
(2012) 11 PAT CK 0035

In the Patna High Court

Case No : Criminal Appeal (DB) No. 535 of 1990

Ram Baboo Bhagat and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 22-11-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 313
Penal Code, 1860 (IPC) — Section 120B, 201, 302, 34, 364

Citation : (2012) 11 PAT CK 0035

Hon'ble Judges : Mihir Kumar Jha, J;Aditya Kumar Trivedi, J

Bench : Division Bench

Advocate : Hemant Kumar Jha, for the Appellant; Shashi Bala Verma, Assistant Public Prosecutor, for the Respondent

Judgement

Honourable Mr. Justice Mihir Kumar Jha

1. This appeal is directed against the judgment of conviction and sentence dated 30.11.1990 passed by the Sessions Judge, Sitamarhi in S.Tr. No. 66/1990 arising out of Dumra P.S. Case No. 194/1989 whereby and where under both the appellants have been convicted for offence under sections 120B, 364, 302/34 and 201 of the Indian Penal Code and have been sentenced to undergo Rigorous Imprisonment for life on each of the count of section 120B, 302/34 and 364 I.P.C. as also five years R.I. for offence u/s 201 I.P.C. Such sentences, however, in case of both the appellants have been directed to run concurrently. The prosecution case in nut-shell as per the First Information Report of Shankar Rai (P.W.7) lodged by him on 17.11.1989 at about 12.30 P.M. in the afternoon in Dumra Police Station is that on 9.11.1989 at about 9 A.M. in the morning he had seen the appellant Ram Babu Bhagat to have arrived in his house and had also taken away his father. According to the informant when his father did not return in next 2-3 days, he had gone to the house of Ram Babu Bhagat to ascertain the whereabouts of his father but he could not get hold of Ram Baby Bhagat and his mother Surajbati Devi was also not available in the house. The informant has

further stated that on enquiry all that he could come to know was that some 2-3 days earlier Surajbati Devi alongwith his brother appellant Ram Shrestha Raut and appellant Ram Babu Bhagat had left their house at about 8 A.M. in the morning and had not returned as yet.

2. The informant in the F.I.R., therefore, had also claimed that his doubt with regard to safety and life of his father had further increased and he had started making hectic search of his father with the help of his family members but he could not get any information about him. As per version of the informant, on 15.11.1989 he had met the appellant Ram Shrestha Raut and Ram Babu Bhagat who were returning to their house and the informant at his own Darwaja had made enquiry as with regard to the whereabouts of his father who earlier had gone with them but both the appellants had feigned ignorance as with regard to trace of the father of the informant and has stated that they did not know where his father had gone. On this statement of the appellants, the informant has claimed that he became confident that the two appellants in company of co-accused Surajbati Devi had kidnapped his father for committing some serious offence. The informant has also stated that his father was the Chaukidar and used to frequently visit the house of Surajbati Devi as also of the two appellants Ram Shrestha Raut and Ram Babu Bhagat.

3. On the basis of the aforementioned information given by the informant Shankar Rai (P.W.7) the police had instituted Dumra P.S. Case No. 194/1989 initially u/s 364 I.P.C. and had taken up the investigation. Later on it appears that in the night of 17.11.1989 the police had arrested Surajbati Devi and the appellant Ram Shrestha Raut from the house of the sister of Surajbati Devi at 1.40 A.M. and when they had made a confessional statement as with regard to kidnapping as also murder of Musahar Rai, deceased, the father of the informant, and had disclosed the concealment of the dead body in the field of Uttim Raut in eastern portion of village Bela, a dead body without its head was recovered at 9 A.M. on 19.11.1989 whereafter the offence u/s 302 as also 201/34 I.P.C. was added in the F.I.R. of Dumra P.S. Case No. 194/1989 and the police after investigation had submitted its charge sheet against the two appellants as also Surajbati Devi. The case thereafter was committed to the court of Sessions on 28.3.1990 and had led to the present trial wherein the learned Sessions Judge, Sitamarhi by the impugned judgment while convicting both the appellants had acquitted co-accused Surajbati Devi. This appeal is only against such judgment of conviction and sentence of both the appellants Ram Babu Bhagat and Ram Shrestha Raut.

