
(2012) 07 PAT CK 0007

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 192 of 2000

Parmeshwar Pandit and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 06-07-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 147, 364

Citation : (2012) 07 PAT CK 0007

Hon'ble Judges : Sheema Ali Khan, J

Bench : Single Bench

Advocate : Abhimanyu Sharma No. 1, for the Appellant; Abha Singh, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

S.A. Khan, J.—The two appellants have challenged the judgment of conviction passed in Sessions Trial No. 96 of 1987/65 of 1990 dated 17th May, 2000, passed by the 2nd Additional Sessions Judge, Nawadah by which they have been sentenced to undergo R.I. for 10 years for offences u/s 364 and 2 years R.I. u/s 147 of the Indian Penal Code. Both the sentences are directed to run concurrently. The First Information Report has been instituted by Md. Irfan Alam on 3.5.1986 alleging therein that during the communal riots that took place in the year 1986 in village Pachamba, the informant along with Mehmood Alam, his uncle (Khalu Mause) had gone to buy some articles and were proceeding towards the shop of Parmeshwar Pandit. When they were approaching the shop, they saw 20 to 25 persons standing near the shop. These persons raised "hulla" and caught hold of Mahmood Alam whereas the informant ran away from the place of occurrence. It is alleged that these persons dragged away Mahmood Alam to some unknown place. The informant made efforts to trace him but was unable to do so.

2. After lodging the First Information Report, investigation proceeded in this

case. In the subsequent statement given by the informant, he has named several persons including these two appellants Parmeshwar Pandit and Nageshwar Kahar. The informant has been examined as P.W. 1 who has made specific allegations against Nageshwar Kahar and alleged that he was carrying a sword by which he assaulted Mahmood Alam whereas, Parmeshwar Pandit assaulted his uncle by means of a dagger.

3. The only question to be decided in this appeal is whether the prosecution have been able to prove the case beyond reasonable doubt i.e. whether these appellants were the persons responsible for dragging and assaulting the victim Mahmood Alam.

4. Learned counsel for the appellants has argued that the case has been instituted after a delay of 5 days of the occurrence, although there was a posse of policemen posted in the village, it has been argued that the appellants or for that matter none of the persons who have been named in the subsequent statement before the Investigating Officer u/s 161 Cr.P.C. were named in the First Information Report and as such the implication of the appellants is completely false and is deliberate because there was an earlier dispute between the parties. Lastly, it has been argued that P.Ws. 4 to 7 who claim to be the eye witnesses were not examined u/s 161 Cr.P.C. and their names have been included in the charge sheet by interpolating the same which has been produced on behalf of the defence as Ext. A.

5. In this background I will first take into account of the evidence of P.W. 8. P.W. 8 is the Investigating Officer who has proved the signature of the Officer who has registered the First Information Report. It would be relevant to state that he has supported the prosecution case to the extent that he along with the Deputy Superintendent of Police have supervised the case and found that Mahmood Alam was missing during the riots and that he had been kidnapped or dragged away by persons as mentioned by the informant in his subsequent statement. The attention of P.W. 8 has been drawn to the statement made by the informant in his further examination u/s 161 Cr.P.C. P.W. 8 denies at paragraph 14 of his evidence that P.W. 1 (informant) had stated before him that Parmeshwar Pandit had inflicted a dagger blow on Mahmood Alam and that Nageshwar Kahar had inflicted a sword blow on the victim. Similarly his attention has been called to the statement made by Md. Usman, P.W. 2 and Sakil Ahmad, P.W. 3 regarding specific allegations against these appellants. The Court below while discussing the evidence of P.W. 8 has considered the submission made on behalf of the defence that the evidence of P.Ws. 4 to 7 should be ignored by the Court as their names have been interpolated in the charge sheet (Ext. A) which is torn. A carbon copy of the charge sheet had also been produced which does not include the name of these witnesses. Having examined Ext. A, this Court finds that there is no difference in handwriting and the charge sheet may have been torn by either parties. It is not very important for this Court to rely on this aspect of the matter in view of the fact that the Investigating Officer has denied that P.Ws. 4

