

Jagarnath Bind and ors. Vs. State of Bihar

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Court : Patna

Decided On : Oct-29-1999

Judge : R.N. Sahay and Ashish N. Trivedi, JJ.

Appeal No. : Criminal Appeal No. 58 of 1986

Appellant : Jagarnath Bind and ors.

Respondent : State of Bihar

Disposition : Appeal Allowed

Judgement :

R.N. Sahay, J.

1. There are five appellants in this appeal, who were charged, tried and convicted by the 6th Additional Sessions Judge, Arrah in Sessions Trial No. 190 of 1980 by judgment and order dated 25th January, 1986. The appellants were tried for the murder of Sheo Shankar Singh in furtherance of their common objection 15th June, 1978 at a place known as Barakha Pokhra, Badhar, village Jagdishpur, P.S. Jagdishpur in the district of Bhojpur. Appellant Ramasis Bind has been convicted under Section 302, I.P.C. and sentenced to imprisonment for life. He has further been convicted under Section 148, I.P.C. and sentenced to two years. Appellants Jagarnath Bind, Sardar Bind, Gudri Bind and Lallan Bind have been convicted under Section 302/149, I.P.C. and sentenced to imprisonment for life. Appellants

Jagarnath Bind, Sardar Bind and Gudri Bind have further been convicted under Section 147, I.P.C. and sentenced to six months' imprisonment. Appellant Lallan Bind has further been convicted under Section 148, I.P.C. and Section 27 Arms Act and sentenced to two years imprisonment under Section 148, I.P.C. and three years' imprisonment under Section 27, Arms Act. All the sentences were ordered to run concurrently.

2. The occurrence had taken place, according to the prosecution, in presence of two brothers Ayodhya Singh and Raghunath Singh and one Brij Bihari Singh. The First Information Report was lodged by Raghunath Singh on 15-6-1979 at 15.30 hours about the occurrence having taken place at 11.00 a.m. The story, according to the First Information Report, is as follows:

3. On 15-6-1979 at 10.00 a.m. Raghunath Singh, Sheo Shankar Singh, Ayodhya Singh and Brij Bihari Singh left for Consolidation Office, Jagdishpur in order to seek permission to sell the land to Brij Bihari Singh. While Raghunath Singh proceeded east to Barai Pokhra. Sheo Shankar Singh went ahead and when he reached some distance ahead of Pagdandi Rasta, all on a sudden the appellants Jagarnath Bind and Sardar Bind appeared and struck him with lathi. Sheo Shankar Singh raised alarm upon which Raghunath Singh and Ayodhya Singh proceeded further. They saw appellants Gudri Bind and one Dineshwar Bind lifting Sheo Shankar Singh and taking to a nearby field through the Pagdandi Rasta. Appellant Ramasis Bind cut partially the neck of Sheo Shankar Singh. Cause of crime was that one Ram Kishun Bind was a candidate for Mukhiya and he lost the election.

4. The defence was that the appellants had already given a Sanaha that their enemies are trying to implicate the appellants in a false case. Sheo Shankar Singh had enmity with many persons. The appellants were labourers of the family of the deceased and they left their work.

5. Learned Additional Sessions Judge has convicted the appellants on the evidence of Ayodhya Singh, Brij Bihari Singh and Raghunath Singh, who, as per the prosecution case, had seen the entire occurrence.

6. Dr. D.K. Singh, who was posted at State Dispensary Jagdishpur, had performed autopsy on the dead body of the deceased on the day of occurrence itself and following ante-mortem external injuries were found on the person of the deceased:

(i) Incised wound placed over the neck 7' x 2' x 3' from the angle of right mandible extending laterally and posteriorly cutting whole of the anterior and lateral, part of the oesophagus and trachea also cut big blood vessels cut.

(ii) One incised wound 6' x 2' x 2' starting one inch below and the right mastoid region extending posteriorly cutting all the adjoining tissues blood vessels and radiating up to the angle of the left mandible 1-2' behind and below.