4. The defence of the appellants and the co-accused Surajbati Devi in the trial court was one of complete denial of the alleged occurrence and there being also falsely implicated on account of grudge that the prosecution party was carrying against Surajbati Devi. From the trend of cross-examination as also statement of the appellants u/s 313 Cr.P.C. it would also transpire that in fact the police had acted in a biased manner and simply because the deceased was the Chaukidar,

the story of extra judicial confession was of Surajbati Devi and Ram Shrestha Raut was concocted and some headless body which was not even worth identification much less of the deceased Musahar Rai was made the basis for launching the prosecution against the two appellants and co-accused Surajbati Devi. Additionally a defence was also taken that the appellant Ram Babu Bhagat was aged about 15 years on the date of occurrence and as such, he being a juvenile, his trial could not have been jointly conducted alongwith his mother Surajbati Devi and his Mama appellant Ram Shrestha Raut.

5. Mr. Hemant Kumar Jha, learned counsel for the appellants, while assailing the impugned judgment has submitted that the trial court has virtually accepted the mere ipse dixit of the prosecution in convicting and sentencing the two appellants. According to him there is no evidence worth the salt on the point of murder of the deceased Musahar Rai or his dead body being concealed by the appellants. He has further submitted that the story of kidnapping, in absence of materials attracting ingredients of section 364 I.P.C., is also not made out, inasmuch as the prosecution witnesses have themselves admitted that both the appellants were on quite friendly terms with the deceased Musahar Rai and the story of illicit relationship between Surajbati Devi and the deceased Musahar Rai and its repercussion by way of enmity of the son Ram Babu Bhagat or brother Ram Shrestha Raut has also not been established.

6. In this regard Mr. Jha has laid stress on the delay of 11 days in recording of the F.I.R. till it was seen by the Magistrate on 20.11.1989 and he has suggested that such delay of initially eight days in recording of the F.I.R. and subsequently three days in reaching of the F.I.R. to the court when it was seen by the Magistrate on 20.11.1989 by itself would go to show that after the police had concocted its version for implicating the two appellants and Surajbati Devi that the prosecution case was given a shape merely on suspicion. He has further submitted that the trial court has miserably failed to record its finding as with regard to the age of the appellant Ram Babu Bhagat who on the basis of material on record was definitely a juvenile on the date of occurrence i.e. 9.11.1989 and such fatal error in fact has vitiated the trial of the appellant Ram Babu Bhagat. On all these broad submissions which were also developed by the learned counsel for the appellants in course of hearing of this case it has been argued that the conviction and sentence of both the appellants cannot be maintained and they would be entitled for their acquittal.

7. Per contra, Ms. Shashi Bala Verma, learned Addl. Public Prosecutor, appearing on behalf of the State, has submitted that there are sufficient evidence to show that initially on 9.11.1989 it was the appellant Ram Babu Bhagat who had taken away the deceased Musahar Rai from his house whereafter his dead body was recovered only on 19.11.1989 after lodging of the F.I.R. by P.W.7 and as such, when the dead body was also recovered at a hidden place as shown by the co-accused Surajbati Devi and the appellant Ram Shrestha Raut, their conviction and sentence for offence under sections 364, 302/34, 120B and 201 I.P.C. would

require no interference. In this regard she has also explained that there is actually no delay in lodging of the F.I.R., inasmuch as even when the deceased Musahar Rai was taken away from his house by the appellant Ram Babu Bhagat on 9.11.1989, the informant being the son continued to search till 15.11.1989 and only when on 15.11.1989 the appellants Ram Babu Bhagat and Ram Shrestha Raut had disclosed to the informant, P.W.7, the son of the deceased, that they did not know where the deceased Musahar Rai had gone that F.I.R. was promptly lodged on 17.11.1989. Proceeding further APP has also submitted that due to swift action on the part of the police when the dead body was also recovered within 24 hours of recording of the F.I.R., much cannot be made out on account of alleged delay in lodging of the F.I.R. which initially was lodged only u/s 364 I.P.C. in which addition of section 302/34, 201 and 120B I.P.C. was made on recovery of the dead body.

8. She has further submitted that there could be no question mark on the identification of the dead body of the deceased Musahar Rai because even when such dead body was recovered without its head, his clothes as also ring worn by him were identified by the informant as also his fellow colleague Chaukidar P.W. 11 and the Investigating Officer (P.W. 10), who knew the deceased Musahar Rai very well on account of his being a village Chaukidar. Proceeding further she has also submitted that the acquittal of co-accused Surajbati Devi by the trial court in no way could affect the prosecution case as against both the appellants Ram Babu Bhagat and Ram Shrestha Raut, inasmuch as there were clinching evidence against them for proving the charge under sections 302/34, 120B, 364 as also u/s 201 I.P.C. As with regard to claim of juvenile of Ram Babu Bhagat she has sought to clarify that though such a claim was made but the trial court had assessed the age of Ram Babu Bhagat to be 18 years which in turn would make his trial alongwith the other two co-accused perfectly in order and in accordance with law. In the light of the aforementioned submissions she is of the firm view that the impugned judgment of conviction and sentence would require no interference from this Court.

