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**(2002) 09 PAT CK 0008**

**In the Patna High Court**

**Case No : Criminal Appeal (DB) No. 461 of 1987**

Lala Koeri, Ramdeep Sharma and Srikant Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

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**Date of Decision :** 25-09-2002

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 147, 148, 149, 302

**Citation :** (2002) 4 PLJR 753

**Hon'ble Judges :** S.N. Jha, J; P.N. Yadav, J

**Bench :** Division Bench

**Advocate :** Akhileshwar Prasad Singh, Amit Singh, Murari Prasad Sinha and Gopal Prasad Roy, for the Appellant; Lala Kailash Bihari Prasad and Ramakant Sharma, for Informant, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

P.N. Yadav, J.—Criminal Appeal No. 461 of 1987 preferred by Appellants Lala Koeri, Ramdeep Sharma and Shrikant Singh and Criminal Appeal No. 520 of 1987 filed by Appellants Santoshi Manjhi and Panchi Manjhi arose out of one and the same judgment and order dated 15th September, 1987 recorded by Shri Priyabrat Narain Sinha, 2nd Additional Sessions Judge, Gaya in Sessions Trial No. 80 of 1987/4 of 1987 and similar questions of law and facts were involved in both the appeals and hence they were heard together and they are going to be disposed of by this common judgment.

2. All the five Appellants suffered conviction and sentence of rigorous imprisonment for life u/s 302 read with Section 149 of the Indian Penal Code (hereinafter referred to as the Code). Appellants Lala Koeri, Ramdeep Sharma and Srikant Singh were further convicted and sentenced to rigorous imprisonment for three years each u/s 148 of the Code. Appellants Santoshi Manjhi and Panchi Manjhi were also convicted u/s 147 of the Code and sentenced to undergo rigorous imprisonment for two years each thereunder.

3. The prosecution case as unfolded in the first information reports lodged by Vijay Kumar Singh ( PW. 5) and Ram Vinay Singh alias Bigan Singh ( PW. 12) and the evidence of the prosecution witnesses and found proved by the court below is as follows:

4. Vijay Kumar Singh (PW. 5) and his uncle Madho Singh had their cabins with electric motors and pumping sets installed therein near village Jinorechak. PW. 5 after taking his meal at about 7.00 P.M. on 7.5.1986 left for cabins and on his arrival there he in the torch light flashed by him saw certain miscreants of villages Raunia and Bhagalpur Bhuintoli removing electric motors, starters etc. from the cabins.

5. PW. 5 then ran towards his village , Bana and raised alarm. When he covered a distance of 0.80 kilometre, towards his village which situated at a distance of one and a half kilometre from the cabins his villagers including Ram Vinay Singh (P.W.12), Bameshwar Singh (PW. 8), Suresh Singh (PW. 3), Harbans Singh (P.W.7), Upendra Singh (PW. 11), Devendra Singh (PW. 4), Nunu Singh (PW. 6), Bigan Singh (PW. 1), Arvind Kumar alias Raju (deceased) and Satyendra Singh (not examined) arrived there and they all along with him (PW. 5) set out for the cabins. They found that electric motors, starters, bicycle, umbrella etc. missing from the cabins.

6. The witnesses saw the miscreants fleeing away towards village Bhagalpur Bhuintoli with electric motors etc. and they following them reached the said village but the miscreants entered into the village and hid themselves. However, to their utter surprise and dismay several persons of Bhuintoli forming an unlawful assembly re criminated them and pounced upon them raising alarm of chor chor. The utterances, made by the witnesses that they were not thieves rather they were in search of thieves who after removing their electric motors etc. had hid themselves there in the village " referred to above went unheeded for by them.

7. Getting frightened the witnesses and the villagers started fleeing away towards villages Raunia and Darshan Bigha, however, one of them i.e. Arvind Kumar alias Raju (deceased) was caught hold by the miscreants who at about 8.30 PM. assaulted and killed him and they dragged the dead body and concealed the same somewhere in between northern tola and southern tola of Bhagalpur Bhuintoli. The informant (PW. 12) identified the Appellants and 22 others with their respective weapons in their hands amongst the miscreants in the torch light.

