

Bhola Kachhap Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Jan-25-2016

Appellant : Bhola Kachhap

Respondent : State of Jharkhand

Judgement :

1 Criminal Appeal (D.B) No.1549 of 2004 with Criminal Appeal (D.B) No.1383 of 2004 with Criminal Appeal (D.B) No.1589 of 2004 with Criminal Appeal (D.B) No.306 of 2012 Against the judgment of conviction dated 19.5.2004 and order of sentence dated 20.5.2004 passed by the Judicial Commissioner, Ranchi in S.T. No.12 of 2001. Arun Kumar Verma Appellant [Cr.App.(D.B) No.1549 of 2004] Awadh Kishore Sahu.Appellant [Cr.App.(D.B) No.1383 of 2004] Ajay Kumar Gupta @ Chhotu @ Ajay Soni. Appellant [Cr.App.(D.B) No.1589 of 2004] Bhola Kachhap @ Bhola Pahan... Appellant [Cr.App.(D.B) No.306 of 2012] V ERSUS The State of Jharkhand..Respondent For the Appellants: M/s.K.P.Deo and Anil Kumar Sinha, Advocate For the State : Mr. Amaresh Kumar Sinha, APP [In Cr.App.(D.B) No.1549 of 2004 and Cr.App.(D.B) No.306 of 2012] Mr.Awnish Shankar,APP[In Cr.App.(D.B)No.1383 of 2004] Mr.Azeemuddin, APP [In Cr. App.(D.B) No.1589 of 2004] P R E S E N T THE HONBLE MR. JUSTICE R.R.PRASAD THE HONBLE MR. JUSTICE R. N. VERMA By Court: All the four appeals arising out of the same case were heard together and are being disposed of by this common judgment. The aforesaid appellants were put on trial on the accusation of committing robbery in the house of the informant, Pushpa Kumari (P.W.1) and also for committing

gang rape upon the informant's elder sister (deceased) and then committing her murder. The trial court having found all the four appellants guilty for the said charges convicted them for the offence punishable under Sections 302/34, 376(G) as well as under Section 394 of the Indian Penal Code, vide its judgment dated 19.5.2004 and sentenced each of them to undergo imprisonment for life for each of the offences punishable under Section 302/34 as well as 376(G) of the Indian Penal Code and further to undergo rigorous imprisonment for 10 years for the offence under Section 394 of the Indian Penal Code. 2 The case of the prosecution is that in intervening night of 10/11.3.2000 while the informant Pushpa Kumari (P.W.1), aged about 14 years, was sleeping in her house along with her elder sister (deceased) and younger brother Rabindra Keyam (P.W.3) as well as Ranjan Kumar (not examined), 3-4 miscreants after breaking open latches of the door entered into the room at about 3.30 a.m. to whom they saw in the light of electric bulb. One of them holding knife asked from them about the money kept in the house. Upon it, elder sister (the deceased) told them that they do not keep money in the house. When they tried to raise alarm, miscreants by branding knife asked them not to raise alarm. Thereafter the miscreants made an attempt to break open two boxes but did not succeed. Thereupon they took away the boxes and at the same time, they also forcibly took away the elder sister (the deceased) by saying that they will let her off in front of the house of her uncle. Thereafter the informant and others tried to open the door but they could not do so as it was closed from outside. Thereafter they raised alarm through window, upon which some family members of the uncle of the informant entered into the house by scaling wall to whom they did not speak about the incident as the relationship with the uncle of the informant was not good. In the morning, when the Aunt went outside of the house towards Nala (drainage), she saw her injured. There two boxes were also found but it were broken. The victim was brought to RMCH for treatment. After seeing condition of the victim, they could know that she has been raped. In the morning on 11.3.2000 when Ram Yash Prasad (P.W.11), the then Officer-in-Charge, Bariatu Police Station came to know about the incident , he came to the house of the informant and recorded the Fardbeyen (Ext.4) at about 9.45 a.m. On the basis of which, a case was lodged against unknown and a formal FIR (Ext.5) was drawn. The Investigating Officer, P.W.11 himself took up the