and 7 were examined in the case diary. This Court had looked into the case diary but since I am not relying on any of the statements therein, it has been done only to satisfy myself as to whether these witnesses were examined by the Investigating Officer u/s 161 Cr.P.C. This Court comes to the conclusion that infact they were not examined u/s 161 Cr.P.C. and to this extent the submission of the appellants that the evidence of such witnesses should not be taken into account is a valid point on behalf of the defence. For this purpose I may refer to a judgment of this Court passed in the case of Maga Ram Rajak & Ors. Vs. State of Bihar (D.B.) [1985 BLJR 44] wherein the Court has held that if statements of witness is not taken during investigation and if such witnesses are examined in Court, the testimony of such witnesses given for the first time in Court has to be excluded as it is of no consequence. Having held as above, this Court would like to depreciate the manner in which the Investigating Officer had conducted the investigation. P.W. 4 for example is the wife of the victim. It was incumbent for the Investigating Officer to examine her and to ascertain as to whether Mahmood Alam was kidnapped while he was on his way to buy some articles from the shop of Parmeshwar Pandit or he was abducted from the village in some other manner. Also pertinent is the fact that it would appear that no efforts were made by the Investigating Officer to try and trace the whereabouts of Mahmood Alam.

6. For the purposes of determining the participation of the appellants in the said occurrence, this Court will now refer to the evidence of P.Ws. 1 to 4. P.W. 1 has stated in his chief for the first time that Parmeshwar Pandit assaulted Mehmood Alam with a dagger and Nageshwar Kahar and Hari Kahar with swords. It is said that the victim received injury and began to bleed. In the cross-examination he has stated that there are 3 shops in his Tola and the shop of Parmeshwar Pandit is about 500 yards from his house. He has also stated that he saw the miscreants from a distance of about 450 yards while he was approaching Parmeshwar's shop. Attention has been drawn to the fact that whether he has made specific allegations in the First Information Report against the aforesaid persons. He has admitted that he has not made allegations against the appellants in the First Information Report. According to him he put his signature on his Beyan without it being read out to him. On perusal of evidence of the informant (P.W. 1), it is quite clear that he has admitted that he had not made the specific allegations even in his further statement u/s 161 Cr.P.C. Infact there is a discrepancy in the First Information Report and his further statement which is given after 5 days. It is submitted that the informant had enough time to deliberate over the matter and thereafter he has named the appellants and others in his further statement. It also does not stand to reason as to why these persons belonging to the Muslim community should venture into another Tola dominated by Hindus in a riot like situation when it was possible and there was a likelihood of there being any untoward incident specially as the Tola in which he was living had shops to cater to the needs of the Tola in question. I, therefore, find that the manner in which the informant has tried to improve upon the earlier version cannot be believed to the extent of involving of a particular person or a group of persons specially as

this vital information is missing from the First Information Report although all the persons who have been named were well known to him and he claims to recognize and know them much prior to the occurrence. It is also strange that after seeing a group of so-called miscreants from the distance of 250 yards before he actually reached the alleged place of occurrence, the informant would continue to go in that direction where the persons armed with various weapons were standing, keeping in mind the fact that the village was disturbed due to the communal violence. 7. P.W. 2 has given his evidence in the same vein as P.W. 1. He has come out with a case that when he was about 150 yards from the shop of Parmeshwar Pandit, the miscreants began to shout