8. Vijay Kumar Singh (PW. 5) rushed to the police station and he submitted written report on the basis of which formal first information report was drawn up and Khizersarai PS. Case No. 50/86 was registered. Thereafter the Officer-in-charge Ram Nandan Singh (PW. 14) along with PW. 5 went to Bhagalpur Bhuintoli where Fardbeyan of PW 12 giving rise to Khizersarai PS. Case No. 51/86 was recorded at 10.30 PM.

9. Ram Nandan Singh ( PW. 14) took up investigation. He started making search for the dead body of deceased Arvind Kumar alias Raju. He recovered the same from the bushes of SARPAT in between northern tola and southern tola of Bhagalpur Bhuintoli. He recorded the subsequent statement of PW. 12 and statements of other witnesses. As it was late dark night, he inspected the place of occurrence and prepared inquest report in the next morning. The dead body of the deceased was sent to mortuary for autopsy.

10. After completion of investigation and receipt of post mortem examination report PW. 14 submitted chargesheet against the Appellants and three others u/s 302 besides some other sections of the Code.

11. As gathered from the trend of cross examination of prosecution witnesses, the defence seemed to be that no such incident took place and, as a matter of fact cold blooded and gruesome murder of the deceased as well as removal of electric motors, starters etc. from the cabins with which we are not concerned here nor can which be said to be the genesis of the occurrence leading to the death of the deceased went unseen and the present case was concocted to implicate the Appellants on the basis of mere suspicion. Appellants Santoshi Manjhi and Panchu further set up the defence that they had acted as labourers of the informant and there was dispute between them over nonpayment of wages by the informant to them and hence they have been dragged in this case. Appellant Ramdeep Sharma also took the plea of alibi and in order to prove it he examined a defence witness Ram Anugrah Singh (D.W. 1).

12. As many as 14 witnesses were examined by the prosecution to prove its case. PW. 1 Bigan Singh, PW. 2 Krishna Singh, PW. 3 Suresh Singh, P.W. 5 Bijay Kumar Singh, P.W. 8 Bameshwar Singh and P.W. 12 Ram Binay Singh figured as eye witnesses to the incident. P.W. 13 Dr. Mithilesh Kumar Sinha conducted autopsy on the dead body of the deceased while P.W. 14 Ram Nandan Singh was the investigating officer. P.W. 4 Devendra Kumar, P.W., 6 Nunu Singh, P.W. 7 Harbans Singh, P.W. 9 Suryadeo Singh, P.W. 10 Madheshwar Singh and P.W. 11 Upendra Singh were tendered witnesses.

13. It would be relevant and convenient to look to the topography of villages to which the prosecution witnesses and the accused including the Appellants belonged and where the cabins and the place of occurrence situated as well as the sequence of events of the incident leading to commission of murder of the deceased. Vijay Kumar Singh ( PW. 5) after having dinner at his house left for cabins at about 7.00 P.M. On his arrival nearby the cabins he happened to see 10-15 miscreants opening nuts and bolts and removing electric motors and starters from the cabins. He in, the torch light flashed by him identified the Appellants and others while they were removing motors and starters. He then ran towards his village raising alarm of Chor Chor and covered a distance of half a mile i.e. 0.80 kms., when his villagers including prosecution witnesses ( PW. 1 to 12) were found coming towards him after hearing his alarm. All the witnesses including PW. 5 and the deceased besides some other persons set out for the

cabins and on their arrival there they found electric motors, starters, bicycle, umbrella etc. removed from the cabins. They, however, in the torch light happened to see the miscreants taking away electric motors, starters etc., on their heads. They followed the miscreants upto Bhagalpur Bhuintoli where the miscreants hid themselves in the village.

14. After a short while a number of villagers of Bhagalpur Bhuintoli came out and they branding the members of the prosecution party as culprits raised alarm of chor chor and they got ready to invade and pounced upon them whereafter they in a bid to save their lives started fleeing away towards villages Raunia and Darshan Bigha but unfortunately one of their companions i.e. Arvind Kumar alias Raju was caught hold of, killed and his dead body dragged away and concealed by the miscreants in the bushes of SARPAT in between the northern tola and the southern tola of Bhagalpur Bhuintoli.

