish Paswan, Naresh Paswan (PW 4), Ramdeo Paswan (PW 3) were named, in the FIR as eye-witnesses to the occurrence. The informant further alleged that while he was taking his brother (the deceased) to Barbigha Hospital for treatment, the village doctor Dr. Mukhtar Ahmad came and he assured him that he will treat his (informant's) brother (the deceased) and persuaded him not to go to Hospital and the police station and he also said that he will attempt for arriving at a compromise between the parties. The informant further stated in his FIR that on the persuasion of Dr. Mukhtar Ahmad, he kept his brother (the deceased) under his treatment and he started treating him (the deceased). But in the ensuing morning, when the condition of informant's brother (the deceased) became serious, Dr. Mukhtar Ahmad advised him (the informant) to take the deceased to Patna for treatment. Then the informant taking his injured brother (the deceased) came to the police station and lodged his fardbeyan there. After lodging

of the fardbeyan, the police sent the informant and the deceased, to Government Hospital, Barbigha for treatment. The informant was treated at Government Hospital, Barbigha but the deceased due to his condition being precarious, was referred to Patna Medical College and Hospital, Patna. Hence, he was moved there (PMCH). The deceased succumbed to the injuries at PMCH. On conclusion of investigation, charge-sheet was submitted and the appellants were tried and convicted as above. One of the accused, namely, Anandi Paswan had died during the trial of the case.

3. As many as nine witnesses were examined by the prosecution, PW 5 Ramnandan Das is the informant who is injured also. PW 1 Fuleshwari Devi, PW 2 Chandeshwari Devi, PW 3 Rameshar Paswan and PW 4 Naresh Paswan have been examined as eye-witnesses to the occurrence. PW 6 Dr. Krishnadeo had examined the informant and the deceased when they were brought to Government Hospital, Barbigha for treatment. PW 8 Dr. Arbind Prasad had conducted the post-mortem examination on the dead body of deceased Gorelal. PW 7 Shyam Kumar Singh is the I.O. of the case. PW 9 Naresh Prasad Singh is a formal witness who has proved the writings on the inquest report marked Ext. 1.

4. The informant (PW 5) deposed that on the day of occurrence at about 12.00 noon, while he was sitting with his brother Gorelal (the deceased) at his house, the appellant Gokul Paswan carrying garasa, Anandi Paswan (since dead) carrying khanti and appellant Ravindra, Devendra and Rambali carrying lathi came there and abused them saying that his Shegoat had grazed paddy crop in their field. The informant asked them to capture the cattle and keep it in the cattle pond whereupon the appellant Gokul Paswan gave a garasa blow on the head of Gorelal (the deceased). Receiving garasa blow, he (the deceased) fell down. When the informant went to save him, appellant Anandi Paswan (since dead) assaulted him on his head causing bleeding injury and the remaining appellants Ravindra, Devendra and Rambali assaulted him with lathi. He further deposed that on hulla witnesses Rameshish, Ramdeo (PW 3), Chandeshwari Devi (PW 2) and Fuleshwari Devi (PW 1) came there and they saw the occurrence. He also deposed that they were going to Barbigha Hospital for treatment but the village doctor (Dr. Mukhtar Ahmad) persuaded them not to go to the Hospital saying that

he will treat them in his clinic and get them cured and he also asked them not to go to the police. He kept his brother (the deceased) under the treatment of said doctor (Dr. Mukhtar Ahmad) but in the ensuing morning at about 4.00 a.m. Dr. Mukhtar Ahmad asked him to take the deceased to Patna saying that his (deceased's) condition was serious. Then he deposed that he came to Barbigaha Police Station where he lodged the FIR (Ext. 1). The police sent them to Government Hospital, Barbigaha for treatment. He was treated there but due to the condition of the deceased being serious, he was referred to Patna for treatment. At para 11 of his cross-examination, he deposed that at the time of occurrence, the appellants were keeping the shegoat in their custody. At para 16 he deposed that after assault, PWs 1, 2, 3 and 4 had come there. During hearing, it was argued by the appellants' counsel that those four witnesses had come there after completion of the assault but it was replied by the (earned APP that these witnesses are villagers or residents of the house and that they stood standing at a distance from the P.O. and that after completion of assault, they approached near the injured persons, i.e., the informant and the deceased. At para 10 he deposed that Dr. Mukhtar Ahmad had come to him at his own and he had pressurised him for taking his brother (the deceased) to his clinic assuring that he will cure him.