9. Before we would analyze the aforementioned submissions it would be necessary for us to take stock of the evidence on record. In this case the prosecution has examined 11 witnesses, out of whom P.W. 1 Sewak Rai, P.W.2 Basudeo Rai, P.W. 3 Chulhai Mahto, P.W. 4 Bindeshwar Rai, P.W. 5 Anand Rai, P.W. 6 Ram Dulari Devi, the wife of the deceased and P.W. 7 Shankar Rai, the informant and the son of the deceased, have come out to support the prosecution case as eye witnesses to the first part of the occurrence taking place on 9.11.1989 when the deceased Musahar Rai was allegedly taken away from his house by the appellant Ram Babu Bhagat. P.W. 8 Dr. Krishna Nandan Prasad is the doctor who had conducted the postmortem on the dead body of the deceased Musahar Rai. P.W. 9 Shankar Chaudhary is the alleged seizure list witness, who has been declared hostile by the prosecution. P.W. 10 Ram Balak Singh is the Investigating Officer and P.W. 11 Awadh Rai is a Chaukidar, who has claimed to have identified the dead body of the deceased Musahar Rai. Additionally the

prosecution had also led documentary evidence in form of Ext. 1 F.I.R., Ext. 2 Postmortem report, Ext. 3 signature of Shankar Chaudhary on the carbon copy of the inquest report and Ext. 4 inquest report. Apart from the aforementioned oral and documentary evidence material exhibits in form of Ext. I Dhoti, Ext. II Shirt, Ext. III Gamchha, Ext. IV Ganji, Ext. V Langota, Ext. VI Khenhara, Ext. VII Sutali and Ext. VIII Bora Chatai were produced.

10. The defence in this case had also examined two witnesses, namely, D.W. 1 Radha Kant Chaudhary on the point of arrest of the appellant Ram Shrestha Raut and co-accused Surajbati Devi, D.W.2 Dilip Kumar Jha, an Advocate's Clerk, has come out to prove the age certificate of the appellant Ram Babu Bhagat. The defence has also led documentary evidence in form of Ext. A being certificate of Ram Babu Bhagat in proof of his age issued by the Headmaster of Rajkiya Madhya Vidyalaya, Methua, Dumra, Sitamarhi and Ext. B is the endorsement with the signature of the Chief Judicial Magistrate on the F.I.R. in the date of 20.11.1989.

11. The first and foremost important thing to which we must address is the charge u/s 302/34, 120B and 201 I.P.C. As noted above the prosecution case in this regard has been woven on the alleged confessional statement of both the co-accused Surajbati Devi and the appellant Ram Shrestha Raut. We have already noted above that these two confessional statements have not at all been proved by the prosecution and as such, the story of confession by the co-accused before the police will have no evidentiary value. We have, however, also carefully gone into the records and specially the evidence of P.W. 10 who is said to have arrested the co-accused Surajbati Devi and the appellant Ram Shrestha Raut in the night of 17.11.1989 at about 1.40 A.M. and we find that there is complete want of any evidence even on the point of recovery of the dead body at the instance of the aforesaid two persons, namely, Surajbati Devi and the appellant Ram Shrestha Raut. In fact no seizure list has been produced much less proven and the story of recovery and the seizure of the dead body also becomes doubtful because P.W. 9 Shankar Chaudhary in his evidence in court has straightway rejected the claim of the prosecution to be a signatory to any seizure list or even the recovery of dead body in his presence. True it is that P.W. 9 was declared hostile but then there is nothing on record to substantiate the recovery of the dead body at a concealed place at the instance of co-accused Surajbati Devi or the appellant Ram Shrestha Raut.