investigation during which he inspected the place of occurrence, house of the informant and also the place where the victim was lying injured. The Investigating Officer seized the doors as well as 'Chaukat' (a wooden plank in which doors are fixed) under Ext.6. Broken boxes were also seized 3 (under Ext.6/2) from the place where the victim was found lying in injured condition. Apart from that earth smeared with blood and also some pieces of white cloth was seized under seizure list Ext.6/1. That apart, one pant, shawl, sweater and shirt were also seized under seizure list Ext.6/3. Thereupon the Investigating Officer proceeded to RMCH where victim was being treated. There he recorded the statement of victim but the said statement was not brought on record. On 1.3.2000 the victim died. Thereupon the Investigating Officer(P.W.11) held inquest on the dead body of the deceased and prepared an inquest report (Ext.7). The dead body was sent for post mortem examination which was conducted by Dr.Ram Sawak Sahu (P.W.10), who upon holding autopsy on the dead body did find following injuries. Stab wound stitched - (i) 1 x x 1- cm on right fore arm back. (ii) 2 x 1 cm cavity deep on left abdomen point upper part situated 4 cm left to midline. The weapon passes through abdominal wall cuts the costal margin of ribs perforated liver and stomach. Stitched wound (surgical) - 17 cm. long on front part of abdomen. There are two drainage tubes on left and right front of abdomen which were covered with stitches. After removal of stitches which were not united- Liver, stomach wall, intestine and mesentory colon were found stitched. Presence of blood and blood clot were found in the abdominal cavity. Abrasion - (i) Linear 6 cm long on right thigh front situated vertically. (ii) 11 cm. long on left thigh stitched transversely. (iii) 15 cm. long on right side of neck starting from middle part front of neck to the middle part back of neck. There was tear of vaginal wall with presence of blood clot at the side of tear. There was presence of few spermatozoa on vaginal wall. Doctor issued post mortem examination report (Ext.3) with an opinion that death was caused as a result of above noted injuries. The Investigating Officer (P.W.11) under the order of Senior Officer handed over the investigation to the Circle Inspector, Victor Anthony (P.W.12) on 22.3.2000. Before he took up the investigation, two of the appellants, Awadh Kishore Sahu and Arun Kumar Verma who have been arrested in connection with Gonda Police Station Case No.39 of 2000 registered under Section 395 of the Indian Penal Code had confessed about

their involvement and therefore, were taken on remand in this case. The Investigating Officer 4 (P.W.12) got the test identification parade conducted during which the informant Pushpa Kumari (P.W.1), Ravindra Kayam (P.W.3) and Ranjan Kumar (not examined) did identify both the appellants, Awadh Kishore Sahu and Arun Kumar Verma. Meanwhile, on 18.3.2000 Gonda police arrested the appellant Bhola Kachhap in connection with other case. He also confessed his involvement in the instant case and therefore, the Investigating Officer (P.W.12) took him on remand in this case. He was also put on test identification parade on 22.4.2000 and was identified by the witnesses. The Investigating Officer also sent upper part of 'Choukat' (a piece of wood rectangular in shape meant for holding the door). The Investigating Officer having found the involvement of the aforesaid three appellants submitted charge sheet. Subsequently, when another appellant, Chhotu @ Ajay Kumar Soni was arrested, he was also taken on remand but was not put to test identification parade. It be stated that before the three appellants as aforesaid were taken on remand by the Investigating Officer (P.W.12), the aforesaid three appellants, Awadh Kishore Sahu, Arun Kumar Verma and Bhola Kachhap had been arrested by Ramjee Prasad, court witness no.3. They, on being arrested, confessed their guilt which was recorded by him, carbon copy of which has been marked as Exts.9 to 9/2. Upon submission of the charge sheet when the cognizance of the offence was taken against the appellants, they were put on trial upon the case being committed to the court of sessions. During which the prosecution examined altogether 13 witnesses and also some of the court witnesses. P.W.1, Pushpa Kumari, the informant as well as P.W.3, Rabindra Keyam, brother of the informant did testify that while they were sleeping in the house along with their sister (deceased) as well as Ranjan Kumar (not examined), the miscreants entered into the room after breaking open the door, one of them was holding knife and other was holding stick. They asked about the place where the money had been kept. When they did not find any money, one of them put knife on the neck of the deceased and when they tried to 5 raise alarm, the miscreants by taking them on the point of knife asked not to raise alarm. Thereupon they took away the boxes and also the victim with them by saying that they will let off her outside. While coming out of the room they closed the door from outside. In the morning, when they came out, they found their sister injured