5. PW 1 Fuleshwari Devi deposed on similar lines saying about the occurrence. She also deposed that Dr. Mukhtar Ahmad had persuaded them to come to his clinic and he would get them treated and cured there, but when the condition of the deceased became serious, he asked them to take him to Patna whereafter the deceased was taken to Patna. In para 4 of cross-examination, she deposed that the shegoat had grazed in the field of appellant Gokul Paswan. She further deposed that the occurrence had taken place on the ridge which was of the height upto waist and of breadth about one bamboo. She also stated that blood had fallen on the ridge. He further deposed that appellant Gokul Paswan had not returned to his house and he had gone away from the ridge. At para 6 she admitted that Lakhan Paswan and Bharo Paswan are the brothers of her husband and Ajablal is cousin of her husband. There is nothing material to discredit the testimony of his witness.

6. PW 2 Chandeshwari Devi has also testified about the occurrence on similar lines and she has also stated about the informant and the deceased having been treated by the said doctor (Dr. Mukhtar Ahmad) on the assurance that he would treat them and get cured in his clinic. At para 4 she admitted that Ajablal is her Gotia and she is also related to Ajablal as his sali. At paras 5 and 6 of her cross-examination, she deposed that at the time of occurrence Gorelal (the deceased) was snatching the shegoat on the ridge where the occurrence of assault took place. At para 7 she further deposed that the ladies of the village had tied gamchha on the injured head of the deceased. Thus, PW 2 corroborates the informant on material particulars of the case.

7. PW 3 Ramdeo Paswan deposed that while he was in his house, he heard hulla and then he went to the ridge situated at a distance of 12 feet west of the house of Gorelal Paswan (the deceased) and saw that the appellants were there. Gorelal Paswan had garasa, Anandi (since dead) had khanti and the remaining appellants had lathi in their hands. Appellants Gokul Paswan assaulted the deceased with garasa on his head as a result of which the deceased fell down. On falling of the deceased, the informant (deceased's brother Ramanand Paswan) came there to save the deceased, then Anandi Paswan (since dead) gave a khanti blow on his (informant's) head and the remaining appellants assaulted him with lathi. The grazing of paddy crop by shegoat was stated to be the cause of occurrence. This witness further deposed that Dr. Mukhtar of the village asked them not to go to the police station saying that he would get the injured treated and cured in his clinic and he started treating them there. But in the ensuing morning, when the condition of the deceased became serious, Dr. Mukhtar advised to take the deceased to Patna. He further deposed that the deceased was sent to Patna and he died there and that the treatment of the informant was done at Government Hospital, Barbigaha. At para 5 of his cross-examination, he admitted that Daro Paswan and Lakhan Paswan (husband of PWs 1 and 2) are his cousins. He also deposed that he was uncle of the informant. He deposed further at para 6 that Gokul Paswan had captured the shegoat and had kept it at the house of Rambati in different village and that subsequently the shegoat had been got released from the cattle pond on payment of fine of Rs. 23/-. There is nothing in his evidence to discredit the testimony of this witness.

8. PW 4 Naresh Paswan has given in his evidence a similar description of the occurrence and he has deposed specifically that appellant Gokul had caused garasa blow on the head of the deceased and that Anandi Paswan (since dead) had assaulted the informant on his head with khanti and that the remaining appellants had assaulted the deceased by means of lathi. He also deposed about the village doctor (Dr. Mukhtar Ahmad) treating the deceased and the informant in his clinic and then advised him on the next date for taking the deceased for treatment to Patna. He also stated that Gorelal (the deceased) died in the Hospital at Patna and that his inquest report was prepared there and he (PW 4) had also signed the inquest report as a witness. At para 12 of his deposition he deposed that the informant is not related to him in any capacity. Thus, this witness is an independent witness, who supported the prosecution on all the material points.

9. PW 6 Dr. Krishnadeo had examined the injuries on the informant and the deceased at Government Hospital, Barbigha on 20th August 1986. He deposed that he had examined the informant Ramnandan Das and had found the following injuries :

1. A pre-stitched (two stitches with silk thread) wound length of 1.1/4' breadth-because was stitched depth not proved on the scalp over front of the head. The injury simple, weapon unable to draw the opinion. Age of injury unable to draw the opinion.

2. An abrasion 1' x 1/2' on the scalp over vault on his head. Injury was simple caused by hard and blunt substance. Age of injury within 24 hours.

