

Ram Roy and ors. Vs. State of Bihar

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Court : Patna

Decided On : Mar-06-2000

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

Appeal No. : Criminal Appeal (D.B.) No. 273 of 1987

Appellant : Ram Roy and ors.

Respondent : State of Bihar

Disposition : Appeal Allowed

Judgement :

R.N. Prasad, J.

1. The appellants have preferred this appeal against the judgment and order dated 22.6.1987 passed by 3rd Addl. Sessions Judge, Madhubani in S.T. No. 57/81 of 1980/85 whereby the appellants have been convicted for the offence under Sections 302/149 of the Indian Penal Code and sentenced to undergo imprisonment for life. Appellant Nasib Lal Roy has further been convicted for the offence under Sections 147 & 323 of the Indian Penal Code and sentenced to undergo rigorous imprisonments for three months and one month respectively.

2. The prosecution case is that Mahanth Tilak Bhagat gave his fardbeyan that an incident took place on 24.1.1978 at about 11 p.m. At the relevant time, he along

with Raj Kumar Sah, Laxmi Sah and Rajendra Sah after taking food were lying on the veranda of the northern room of the Math. Rajendra Sah and Raj Kumar Sah were expected to return to their house. The reason of assemblage was distribution of land of village Got Parsahi among the people by members of the Communist party. Raj Kumar Sah and Rajendra Sah had also land in village Got Parsahi. At about 11 p.m. while they were lying three persons armed with lathi came and started assaulting them. One of them enquired about Rajendra Sah. In the meantime, 18-20 miscreants variously armed with lathi, bhala and/or farsa arrived there. They started running away. Rajendra Sah ran towards east but he was surrounded by the miscreants near the Bari of the Math and assaulted with bhala and farsa as a result of which he died at the spot. The miscreants, thereafter, ran away towards south. He identified Ram Roy, Ddm Roy, Samol Mandal, Dhamlal Roy, Nasib Lai Roy, Phuleshwar Yadav, Bhaiji Musher amongst the miscreants. Ddm Roy assaulted him with lathi. Accused-persons also assaulted Raj Kumar and Laxmi Sah. The motive of the occurrence was land dispute and litigation pending in the Court between the deceased and the accused persons. On hearing alarm raised, Bhagwat Sah, Ram Bilas Sah, Ram Narain Sah, Uma Kant Sah and others came to whom he disclosed about the occurrence.

3. On the aforesaid fardbeyan, formal First Information Report was drawn, Investigation was taken up, on completion of investigation, charge-sheet was submitted, cognizance was taken and the case was committed to the Court of Session for trial. During trial, Ddm Roy and Samol Mandal died. However, the trial Court convicted the appellants as indicated above.

4. The defence of the appellants was that no occurrence took place as alleged by the prosecution. They have falsely been implicated in this case due to enmity and litigation pending in the Court.

5. The prosecution in support of its case examined 12 witnesses, out of whom P.Ws. 1, 2, 3 & 7 have been declared hostile. P.W. 4 is witness to the inquest. P.W. 6 is witness to the seizure. P.W. 9 proved fardbeyan and the formal First Information Report. P.W. 10 proved injury report. P.W. 11 proved sketch-map. P.W. 12 proved charge-sheet P.W. 8 is Doctor who held autopsy over the dead

body P.W. 5 claimed to be the eye-witness to the occurrence.

6. The informant of the case has not been examined as he died. The Investigating Officer has also not been examined. The Doctor, who examined the injured, has also not been examined. P.W. 5 is the sole eye-witness to the occurrence. In the First Information Report the informant claimed to identify only seven persons. The motive of the occurrence was stated to be land dispute and litigation pending in the Court with the accused-persons. In the First Information Report, no means of identification has been stated. However, P.W. 5, claimed to identify 13 accused-persons. He stated that three persons came while he along with the informant, Laxmi Sah, Budhu Sah and the deceased were on the veranda of northern room of the Math. They were armed with lathi and started assaulting them. In the meantime, 10-15 persons came there. They started running away. While Rajendra Sah was running away, he was surrounded and was killed. In cross-examination, the witness admitted the enmity and litigation pending in the Court with the appellants. P.W. 1 Laxmi Sah and P.W. 2 Budhan Sah who are said to be present at the time of occurrence did not support the prosecution case and have been declared hostile. However, P.W. 1 stated that he was assaulted near his house, P.W. 2 stated that he was assaulted near the tank, i.e., not at the place of occurrence as alleged in the First Information Report by P.W. 5. They also did not identify any person. In cross-examination, attention of P.W. 5 was drawn to the statement made before the police that he did not disclose the name of Bhaiji Musher. Domi and Samol Mandal which he denied. He also stated in his evidence that the police came and prepared inquest report and then fardbeyan was recorded. Therefore, it is manifest that investigation was started before recording fardbeyan.

7. It is thus evident from the discussion of evidence of the sole eye witness that his evidence is not consistent. Moreover, the witness admitted the enmity and litigation with the accused-persons. The witnesses named in the First Information Report and P.W. 1 also did not support the prosecution case. They stated that they did not identify any person. The attention of the witnesses was also drawn with respect to the statement made before the police but-the Investigating Officer has not been examined and as such it can safely be said that the case of the

defence has been prejudiced.

8. Furthermore, occurrence is alleged to have taken place on 24.1.1978 at 11 p.m. Fardbeyan was recorded on 25.1.1978 at about 1.30 p.m. the First Information report was sent to the Court on 26.1.1978 which was received in the Court on 28.1.1978. Therefore, it is evident that there was great delay in receipt of the First Information Report in the Court. No explanation has been brought on the record as to how such delay was caused. Specific case of the appellants is that no occurrence in the manner as alleged by the prosecution had taken place. They have falsely been implicated in this case due to enmity and pending litigation. The delay in receipt of the First Information Report in the Court is unexplained, which creates doubt about the prosecution case and it supports the defence case. Moreover, it appears from the cross-examination of P.W. 5 that investigation was taken up and then fardbeyan was recorded.

9. Therefore, on consideration of the evidence as discussed above, and the inconsistency as pointed out it is not safe to sustain the conviction of the appellants. Accordingly, this appeal is allowed. The judgment and order of conviction and sentence are hereby set aside. The appellants are discharged from the liability of their bail-bonds.

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