and then she was brought to Hospital. P.W.2, Sukhmati Keyam is the mother of the informant as well as the victim. According to her, when she came home from Jamshedpur where she has been posted, she came to know about the occurrence from the informant as well as the victim. P.W.6, Lachiya Devi @ Badi Maa, Aunt of the informant did testify that in the morning when she found the victim in injured condition near the bushes, she enquired from her about the incident, upon which the victim told that miscreants after taking her out of the house committed rape upon her and thereupon they inflicted injury by knife. P.W.8, Shambhu Kumar Verma happens to be a Magistrate, who conducted test identification parade during which P.W.1, P.W.3 and Ranjan Kumar identified the appellants, Awadh Kihore Sahu and Arun Kumar Verma. He has proved the test identification chart as Ext.2. Similarly, P.W.9, Md. Gulam Gaus conducted test identification parade during which the aforesaid three witnesses identified the appellant Bhola Kachhap @ Bhola Oraon. Upon closure of the prosecution case, when the appellants were questioned under Section 313 of the Code of Criminal Procedure about the incriminating evidences appearing against them, they denied. However, they stated that the police got them identified to the witnesses in Police Station. The trial court having regard to the facts and circumstances and placing reliance on the testimonies, particularly P.W.1 and P.W.3, did find the appellants guilty and accordingly recorded the order of conviction and sentence which is under challenge. Mr.K.P.Deo, learned counsel appearing for the appellants submits that the Fardbeyan of P.W.1 which is being taken to be the FIR, can never be taken to be an FIR, as according to P.W.1, as has been testified at paragraph 49 of 6 her cross-examination she for the first time had made statement before the police at the Hospital, when she had met with the police. Further submission which was advanced on behalf of the defence is that the conviction of the appellant is based on the identification made by P.Ws.1 and 3 but the identification made by them loses its significance in view of the testimony of P.W.1 testifying that she had been taken to police station where she must have been made to identify the appellants by P.W.12, who appears to be an over jealous officer determined to implicate someone as the case happens to be of rape and murder of the daughter of a lady police constable. Further identification made by P.W.1 becomes meaningless in view of the testimony recorded at paragraphs 41 and 61 where she has testified

that she as well as her brother, P.W.3 had identified witnesses together and that she has also testified that P.W.12 at the time of identification was there inside the jail. Further submission which was made is that the prosecution did withhold the important witness, such as Ranjan Kumar, brother of the informant, who had identified the miscreants and Santosh, uncle of the informant as well as son of the uncle and thereby adverse inference be drawn against the prosecution. Heard Mr. Anil Kumar Sinha, learned counsel appearing for the appellants and also heard Mr. Amaresh Kumar, Mr. Awnish Shankar and Mr. Azeemuddin, learned counsel appearing for the State. Having heard learned counsel appearing for the appellants and learned counsel appearing for the State and on perusal of the record we do find that the case of the prosecution as has been testified by P.W.1 and P.W.3 is that while the informant Pushpa Kumari (P.W.1) was sleeping in her house along with her elder sister (the victim) as well as brother Rabindra Keyam (P.W.3) and Ranjan Kumar, the miscreants came by breaking open the door and asked as to where they had kept the money. They did tell them that money is not there in the house. However, when the miscreants found two boxes, they made an attempt to open it but failed. Thereupon they took away the boxes and also elder sister of the informant (P.W.1) by saying that they will let her off outside the house. When the miscreants left the room, they closed the door through latches from outside. In the morning, when the victim was found injured few hundred yards away from the house near the bushes, she was taken to Hospital for treatment. Treatment was extended but she died on 13.3.2000. For the said occurrence, a case had been registered against unknown. During investigation, when it was found that three persons, namely, Awadh Kishore Sahu, Arun Kumar Verma and Bhola Kachhap, who had been arrested in connection with a case of dacoity by Gonda police have confessed their involvement in the instant case, they were taken on remand and were put on test identification parade conducted by P.W.8 and P.W.9 before whom P.W.1 and P.W.3 as well as Ranjan Kumar (not examined) identified them. The other appellant, namely, Ajay Kumar Gupta @ Chhotu, who had been arrested later on had never been put on test identification parade. However, all the aforesaid four appellants were also identified by P.Ws.1 and 3 during their evidences in court. The said identification by P.Ws.1 and 3 is being impeached on the ground that before the witnesses identified the aforesaid