3. A swelling 2' x 1' on the dorsal aspect of left palm. Injury simple caused by hard and blunt substance.

Age of injury within 24 hours. Time at examination of injury on 20.9.1986 at 7.45 a.m.

He proved the injury report in his pen which was marked Ext. 3. He also deposed that on the same day, at 7.15 a.m. he had examined Gorelal Paswan (deceased) and had found the following injuries on his person :--

1. A Pre-stitched (4 stitches with silk thread) wound length 2.1/2' x breadth nil because stitched on his scalp over the vault of his head. The patient was unconscious with sign of head injury. The injury was grievous. Weapon used, is unable to draw the opinion.

Age of injury, unable to draw the opinion.

2. Leucoplast adhesive was present on the clavicle ulvicle fossa of the left upper limb, as seem to be intravenous fusion done previously.

He proved the injury report in his pen and signature marked Ext. 3/1. At para 2 of his cross-examination, he deposed that save and except the head injury, no other injury was found on the person of the deceased. He also deposed that the wound of the deceased was prestitched and that he had not opened the stich. At para 3 of his cross-examination, he deposed that he did not prove injury on Ramnandan but he stated that this injury and other two injuries were simple in nature.

10. PW 8 had conducted the post-mortem examination on the dead body of the deceased on 21st August 1986. He deposed in his evidence that on post-mortem of deceased Gorelal, he found the following ante-mortem injuries on his person :--

1. Stitched wound 3' x 1-1/4' over the left parietal bone, was found facing antero-posterior.

2. Hymotoma underneath the scalp was found over the left parital and occipital region marked beneath the injury of the scalp.

3. Coronel surture separobin was found in the middle and linear fracture extending from the coronal surture to the left parietal region was found 1-1/2' x 1/2' x 1/4'.

4. Massive subdural hymotomaa was found in the left parietal region. Time elapsed since death within 24 hour but more than 6 hours caused injury to his head by hard blunt substance.

He proved the post-mortem report in his pen and signature which was marked Ext.

5. In his cross-examination, he deposed that the injury Nos. 2, 3 and 4 were result of injury No. 1.

11. PW 7 Shyam Kumar Singh (I.O.) deposed that on 28.8.1986, the FIR was registered on the statement of informant Ramnandan Das, which was recorded by the Thana Munshi Chhathu Pathak. He further deposed that he recorded the further statement of the informant and he also recorded the statement of the witnesses PWs 1, 2, 3 and 4. At para 3 he stated about the P.O. saying that the P.O. Was eastern ridge of a canal and that the ridge was about 10 feet wide. He further deposed in para 4 that some blood marks were found at the P.O. He also deposed that adjacent to the ridge, the house of Haro paswan situated. He also deposed that the house of the informant situated in the east of the ridge and that the ridge was being utilised as a path for the villagers. He also deposed that the ridge was very close to Harijantola. Thus, as mentioned by the I.O., the house of the informant situated close to that ridge which is said to be the P.O.

12. During hearing, the learned counsel for the appellant pointed out some discrepancies in the evidence of witnesses and pointing to those discrepancies and also some statements of some witnesses showing that PWs 1, 2 and 3 and the informant were close relations, it was argued that the material witnesses of this case are close relations, hence, interested witnesses. It was also argued that in view of some of the contradictions, the evidence of the witnesses are not fit to be relied upon. As to the relationship of the witnesses, the learned counsel pointed out that considering the evidence of PW 1 at para 6, PW 2 at para 4, PW 3 at para 5 it is clear that these three witnesses are close relations of the informant (PW 5). It was also argued that being related, these witnesses are highly interested witnesses.

13. The learned APP referred to the evidence of PW 4 at para 12 where he has stated that the informant is not related to him in any capacity and he pointed out that PW 4 is not a relation and thus, he is an independent witness. So far the question of the witnesses being interested, I find that the evidence of such witnesses cannot be brushed aside only due to they being relations, as because in such circumstances, when such occurrence took place, only the relatives or the inmates of the house who happened at or near the house situated near the P.O. would be natural and probable witnesses. In this case, PW 4 is not an interested witness and he has fully corroborated the evidence of the informant and other eye-

witnesses. Therefore, I find no reason to disbelieve the eye-witnesses on the ground of they being related or interested.

