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**(1991) 05 PAT CK 0001**  
**In the Patna High Court**  
**Case No : Criminal Appeal No. 585 of 1984**

Abdul Rahman and 10 Ors.

APPELLANT

Vs

The State of Bihar

RESPONDENT

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**Date of Decision :** 13-05-1991

**Acts Referred:**

**Citation :** (1991) 05 PAT CK 0001

**Final Decision :** Allowed

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### Judgement

N.P. Singh, J.—The eleven Appellants and one Muzaffar Hussain were tried on the charge, u/s 302/149 of the Indian Pena Code, for the murder of Bilayat Ali. Muzaffar Hussain was, however, acquitted and the Appellants were convicted and sentenced to R.I. for life.

2. Briefly stated, the prosecution case is that on 8.10.1973 at about 8 P.M. Bilayat Ali was returning to his home from Kolasi Mela alongwith bis co-villagers Siddique Hussain, P.W. 1, Muzaffar Hussain, P.W. 8 and Anisur Rahman, P.W. 11. When they reached near a bridge the accused persons variously armed with lathi, Bhala appeared and surrounded them and started assaulting Bilayat Ali. When Siddique, Muzaffar and Anisur intervened they were threatened on which Muzaffar and Anisur fled towards the Mela while Siddique fled towards the village and went to the house of Bilayat Ali and narrated about the occurrence to his son Abdul Haque, P. W. 2 who rushed to the place of occurrence alongwith his uncles Abid Al, P.W. 5, Rushtam Ali, P.W. 7, other villagers and Siddique, P.W. 1, Meanwhile, Chaukidar Amrit Turi, P.W. 4 Dr. Aminuddin, P.W. 3 and Dafadar also arrived there. Dr. Aminuddin gave first aid to Bilayat Ali and asked Abdul Haque to remove his father to the hospital. On a query by Dr. Aminuddin, Bilayat Ali disclosed the names of the assailants to him. While Bilayat Ali was being taken to the hospital he died on the way.

3. In the morning, Abdul Haque went to the Police station and submitted a written report (Ext. 1) about the occurrence, on the basis pf which first information report, Ext. 4, was drawn up and police took up investigation of the

case. After the charge sheet and cognizance the case was committed to the court of sessions for trial. A

4. The accused pleaded not guilty to the charges and claimed to be tried. The defence was that they are innocent and they had committed no offence.

5. Further, defence was that the deceased had illicit relation with the daughter of Angus Lohar and he might have been done to death on that account. There was also alibi defence of Appellant Ibrahim Biswas. The defence also adduced evidence of 2 D.Ws, out of whom D.W.1 proved the discharge certificate (Ext. 4) of Ibrahim Biswas from Korha State Dispensary and entry dated 5.7.1973 (Ext. B) of Outdoor register of Korha State Dispensary. D.W. 2 brought Outdoor register of Korha State Dispensary.

6. The prosecution examined in all 13 witnesses in support of the case. Out of whoa P.W. 4 Amrit Turi Chaukidar, has turned hostile. P.W. 12 Amir Hussain is a witness of the inquest. P.W. 2 Abdul Haque is informant. P.W. 3 Dr. Aminuddin had given medical lid to the deceased Bilayat Ali and in whose presence the deceased had disclosed the name of the Appellants. P.W. 5 Abid Ali, P.W. 7 Rushtam Ali are the brothers of the deceased They went to the place of occurrence along-with P.W. 2 and other villagers and in their presence the deceased disclosed the names of the Appellants. P.W. 9 Dr. A.K. Chaudhary held autopsy on the dead body of the deceased. P.W. 1 Siddique, P.W. 8 Muzaffar Hussain and P.W. 11 Anisur Rahman are eye witnesses to the occurrence. They were returning to their home alongwith deceased at the time of occurrence. P.W. 10 Radhey Shyam Prasad and P.W. 13 Sukhdeo Das have investigated case in part.

7. The learned Counsel for the Appellants contended that there was abnormal delay in lodging the first information report in this. The first information report was also sent to the court promptly. The first information report was received in the court a week after the recording of the case. There is no explanation for the delay in sending the First information report to the court. The delay in sending the first information report creates a suspicion as to the genuineness of the prosecution case. In support of his contention he placed reliance in the case of Ishwar Singh Vs. State of U.P., wherein the Supreme Court has held that extraordinary delay in sending the F.I.R. is a instance which provides a legitimate basis for suspecting the F.I.R. which was recorded much later than the stated date and hour affording sufficient time to the prosecution to introduce improvement and embellishment and set up the distorted version of the occurrence.

