

Punit Mandal and ors. Vs. State of Bihar

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Court : Patna

Decided On : Jan-21-2000

Judge : R.N. Prasad and S.N. Pathak, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 147, 148, 149 and 302

Appeal No. : Criminal Appeal (DB) No. 182 of 1987

Appellant : Punit Mandal and ors.

Respondent : State of Bihar

Advocate for Def. : Lala Kailash Bihari Prasad, Adv.

Advocate for Pet/Ap. : Jawahar Prasad Karn, Adv.

Disposition : Appeal allowed

Judgement :

1. The appeal has been preferred by the appellants against the judgment and order dated 30-4-87 passed by the 1st Addl. Sessions Judge, Bhagalpur in S.T. No. 78/75 whereby the appellants have been convicted for the offence under Section 302/149 of the Indian Penal Code and sentenced to undergo imprisonment for life, Appellants Gholtan Mandal, Ram Swaroop Mandal, Ghotan Mandal alias Chittu Mandal, Bhola Mandal, Uttam Mandal, Ganesh Mandal, and Miri Mandal have further been convicted for the offence under Section 147 of the

Indian Penal Code and they have been sentenced to undergo rigorous imprisonment for six months. Appellants Punit Mandal, Prahlad Mandal, Babulal Mandal and Jagdish Mandal have further been convicted for the offence under Section 148 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for one year.

2. The prosecution case is that on 17-3-1974 at about 7 p.m. one Gholtan Yadav gave his furdbeyan that at about 4 p.m. he was tending his cattle in the west of the village, wife of Meghan Das came and informed that Sonu Yadav was being assaulted. He went near the house of Sudin Mandal and saw his nephew Sonu Yadav lying on the ground in injured condition. He also found Siri Mandal, Miri Mandal, Jagdish Mandal, Chotan Mandal, Ram Swaroop Mandal, Bhola Mandal, Prahlad Mandal, Babulal Mandal, Baldev Mandal, Gholtan Mandal and Punit Mandal standing there variously armed with Bhala, Garasa, lathi and pistol and surrounding Sonu Mandal. There were some other persons whom he did not identify. The motive of the occurrence was that Siri Mandal and Miri Mandal were step brothers. There was dispute between them and Siri Mandal had assaulted his step brother Miri Mandal. Sonu Mandal was in favour of Siri Mandal. Some time thereafter there was compromise between Siri Mandal and Miri Mandal. Due to the aforesaid reason there was groupism in the village. The occurrence was seen by Sudin Mandal and Labu Yadav.

3. On the aforesaid fardbeyan formal First Information Report was drawn and investigation was taken up. After investigation charge sheet was submitted. During trial two accused persons died and thus 11 persons were put on trial. The trial Court convicted the appellants for the offences as stated above.

4. The defence of the appellants was that no such occurrence as alleged by the prosecution had taken place rather on the said date and time the prosecution party caused murder of Baldeo Mandal and Ramesh Mandal alias Photo Mandal for which a separate case under Section 302 of Indian Penal Code was registered. They were innocent and had been falsely implicated in this case.

5. The prosecution in support of its case examined six witnesses, out of whom P.W. 1 is the informant. P.Ws. 2, 3, 4 & 5 have claimed to have seen the

occurrence. P.W. 6 is part Investigating Officer who took charge of the case of 3-4-1974 from S.I.T.K. Jha and handed over charge to A.S.I., Mr. Shukla on 3-1-1975.

6. In this case, the Doctor who held postmortem over the dead body has not been examined, S.I.T.K. Jha who recorded the fard beyan, inspected the place of occurrence and prepared inquest report has not been examined nor the officer who submitted charge-sheet has been examined. P.W. 1 is the informant and is not eye-witness to the occurrence. He stated in his evidence that at about 4 p.m. he was in the west of the village. One lady came and informed that Sonu Yadav had been killed. He subsequently stated that he was informed that his nephew was being assaulted. He went there and saw the appellants surrounding Sonu. On hulla many people came and the appellants ran away. The occurrence was witnessed by P.W. 2, Sudin Mandal and P.W. 5 Labu Mandal. In cross-examination the witness stated that Photo alias Ramesh and Baldeo were killed on the same day. On the date of occurrence he had seen Uttim, Bhola and Chotan alias Chitu injured in the hospital. Aforesaid persons were taken on bullock cart along with Sonu Mandal to the hospital. They were assaulted on the same day for which a counter case was lodged which is pending in the Court. He along with others are accused in the said case. He had seen assault on Sonu but he could not identify who assaulted Sonu. He had shown place of occurrence to the Investigating Officer but there was no blood. He did not inform the Chaukidar and the Dafadar about the occurrence. Attention of the witness was also drawn with regard to the statement made before the police. It is thus evident from the evidence of the witness that he was not eye-witness to the occurrence and has admitted in evidence that Baldeo Mandal and Photo alias Ramesh were killed and some of the appellants were injured on the same day for which a separate case was registered in which he along with others were accused. Learned counsel for the appellants pointed out that the aforesaid evidence supports the defence case. P.W. 2 stated in his evidence that he was at his house. He stated that appellants Chotan Mandal, Punit Mandal, Miri Mandal and Jagdish Mandal were assaulting, Sonu Yadav. He out of fear entered in his house. In cross-examination the witness admitted that on the same day Photo alias Ramesh Mandal and Baldeo were killed. However, he denied that some of the appellants were assaulted on the same day. He stated that blood had fallen at the place of occurrence. The witness

also stated that he was in the house while Sonu Yadav was being assaulted and he had no knowledge as to where Sonu Yadav was taken. Attention of the witness was also drawn to the statement made before the police.

