

Anuj Ram and ors Vs. State of Bihar

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Court : Patna

Decided On : Aug-07-2013

Judge : Akhilesh Chandra

Appellant : Anuj Ram and ors

Respondent : State of Bihar

Judgement :

IN THE HIGH COURT OF JUDICATURE AT PATNA Criminal Appeal (SJ) No.832
of 2010

===== 1.

Anuj Ram, Son of Ram Pramod Ram.

2. Raj Kumar Ram, Son of Ram Pramod Ram.

3. Ram Pramod Ram, Son of Late Lila Ram. All residents of Village- Kharuara,
P.S.- Harnaut, District- Nalanda. Appellants Versus The State of Bihar
Respondent

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Appearance: For the Appellants : Mr. Kanahiya Prasad Singh, Sr. Advocate Mr.
Sharwan Kumar, Advocate For the Informant : Mr. Sanjay Kumar, Advocate For
the State : Mr. S.A. Ahmad, Additional Public Prosecutor

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CORAM: HONOURABLE MR. JUSTICE AKHILESH CHANDRA ORAL

JUDGMENT Date:

07. 08-2013 Heard the learned counsels appearing on behalf of the parties.

2. The three appellants preferred this appeal against their conviction for the offence punishable under Section 304(2) of the Indian Penal Code and sentenced to undergo rigorous imprisonment for eight years and to pay a fine of Rs. 5,000/- each, in default, further simple imprisonment for five months as awarded by 2nd Additional Sessions Judge, Nalanda at Bihar Sharif on 12th August, 2010 in Sessions Trial No. 122 of 2003 arising out of Harnaut P.S. Case No. 20 of 2002 instituted for the offence punishable under Sections 341, 323, 504/34 of the Indian Penal Code, subsequently, Section 302 of Patna High Court CR. APP (SJ) No.832 of 2010 dt.07-08-2013 2/8 the Indian Penal Code was also added after the death of injured Sita Ram, the father of the informant.

3. The prosecution case as reveal from formal First Information Report whereon the signature of Chero O.P. In-charge appears marked as Ext.-1/4 and the First Information Report contains written application submitted to In-charge Chero O.P. by P.W.-3 on 17.01.2002 is that on the same day in evening at 6.30 P.M. there was some quarrel between the children of both the sides giving rise to a complain made by the informant to the appellant, namely, Ram Pramod Ram which resulted into hot exchange of words wherein the informants father (deceased), his brother (P.W.-1) and niece (not examined) all were also assaulted by the three appellants by means of Lathi and on being alarm raised the villagers and other persons intervened in rescue. The injured was subsequently after providing first aid treatment referred to P.M.C.H., Patna, where he continued in senseless state and died on 02nd February, 2002 and Fardbeyan of P.W.-1, Moti Ram, was recorded there by the officials of Pirbahore Police Station, wherein, some facts in addition to what is stated by the informants brother earlier contains that in fact appellant, Ram Pramod Ram blames that P.W.-1 assaulting his son which was denied and he was being assaulted by slaps and fists. In the meantime, his father (deceased) along with Umesh Ram, brother of son-in-law Patna High Court CR. APP (SJ) No.832 of 2010 dt.07-08-2013 3/8 arrived and intervened in rescue, wherein, at the instigation of appellant, Ram Pramod Ram, they were assaulted by back portion of

Spade by Kundan Kumar which had fallen from the hands of his father, who after sustaining injury on the head became senseless and even then he was assaulted by Lathi-Danda and when the informants wife intervened in rescue she too was assaulted and Manoj Ram snatched her ears ring, only thereafter, due to intervention of villagers they fled away. Then the injured was brought to hospital and referred to P.M.C.H., Patna, where he was died during course of treatment.

4. The police after investigation submitted charge-sheet and the appellants faced trial for the offence punishable under Section 302/34 of the Indian Penal Code, wherein, the prosecution examined altogether nine witnesses besides producing following documentary evidence:(i) Ext.-1 : Signature of Moti Ram on F.B. (ii) Ext.-1/1 : Signature of Umesh Ram on F.B. (iii) Ext.-1/2 : Signature of Moti Ram on inquest (carbon copy). (iv) Ext.-1/3 : Signature of Umesh Ram on inquest (carbon copy). (v) Ext.-1/4 : Signature of Hare Ram on the Formal F.I.R. (vi) Ext.-2 : Postmortem report. 5. On the other hand, the defence examined only two Patna High Court CR. APP (SJ) No.832 of 2010 dt.07-08-2013 4/8 witnesses. On consideration of all such materials available on the record the court below, while acquitting the appellants for the offence punishable under Section 302/34 of the Indian Penal Code, convicted and sentenced the appellants in the manner aforesaid.

6. It is contended by learned counsel for the appellants that the three claimed eye-witnesses of the occurrence i.e. P.Ws.- 1, 2 & 3 have given contradictory statements and even said what they did not before the police under Section 161 of the Code of Criminal Procedure and P.W.-7 is also an eye-witness of injury being sustained by the deceased father of P.Ws.- 1 & 3, but in a different manner, in fact, at the hands of P.W.-1. and this witness has not been declared hostile. The prosecution is bound by the statements given by him which corroborates the defence version that in fact it is the prosecution side, who for their personal reasons pushed the deceased, who sustained injuries which ultimately proved fatal and taking undue advantage they falsely implicated the appellants. Learned Additional Public Prosecutor appearing on behalf of the State has tried his level best to support the findings of the court below and submitted that the statements of the witnesses are consistently finds corroboration from the medical evidence.