three appellants in test identification parade, they were made to identify them in police station by P.W.12 and that both P.W.1 and P.W.3, as per the evidence of P.W.1, had identified them together during test identification parade but the said submission is not worth acceptable. It is true that P.W.1 has testified in paragraph 24 that she had been taken to police station during investigation but she is quite categorical in saying that there she was never made to identify anybody. There has been no reason to disbelieve her testimony, particularly when nothing could be elicited from the witnesses about the reason for falsely implicating the appellants and that the witnesses had ample opportunity to identify the miscreants in the light of the electric bulb. Further we do find that she has testified in paragraph 61 that she as well as her brother (P.W.3) had identified the appellants together but she, in view of the evidences of the other witnesses, P.W.8 and P.W.9, the Magistrate 8 who conducted test identification parade never meant that the identification parade was jointly held, rather she seems to have said so as they for the purpose of identification would have gone together to jail and did identify the appellants on the same day. Had the plea taken by the defence been true, some suggestion to that effect would have been given to P.Ws.8 and 9 whose evidences never do suggest that they held test identification parade wherein P.W.1 and P.W.3 jointly identified the appellants. According to P.W.8, both the witnesses P.W.1 and P.W.3 while identifying the appellant Awadh Kishore Sahu and Arun Kumar Verma, they did disclose to P.W.8 that the appellant Awadh Kishore Sahu was lifting the boxes whereas Arun Kumar Verma was standing by his side. According to P.W.8, Ranjan Kumar (not examined) he identified both of them by saying that they had taken away the victim. Even if Ranjan Kumar (not examined) did say so while identifying the appellants, it never means that Awadh Kishore Sahu was never lifting the boxes and Arun Kumar Verma was never standing by the side of Awadh Kishore Sahu for the simple reason that the witness Ranjan Kumar might have seen the miscreants at different point of time. Under the circumstances, we do not find any serious infirmities in the evidences of P.W.1 and P.W.3 either on the point of manner of occurrence or on the point of identification. Coming to the next point relating to the Fardbeyan being not treated as the first information report, the submission in this regard seems to be devoid of any merit. It is true that P.W.1 has testified that she for the first time had met with

the police at Hospital where she made her statement. She in the same breath has said that she had made such statement in the afternoon whereas Fardbeyan upon FIR has been given at 9.45 a.m. and therefore, there has been no reason why the Fardbeyan be not taken to be the FIR. Thus, we do find that P.W.1 and P.W.3 not only identified the appellants, Awadh Kishore Sahu, Arun Kumar Verma and Bhola Kachhap in the test identification parade and also in the court and thereby the trial court seems to be absolutely justified in recording the order of conviction and sentence against them and hence, it is hereby affirmed. So far the case of Ajay Kumar Gupta @ Chhotu is concerned, he though has been identified by the aforesaid witnesses, P.W.1 and P.W.3 but the appellant never appears to have been put on test identification parade. The witnesses have simply identified the appellant without saying anything about the role being played by him. In such circumstances, we do not find safe to hold him guilty. In this regard it be stated here that test identification parade as such is not a substantive piece of evidence but it is done only for the satisfaction of the prosecution that the investigation was moving in the right direction. In this regard Their Lordships in a case of Dhananjay Shanker Shetty vs. State of Maharashtra [(2002) 6 SCC596] have been pleased to observe as follows: The main thrust should be on answer to the question as to whether evidence of an witness in court to the identity of the accused from before is trustworthy or not. In case answer is in the affirmative, the fact that prayer for holding test identification parade was rejected or although granted but no such parade was held, would not in any manner affect the evidence adduced in court in relation to identity of the accused. But if, however, such an evidence is not free from doubt the same may be relevant material while appreciating the evidence of identification adduced in court. Further it was observed that evidence of identification of an accused in court by witness is substantive evidence whereas that of identification in test identification parade is though a primary evidence but not substantive one and the same can be used only to corroborate identification of the accused by an witness in court. In this regard it was further held that identification parade are held during the course of investigation ordinarily at the instance of investigating agencies and should be held with reasonable dispatch for the purpose of enabling the witnesses but identify either the property which are the subject matter of alleged offence or the accused persons involved in the offence

so as to provide with material to assure itself if the investigation is proceeding on right lines and the persons whom it suspect could have committed an offence were the real culprits. Failure to hold test identification parade does not make the evidence of identification in court admissible, rather the same is very much admissible in law but ordinarily identification of an accused by an witness for the first time in court should not form the basis of conviction, the same being from its very nature inherently of an weak character 10 unless it is corroborated by his previous identification in the test identification or any other evidence. The previous identification in the test identification parade is a check value to the evidence of identification in court of an accused by an witness and the same is rule of prudence and not law. However, in exceptional circumstances only, as discussed above, evidence of identification for the first time in court, without the same being corroborated by previous identification in the test identification parade or any other evidence can form the basis of conviction. Accordingly, he is acquitted of all the charges and thereby the appeal preferred by him bearing Cr. App.(D.B) No.1589 of 2004 is hereby allowed whereas Cr.App.(D.B) No.1383 of 2004, Cr.App.(D.B)1549 of 2004 and Cr.App.(D.B) No.306 of 2012 preferred by other appellants are dismissed. (R.R.Prasad, J.) (R. N. Verma, J.) Jharkhand High Court, Ranchi, The 25th January, 2016, NAFR/N.Dev

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