12. It has to be kept in mind that the prosecution through the I.O., P.W. 10, had claimed recovery of the dead body at the instance of Surajbati Devi and the appellant Ram Shrestha Raut on 18.11.1989 as was sought to be supported on the basis of inquest report, Ext. 4. The inquest report, however, would go to show that it was prepared on 19.11.1989 bearing the signature of the two persons as its witnesses, namely, Shankar Chaudhary (P.W. 9) and Rajendra Prasad Sah. What is very important is Shankar Chaudhary (P.W. 9) had turned hostile and Rajendra Prasad Sah has not been examined. There is no

documentary proof in shape of signature of the either Surajbati Devi or the appellant Ram Shrestha Raut on any document much less inquest report or any seizure list to show that the dead body was recovered at a place concealed on the instance of either the appellant Ram Shrestha Raut or co-accused Surajbati Devi, who has seen been acquitted by the trial court. It is here that the prosecution case becomes fully doubtful as with regard to recovery of the dead body at the instance of the appellant Ram Shrestha Raut or Surajbati Devi.

13. The police in fact having arrested both of them in the night of 17/18.11.1989 is said to have recovered the dead body on 19.11.1989 but in the inquest report its time of preparation has not been disclosed and in Column No. 3 the time and the date of preparation of the inquest report has been surprisingly omitted by filling up only the place where the dead body was recovered. The police in fact wanted to seal its case by producing both arrested persons, namely, Surajbati Devi and the appellant Ram Shrestha Raut before the Magistrate for recording their statement u/s 164 Cr.P.C. on 21.11.1989 but the appellant Ram Shrestha Raut did not make any confessional statement and whatever was stated by even Surajbati Devi on 21.11.1989 would in no way support the prosecution version as with regard to recovery of the dead body at the instance of the appellant Ram Shrestha Raut or even Surajbati Devi. For a better appreciation of this aspect this Court would quote the so called confessional statement of co-accused Surajbati Devi recorded on 21.11.1989 which reads as follows:

14. From a bare reading of the aforesaid so called confessional statement of Surajbati Devi it would appear that she had only stated as with regard to involvement of Ram Sagar Raut, Sukendar Raut, Binod Raut, Mithila Devi, Sukeshwar Rai in kidnapping or killing of Musahar Rai whose dead body was said to be kept in a field in village Bela. On the basis of such confessional statement the prosecution cannot get any advantage much less prove its case with regard to recovery of the dead body at the instance of the co-accused Surajbati Devi and/or the appellant Ram Shrestha Raut. Thus, the charge u/s 201 I.P.C. in absence of any cogent evidence brought on record by the prosecution must fail as there is nothing to connect recovery of the dead body at a concealed place at the instance of the appellant Ram Shrestha Raut.

15. The next question would be as with regard to identification of the dead body to be that of the deceased Musahar Rai. On this aspect there are only four witnesses, namely, P.W. 7 informant, P.W. 10 the doctor, P.W. 10 the Investigating Officer and P.W. 11 the fellow Chaukidar. It has to be noted that in the inquest report the description of the dead body found by the Investigating Officer was as follows:

16. The aforesaid description of the dead body will go to show that the recovered body was totally in a decomposed position and therefore, when certain cutting was made on an inquest report for introducing the name of the deceased Musahar Rai, the same could not have been authentically claimed to be the dead body of the deceased Musahar Rai. This aspect of the matter gets further

clarified from the evidence of the informant P.W.7 who is said to have identified the dead body of his father. P.W. 7 in paragraph no. 30 had stated as follows:

17. This aspect of the matter in fact gets also clarified from the evidence of P.W.8, the doctor, who had conducted postmortem on the dead body. He had stated that the board was constituted by the Deputy Superintendent of Sadar Hospital, Sitamarhi and the board consisting of Dr. Ram Chandra Singh, Deputy Superintendent, Dr. Umakant Chaudhary, Dr. Uma Shankar Prasad and myself (Dr. Krishna Nandan Prasad). The report by the board was as follows:

Completely decomposed skeleton of a male aged about 45 years without head, full of maggots and foul smell was available for examination. The dead body was decomposed to much an extent that only some parts of same decomposed soft tissues attached to parts of bone were only visible. The thoracic cage and abdominal cavity contained same putrefied soft mass which could not be recognized.

18. In his cross-examination he had also stated that the dead body was identified before him by Chaukidar Awadh Rai (P.W. 11) and Shankar Rai (P.W. 7) who had accompanied the dead body which for a better appreciation is quoted here-in-below.

The head portion was not available at all. No skin or flesh was found on the dead body. Some soft tissues were found here and there on the dead body. The dead body was highly decomposed and it had become unidentifiable. It was practically skeleton of a dead body. No foreign material like ring etc. was found on the person of the deceased. There was no cloth on the dead body.