(iii) Abrasion 2'x2' over the right shin of tibia,

(iv) Abrasion 2 1/2' x 2' on the medial area of the right knee joint region.

(v) Abrasion 4'x2' in front of right elbow.

(vi) Incised wound 1'x 1/2'x 1/2' in front of middle phalanx.

(vii) Fracture of radius and ulna of left arm at the junction of lower and middle third of the arm.

On deep dissection of the neck tissues, the doctor found that the tissues were clearly cut. Oesophagus trachea, big blood vessels and anterior part of the 3rd and 4th cervical vertebra was cut. Death was caused due to injury inflicted over the neck, cutting trachea oesophagus and big blood vessels leading to haemorrhage and shock.

7. Learned trial Judge has opined that the medical evidence was in consonance with the evidence of the three eye-witnesses. Learned trial Judge has summarised the entire ocular evidence in paragraphs 14 and 15 of the judgment which for the sake of convenience is reproduced here-under:

14. Now the question arises as to who were the assailants. In this context I find that there were only three witnesses including the informant who had seen the occurrence from their eyes and they were P.Ws. 2, 3 and 5. P.W. 5 stated in his

evidence that on 15-6-1979 at about 10 a.m. he along with Brij Bihari Singh (P.W. 3), Sheo Shankar Singh and Ayodhya Singh (P.W. 2) left for Jagdishpur consolidation office to seek permission to sell his land. He stated that when he and others reached Bharahi village he brother Sheo Shankar Singh went ahead of them and while Sheo Shankar Singh was proceeding east to 35 Paine, accused-persons ran towards Sheo Shankar Singh from the south and surrounded him. Out of them, he identified accused Jagarnath Bind, Sardar Bind, Gudri Bind, Dinesh Bind, Lallan Bind and Ramasis Bind. Jagarnath Bind and Sardar Bind started dealing lathi blows upon Sheo Shankar Singh whereby he fell down on the pagdandi itself. On the alarm raised by Sheo Shankar Singh, he (P.W. 5) and others rushed towards the place of assault but in the meantime accused Gudri Bind and Dinesh Bind lifted Sheo Shankar Singh physically and after going 10 yards south threw him down on the ground and thereafter accused Ramasis Bind rasped to Sheo Shankar Singh at his neck. P.W. 5 further stated that accused Lallan Bind and two more unknown persons threatened them at the point of guns not to proceed further and after committing the crime all the accused-persons made their escape good and fled towards north. Similar was the evidence of P.Ws. 2 and 3 and they consistently and coherently supported the evidence of P.W. 5 in toto. All the three witnesses appeared to be reliable and trustworthy. I say so because despite intelligent questions put by learned defence lawyer, the P.Ws. gave consistent answer as to the place where Sheo Shankar Singh was assaulted and as to the place where Sheo Shankar Singh was assaulted and as to the place from where they saw the occurrence. P.W. 2 in para 5 stated that at the time Sheo Shankar Singh had raised alarm he was 20 to 25 steps west of Paine and the dead body was lying 25 steps east to the place from where they had heard alarm of Sheo Shankar Singh. At the time of lathi assault, Sheo Shankar Singh was standing on the pagdandi and the assailants were assaulting him from north and south and that gun was aimed towards him and others from a distance of 5 yards, Similar was the evidence of P.W. 3 who also stated that Gudri Bind had taken Sheo Shankar Singh up to a distance of 10 yards and he and others were 10 to 15 steps away from Sheo Shankar Singh when gun was aimed towards them. In answer to another question, he stated that he and others saw lathi assault from a distance of 30 to 35 yards and that the P.Ws. ran 10 to 15 steps when they were

prevented by the threats of guns.

15. From the aforesaid discussions, it would be crystal clear from the evidence of P.Ws. 2, 3 and 5 that lathi assault was seen by the witnesses from a distance of about 30 yards and rasping of neck by Ramasis Bind was seen by the witnesses from a distance of 10 to 15 steps. A capital was sought to be made out of the evidence of P.W. 2 Ajodhya Singh on the ground that he could not identify Ramasis Bind and that proved the fact that he was not present at the spot. In this context, I would like to add that even if P.W. 2 did not identify Ramasis Bind there were two more witnesses to identify him and that makes the contention of the defence law or meritless.