7. P.W. 3 is widow of the deceased. She claimed to have seen the occurrence from her house and named 15 persons amongst the assailants. She came out of the house after the occurrence and brought the injured with the help of others to her house. Her husband was taken to the hospital. In cross-examination the witness admitted that on the same day Photo alias Ramesh and Baldeo were killed. However, she denied to have seen the assault on some of the appellants. Her husband was assaulted near the electric pole where blood had fallen. Her husband was being taken by appellant Chottan but he threw him near her house. Blood had also fallen there. He was taken to her house and blood had fallen in her house and on her clothes her attention was also drawn with regard to the statement made before the Investigating Officer but the first Investigating Officer was not examined.

8. P.W. 4 is another witness who claimed to have seen the occurrence. He stated that 20 to 25 persons were assaulting Sonu near electric pole out of whom he identified Bhola Mandal, Babulal Mandal, Jagdish Mandal and Miri Mandal. In cross-examination the witness denied knowledge of murder of Baldeo Mandal and Photo alias Ramesh Mandal and also assault on some of the appellants. However, the witness stated that he had seen the occurrence from 200 steps. There were 10-12 houses in between the place of occurrence and the place from where he had seen the occurrence. He did not come to the place of occurrence due to fear. He had given statement before the police after 17 days of the occurrence.

9. P.W. 5 is another witness who stated that Sonu was assaulted near the electric pole. Amongst the assailants he named Uttam Mandal Bhola Mandal, Vakil Mandal, Babu Lal Mandal and Baldeo Mandal. Some of the persons including Photo alias Ramesh Mandal were surrounding the deceased. The witness named the persons Baldeo Mandal and Photo alias Ramesh Mandal amongst the assailants who were killed for which a separate case had been registered. However, he denied knowledge that Baldeo Mandal, Photo alias Ramesh Mandal

were killed on the same day of the occurrence.

10. P.W. 6. is part Investigating Officer. He has stated that he took charge of the case on 3-4-1974 and handed over charge on 3-1-1975. The witness has proved fardbeyan, Ext. 2 and formal First Information Report. Ext. 3. However, he did not say anything with regard to the investigation prior to taking over charge.

11. One defence witness was examined who has proved the fardbeyan and the First Information Report lodged for the killing of Photo alias Ramesh Mandal and Baldeo Mandal to show that no occurrence took place in the manner as alleged by the prosecution.

12. It is evident from the discussion made above that the evidence of witnesses is contradictory, such as in the First Information Report 11 persons were named as assailants of Sonu. P.W. 2 named only four persons. P.W. 3 named 15 persons. P.W. 4 named four persons. P.W. 5 named five persons. P.W. 1 did not claim to be eye-witness, whereas rest of the witnesses claimed to be eye-witnesses. P.W. 1 stated, that no blood was found at the place of occurrence i.e. near the electric pole, P.Ws. 2 & 3 stated that blood had fallen there. P.W. 3 gave different picture of the occurrence. She stated that her husband was assaulted near electric pole. Thereafter one of the appellants was taking her husband but he threw him near her house. Her husband was brought in her house and blood had fallen at all the places but there is nothing on the record to show that at any place blood was found P.W. 4 stated that his statement was recorded after 17 days of the occurrence. He stated that he had seen the occurrence from 200 steps and there were 10-12 houses in between the place of occurrence and from where he had seen the occurrence. Moreover, attention of the witnesses was drawn to the statement made before the Investigating Officer but the first Investigating Officer who recorded the statement has not been examined which has caused prejudice to the case of the defence. Moreover, almost all the witnesses in fact admitted the death of Photo alias Ramesh Mandal and Baldeo Mandal on the same day of the occurrence and some of the appellants were also assaulted on the same day of the occurrence. P.W. 1 has stated that the deceased and the injured were taken to the hospital on a bullock cart which gives impression that no occurrence took

place in the manner as alleged by the prosecution. The prosecution witnesses tried to suppress the real version of the occurrence. Therefore, the evidence of the witnesses, in our view, is not worthy of reliance.

13. In this case the Doctor who held postmortem over the dead body has not been examined. Therefore, there is nothing on the record to show that Sonu died' due to the injuries on his person. In such a situation it cannot be said that death of Sonu was homicidal. Moreover, the prosecution has failed to' establish the manner of occurrence. Thus the conviction of the appellants for the charges levelled against them, in our view, cannot be sustained.

14. Thus on consideration, as discussed above, the appeal is allowed. Appellants are acquitted. They are discharged from the liability of the bail bonds.

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