15. PW. 5 who had also run towards village Raunia thereafter rushed to Khizersarai police station, submitted his written report which he got written by one Ramadhar Singh who was present there from before on the basis of which PW. 14 registered Khizersarai PS. Case No. 50/86 and proceeded for Bhagalpur Bhuintoli along with PW. 5. After arrival of the police the other prosecution witnesses including PW. 12 who had fled away to Raunia and Darshan Bigha came to Bhagalpur Bhuintoli where PW. 14 recorded the fardbeyari of PW. 12 giving rise to Khizersarai PS. Case No. 51/86. PW. 14 searched out the dead body, recorded statements of certain witnesses and as it was dark night he prepared the inquest report in the next morning and caused the dead body to be sent to mortuary for autopsy.

16. All the prosecution witnesses belonged to village Bana. They are not only co-villagers but they are also related to each other as would be evident from analysis and scanning of evidence on record. Jinorechak where the pump houses (cabins) were located situated one and a half Km. east of village Bana and Bhagalpur Bhuintoli situated one and a half Km. north east of the cabins while village Raunia was 1 Km. north of Bhagalpur Bhuintoli and the distance between northern tola and southern tola of Bhagalpur Bhuintoli was 300 yards vide evidence of R Ws. 1 and 14.

17. It is highly unlikely that PW 5 after detecting the miscreants removing the electric motors etc. from the cabins proceeded towards his village Bana and covered a distance of 0.80 Km. and then the villagers including the prosecution witnesses and the deceased hearing alarm of PW. 5 set out from their village Bana and reached the cabins along with PW. 5 after covering a distance of one and a half Km. and they, saw the miscreants in the torch light to dark night taking away heavy electric motors, starters on their heads from a distance of 300-400 yards and it has come in evidence that the miscreants were running away 300-400 yards ahead of the witnesses. The miscreants would not have remained in the vicinity of the cabins for such a long duration and they were expected to have already gone beyond the range of visibility. Again as per

statement of PW. 5. the miscreants were 10-15 in number while as many as 25 villagers including the witnesses vide statement of PW. 1 were chasing them. Under such circumstance, the miscreants would not have run away and made good escape with heavy electric motors, starters on their heads and they could have at best fled away after throwing the stolen motors, etc. on way to their destination.

18. Identification of the miscreants including the Appellants in the cabins by PW. 5 and their identification while they were fleeing away with stolen motors, starter etc. and also at the time when they raising alarm of chor chor started surrounding and invading, the prosecution party near Bhagalpur Bhuintoli too was not free from suspicion. It is very difficult to identify such a large number of miscreants with weapons in their hands in the flash of torch light. from a distance of 300-400 yards from where they were being chased by the witnesses right from the cabins upto Bhagalpur. Bhuintoli.

19. Though, P.W. 5 stated that he and other witnesses identified the miscreants fleeing away upto Bhagalpur Bhuintoli whereafter they hid themselves in the said village, certain other witnesses did not claim to have seen the miscreants fleeing away and their concealment in village Bhagalpur Bhuintoli rather they said that they after coming to know of the commission of theft of electric motors etc. proceeded for Bhagalpur Bhuintoli in search of the miscreants and for recovery of stolen motors, starters etc. and no sooner had they are rived at Bhagalpur Bhuintoli than a number of persons came out of the village and they raising alarm of chor chor pounced upon them. All this instills doubt in the theory of chase and identification by the witnesses of the miscreants while they were fleeing away towards their village Bhagalpur Bhuintoli from the cabins.

20. The Investigating Officer (P.W. 14) found profused bleeding and huge quantity of blood fallen in the field of one Nand Kishore Thakur of village Raunia at a distance of half a km. north of the northern tola of Bhagalpur Bhuintoli. He described it as the place of occurrence where the deceased was, in all probability, murdered. This place of occurrence situated at a distance of about 2 Kms. north east of the cabins as calculated on the basis of the evidence of PW. , 1. The dead body of the deceased was recovered from the bushes of SARPAT in the field of one Saryug Lal in between the northern tola and the southern tola of Bhagalpur Bhuintoli. Dragging mark was also found by the I.O. That would mean that after committing murder the miscreants dragged and threw away the dead body in the bushes about half a Km. south west of the place of occurrence. It is against natural conduct and it does not stand to reason as to why the miscreants of Bhagalpur Bhuintoli after killing the deceased half a Km. away from their village dragged and concealed the same in close vicinity of their own village. On the contrary they were expected to have carried and concealed the dead body of the deceased somewhere else in another direction away from their own village.