19. Thus, from the evidence of the doctor also, in addition to what was found by the Police Officer as recorded in the inquest report and the evidence of the informant in paragraph no. 30, as quoted above, it would be absolutely clear that the recovered dead body was that of Musahar Rai, the deceased. The evidence of P.W. 11 Awadh Rai would also not inspire confidence, inasmuch as he had claimed to have identified the dead body on the basis of clothes recovered from the deceased. As noted above, in the inquest report there is no mention of any cloth nor the prosecution witnesses have stated about the type and colour of clothes worn by the deceased at the time of leaving his house on 9.11.1989. The story of identification of the deceased by a ring worn by him also does not inspire confidence, inasmuch as such ring has not been produced and the doctor had also categorically stated in this evidence that he had found skeleton of a dead body. There is also no seizure list of cloth and the articles on record so as to inspire confidence in the materials exhibits produced by the prosecution for the first time only in court.

20. In view of our above discussion it would be clear that there is no clinching evidence even on the point of identification of the dead body and therefore, the charge u/s 302/34 I.P.C. also cannot be said to be made out at least on the basis of material on record. There is infact complete want of any evidence as with

regard to any role played by the appellants in causing death of Musahar Rai about whom all that has been said in the evidence of P.W. 1 to P.W. 7 is that they had seen the appellant Ram Babu Bhagat to be in company of the deceased on 9.11.1989. Once therefore charge u/s 302/34 I.P.C. is not made out against either of the appellant the charge against u/s 120B I.P.C. has to automatically fail.

21. We have however also analyzed the matter from a different angle, namely, as with regard to proving of charge u/s 364 I.P.C. at least against the appellant Ram Babu Bhagat. It is true that all the seven witnesses, P.W. 1 to P.W. 7, had stated that they had seen Ram Babu Bhagat in company of the deceased in or around 9.11.1989 but then they all have materially contradicted each other on the point as to when they had seen them last together. Not only the time in their evidence are radically different but even the manner which has been suggested by them is completely contradictory to each other as would be borne out on reading of evidence of P.W. 5 in paragraph 2 read with the statement of P.W. 3 in paragraph 8 and the deposition of P.W. 6 in paragraph 5 and that of P.W. 7 informant in paragraph 10.

22. Not only that there has been inherent contradiction as with regard to company of the appellant Ram Babu Bhagat with the deceased Musahar Rai but in fact P.W. 5 has in fact given a death blow to the entire prosecution case even on the point of kidnapping because what he has stated would make a different case altogether. P.W. 5 has stated that on a Wednesday he had seen all the three persons, namely, appellants Ram Babu Bhagat, Ram Shrestha Raut as also Surajbati Devi going from village Methora to Sitamarhi on a road. The prosecution case, however, as per the informant was it was on a Thursday i.e. 9.11.1989 that only appellant Ram Babu Bhagat had come to the house of the deceased Musahar Rai and had taken him away to Sitamarhi saying that his mother Surajbati Devi had called her at Sitamhari. The time, therefore, given by P.W. 5 in the evening of Wednesday i.e. 8.11.1989 would virtually seal the fate of the prosecution case even on the point of kidnapping to constitute an offence u/s 364 I.P.C.

23. It is here that the prosecution case has to be viewed with suspicion on account of exorbitant delay in lodging of the F.I.R.. P.W.7 had claimed that his father was taken away in the morning of 9.11.1989 by the appellant Ram Babu Bhagat. He had further stated that two days thereafter he had gone to the house of Ram Babu Bhagat and Surajbati Devi and did not find anyone, however, present at the place of occurrence. He had further come to know at least on 15.11.1989 that his father was still traceless and the whereabouts could not be ascertained by the informant from the appellants. A question would, therefore, arise as to why the period of 8 days was lost in reporting the matter to the police at least by way of an information with regard to his missing father. No explanation, however, has been found by this Court in this regard from the records.

