

State of Bihar Vs. Mahendra Ram and Munna Ram

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Court : Patna

Decided On : Aug-05-2009

Judge : Navin Sinha and; Dharnidhar Jha, JJ.

Acts : Code of Criminal Procedure (CrPC) - Sections 161 and 366; ;Indian Penal Code (IPC) - Sections 34, 120B, 225, 302 and 504; ;Explosives Substances Act - Sections 3 and 4; ;Evidence Act - Sections 137, 145, 154 and 157

Appeal No. : Death Reference Nos. 13 and 714 of 2008

Appellant : State of Bihar;mahendra Ram

Respondent : Mahendra Ram and Munna Ram;state of Bihar

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

Advocate for Pet/Ap. : Kanhaiya Prasad Singh, Sr. Adv.

Disposition : Appeal allowed

Judgement :

Navin Sinha, J.

1. The present appeals arise from the judgment of conviction and sentence dated 26.6.2008 of the Additional District & Sessions Judge, Fast Track Court No. V, Munger. Death Reference No. 13 of 2008 arises also out of the same judgment of

conviction and order of sentence as required by Section 366 Cr.P.C. Six persons were charged under Sections 302/34, 120B, 225 and 504 of the Penal Code, 3 & 4 Explosives Substances Act. Three have been acquitted.

2. Appellant Mahendra Ram and Munna Ram have been convicted and sentenced to death under Sections 302/34, 120B of the Penal Code and Sections 3 & 4 of the Explosive Substances Act. Accused Upendra Ram has been convicted and sentenced to life imprisonment with fine and in default to one year rigorous imprisonment under Section 302/34, 120B IPC and one year rigorous imprisonment under Section 504 IPC. He has further been sentenced to ten years rigorous imprisonment each under Section 3 & 4 of the Explosive Substances Act to run concurrently. The death reference, as such, was made by the trial court for the confirmation of sentence of death awarded by the trial court to appellants Mahendra Ram and Munna Ram.

3. For an occurrence of 10.3.2005 at about 5 P.M. a written report of the same date was given by the informant Rajesh Pd., P.W. 7 to the Officer Incharge Kotwali, Munger. He stated that the appellants along with Dhappu Ram and Chandra Bhanu Prasad and two unknown persons came and protested that the informant opposed their illegal activities and, therefore, their entire family would be blown of by bomb. Munna Ram threw a bomb at the informant's father Chhote Lal Mahto who was sitting in his betel shop. The rear portion of his father's head was blown off leading to his being deceased. Mahendra Ram threw another bomb which hit O.P. Verma of Sadipur, his head was also blown off and deceased. The bomb thrown by Upendra Ram fell on the road and exploded. Chandra Bhanu Prasad and Dhappu Ram stated that the work was done and all started to flee. One person was apprehended and mercilessly assaulted by the mob. Chandra Bhanu Prasad helped Munna Ram to flee away after the latter was apprehended. The cause of the assault was attributed to the opposition of the informant against the illicit liquor trade indulged in by the accused. Anil Mahto, Pintu Sinha, P.W.2, Umesh Prasad, P.W. 4 were named as F.I.R. witnesses. P.W. 4 and Santosh Kumar Patel, P.W. 8 were attesting witnesses to the first information report.

4. After investigation the Police submitted charge sheet and charges were framed against the accused under Sections 302/34, 120B, 225 I.P.C. and Sections 3 & 4 of the Explosive Substances Act.

5. The prosecution examined ten witnesses. P.W. 1, was the husband of the sister of P.W. 7, informant. P.W. 2 was a tenant of the informant. P.W. 3 & 4 are the cousin brothers of the informant and P.W. 8, maternal cousin. P.W. 5 is the Doctor, who held post-mortem of the deceased. P.W. 6 is a formal witness. P.Ws. 9 & 10 are the Investigating Officers. The defence examined one witness.

6. The fardbeyan and the formal F.I.R. were marked as Exhibits. The inquest report was marked as an Exhibit and the post-mortem report also was marked as Exhibit.