7. Out of total nine prosecution witnesses examined, P.W.-6, Bishun Yadav, since did not claim to see the occurrence Patna High Court CR. APP (SJ) No.832 of 2010 dt.07-08-2013 5/8 declared hostile. P.W.-1, Moti Ram, is the maker of Fardbeyan after death of the deceased stated the prosecution version with a bit developed story and proved Ext.(s)- 1 - 1/2. In cross-examination in paragraph-8, he says that no information etc. was lodged in regard to the quarrel between the children and, in paragraph-9, he says that the moment his father arrived and was surrounded by the appellants, who assaulted his father by legs and fists and he raised alarm. Further, he also states that his father was assaulted by back portion of Spade and he along with his brother (P.W.-3) brought him to Chero O.P. and from there to hospital, but none of these two made any statement to Chero O.P., the place, where they spent whole night.

8. P.W.-3 is Sanak Ram at whose application the case was initially instituted has come to say that while complain was being made by Ram Pramod Ram, P.W.-1 denied, then he was assaulted by slaps and fists and even this witness P.W.-3, his mother and brother (P.W.-1) all were being assaulted, at that time, his father (deceased) carrying Spade along with Umesh Ram (not examined) arrived and all the three appellants assaulted him (deceased) by Lathi. There was bleeding and then the appellants were fled away. He was brought to hospital and ultimately referred to P.M.C.H., Patna, where he was subsequently died. In cross-examination in paragraph-7, he said that there was alarm as regard to assault of his father and when he arrived Patna High Court CR. APP (SJ) No.832 of 2010 dt.07-08-2013 6/8 there his father had been lying in injured state and then he along with the help of others brought him to hospital and further he says that Chero O.P. did not take his statement and subsequently he said that the police recorded his statement roughly two and half months after the occurrence. Such statement coming from the mouth of this witness in absence of anything relating to his said written application which founds basis of institution of the case gets a big jolt.

9. P.W.-2, Indar Kumar, appearing as a chance eyewitness narrated what P.W.-1 has said, but in cross-examination though he has said that he made every statement what he has said before the police, but P.W.-8 (I.O.) in paragraph-7

denies everything. P.W.-4, Ram Uchit Paswan, is hearsay witness. P.W.-5, Umesh Ram (not other than who named in Fardbeyan of P.W.-1) accepted Ext.-1/1 and Ext.-1/3. P.W.-7, Raj Kumar Ram, giving further jolt to the prosecution case has come to say that while he came to know that there was some quarrel between the children of two families and he saw the deceased convincing P.Ws.- 1 & 2 about their aggression. He was post by P.W.-1, sustaining some injury and became senseless and further in cross-examination he stated about illness etc. of the deceased and continued out of sense till he died. P.W.-8, Bhavesh Kumar Dinakaran, is the Investigating Officer with respect to initial version has simply proved Ext.-1/4, inspected the place of occurrence, Patna High Court CR. APP (SJ) No.832 of 2010 dt.07-08-2013 7/8 recorded the statements of some witnesses and submitted chargesheet. He did not found any blood stained clothes or other materials.

10. P.W.-9, Dr. Arbind Kumar Singh, holds autopsy, identified his writing and signature on postmortem report, marked as Ext.-2 and found following anti-mortem injuries on the person of the deceased: (i) One abrasion 2 x 1 over right temporal region with contusion. (ii) One contusion 1 x over left temporal region. (iii) One lacerated wound 1 x x over mid frontal region of scalp. (iv) One abrasion 1 x over back half both elbows. On Dissection: - Blood clots seen over sternum. All the viscera in general were found congested. stomach Heart right full, left empty, contains watery fluid. One comminuted fracture 4 x over left fronto temporal region, one depressed 1 diameter bone seen on right parietal region. A purrhole bone missing. Sub Dural: - Haematome and brain laceration seen on left fronto parietal region of brain and inside. Opinion: - (i) Time elapsed since death : Twelve to twenty four hours, (ii) Cause of death :- Head injury and (iii) Nature of weapon :- Hard blunt substances and its impact. 11. It is undisputed fact that the father of P.Ws.- 1 & 3 Patna High Court CR. APP (SJ) No.832 of 2010 dt.07-08-2013 8/8 after sustaining some injuries during treatment died, but with respect to manner of occurrence and weapon used there is contradictory statements of alleged eye-witnesses P.Ws.- 1 & 3 and P.W.-2 appears, for the first time, before the trial court with such assertion. The prosecution has not been able to establish its case and manner of injuries sustained by the injured, who subsequently died at the hands of the appellants rather the defence from prosecution witness has taken what they

had been suggesting and they further apart from P.W.-7, examined D.W.-1, Kailash Sao and D.W.-2, Daroga Kumar, who corroborated the statement of P.W.-7. Thus, the prosecution case is not acceptable.

12. In the result, from the facts and circumstances discussed above, the judgment of conviction and order of sentence respectively dated 12.08.2010 and 18.08.2010 of the appellants as recorded by the trial court is not at all sustainable; consequently, it is set-aside. The appeal is hereby allowed. The appellant no. 1, namely, Anuj Ram, who is in custody, is ordered to be released forthwith, if not required in any other case and the remaining appellant nos. 2 & 3, namely, Raj Kumar Ram and Ram Pramod Ram, are set free from the liability of bail bonds furnished on their behalf. (Akhilesh Chandra, J) Praveen-II/-

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