

Barachya Singh Vs. State of Bihar

Barachya Singh Vs. State of Bihar

SooperKanoon Citation : sooperkanoon.com/77683

Court : Jharkhand

Decided On : Dec-08-2016

Appellant : Barachya Singh

Respondent : State of Bihar

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI Criminal Appeal (D.B.) No.146 of 1992(R) (Against the Judgment of conviction dated 15.07.1992 and order of sentence dated 20.07.1992 passed by learned 2 nd Additional Sessions Judge, Palamau, in Session Trial No.26 of 1985) 1. Barachya Singh 2. Laldeo Singh @ Lalbabu Singh 3. Raghunandan Mistri . Appellants -Versus - The State of Bihar (Now Jharkhand) ... Respondent PRESENT HONBLE MR. JUSTICE H.C. MISHRA HONBLE MR. JUSTICE Dr. S.N. PATHAK For the Appellants : Mr. Vijoy Pratap Singh, Sr. Advocate Ms. Rashmi Kumari, Advocate Ms. Amrita Kumari, Advocate For the State : Mr. Shekhar Sinha, APP C.A.V. on:

21. 11.2016 Pronounced on:

8. h/12.2016 Dr. S.N. Pathak, J.

- It is submitted that the appellant no.1- Barachya Singh died on 07.03.2015, during pendency of this appeal. The death certificate of the appellant has been brought on record by filing supplementary affidavit. In view of the death certificate, this appeal abates as against the appellant no.1-Barachya Singh.

2. The appellants are aggrieved by the judgment of conviction dated 15.07.1992 and order of sentence dated 20.07.1992 passed by learned 2nd Additional Sessions Judge, Palamau whereby the appellant no.2-Laldeo Singh @ Lalbabu Singh has been found guilty under Sections 302, 307/149 and 148 of the Indian Penal Code and appellant no.3- Raghunandan Mistri has been found guilty under Sections 302/149 and 307/148 of the Indian Penal Code and Section 27 of the Arms Act. Upon hearing on the point of sentence the appellant no.2-Laldeo Singh @ Lalbabu Singh has been sentenced to undergo rigorous imprisonment for life under Section 302 of the I.P.C. as well as under Section 307/149 of the I.P.C. He is further sentenced to undergo rigorous imprisonment for two years under Section 148 of the I.P.C. Appellant no.3- Raghunandan Mistri sentenced to undergo rigorous imprisonment for life under Section 302/149 of the I.P.C., 2 rigorous imprisonment for seven years under Section 307 of the I.P.C. and rigorous imprisonment for two years under Section 148 of the I.P.C. and five years under Section 27 of the Arms Act. The sentences passed against each of the appellants shall run concurrently.

3. The prosecution case, in brief, is that accused Sarju Prasad Singh and Raghunandan Mistri were on inimical terms with the informant Maheshwar Singh and there were several cases pending between them from before. Few years prior to the date of occurrence, Sarju Singh and accused Laldeo Singh and Barachya Singh had cut the hands of the informant and his brother in a dispute over irrigation of water in respect of which there was a case pending in the court. In the previous year prior to the occurrence, the aforesaid three accused persons had threatened the informant and his family members in order to force them for compounding the case, but the informant and his family members did not agree, whereupon the aforesaid three accused persons had committed the murderous attack on Jagdish Singh (son of the informant) in respect of which a case was also pending in the court against the aforesaid three accused persons. The aforesaid accused persons had also encroached upon some lands of the informant forcibly. The son of the informant used to make Pairvi in those cases on behalf of the informant and the aforesaid three accused persons had put pressure on Jagdish Singh (son of the informant) to compound the case but did not agree whereupon the aforesaid accused persons had threatened him (the informant's son) two days

prior to the occurrence that they would celebrate bloody Holi. On 03.04.1984, at about 6.30 p.m., Jagdish Singh (the son of informant) after returning from Hariharganj was sitting in his Kirana shop and at that time Faguni Pasi of the village reached there to purchase rice etc. but all of a sudden 7-8 persons armed with guns and Farsa arrived there and shot fire three rounds continuously. The informant was getting the wheat bundles tied in his filled just by the side of the shop. The informant identified Sarju Singh and Barachya Singh with gun in their hands and Laldeo Singh with Farsa in his hand out of 7-8 persons. The informant raised Hulla whereupon Lallan Singh, who was working in 3 the field alongwith the informant, went to bring the gun and Sarju Singh fired at Jagdish Singh and accused Barachya Singh fired at Faguni Pasi who was trying to escape. Lallan Singh (the informant's son) proceeded towards the shop by firing from his gun whereupon all the accused persons wanted to take away Jagdish Singh, but by that time, the villagers arrived there and thereafter the accused persons fled away after leaving Jagdish on the road side. Besides the informant, his brother Mukha Singh, son of Lallan Singh, Arjun Singh and his son-in-law Parsuram Singh and many others identified the accused persons. After the escape of the accused, Faguni Pasi was found in the unconscious state in that field towards East and Jagdish Singh had succumbed to the injuries by gunfire and Farsa.

