

(2022) 04 PAT CK 0015

In the Patna High Court

Case No : Criminal Appeal (DB) No. 117, 122 Of 1995

Ravi Mandal @ Ravin Mandal @ Ravindra Mandal

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 07-04-2022

Acts Referred:

Indian Penal Code, 1860 — Section 34, 153B, 201, 302, 295A, 341, 342

Citation : (2022) 04 PAT CK 0015

Hon'ble Judges : A. M. Badar, J; Sunil Kumar Panwar, J

Bench : Division Bench

Advocate : Kanhiya Prasad Singh, Indeshwari Prasad Mandal, Satya Narayan Prasad, S.B. Verma

Final Decision : Allowed

Judgement

1. Heard the parties.

2. The appellants in both the appeals have challenged the judgment of conviction dated 20th of May, 1995 and the order of sentence dated 23rd of May, 1995 passed by the learned 2nd Additional Sessions Judge, Bhagalpur in connection with Sessions Trial No. 331 of 1991, arising out of Sabour P.S. Case No. 222 of 1989.

3. By the aforesaid judgment dated 20th of May, 1995, the appellants have been convicted for the offences punishable under Sections 302, 201 and 153(B) read with Section 34 of the Indian Penal Code (for short I.P.C).

4. After hearing the convicts on the point of sentence, vide consequential order dated 23rd of May, 1993, the Trial Court sentenced the appellants to undergo imprisonment for life for the offences punishable under Section 302 of the Indian Penal Code read with Section 34 of the I.P.C. The appellants were further sentenced to undergo rigorous imprisonment for three years under Section 201 of the Indian Penal Code read with Section 34 of the I.P.C and rigorous imprisonment for two years under Section 153(B) of the Indian Penal Code. All

the sentences were directed to run concurrently.

5. The Sessions Trial in which the impugned judgment and order was passed relates to the First Information Report (in short 'F.I.R') that had been registered on 13.12.1989 in Sabour P.S. Case No. 222 of 1989 under Sections 341, 342, 302, 201, 295(A), 34 of the Indian Penal Code.

6. The prosecution case as recapitulated hereunder is based on the written report of Md. Fida Hussain, resident of Village-Fatehpur who has stated that on 28.10.1989 at about 10:00 A.M, his sons namely Pir Mohammad (minor) and Rinku (minor) had gone out of their house along with Md. Maruf (P.W. 8). When they did not return home after some time, the informant started searching his children. At about 2:30 P.M, Md. Maruf (P.W.8) came running in scared condition. The blood was oozing out from his nose and ear and his eyes were radish and there was black sign around his neck. He started crying and became unconscious. He was thereafter taken to the village doctor for his treatment where some treatment was provided to him. After regaining his consciousness, he had stated that he along with Pir Mohammad (deceased) and Rinku (deceased) were going to see lion of the circus but as soon as they reached near Fatehpur Hat, they were surrounded by Ravin Mandal (appellant), Parma Mandal and one another person who enquired as to where they were going and when they came to know that we were going to see lion of the circus, all the accused persons offered to accompany them to see lion of the circus. The accused persons thereafter took all the three children in a house situated in a guava grove and locked them inside a room. After some time, they came along with one Chandma Dacoit and started making enquiry as to where the arms were kept concealed by muslim people and then the children showed their inability about the whereabouts of the arms, they were assaulted by the accused persons. It is further alleged that they were taken towards Bansbhitti where the accused persons killed Pir Mohammad (deceased) and Rinku (deceased) by chopping off their necks. They also put a rope around the neck of Md. Maruf (P.W. 8) and stretched. The accused persons presuming Md. Maruf (P.W.8) dead, left the place of occurrence. When Md. Maruf (P.W.8) regained consciousness, he returned to his house and narrated the entire incidence to the family members and other people of the locality. It is further submitted that roads were blocked due to communal riots, hence, the informant could not report to the police just after the incidence nor searched the bodies of his children. The informant claims that his children were killed due to communal riot.

7. On the basis of the written application of the informant on 13.12.1989, a formal F.I.R was lodged and investigation was accordingly initiated.

8. After completing the investigation, charge-sheet has been submitted against the appellants after finding the case true, cognizance has been taken. Thereafter, the case was committed to the Court of Sessions for trial and disposal. The charges were read over and explained to the accused/appellants to which they pleaded not guilty and claimed to be tried. Their defence is that they have falsely

been implicated in this case and the occurrence did not take place in the manner as alleged by the prosecution.

9. After hearing the parties, learned Trial Court held the appellants guilty. Accordingly, the appellants were convicted and sentenced as indicated in the opening paragraph of the judgment.

10. We have heard learned counsel for the appellants as well as learned A.P.P for the State.

11. To substantiate the charges levelled against the accused persons, altogether fourteen witnesses have been examined on behalf of the prosecution.