21. The dead body of the deceased was claimed to have been recovered at night after P.W. 14 arrived at Bhagalpur Bhuintoli at 10.30 P.M. and recorded the

Fardbeyan of PW. 12 and statements of certain witnesses. However, inquest report was prepared in the next morning at about 7.30 A.M. It is no where in the evidence whether the I.O. deputed some one to keep watch over the dead body in the night and if some one kept watch over the same who such person was. It is doubtful if the dead body was really recovered in the night and the probability of the same being recovered and statements of witnesses having been recorded in the morning showing all this to have been done in the night also cannot be ruled out.

22. It is PW. 5 who is said to have set the law in motion. He along with other witnesses including the deceased followed the miscreants upto village Bhagalpur Bhuintoli and witnessed that the miscreants of village Bhagalpur Bhuintoli pounced upon them by raising alarm of chor chor whereafter they all fled away towards villages Raunia and Darshan Bigha. It would mean that PW. 5 left for the police station from village Raunia after the incident which had taken place at Bhagalpur Bhuintoli at about 8.30 P.M. as per fardbeyan of PW. 12. As gathered from the first information reports drawn up on the basis of Fardbeyan of PW. 12 and the written report of PW. 5 the police station situated 3 Kms. west of cabins of Jinorechak and 5 Kms. west of Bhagalpur Bhuintoli where the incident leading to apprehension of the deceased and his murder took place. From the topography and location of the villages Bana, Jinorechak, Bhagalpur Bhuintoli and Raunia and the police station it would be crystal clear that village Bana situated at a distance of one and a half km. west of cabins at Jinorechak and the police station was at a distance of one and a half Km. west of village Bana. It is doubtful that PW. 5 after witnessing the occurrence of Bhagalpur Bhuintoli at about 8.30 P.M. would reach the police station and submit at 9.00 P.M. his written report after getting the same written by Ramadhar Singh (not examined) who was already present there. PW. 5 after running from the cabins towards his village Bana was expected to have gone to the police station for lodging information regarding commission of theft of electric motors etc. and his villagers including the witnesses were expected to have waited at their village for arrival of the police along with PW. 5 and then only they were expected to proceed for the place of occurrence in the dark night and it is suspicious that instead of doing so they ran after the miscreants who must have made good escape from the cabins before the villagers could have reached there.

23. As a matter of fact none of the prosecution witnesses witnessed removal of electric motors and other goods and articles from the cabins and there was no miscreant to be chased and identified while fleeing away. As PW. 5 had already lodged information with the police which soon swung into action the villagers of village Bana including the prosecution witnessed and the deceased were not expected to have set out in search of thieves and stolen articles particularly when it was late dark night.

24. The Appellants lay challenge to their conviction and sentence also on the ground that the evidences of the prosecution witnesses suffer from

inconsistencee and contradictions and that the prosecution witnesses are relatives and interested ones As per contents of the F.I.R. all the prosecution witnesses including PW. 5 and the deceased after hearing halla left their village Bana, covered a distance of one and a half km. in the eastern direction to go to the cabins and again one and a half km. to the north eastern direction to reach Bhagalpur Bhuintoli where the miscreant of Bhagalpur Bhuintoli ran after them brand ing them as thieves and hence they fied away towards Raunia and Darshan Bigha.

As per his written report P.W. 5 along with other witnesses also; ran away to Raunia, nowever, in his deposition he said that he disassociated himself from other witnesses at Bhagalpur Bhuintoli and he rushed to the police station. Had PW. 5 accompanied the other witnesses to Raunia, he must have come to know that the deceased was trapped and atleast made captive, if not killed by that time. He ought to have made disclosure of this fact in his written report but it has not been done so. All these would go to show that P.W. 5 did not accompany his villagers including other witnesses nor did he follow and chase the miscreants nor did he see the miscreants taking away electric motors etc. towards Bhagalpur Bhuintoli and under such circumstance it is also doubtful that the miscreants with electric motors etc. on their heads were fleeing away within vision of the witnesses who claimed to have seen and identified them in torch light from a distance of 300-400 yards and followed them upto Bhagalpur Bhuintoli and after apprehending invasion by the miscreants of Bhagalpur Bhuintoli they ran away to Raunia and Darshan Bigha.