7. Learned Senior Counsel Sri Kanhaiya Pd. Singh submitted that the appellants had been falsely implicated. The manner and sequence of events was entirely different as first disclosed before the Police than that urged by the prosecution at trial. The prime prosecution witnesses P.Ws. 1, 3, 4, 7 & 8 were related and, thus, were interested witnesses. P.W. 2 was a tenant in the premises of P.W. 7 and was, therefore, also an interested witness. P.W. 7, the informant, during the course of trial gave up the specific allegations against co-accused Chandra Bhanu Prasad and himself honourably exonerated him. The other witnesses during investigation had not named co-accused Dhappu when they contradicted themselves during trial by naming him also to which their attention was specifically drawn, which was corroborated by P.W. 9, the Investigating Officer. Both the aforesaid accused have been acquitted. The father of the appellant was deceased at his own door, while the other deceased O.P. Verma is stated to have been deceased near M/S Aditi Electronics. The distance between two places of occurrence is approximately 40-45 yards. The latter was not visible from the former place as deposed by prosecution witness. The body of the deceased O.P. Verma was recovered from the verandah of a shop premises of another about which there are no allegations of assault at that location. P.W. 1 and P.W. 3 are seizure list witnesses and yet P.W. 3 states that he does not know who else signed the seizure list. P.W. 1, a seizure list witness gave his statement to the

Police one and half months' later. P.W. 4, who is an inquest report witness gave his statement two months twenty days later to the Police. The occurrence was on a busy road and yet there was no independent witness examined, despite their being named in the written report.

8. The written report was signed by P.W. 7 and witnessed by P.W. 4 and P.W. 8. The Investigating Officer, P.W. 9 states that he reached the place of occurrence at 5.20 and assumed investigation thereafter on the spot at the orders of the Superintendent of Police. P.Ws. 2 & 3 state that the Police came within 20-25 minutes of the occurrence and recorded their statement. This was done after investigation had commenced as noticed above. P.W. 7 says that the written report submitted by him was written by P.W. 4 and given to the Police at 6 in the evening. He denies that it was given at 9 P.M. at the Police station. P.W. 4 who wrote the written report, denies having written it. P.W. 3 states that the statement of the informant, P.W. 3 and others was taken by the Police on the spot. There was no occasion for the F.I.R. to be registered at 9 P.M. on basis of alleged information of the occurrence furnished to the Police at 9.00 P.M. That this F.I.R. was a fabricated and concocted document brought into existence after the deliberation for false implication. P.W. 7, who signed the written report, stated that he was not fully aware of what was written in it as it was written by P.W. 4. A part was only read over to him and not the entire document. P.W. 4 and 8, who are the author and attesting witnesses to the written report respectively state that before putting their signature they did not read the written report and signed after reading it partially only. It was submitted that they were not rustic witnesses but practising Advocates, whose signature could not be obtained by default. P.W. 8 stated that he normally reads a paper before signing. There was no formal description of the place of occurrence. While the other witnesses talk of three bombs having been thrown, P.W. 7 talks of 4-5 bombs exploded, but the Police finds evidence of two explosions only.

9. The submission, therefore, was that the written report itself was a highly suspicious, antetimed document demolishing by itself the entire prosecution case in view of the nature of evidence that has transpired. The prosecution witnesses were completely unreliable. The informant was completely untrustworthy and no

credence could be given to him or the allegations by him. He has demolished the entire prosecution case himself. There was no justification for the conviction of the appellants after the acquittal of co-accused Chandra Bhanu and Dhappu. The appellants were, therefore, entitled to acquittal also.

10. Learned Senior Counsel, Sri Lala Kailash Bihari, for the Respondents submitted that any infirmity and consequent acquittal of two co-accused cannot ipso facto annul to the benefit of the appellants. A wrong acquittal can be of no avail. If the prosecution did not support the allegations against the co-accused, that shall not otherwise demolish the case of the prosecution vis--vis the present appellants invoking the maxim of falsus in uno falsus in omnibus. The written report was made with promptitude. There are two deaths in the episode and the forensic report confirms death by bomb explosions. There is consensus between the oral and medical evidence.

11. It is trite law that acquittal of a co-accused cannot simpliciter be a ground for acquittal of other accused. There may be factors distinguishing the two cases. Alternately, an erroneous acquittal and absence of any challenge to the same cannot be a ground to demand similar treatment by others. Likewise, the testimony of an interested witness cannot be discarded on that ground alone. It would only require the Court to be more cautious and scrutinise the evidence carefully. Evidence, otherwise cogent and convincing cannot be rejected on the ground that there was no independent witness, though the occurrence had taken place on a busy road. But, there may be circumstances where the witnesses are interested and the manner of occurrence as described requires corroboration by independent witness also. Ultimately, therefore, it shall all depend on the facts and circumstances of the case. It has also to be kept in mind that it shall be those close to the deceased, who shall be most keen that the real culprits be booked.

12. The written report is specific. It attributes a primal role to Chandra Bhanu, who was accompanied by Dhappu and others. It was on the orders of the former that three bombs were thrown, when the two stated that the work was done and it was time to flee. Chandra Bhanu freed co-accused Munna Ram, when he was apprehended.