12. P.W.1 Md. Fida Hussain is the informant and father of both the deceased. P.W. 2 Md. Wali and P.W. 3 Mustafa are co-villagers of the informant. P.W. 4 Md. Matin is the brother of the deceased. P.W. 5 Md. Nayeem has not supported the prosecution case. P.W. 6 Suresh Chandra Jha, P.W. 7, Alok Kumar Jha and P.W. 10 Md. Mohid have been declared hostile before the Court. P.W. 8, Md. Maruf is the eye witness and got injured in the incidence. P.W. 9 Md. Shakur has proved an F.I.R. P.W. 11 Md. Shaki is tender. P.W. 12, Biseshwar Bhagat is the Investigating Officer of this case. P.W. 13, Md. Manjoor Ali is the witness of the seizure list and P.W. 14 Hasnuddin Khan is the formal witness who has proved sanction order granted by the District Magistrate for prosecution of the accused persons.

13. On behalf of the defence, no witness has been examined in their support.

14. The learned senior counsel appearing on behalf of the appellants has raised two fold contentions, firstly that the prosecution has failed satisfactorily to explain the delay and there seems to be a possibility of embellishment in the prosecution version on account of such delay which would be fatal on the prosecution. Secondly, learned Trial Court has wrongly believed upon the evidence of a child witness namely Md. Maruf (P.W.8) as corroboration of his evidence is necessitated because a child witness may be an easy access of tutoring.

15. We have gone through the entire prosecution evidence available on record and the impugned judgment of the learned Trial Court.

16. In this case, the date of occurrence as alleged in the F.I.R is 28.10.1989 at about 10:00 A.M whereas the fardbeyan was recorded on 12.12.1989 at 6:00 P.M after more than 45 days of the occurrence by the informant Md. Fida Hussain (P.W. 1) who is an unfortunate father of both the deceased without giving any plausible explanation about such an inordinate delay.

17. The case of the prosecution is that due to communal riot and blockage of roads and also due to imposition of curfew in the area, information in respect of occurrence could not be given to the police station on the alleged date of occurrence.

18. P.W. 1 Md. Fida Hussain is the unfortunate father of the deceased who in his

evidence has deposed that when Md. Maruf (P.W. 8) became unconscious, he was taken to the village doctor for his treatment. Vide para 3, he deposed that on getting information regarding killing of his sons from Md. Maruf (P.W. 8), he started to search the dead bodies of his sons. Vide para 7, he has reported in respect of the occurrence after about 4-5 days, however he has no knowledge about the author of the application. He has denied the suggestion that he has lodged the case after about 47 days of the occurrence. Vide para 12, this witness has deposed that at about 2:00 P.M, Md. Maruf (P.W. 8) narrated the incidence to the informant and other people of the muslim community and after about one and half months of the occurrence, he has seen the house where his sons were kept concealed. Vide para 14, this witness has deposed that Md. Maruf (P.W. 8) was injured, hence he was treated by Dr. S. Ahmad on 09.11.1989 and before that Md. Maruf was not ever treated by any doctor. Vide para 15, he had knowledge that for death of a person in communal riot, rupees one lakh was being given to the family. He claimed for a compensation of rupees two lakhs and twenty thousands and he has received the same from the government. Vide para 17, he has deposed about the availability of telephone in his locality. Vide para 18, a telephone was also available in the post office which was situated in the house of Salo Babu in his vicinity but Salo Babu has not made any telephone call to the police regarding the occurrence. The army personnel along with the Magistrates and senior officers came at the village but he had not stated anything regarding the occurrence or gone with them to search the dead bodies of his sons.

19. P.W. 3 Md. Mustafa is the co-villager of the informant who has deposed in para 13 that police picket was available at the time of curfew in village Fatehpur. He has further deposed that police personnel were roaming two-three times in a day and in the night. From the deposition of this witness, it is established that after the occurrence, the police party was in access to lodge the F.I.R in respect of commission of murder and search the dead bodies of the deceased but informant and his family have not made efforts for this.

20. P.W. 4 Md. Matin is the brother of the deceased. He has deposed in para 6 of his evidence that at about 2:00 P.M, Md. Maruf (P.W. 8) came in the village. He became unconscious for three minutes. He was thereafter taken to the village doctor and after his consciousness, he, his father and other villagers enquired from Md. Maruf regarding the occurrence. Vide para 8, deceased Pir Mohammad and Rinku are their real brothers but after hearing the news of their death, he did not go for search of their dead bodies. In para 12, he deposed that communal riot had not spread where the deceased and Md. Maruf were going to see lion in the circus.

21. P.W. 8 Md. Maruf, child of age about 12 years at the time of deposition is the prime and sole eye witness to the occurrence. He has deposed in his evidence vide para 11 that after regaining consciousness, he returned to his house. On way to his house, he met several persons near Fatehpur mosque but he had not

told about the occurrence as well as the names of the accused persons to anyone. Vide para 12, he has disclosed the names of the accused persons while taking treatment to the doctor.