8. In the instant case the first information report was drawn up on 9.10.1973 where it was received in the court on 17.10.1973. In the first information report no date is mentioned when that was sent to the court. The prosecution was not given any explanation for the extraordinary delay in sending the first information report to the court of Magistrate. It further transpires that there is interpolation

in the date of written report on the basis of which first information report has been drawn up. The written report appears to have been prepared on 17.10.1973 which has been corrected as 9.10.1973. This interpolation in the date on the written report creates a doubt as to the existence of written report on 9.10.1973. The evidence of P.W. 1 Siddique Hussain at" para 30, indicates that he had gone to the police station in the night of the occurrence and lodged information about the occurrence at the police station and stayed at the police station in the night. P. W. 2 the informant Abdul Haque has also stated that he had sent 4-5 persons to the police station in the night of the occurrence to lodge information about the occurrence. The first information report lodged by the P.W. 1 Siddique Hussain has not seen the light of the day. Thus there is reason to believe that the first information report is ante dated and investigation is tainted. Moreover, the evidence of eye witnesses in this case cannot also be accepted at its face value.

9. The informant, Abdul Haque, P. W. 2 has deposed that at about 8.30 in the night P.W. 1 Siddique Hussain came to him and informed that his father was being assaulted by the accused persons near a bridge. On the said information he rushed to the place of occurrence alongwith his two uncles Abid AH, P.W. 5, Rustam Ali, P.W. 7 alongwith 15-20 villagers. On query his father disclosed the name of the accused persons. He sent Ataur Rahman for Dr. Aminuddin who came and gave first aid to his father and told him to remove him to the hospital. He returned to his house with the dead body and sent 4-5 persons to police station and on the next morning he went to the police station and submitted a written report at the police station. In his cross-examination he has stated that Appellant Ibrahim Biswas had filed a prosecution case against his father and his two uncles namely Abid Ali and Rush-tam Ali. That was a false case and the same was filed on account of faction in the village.

10. P.W. 5 Abid Ali and P.W. 7 Rushtam Ali have supported the evidence of informant, P.W. 2 that they also went to the place of occurrence alongwith the other villagers and they found Bilayat Ali lying injured near a bridge. On query by the informant the deceased had disclosed the names of the Appellants.

11. It is evident from the evidence of P.Ws. 2, 5 and 7 that several villagers had also gone to the place of occurrence alongwith them, but none of those villagers have come to support the case of the prosecution.

12. P.W. 3 Dr. Aminuddin who went to the place of occurrence and gave first aid to the deceased has deposed that the voice of deceased was not audible and he did not disclose the name of the accused persons before him. The Chaukidar Amrit Turi, P.W. 4 was also present at the place of occurrence when Bilayat Ali is said to have disclosed the name of assailants but he has turned hostile and not supported the prosecution case. Therefore, no reliance can be placed on the testimony of P.Ws. 2 and 7 for want of corroboration by any independent witness ON the point of disclosure of the names of the accused person by the deceased.

13. Siddique Hussain, P.W. 1, Muzaffar Hussain P.W. 8 and Anisur Rahman, P.W. 11 have deposed as eye witnesses to the occurrence in this case. P. W. 1 stated that at the time of occurrence he was returning to his home alongwith the deceased, P.W. 8 Muzaffar Hussain and P.W. 11 Anisur Rahman. When they reached near a bridge the accused persons suddenly surrounded them variously armed with weapons and started assaulting Bilayat Ali. Accused persons threatened them with dire consequences and he fled away towards the village and on, reaching the village he narrated about the occurrence to P.W. 2 Abdul Haque and thereafter he went to the place of occurrence alongwith the villagers.

14. P.Ws. 8 and 11 have supported the evidence of P.W. 1 that the deceased was returning to his home alongwith them and wheal they reached near a bridge the accused persons surrounded them and assaulted the deceased. They fled away from there and went towards the Mela. P.W. 6 Jitendra Sah has deposed that he saw P.Ws. 8 and 11 going towards the Mela when he was returning to his home. He saw some miscreants assaulting Bilayat AHJ but he did not identify the miscreants.

15. The P.Ws. 1, 8 and 9 in their evidence have not disclosed the means of identification of the accused person nor the source of identification mentioned in the first information report. The learned Stale Counsel has contended that the occurrence took place in a 7 bright moon lit night. Therefore, the identification of the accused persons in the moon light cannot be doubted.

16. It is true that a known person can be identified in the bright Moonlight flora close proximity. But it appears from the evidence of P.Ws 1, 8 and 11 that there is nothing in their evidence to show from what distance they had identified the Appellants. They have also not stated which of the Appellant was armed with what weapon. This indicates that P.Ws. 1, 8 and 11 had not seen the assailants from a close proximity. Therefore, no reliance can be placed on the testimony of P.Ws. 1, 8 and 11 as to the identification of the accused person in the commission of the alleged offence.

17. As regards, the motive for the false implication of the Appellants is concerned, it is evident from the evidence of P.Ws. 1 and 2 that there are two factions in the village. The Appellants belonged to one faction and the prosecution party members belonged to other faction. It is also admitted that the Appellant whim Biswas had instituted a criminal case against the deceased and P.W. 5 and 7. The fence of the Appellants was that deceased had illicit relation with the daughter of Lohar and is just possible that the deceased might have en done to death oh that account. Therefore, the false implication, of the Appellant on account of group rivalry cannot be ruled out.

18. For the reasons mentioned aforesaid, conviction and sentence of the Appellants are set aside and they are acquitted and exonerated from the liability of bail bonds and in the result this appeal is allowed.

Bimlendu Nr. Sinha, J.

19. I agree.