13. P.W. 7, the informant, who does not disown the written report in its entirety, was an eye witness to the occurrence. In his cross-examination, he states that he had never seen Chandra Bhanu and Dhappu, who are residents of the same locality, well known to him, present at any time throughout the occurrence. He also refused to identify Fantus, whose name figured during investigation. P.W. 2 stated that Chandra Bhanu was a resident of the locality known to him and was not present during the entire occurrence. To the same effect is the statement of P.W. 3. P.W. 4 and P.W. 8 also stated that Dhappu and Fantus were not present. P.Ws. 1, 2, 3, and 4 talk of the presence of Dhappu and asserted that they had given his name in their statements under Section 161 Cr.P.C. P.W. 9, the Investigating Officer has stated that the informant in his statement under Section 161 Cr.P.C. had not stated about throwing of bombs by Mahendra Ram and Upendra Ram and neither had he named Dhappu Ram. P.W. 3 had not named Dhappu, Munna and Mahendra. P.W. 2 had likewise not named Munna Ram, Mahendra Ram, Upendra Ram and Dhappu Ram. P.W. 7 had not stated anything about any accused being apprehended and beaten up. In his restatement also he did not state that Munna Ram, Mahendra Ram, Upendra Ram and Dhappu Ram had come to the shop of his father and indulged in abusing. Likewise, P.W. 8 had also not made statements as was being deposed in Court.

14. The contradiction in the statements of the prosecution witnesses as stated during investigation and in the trial having been pointed out to them in the manner provided for in Section 145 of the Evidence Act, and corroborated by the Investigating Officer, under Section 157 of the Evidence Act lends credence to the allegation of the defence that an entirely new case was sought to be made out by the prosecution for what was essentially a different manner and sequence of events.

15. The Police is stated to have arrived at the place of occurrence within 20 minutes i.e. at 5.20 P.M. P.W. 7, the informant and other prosecution witnesses have corroborated this. P.W. 7 says that the written report prepared by P.W. 4 was given to the Police and denies that any written report was given at the Police Station at 9 P.M. He signs the written report but states that he is not properly aware of the contents. He attributes the preparation of the written report to his

cousin P.W. 4, who is an Advocate. The latter admits that he is an attesting witness to the F.I.R. but denies full knowledge or reading of the same before signing. Similar is the statement of P.W. 8, relative of P.W. 7, another Advocate, an attesting witness to the written report. They were not rustic witnesses but were practising Advocates fully aware of the nature and importance of the documents they were signing. It is not possible to accept their contention that they signed it unaware of the full contents. It raises serious doubts that they were attempting to conceal something. P.W. 7 says P.W. 4 drew up the written report, while the latter himself denies it. P.W. 1 and P.W. 3, who are both related to the deceased and signed the seizure list immediately after the occurrence, yet P.W. 3 says that he is not aware who is the other signatory to the seizure list. Notwithstanding the fact that P.W. 1 was a seizure list witness claiming to be also an eye-witness, yet his statement was recorded by the Police one and half months later with no explanation either by the witness or by the Police. Likewise, P.W. 4 is also an eye-witness and an inquest report witness related to the deceased, who is stated to have drawn up the written report given to the Police, yet his statement was recorded by the Police two months twenty days later. He states of his continued availability throughout as an Advocate. There is no explanation for this delay, though he could be presumed to be present at the Police Station when the written report was handed over to the Police.

16. P.W. 3 states that the Police came within 20-25 minutes and took the statement of the informant P.W. 3 and others, yet he states that P.W. 7 gave written report to the Police at 9 P.M. He was sleeping at that time and was, therefore, unaware about it, but simultaneously states that he gave his statement to the Police at 8.30 P.M. P.W. 7 states that he gave the written report to the Police at 6 P.M. at the Police Station and denies of having given any report to the Police at 9 P.M. at the Police station. P.W. 9, the Investigating Officer states that P.W. 7 gave him the written report immediately after he reached the place of occurrence. P.W. 2, a tenant, is alleged to have been injured but there is no injury report.

17. The written report reflects that the two explosions took place at one location. P.W. 7 in his deposition states that he was at his door when the bombs were

thrown and O.P. Verma was deceased near Aditi Electronics. P.W. 1 states that M/S Aditi Electronics was not visible from their house due to intervening structures. P.W.9, the Investigating Officer states that the difference between the betel shop of the deceased, which is the first place of occurrence and M/S Aditi Electronics was approximately 40-45 yards. The body of deceased O.P. Verma was found on the verandah of the market cum-shop of one Udai Jaiswal. There are no allegations of the accused chasing O.P. Verma and throwing bombs at him. While the prosecution witnesses alleged throwing of three or more bombs, the Investigating Officer states that he did find signs of only two explosions at the aforesaid two locations.