22. After scrutinizing the aforesaid evidences, it is established that the prosecution has failed to satisfactorily explained the delay and there seems to be a possibility of embellishment in the prosecution version on account of such delay which would be fatal on the prosecution.

23. In *Thulia Kali versus State of Tamil Nadu* reported in AIR 1973 SC 501, the Apex Court has observed that F.I.R in a criminal case is an extremely vital and valuable piece of evidence for corroborating the oral evidence adduced at the trial. The Court further observed that delay in lodging the F.I.R often results in embellishment as it might be creation of afterthought. On account of delay the F.I.R not only gets bereft of the advantage of spontaneity but danger creeps in the introduction of colored version exaggerated account or corrected story as a result of deliberation and consultation. It is therefore essential that the delay in lodging of the F.I.R should be satisfactorily explained.

24. In the instant case, from the above prosecution evidences, it is established that though curfew was imposed in the area but army personnel, Magistrates and local police were roaming in the locality but neither the informant who is the unfortunate father of the deceased children nor his family members informed about the occurrence to any police personnel or paid any heed to to search the dead bodies of their children after receiving information regarding commission of murder of Pir Mohammad and Rinku from Md. Maruf (P.W. 8).

25. It has also proved that Md. Maruf (P.W. 8) also narrated the version of commission of murder of the deceased to the doctors namely Dr. Muzaffar and Dr. S. Ahmad but the informant did not lodge any F.I.R prior to 12.12.1989. The informant P.W. 1 was the saddened father of the deceased. His two children were murdered by the accused persons as deposed by Md. Maruf (P.W.8) and names of the accused persons were disclosed. P.W. 8 also stated about the place of occurrence where his children were alleged to be murdered and being father of the deceased children, it was the bounden duty of the informant (P.W. 1) to lodge F.I.R and search the dead bodies of his children, but he kept quite for about 45 days which creates serious doubts about the authenticity of the prosecution version.

26. In the light of the evidences discussed above, we are of the opinion that delay in lodging the F.I.R in respect of commission of murder adversely effects the case of the prosecution. It would also be fatal in the instant case because of evidence of the prosecution witnesses regarding the involvement of the accused persons in the commission of the murder is not reliable and convincing.

27. We have gone through the evidence of P.W. 8 who is the star witness of this case who also sustained injuries in the occurrence. Vide para 5, he along with Pir Mohammad and Rinku went to see lion of the circus without informing to any

family member while P.W. 4 in his evidence has deposed that he enquired from his brother Pir Mohammad, Rinku and Md. Maruf(P.W. 8) as to where they were going and they replied that they were going to see lion of the circus. P.W. 8 in his deposition has identified two accused persons namely Ravin Mandal (appellant) and Chandra Deo Paswan (appellant) but vide para 3, he identified all the three accused persons who were standing in the dock before the Court. During cross-examination, P.W. 8 has deposed vide para 17 that he did not disclose in presence of the doctor the names of the accused persons since he was not aware about their names and he had earlier taken the names of the accused on the basis of hearing the names of accused by the people who were gathered near the mosque. He has identified the accused persons in the dock on the basis of guesswork.

28. From perusal of the above evidence, we are of the view that at the time of occurrence, this witness was aged about eight and half years. He has retracted from his initial version during adducing of his evidence. It seems that he is not a reliable witness.

29. In *Panchi & Ors versus State of U.P* reported in 1998(7) SCC 177, the Apex Court has observed as follows:-

"But we do not subscribe to the view that the evidence of child witness would always stand irretrievably stigmatized. It is not the law that if a witness is a child his evidence should be rejected even if it is found reliable. The law is that evidence of child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell them and thus a child witness is an easy prey to tutoring.

30. After considering the inconsistency in respect of the manner of occurrence, identification and giving the names of the accused during adducing his evidence, as a rule of prudence, we find that it is desirable to have the corroboration of such evidence from other dependable evidence on record. In this case, the evidence of P.W. 8 is not corroborated with other independent witnesses. So, on the sole basis of his evidence, the appellants to be held guilty would not be proper.

31. On a careful consideration of the evidences brought on record, arguments of the learned counsel for the appellants as well as learned A.P.P for the State, we are of the view that prosecution miserably failed to prove and establish the charge levelled against the appellants beyond shadow of reasonable doubt. Therefore, these appeals appear to have merits.

32. In the result, both the appeals stand allowed.

33. The judgment of conviction dated 20th of May, 1995 and the order of sentence dated 23rd of May, 1995 passed by the learned 2nd Additional Sessions Judge, Bhagalpur in connection with Sessions Trial No. 331 of 1991, arising out of Sabour P.S. Case No. 222 of 1989 is quashed and set aside.

34. The appellants are acquitted of the offences punishable under Sections 302/34, 201 and 153(B) of the Indian Penal Code and they are directed to be set free forthwith.

35. Since the appellants are on bail, they are discharged from the liabilities of their bail bonds.