24. Coupled with delay in lodging of the F.I.R. we have also seen another circumstance, namely, its delayed receipt in the court. As noted above, the F.I.R. was given on 17.11.1989 but Ext. D, the endorsement of the C.J.M. on the F.I.R. would go to show that the same had reached the court only after three days on 20.11.1989. The events which had taken place, namely, the arrest of the accused Surajbati Devi and the appellant Ram Shrestha Raut in the night of 17/18.11.1989 followed by recovery of so called dead body on 19.11.1989 and there being forwarded to court alongwith the F.I.R. only on 20.11.1989 would raise a serious doubt as with regard to time when such F.I.R. was recorded. This Court therefore will have no difficulty in accepting the submission of the learned counsel for the appellants that as the police was highly interested in zeroing its case against the appellants, it had purposely delayed in sending the F.I.R. to the court till 19.11.1989 by which period it had made its case acceptable for involvement of the appellants and co-accused Surajbati Devi, who has since been acquitted.

25. It is true that the prosecution has tried to weave its case on the basis of circumstances but then the only circumstance on which the prosecution has proceeded to implicate these two appellants is that the mother of the appellant Ram Babu Bhagat, who was sister of the appellant Ram Shrestha Raut had an illicit relationship with the deceased and that they were so much annoyed with such relationship of Surajbati Devi with the deceased that they had kidnapped and ultimately killed him. This part of the prosecution case, however, does not get any further support beyond a mere doubt of the wife of the deceased, P.W. 6 who had stated about such relationship. P.W. 6, however, had accepted that Surajbati Devi was on visiting terms to her house and that the appellant Ram Babu Bhagat used to call the deceased as his "Baba". Thus, when this old relationship had already been accepted by everyone, the story of kidnapping by the appellant Ram Babu Bhagat for the purposes of killing Musahar Rai has no legs to stand, especially when in ex-culpatory confessional statement of Surajbati Devi, already quoted above, not a word has been said about such relationship.

26. Thus, we would find that even the charge u/s 364 I.P.C. has not been brought home by the prosecution against the appellant Ram Babu Bhagat about whom only the allegation in the F.I.R. was to have taken away the deceased on 9.11.1989. In fact there is no involvement of the appellant Ram Shrestha Raut in this part of the occurrence and as such, the charge u/s 364 I.P.C. also is not made out against either of the appellant.

27. In view of our above conclusion we need not dilate on the issue of appellant Ram Babu Bhagat being a juvenile. Learned counsel for the appellants, however, is correct that there are unimpeachable material to show that the date of birth of Ram Babu Bhagat was 1.2.1974 as proven from the Admission Register and the certificate of the school, Ext. A which was further confirmed even in the report of the Civil Surgeon cum Chief Medical Officer, Sitamarhi in his letter No. 1336 dated 30.8.1990 wherein he had stated that a Medical Board was constituted

consisting of Dr. A.K.Sinha, Civil Surgeon cum Chief Medical Officer, Dr. Umakant Chaudhary, Incharge Dy. Superintendent, Sadar Hospital, Sitamarhi and Dr. L.Jha, Sadar Hospital, Sitamarhi to examine the age of the accused Ram Babu Bhagat on 30.4.1990 and as per report of the Board he was aged about 18 years old. Thus, if the Board had assessed the age of Ram Babu Bhagat to be about 18 years as on 30.4.1990 and if there was a certificate of the school based on Admission Register showing the date of birth of the appellant Ram Babu Bhagat to be 1.2.1974 he was definitely the juvenile on the date of occurrence i.e. 9.11.1989.

28. Unfortunately this aspect of the matter has been completely left untouched by the trial court which while recording statement u/s 313 Cr.P.C. of Ram Babu Bhagat had assessed his age to be 20 years. The court below in fact seems to have acted mechanically, inasmuch as the same court had assessed the age of his mother Surajbati Devi to be 30 years at the time of her recording of statement u/s 313 Cr.P.C. and in this way it cannot be said that appellant Ram Babu Bhagat was borne while his mother was only aged about ten years. This aspect, however, now would have no significance because we have found none of the charges framed against even the appellant Ram Babu Bhagat to have been proven. We, however, would record our displeasure the mechanical manner in which the crucial issue of age of Ram Babu Bhagat was gone into by the trial court. We hope and believe that in future the trial court will not neglect the issue of juvenile of an accused, inasmuch as the moment a person is held to be juvenile he cannot be tried together with the other accused persons and has to be immediately referred to the Juvenile Board.

29. Thus, having given our anxious consideration to the materials on record we in the light of our aforesaid findings are of the considered view that the impugned judgment of conviction and sentence of the appellant Ram Babu Bhagat and appellant Ram Shreshtha Raut is bad both on fact and in law and is, accordingly, set aside. In the result, this appeal is allowed and since the appellants are already on bail, they would also now stand discharged from the liability of their respective bail bonds.