18. P.W. 7, the informant denies having any knowledge of a Police raid on his liquor business. The first Investigating Officer, P.W.9 has deposed that he had been given specific orders by the Superintendent of Police to raid the illicit liquor business of P.W. 7 but states was unable to carry out the raid due to his transfer order received on the same day.

19. P.W.9, in his deposition has stated that for the same occurrence, the present Kotwali P.S. case 136 of 2005 and another Kotwali P.S. case 137 of 2005 were registered and that he was the Investigating officer in both. The evidence of P.W. 10, the second Investigating Officer reveals that the Sanction order, the Post Mortem report and the investigation report were first filed in Kotwali P.S. Case 137 of 2005 and only after the orders of the Court on 6.3.2006 they were filed in the present case. P.W. 8 denies that Kotwali P.S. case 137 of 2005 was registered on his Fardbayan.

20. This Court on consideration of the aforesaid materials and nature of evidence is satisfied that the allegations against the accused cannot be stated to have been proved beyond all reasonable doubts. The several inconsistencies, contradictions in the statement of the witnesses and other necessary materials leaves this Court satisfied that they have attempted to conceal more than they have sought to reveal of the occurrence. A different manner and sequence of the occurrence appears to have been presented by the prosecution for their convenience in a truncated manner implicating those desired and exonerating those against whom the

allegations were originally made also. There is not a semblance of an explanation for exonerating those earlier accused with a primal role and those with regard to whom no statement was made before the Police. All these factors cast a serious doubt on the prosecution case.

21. The informant, in Court, has given up the entire genesis and manner of occurrence when the two co-accused have been exonerated. The informant having implicitly accepted false implication, cannot be trusted of telling the truth. The principle of falsus in uno, falsus in omnibus has no application in the facts of the case, when the prosecution has itself knocked out the basic edifice of its own case as distinct from peripheral issues.

22. The prosecution despite the nature of evidence given by its witnesses, did not consider it necessary to re-examine them under Section 137 of the Evidence Act or cross-examine them under Section 154 of the same.

23. The illicit liquor trade rivalry revealed during trial between the two sides, leaves this Court satisfied that in the facts and circumstances of the case, the charge cannot be stated to have been proved beyond all reasonable doubts. On the contrary, the prosecution has created a cobweb for itself and enmeshed itself, the benefit of which has to go to the accused.

24. Unfortunately, the trial court ignoring all these crucial issues inverted the law to hold that the defence was based on surmises and conjectures to hold the appellants guilty and that there could not be two views of the occurrence to grant any benefit to the accused. And all this, while unquestionably granting acquittal to Chandra Bhanu, Dhappu Ram and Fantus as a case of no evidence. This Court finds it difficult to uphold the conviction let alone the death sentence.

25. The manner in which the trial proceeded as noticed above, leaves the impression that the prosecution witnesses considered the court room as a playing field for a friendly match. Unfortunately, the trial court assumed the role of a referee forgetting the important role that it had to play in the dispensation of justice dealing with the serious issue of a death sentence and life imprisonment affecting not only the liberty but also the life of a citizen.

26. The subversion of the legal maxim presumed innocent till proved guilty to say the least was unfortunate.

27. We are satisfied that the present is a fit case for initiating proceedings of perjury against P.W. 7, Rajesh Prasad son of late Chhote Lal Prasad. We, accordingly direct the trial court to initiate proceedings, hold inquiry in accordance with law and pass appropriate orders.

28. We consider such directions necessary as, given the insurmountable burden of cases before the Courts and the troubling issue of arrears, the Court should be left in peace to decide serious contested matters and not friendly matches.

29. The conviction dated 26.6.2008 and sentence dated 30.6.2008 of all the appellants in Sessions Case 533 of 2005 by the Additional District & Sessions Judge, Fast Track Court V, Munger is set aside. The appellants in Criminal Appeal No. 814 of 2008, namely, Munna Ram and Criminal Appeal No. 747 of 2008, namely, Mahendra Ram are directed to be released forthwith from custody unless they are wanted in any other case. The death reference is answered accordingly. The appellant in Cr. Appeal No. 714 of 2008, Upendra Ram, is discharged from the liabilities of his bail bonds.

30. The appeals are allowed.

Dharnidhar Jha, J.

31. I agree.

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