
(1987) 05 PAT CK 0042

In the Patna High Court

Case No : Criminal Appeal No. 179 of 1984

Binda Mahto and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 01-05-1987

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, 149, 302, 324

Citation : (1988) 36 BLJR 255

Hon'ble Judges : Ram Naresh Thakur, J; Binodanand Singh, J

Bench : Division Bench

Judgement

Ram Naresh Thakur, J.—All these appellants have been convicted u/s 302, read with Section 149 of the Indian Penal Code (hereinafter referred to as the "Code") and each of them has been sentenced to undergo rigorous imprisonment for life. They have also been convicted u/s 148 of the Code and each of them has been sentenced to undergo rigorous imprisonment for three years under this count as well. Appellants Shyam Behari Mahto and Ram Swarup Mahto have further been convicted for an offence u/s 324 of the Code for assaulting the Informant and each of them has been sentenced to undergo rigorous imprisonment for three years each u/s 324 of the Code and the sentence have been directed to run concurrently,

2. The prosecution case leading to this appeal in short is that on August 7, 1979 at about sunset Shiv Dulari (P.W. 6) wife of the deceased Rajeshwar Mahto, was at her house. At that very time, she heard cry raised by her husband shouting "Jaan gale bachao". Hearing this cry, she ran to her cattle shed where her husband was sitting. She found her husband fallen on the ground and all these appellants along with three acquitted accused persons were assaulting the deceased with Garasa, which they had in their hands. In order to save her husband she fell on his body, but she was also assaulted by appellants Ram Swamp Mahto and Shyam Behari Mahto with garasa. Thereafter these appellants alongwith three accused parsons fled away, when the villagers assembled. Soon

thereafter P.W. 1 Dharambir Mahto, who is brother of her husband came there. She told him about the entire occurrence. Thereafter a cot was arranged and the deceased and the Informant were taken to Bihta State Dispensary for treatment. At Bihta State Dispensary the condition of Rajeshwar Mahto was found to be critical. Therefore, he was referred to Patna Medical College Hospital for better treatment. At that very hospital P.W. 11, the officer incharge of Bihta Police Station reached there and recorded the statement of the Informant (P.W. 6) on the basis of which a regular case was instituted and he took up investigation. The deceased Rajeshwar Mahto while being taken to Patna Medical College Hospital on police jeep died on the way. Therefore, he was taken back to the police station. The inquest report was prepared and the dead body was sent for post-mortem examination, which was conducted by P.W. 9.

3. P.W. 11 took up investigation and in course of investigation, three more persons, namely, Sakaldip Mahto, Girja Mahto and Jagdish Mahto were also made accused in this case. On completion of investigation, charge sheet was submitted against 8 accused persons, including these appellants. Subsequently all the accused persons were put on trial, where 11 witnesses were examined on behalf of the prosecution. The appellants pleaded their innocence. It appears that a counter-case was also instituted alleging therein a different manner of occurrence, but no witness was examined on their behalf. From the further case of the appellants, it appears that appellant Shyam Behari Mahto claims to have received injuries and was admitted to the hospital for treatment.

4. After considering the entire evidence, the learned trying Court convicted these appellants, as stated above, but acquitted the three other accused persons.

5. Learned counsel appearing for the appellants has argued that the learned trying court did not appreciate the evidence properly and therefore, he came to wrong conclusion. According to him, the prosecution is guilty of suppressing the correct picture of the occurrence. It has also been argued that the fardbeyan (Ext. 7) was not recorded at the time as alleged by the prosecution and that is why it was received by the court empowered to take cognizance on March 10, 1979 after long delay.

6. The fardbeyan, which contains the earliest version of the Informant, was recorded on March 7, 1979 at 8.30 P.M. at Bihta State Dispensary. In the fardbeyan only these appellants are named as accused persons. Of course the word "Kai anya" is there, but from its writing and the manner in which it has been written indicate that it was subsequently written In course of investigation, three other accused persons were also made accused, but as stated earlier, those three persons have been acquitted and there is no appeal against that order of acquittal. Acquitted accused were also alleged, during trial, to have assaulted the deceased. In the fardbeyan it is stated that when the Informant went to her cattle shed, she found her husband lying injured and these appellants were assaulting him, but the Investigating officer has stated that he found the blood on the road infront of cattle shed of Mangal Mahto. Apart from this, the evidence