14. As to the place of occurrence, learned counsel for the petitioner argued that in the FIR, it was stated that the occurrence took place at the informant's house where the appellants had gone for complaining about the grazing of their crop by shegoat. But according to the evidence of PW 1 at PW 4, PW 3 at para 1, the occurrence had taken place on a ridge. Hence, it was argued by the appellants' counsel that the P.O. differs and it is not the same as stated in the FIR. In reply to this argument, the evidence of PW 3 at para 1 is cited where this witness has stated that the occurrence took place on the ridge which situated at a distance of 12 feet from the house of the deceased. It was also pointed out by the learned APP that the I.O. while describing the P.O. has also mentioned that the P.O. was situated at a ridge and that the house of the informant was close to the ridge. Hence, it was argued by the learned APP that since the house of the informant and the ridge were quite close, it was just possible that the initial lodging of the complaint as made by the appellants were done at the house of the informant and the deceased and the dispute travelled further to the nearby ridge Where the actual assault took place. Hence, such a discrepancy about the P.O. has come in the FIR and the statement of witnesses. Considering this explanation, as given by the APP I find that this discrepancy about the P.O. as in the evidence of witnesses does not remain material discrepancy to discredit the testimony of the witnesses or to dislodge the case of prosecution on the point of location of the P.O.

14. During argument, the learned counsel for the appellants pointed out that according to the informant as stated in the FIR, the occurrence of assault took place at the house of the informant but PW 2 at para 1 deposed that the deceased was assaulted when he was trying to snatch the shegoat from the appellants. Hence, it was argued that the manner of occurrence is also not consistent, as stated by the informant and the PW 2. But there is explanation in the evidence of PW 3 at para 6 of his deposition that the accused persons had captured the shegoat which was subsequently kept in the house of Rambali and that subsequently the shegoat was got released on payment of fine. Thus, it is possible that the occurrence took place on the ridge where the appellants had captured the

shegoat and the deceased had tried to snatch it away and in that attempt the deceased had been assaulted at the hands of appellant Gokul.

15. As to the medical evidence, the learned counsel for the appellants argued that PW 6 who had earlier examined the deceased at Government Hospital, Barbigha and also PW 8 who had held the post-mortem on the deceased have not stated in their evidence that the injuries caused to the deceased were incised wound and that it was caused by a sharp edged weapon. On perusal of evidence of these two witnesses, it appears that they have mentioned that they found prestiched wound on the head of the deceased and that they had not removed the stich. It appears from the evidence of the witnesses that the deceased and the informant were given first treatment in the village by Dr. Mukhtar Ahmad. I have reasons to believe that the stiches on the wound of the informant and the deceased were given by the said Dr. Mukhtar Ahmad and the subsequent two doctors, namely, PWs 6 and 8 who had examined those injuries had found prestiches on the wound and they had also not removed the stiches, hence, they were not in a position to give a definite opinion about the nature of the wounds or the weapon used. However, the evidence of PW 8 who had conducted the post-mortem examination shows that injury No. 1 as found by him and the injury Nos. 2, 3 and 4 which were the resultant injuries of injury No. 1 were grievous and sufficient to cause death in the ordinary course of nature.

16. Thus, on hearing both sides and considering the evidence and the circumstances of the case, as discussed above, I find that the prosecution has been able to prove that appellant Gokul assaulted on the head of the deceased by means of farsa causing injury on his head and that the deceased succumbed to that injury. It also stood proved that the remaining three appellants, namely, Devendra, Ravindra and Rambali had assaulted the informant by means of lathi, in this case, initially there were five accused persons, including Anandi Paswan, who died during trial. Thus, considering the above materials, I find that the appellant Gokul Paswan has been rightly convicted under Section 304, Part II and Section 148, IPC. The conviction of R.I. for 10 years under Section 304, Part II, IPC is justified. So far the sentences under Section 148, IPC is concerned, I feel that the sentence should be R.I. for six months. Hence the same is hereby reduced to R.I.

for six months. So far other three appellants, namely, Devendra Paswan, Ravindra Paswan and Rambali 'Paswan are concerned, each of them has been convicted under Sections 147 and 323, IPC. This conviction is also justified, hence upheld. It appears that any serious injury was not caused to the informant or the deceased at the hands of these three appellants and, hence, so far the quantum of sentence is concerned, I feel that a sentence of R.I. for four months under Section 323 and four months under Section 147, IPC will meet the ends of justice. Therefore, the sentence of these three appellants is reduced to a sentence of R.I. for four months under each of the two sections. All the sentences will run concurrently.

17. In the result, the two appeals stand dismissed with the modification in the sentence, as indicated above.

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