4. The case was investigated and thereafter police submitted charge- sheet against three appellants namely Mahabir Mahto (since acquitted), Sarju Prasad Singh under Sections 302, 307/34 of the Indian Penal Code and Section 27 of the Arms Act. On 09.07.1984 cognizance was taken and case was committed to the court of Session vide order dated 12.01.1985 in G.R. No.500 of 1984. Thereafter, charges were framed against the accused persons. All the appellants were charged under Sections 148, 302/149 of the Indian Penal Code. Appellant nos.2 and 3 were further charged under Section 302 I.P.C. alongwith accused Sarju Prasad Singh. All the appellants and accused Sarju Prasad Singh were further charged under Section 307 I.P.C.. Appellant nos.1 and 3 were also charged under Section 27 of the Arms Act alongwith accused Sarju Prasad Singh. The trial was conducted and 11 witnesses were examined on behalf of the prosecution.

5. P.W.1 is Dr. Bharat Manjhi, who held the post-mortem examination on the dead body of the deceased, P.W.2 is Faguni Chaudhary @ Faguni Pasi, who is eye witness of the occurrence, P.W.3-Lallan Singh is son of the informant, P.W. 4-Mungeshar Singh is brother of the informant, P.W.5-Mukhdeo @ Mukha Singh is also brother of the informant, P.W.6 is Shankar Kumar Singh is nephew of the informant, who has turned hostile, P.W.7 is Thakur Mahto who is seizure 4 list witness, P.W.8 Surjan Mahto has also been tendered by the prosecution, P.W.9 Praduman Singh is son-in-law of the informant, who was also declared hostile, P.W.10 Md. Ishaque is a formal witness who has proved the fardbeyan and P.W.11 is N.K. Singh, I.O. of the case. The informant Maheshwar Singh has not been examined in this case as he was dead. The defence has also examined Sri Shivshankar Singh, Advocate as D.W.1 who has proved the swearing of affidavit by Faguni Das as Ext.A., D.W.2 is Lalmuni Rai who is typist and proved the typing of affidavit Ext.A and D.W.3 Rajendra Prasad is Forester.

6. Mr. V.P. Singh, learned senior counsel appearing on behalf of the appellants submitted that the appellants have been falsely implicated in this case due to enmity and the entire occurrence is said to be false and concocted. He further submitted that the fardbeyan should not have been treated as F.I.R. in view of the fact that the informant has not been examined in this case. Mr. Singh, learned senior counsel pointed out that the Chowkidar Krishna Ram, who gave the information on the basis of which the police arrived at the place of occurrence, has not been examined in this case and previous enmity has been admitted by the informant in the fardbeyan. Learned counsel in course of argument drew attention of this Court towards P.W.2 Faguni Chaudhary, who has not supported the case of the prosecution regarding participation of appellant no.2-Laldeo Singh @ Lalbabu Singh and no overt act has been made against the appellant no.3- Raghunandan Mistri. It is further submitted that P.W.2-Faguni Choudhary has put allegation only on Mahabir Mahto that he fired at him, who has already been acquitted. Learned senior counsel further submitted that at the time of occurrence it was becoming dark and only Jagdish (since deceased) was in the shop and according to him in shop only Mahabir (since acquitted) and appellant no.3- Raghunandan Mistri entered in the shop. Learned senior counsel submitted that the conviction of appellants either under Section 307 I.P.C. or under Section 307/149 I.P.C. is not