and still these persons instead of running away and saving their lives continued to go in the direction of the miscreants. He has also supported the version of P.W. 1 that Mahmood Alam was assaulted in the manner described above. Attention of this witness has also been drawn on the fact that he had not made specific allegations against the appellants in his statement u/s 161 Cr.P.C. At paragraph 3 and 4 this witness has further stated in Court that there was a dispute between the two tolas. It is specifically asserted that PW 2 has his field just next to the Mushar Tola. During Muharram, the villagers took their procession through that route. He denies that the procession trampled the crops of Mushar Tola which was a cause of annoyance to the people of Mushar Tola. He also denies the suggestion that there was tension between the Hindus and the Muslims because they believed that some members of the Muslim Community had broken the Shivling installed in a temple near the field of PW 2. About the occurrence, this witness states that he returned to his house about 200 yards before the shop of Parmeshwar Pandit. It is thus submitted that he was not an eye witness to the occurrence. Even if P.W. 2 has to be treated as an eye witness his evidence regarding involvement of the appellants becomes doubtful in view of the fact that he has not explained as to why the informant and others were approaching the houses of Mushar Tola as riot like situation prevailed in the village.

8. P.W. 3 also claims to be an eye-witness. He states that while he was returning from the field he heard lot of sound, and he saw 20-25 persons from the Mushar Toli were indulging in overt acts of assault and claims to have seen Mehmood Alam being dragged towards the house of Parmeshwar Pandit. He identifies the appellants and also states that they were variously armed with swords and daggers. In his cross-examination he has stated that he identified one Chando Yadav and Parmeshwar by the sound of their voice. On seeing the attack on Mehmood Alam this witness ran away from the place of occurrence. At paragraph 4 in his cross-examination he says that he gave information regarding this occurrence to Sakoor Mian, Abdul Aziz and Md. Samir etc. It may be noted that these witnesses have not been examined. He admits that he was examined after 2 or 3 days of the occurrence. He has denied that he had not told the Investigating Officer regarding the manner of the occurrence.

9. The evidence of the witnesses and the Investigating Officer, specifically the fact that attention of the Investigating Officer has been drawn to the discrepancy made in the statement u/s 161 Cr.P.C. and the statement made in Court regarding the specific allegations levelled by the witnesses in the Court, against these appellants and some others, would lead this Court to the conclusion that the witnesses have on deliberation come out with the name of these appellants and some others and have claimed to be eye witnesses to the dragging and assaulting of Mahmood Alam. This allegation of assault by specific persons named before the Court is missing in the First Information Report as well as the statement u/s 161 Cr.P.C. it has to be kept in mind that in the Ferdbeyan dated 3.5.1986 the informant does not name any one, rather he says that there was a group of miscreants who abducted Mahmood Alam. It is only after deliberation that the names of these appellants have been revealed by the witnesses before the Investigating Officer, that to, without making any specific allegation and have been reiterated in Court. It is well settled that although the First Information Report is not supposed to be an encyclopedia of the occurrence, but vital information should be disclosed in the First Information Report. The involvement of a person is a piece of vital information which requires investigation and helps the Court to come to a conclusion regarding the facts surrounding the occurrence. In the present case, this Court comes to the conclusion that it would not be safe to hold that the appellants were involved in the abduction of Mahmood Alam in view of the discrepancy in the First Information Report and the information given before the police. In the case of *State of Bihar Vs. Jhari Sharma & Ors.* [2007 (4) PLJR 14], while discussing this aspect of the matter a Division Bench of this Court has held that if the occurrence takes place in the broad day light and the persons involved are known to the informant, the fact that they are not mentioned in the First Information would create serious doubts regarding their participation in the occurrence. Moreso, in the facts of this case where there was a communal riot and the members belonging to the Muslim community had ventured for the purposes of buying some stores into the Tola of the Hindu community, although they had facility of purchasing the essential items in their Tola. These facts create doubt in the mind of the Court regarding the prosecution version as far as it involves the appellants. This Court therefore, finds that the abduction of Mahmood Alam is true, but the involvement of these appellants had not been proved beyond reasonable doubt. In the result, the appeal is allowed. The sentence imposed under Sections 364 and 147 of the Indian Penal Code is set aside. The appellants are acquitted of the charges levelled against them and they are discharged from the liabilities of their bail bonds furnished earlier in this case.