of P. W. 10, the doctor is that on March 7, 1979 at 8.15 P.M. Rajeshwar Mandal was brought before him by the police with multiple injuries. This he has stated in-chief, itself. In cross examination, he said that so far he remembered the two injured persons came to the hospital on being referred by the police. This fact is also corroborated by injury reports, but other witnesses have said that the deceased and the Informant went to the hospital directly and they did not go to the police station, rather the police came there. In this very connection, the station diary entry is also necessary to be referred, which is Ext. 6 according to which at 8 P. M. on the same day Chowkidar Rajgiri Dusadh came to the Police Station and stated that Rajeshwar Mahto and his wife had been assaulted by their enemies and they had been taken to the hospital for treatment. The injured persons would tell about the details and on receipt of this information P. W. 11 went to the State Dispensary and recorded the statement of the informant. That Chowkidar has not been examined in this case by the prosecution. We have not been told about the reasons for his non-production. In Ext. 6 the names of the appellants are not mentioned. It is simply mentioned that enemies had assaulted the injured persons. If Kajgiri Dusadh would have been examined, he would have stated as to whether he had seen the occurrence himself or he learnt about the occurrence from any one. Therefore, he was a material witness. If the evidence of P. W. 10 is read alongwith Ext. 6, it creates a reasonable doubt in the mind as to what is the actual truth. If the injured persons would have gone to the police Station at the first instance, the statement of the Informant would have been recorded at the Police Station itself, but that is not so here. Nothing has been shown to us to disbelieve the evidence of P. W. 10, specially when the injury reports and its timing which are Exts. 4, 4/1, 4/2 and 4/3 lend support to the statement of P. W. 10.

7. From the order-sheet of the committing court it appears that the First Information Report was received in the court empowered to take cognizance on March 10, 1979 after three days. The Investigating Officer (P. W. 11) was questioned on this delay. After looking into the fardbeyan and the formal First Information Report, he admits that there is no seal of the court of S. D. J. M., Danapur on those two papers and there is no signature or initial of the S. D. J. M. on the fardbeyan. Of course only on the point that First Information Report was sent after much delay, adverse inference cannot be drawn in every case against the prosecution, but in the present case there are other circumstances, which have been enumerated above to create a reasonable doubt against the prosecution as to when the fardbeyan was recorded. Though the Investigating Officer was questioned on this point, he did not explain the delay satisfactorily.

8. Apart from the aforesaid facts, the evidence of the Investigating Officer shows that on March 8, 1979 at about 10.30 P. M. he received the fardbeyan of appellant Shyam Behari Prasad on the basis of which a case was registered, which is Ext. A/1. In the morning of March 8, 1979 he went to the Patna Medical College Hospital in Rajendra Surgical Ward, where he found appellant Shyam Behari Prasad admitted on bed No. 12 for treatment and thereafter, he took him

in custody and a guard was posted to watch him. He had also investigated in counter case. The Informant (P. W. 6) has admitted in paragraph-13 that on the day of occurrence, there was no other quarrel before the occurrence. She further admits that a false counter case has also been lodged against her for the occurrence alleged to have taken place on this very date of occurrence, but she shows her ignorance as to who are other accused persons in that case. In paragraph 14, she admits that she knows that on the date of occurrence, there were injuries on the person of appellant Shyam Behari Mahto and he was admitted in Patna Medical College Hospital on the same day.

9. P. W. 11 has admitted in paragraph 23 that on March 8, 1979 and on March 9, 1979 he searched for First Information witnesses, namely, Madheshwar Sureshwar and Krishnanand, but inspite of his best efforts they could not be available. Therefore, the evidence of these witnesses suffer from this infirmity.

10. The learned counsel for the State has vehemently argued that P.W. 6 is injured herself and therefore, her evidence should be accepted and on her evidence alone the conviction of the appellants should be maintained. Of course, this argument is very attractive, but in the present case it has no force only on the ground that P. W. 6 is injured, her evidence cannot be relied until and unless, she is found to be truthful witness,

11. From the aforesaid facts, it will appear that in the fardbeyan she stated the names of only these appellants to have assaulted the deceased, but in the Court she named three more accused persons to have assaulted the deceased, who have been acquitted. According to herself, she went direct to the hospital alongwith her husband, but according to doctor (P. W. 10), the deceased came alongwith the police in the hospital and the Informant and the deceased were referred to him by the Police. According to the fardbeyan, the occurrence is alleged to have taken place due to previous enmity, but no detail description has been given in the court by the Informant of the previous enmity. In all criminal cases, motive is not required to be proved, but in a case like present one a question arises in the mind as to why appellants being the villagers would go and assault the deceased, who was sitting in the cattle shed without any rhyme and reason. That question remains unanswered in this case.

12. For all these reasons, a reasonable suspicion arises in respect of manner of occurrence, as stated by the prosecution. Accordingly, the appellants are entitled to get benefit of doubt.

13. In the result, the appeal is allowed. The order of conviction and sentence passed against these appellants is set aside and they are discharged from their bail bonds.