justified as there was no specific allegation on any of the appellants that they caused injury to P.W.2-Faguni Choudhary. The allegation was on the accused Mahabir who was since acquitted. Therefore, in this situation 5 the conviction of the appellants under Section 307/149 I.P.C. or under Section 307 is bad in law and fit to be set aside. The appellant no.2-Laldeo Singh @ Lalbabu Singh has been charged under Section 302 of the Indian Penal Code but there is no direct allegation that the appellant no.2-Laldeo Singh @ Lalbabu Singh assaulted the deceased Jagdish Singh and as such conviction of appellant no.2-Laldeo Singh @ Lalbabu Singh under Section 302 I.P.C. is not sustainable in the eye of law. It is further submitted that all the witnesses are relative of the deceased therefore they are highly interested witnesses and the only independent witness P.W.2 who was injured in the occurrence has not supported the participation of the appellant nos.1 and 2 and there is no specific overt act against the appellant no.3. Learned senior counsel in course of his argument placed reliance on the judgment reported in AIR 1984 SC1523 State of U.P. Versus P.A. Madhu in which the Hon'ble Apex Court at Para 10 held as under:- 10.Moreover, such a cryptic information on telephone has been held 'by this Court to be of no value at all. In Tapinder Singh v. State of Punjab, (1971) 1 SC599 (AIR 1970 SC1566 this Court in identical circumstances observed thus (at p.1569 of AIR): The telephone message was received by Hari Singh, A.S.I. Police Station City Kotwali at 5-35 p.m. on September, 8, 1969. The person conveying the information did not disclose his identity, nor did he give any other particulars and all that is said to have been conveyed was that firing had taken place at the taxi-stand, Ludhiana. This was of course recorded in the daily diary of the police station by the police officer responding to the telephone call. But prima facie this cryptic and anonymous oral message which did not in terms clearly specify a cognizable offence cannot be treated as first information report. The mere fact that this information was the first in point of time does not by itself clothe it with the character of first information report. Learned senior counsel has further placed reliance in a Judgment in the case of Soma Bhai v. State of Gujarat reported in AIR 1975 SC1453in which the Hon'ble Apex Court at Para 18 held as under:- Before closing the case, we might advert to two important circumstances noticed by the High Court. In the first place the High Court was of the opinion that the F.I.R. lodged by Ratilal Deva was inadmissible in evidence because the

telephonic call booked by the P.S.I. Patel to Surat by which he conveyed the information that the appellant had killed the two persons by firing at them would constitute the first information within the meaning of Section 154 of the Code of Criminal Procedure and the statement made by the complainant before the police 6 subsequent to that would be hit by Section 162 of the Code of Criminal Procedure. We are, however, unable to agree with the view taken by the High Court on this point. It is true that under S.154 of the Code the first information is the earliest report made to the police officer with a view to his taking action in the matter. In the instant case, the complainant had made the report regarding the occurrence having taken place to the P.S.I. Patel, who, however, before reducing it into writing, by way of abundant caution, tried to seek further instructions from from the main Police Station at Surat and that is why he had booked a call to Surat. The message given to the Surat Police Station was too cryptic to constitute a first information report within the meaning of Sec. 154 of the Code and was meant to be only for the purpose of getting further instructions. Furthermore, the facts narrated to the P.S.I. Patel which were reduced into writing a few minutes later undoubtedly constituted the first information report in point of the time made to the police in which necessary facts were given. In these circumstances, therefore, we are clearly of the opinion that the telephonic message to the Police Station at Surat cannot constitute the F.I.R. and the High Court was in error in treating the F.I.R. lodged in the present case as inadmissible in evidence.

7. On the other hand, learned counsel appearing on behalf of the State vehemently opposed contention of the learned senior counsel and submitted that from the evidence of P.Ws. and the facts and circumstances, it is evident that prosecution has succeeded in proving its case beyond all reasonable doubt against the accused persons namely Laldeo Singh @ Lalbabu Singh and Raghunandan Mistri. The learned A.P.P. further submitted that the case cited by the learned senior counsel does not come to his rescue and is not attracted in the facts and circumstances of the instant case.

8. We have gone through the impugned judgment, depositions of witnesses, documents and exhibits proved and have also considered the rival contention of the parties. It is highly improbable that in spite of such incidence family members

did not inform the police except the Chowkidar and from the records of the case, it appears that the informant was not examined and the reasons given was that he was dead. P.W.2 Faguni Chaudhary has not named Raghunandan Mistri and Laldeo Singh, who are also not named by the witnesses. The informant Maheshwar Singh has not been examined in this case as he was dead. P.W.6 Shankar Kumar Singh and P.W.9 Praduman Singh have been declared hostile. Taking into consideration the witnesses examined by the 7 prosecution and that of the defence, we find that no overt act has been attributed against the appellant nos.2 and 3 and as admitted by the trial court that the prosecution has failed to prove the charges against Mahabir Mahto and as such he has not been held guilty. Further, based on the same evidence, the appellant nos.2 and 3 cannot be held guilty of the charges and as such the entire prosecution case becomes doubtful. As accumulative effect of these facts, the appellants are entitled to at least benefits of doubt and deserve acquittal.

9. In view of the aforesaid discussions, the impugned Judgment of conviction dated 15.07.1992 and order of sentence dated 20.07.1992 passed by learned 2nd Additional Sessions Judge, Palamau, in Session Trial No.26 of 1985 are, hereby, set aside. The appellants are given the benefit of doubt and they are acquitted of the charges. The appellants are on bail and they are discharged from the liabilities of their respective bail bonds.

10. This appeal is accordingly allowed. Let the Lower Court Record be sent back forthwith to the court concerned alongwith a copy of this judgment. (Dr. S.N. Pathak, J.) H.C. Mishra, J.

(H.C. Mishra, J.) Jharkhand High Court, Ranchi Dated the 8th December, 2016.
Anit/AFR

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com