25. According to P.W. 1 miscreants numbering 10-15 were assaulting the deceased and he could identify 7-8 out of them, however, the Investigating Officer (P.W. 14) contradicted him by stating that he had told him that more than 26 miscreants were assaulting the deceased and he disclosed the names of 26 miscreants to him. P.W. 2 stated that after hearing alarm he along with his villagers went to Jinorechak cabins where they saw P.W. 5 but according to P.W. 5 when he arrived mid way between his village Bana and the cabins he met his. villagers including the witnesses and the deceased. PW. 2 again contradicted P.W. 5 stating that he and others did not go to cabins and they including P.W. 5 proceeded directly to Bhagalpur Bhuintoli and that after P.W. 5 along with other witnesses proceeded 14-15 bamboos on way to Bhagalpur Bhuintoli he left their company and went to the police station. It may be observed that P.W. 5 stated that he along with other witnesses first went to the cabins and there from they left for Bhagalpur Bhuintoli wherefrom apprehending danger to their lives they all including P.W. 5 ran to village Raunia and hence P.W. 5 could not have gone to the police station after parting with company of other witnesses after covering a distance of 14-15 bamboos from the cabins towards Bhagalpur Bhuintoli. The Investigating Officer PW. 14 contradicted the prosecution witnesses also in regard to identification of the Appellants and other miscreants, number of such miscreants and weapons held by them.

26. It is the admitted position that the so called eye witnesses as well as the tendered witnesses not only belong to the same caste and village but they are also related to each other. The principle of law is that the evidence of relatives and interested witnesses cannot be discarded outright and conviction can well be based thereon even without corroboration by some independent witnesses provided their evidence on careful and cautious scrutiny is found to be wholly reliable. But the crux of the matter is that the prosecution evidence in the case we are seisin of does not satisfy the test prescribed by law. The evidence brought on records suffers from inherent taint and infirmity and such inconsistent and contradictory evidence cannot be said to be above board for basing conviction thereon. The infirmities and lacunae that cropped up in the evidence of the prosecution witnesses could have been mitigated or eliminated by bringing on records the evidence of some independent witness. It is needless to mention that independent witnesses were available inasmuch as it has come in evidence, particularly that of PW. 2 that about 15 persons of Brahmin community of his village Bana had also accompanied the prosecution witnesses upto the place of occurrence. It was incumbent on the part of the prosecution to examine certain persons belonging to Brahmin community who also witnessed the incident. But not even a single witness from amongst those 15 persons belonging to Brahmin community was examined by the prosecution nor is there any explanation for their non-examination. Non examination of such independent witnesses instills suspicion in the credibility of the eye witnesses.

27. The contention put forward on behalf of the Appellants that the prosecution version is full of inconsistencies, discrepancies, embellishments and improbabilities and the prosecution has not come to the Court with clean hands and it does appear to have concealed certain material facts on account of which the case as well as the conduct of the witnesses cannot be said to be natural seems to be pregnant with meaning and substance.

28. The discussions made above would give rise to an inference that the ill fated chap, Arvind alias Raju was not apprehended, dragged away from the company of the prosecution witnesses and then killed in presence" of so called eye witnesses. The story of chase by the witnesses of the miscreants including Appellants who put an end to the gory incident culminating in commission of murder of the deceased is not at all convincing and probable. As a matter of fact commission of murder of the deceased went unseen and it remained shrouded in mystery.

29. In the facts and circumstances injuries including their numbers and nature inflicted on the person of the deceased and cause of his death need not be probed nor is required to be discussed the evidence of the Doctor (PW. 13) who conducted autopsy over the dead body of the deceased as well as the evidence of the sole defence witness (D.W. 1).

30. In view of what has been stated and observed in the preceding paragraphs it has to be held that the prosecution has miserably failed to prove that the

incident leading to commission of murder of the deceased had taken place at the time and place and in the manner alleged by it is unfortunate that the killers of the deceased shall go un-punished.

31. For the reasons stated above we allow the appeals and set aside the judgment and order of conviction and sentence recorded against the Appellants. Let the Appellants be directed to be discharged from liability of their respective bail bonds and set at liberty.

Sachchidanand Jha, J.

32. I agree.