8. Plea of alibi was taken by the appellant Lallan Bind, who examined one witness Dr. B. Ram. The plea of alibi was not found convincing by the trial Judge. A plea of alibi was also taken by appellant Jagamath Bind but no evidence was led in support of the plea.

9. Mr. S.R.C. Pandey, learned Counsel appearing for the appellants has placed before us the evidence minutely and submitted that the appellants have convicted on insufficient evidence and hence this appeal deserves to be allowed.

10. The first serious contention of the learned Counsel for the appellants was that the occurrence took place at 8.00 a.m. but the fardbayan was lodged at 3.00 p.m. in spite of the fact that three persons had accompanied the deceased and the police station was only 4 to 5 kilometres from the place of occurrence. There being inordinate delay in lodging the case, the whole case is rendered suspicious.

11. Learned Counsel for the appellants contended that the prosecution has presented a dramatic scene of the occurrence. The deceased was going along with his two brothers and Brij Bihari Singh. There was no reason for him to move ahead of them. The witnesses reached there when the deceased raised alarm. Then two persons are said to have taken the deceased in the field where his neck was cut. There was no reason to carry the deceased to the field when the appellants were armed with guns. These facts lead to only inference that the three witnesses who claimed to be eye-witnesses were not actually accompanying the

deceased. Their evidence is fit to be rejected outright. The deceased and the witnesses were going to the Consolidation Office to seek permission for selling certain lands to Brij Bihari Singh but no details of the land has been given. The occurrence took place at a lonely place and two of the witnesses are blood relations of the deceased and the third one is a purchaser of land: There was no reason why all the three persons had to go to the Consolidation Office.

12. On review of the evidence, following crucial facts may be noticed:

(a) The delay in sending the information to the police has remained unexplained. As a matter of fact, no information was sent to the Police Station which is not far from the place of occurrence.

(b) Ayodhya Singh, own brother of the deceased, was unable to identify Ramasis Bind, the principal accused, who is alleged to have severed the neck of his deceased brother. After witnessing the occurrence, he did not go to his Basti to inform his kith and kin. Other two witnesses also did not go to the Police Station. Brij Bihari Singh, one of the eye-witnesses, identified Ramasis as Sardar Bind and then corrected himself. This witness has stated that Jagdishpur Police Station was 11/4 miles but he did not go to the Police Station. They all remained standing at the place of occurrence till 3.30 p.m. The occurrence has taken place at 11.00 a.m.

(c) Rajnarain Singh, uncle of the deceased, has stated that 200 persons had assembled at the place of occurrence. He reached at 12.30 or 1.00 p.m. on hearing about the occurrence in his village. The informant has stated that the deceased, Ayodhya Singh and Brij Bihari Singh were going to Circle Office for permission to sale the land to Brij Bihari Singh but no paper in this connection was produced during trial. The witness has stated that they were carrying all the necessary papers but there is no explanation as to what happened about these papers.

(d) The informant Raghunath Singh was aged 71 years. His eye-sight was poor. It is doubtful that he had gone to Circle Office when his brother was going. This witness was evasive when asked in the cross-examination. He has filed case

against Ramasis and Sardar Bind.

13. On analysis of the entire evidence, I am of the view that several circumstances noticed above destroy the effect of the evidence of the three eye-witnesses. The conduct of the three eye-witnesses was utterly mysterious. They remained at the place of occurrence till 3.30 p.m. without informing the relations and villagers. The case of the prosecution against the appellants appears to be doubtful. I am, therefore, inclined to acquit all the five appellants by giving them benefit of doubt.

14. In the result, this appeal is allowed and the conviction of the appellants is set aside/They are acquitted of the charges. All the appellants are on bail. They are discharged from the liability of their bail-bonds.

Ashish N. Trivedi, J.

15. I agree.

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