

(2000) 05 PAT CK 0072

In the Patna High Court

Case No : Criminal Appeal No. 215 of 1987

Sahdeo Mahto and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 08-05-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164, 313, 374(2)
Penal Code, 1860 (IPC) — Section 148, 149, 201, 302, 34

Citation : (2001) 1 PLJR 774

Hon'ble Judges : B.N. Singh "Neelam", J;A.K. Verma, J

Bench : Division Bench

Advocate : Braj Kishore Prasad, Anjana Prakash and Soni Shrivastava, for the Appellant; Rudra Deo Kumar Sinha, for the Respondent

Judgement

B.N. Singh "Neelam", J.—This Criminal Appeal is preferred by the above named accused-Appellants u/s 374(2) of the Code of Criminal Procedure (hereinafter referred to as the Code) against the judgment of conviction and sentence so passed by the learned 1st Additional Sessions Judge, Deoghar dated 18th of May, 1987 in Sessions Case No. 58/78/1/86 by virtue of which all the five accused-Appellants are convicted u/s 302/34/149 of the Indian Penal Code (hereinafter referred to as I.P.C.) as well as u/s 148 I.P.C. and each of them is sentenced to undergo rigorous imprisonment for life u/s 302 read with Section 34 I.P.C. no separate sentence is passed by the learned court below for their also being convicted u/s 302/149 and Section 148 I.P.C.

2. The prosecution case, in short, as given by the first informant Chandra Narayan Jha alias Manan Jha (P.W. 9) in his written report is that on 23.8.77 at about 7 O" clock in the morning when the first informant along with his cousin Satya Narayan Jha alias Sona Jha, since; deceased, had gone to see their fields of village Simaria and Singhpurlogidih and were on way returning home and reached Mauza Jogidih and were passing through the house of Baski Mahto, since-deceased, towards their home that the accused-Appellants were so located,

out of whom accused Sahdeo Mahto, Wakil Mahto alias Kamleshwar Mahto and Titu alias Tutka Mahto were found armed with Tangi and the other two accused-appellants Genda Mahto and Dineshwar Mahto were found with dagger and they were being surrounded by the accused persons. At that time, according to the first Informant, his cousin Satya Narayan Jha alias Sona Jha was moving 20-25 steps ahead of the first informant. The accused-Appellants are said to have started inflicting injuries on the person of Satya Narayan Jha alias Sona Jha, since deceased, and at a distance of 25-30 hands the informant (P.W. 9) claimed to have made hue and cry as a result of which Chhotu Prasad Singh (P.W. 1), Paltu Mehra, not examined, Kashi Nath Jha (P.W. 2) and Badri Narayan Jha (P.W. 6) assembled who had also an occasion to see the occurrence on assault. Accused Basuki Mahto, since deceased, as per the prosecution case, had also assaulted Satya Narayan Jha alias Sona Jha with Lathi. Satya Narayan Jha alias Sona Jha could not be rescued by the Informant and the witnesses seeing the occurrence just out of fear. The accused persons also used to threaten the witnesses as not to prevent them committing the overt acts, otherwise they would also be done to death. Because of the injuries so sustained by Satya Narayan Jha alias Sona Jha, as per the prosecution case, he fell down at the place of occurrence and breathed his last. Other eye witnesses, having an opportunity to see the assault on Satya Narayan Jha alias Sona Jha, according to the first informant, had also an occasion to see the cousin of the first informant Satya Narayan Jha alias Sona Jha being then dragged by the accused persons to the nearby house of the accused persons whereby his dead body is said to have been concealed. By attributing the genesis of the occurrence, it is further detailed that accused persons were having land dispute with the members of the prosecution side and some of the litigations were, at that time, even going on between the parties. On the basis of the written report so given by the first informant, formal F.I.R. was so drawn up and the police, after registering the case started investigation against the accused-Appellants. After taking cognizance of the offence case record was so committed to the court of sessions and after hearing on the point of charge, charges were so framed against the accused-Appellants u/s 302/34, also u/s 302/149 and u/s 201 and 148 I.P.C. The accused-Appellants pleaded not guilty and claimed to be tried.

3. In course of trial, It transpires that as many as 13 prosecution witnesses have been examined on behalf of the prosecution, out of them P.Ws. 1,2,6, 8, and 9 claimed themselves to be the eye witnesses to the scene. P.Ws. 3, 4, 5, 7 and 12 are formal witnesses, P.W. 11 is tendered. P.W. 10 is the Medical Officer conducting post mortem on the dead body of Satya Narayan Jha alias Sona Jha. P.W. 13 is the Investigating Officer of this case. This will not be out of place to mention that P.W. 3, the Judicial Magistrate, recording 164 Code of Criminal procedure statement of P.Ws. 8 and 11 is examined in connection with this case who has proved the statement so recorded u/s 164 Code of Criminal procedure marked as Exts. 1 and 1/1. In course of trial, two of the D.Ws. have also been examined and they are Ram Krishna Mandal and P.K. Bhattarjee. D. W. 1 is so

produced in support of the alibi so taken on behalf of the accused-Appellant Sahdeo Mahto that he used to reside at his Sasural and in that circumstance there was no chance of his being, in any way, present at the scene of occurrence. As regards D.W. 2, he has proved the document marked as Ext. A which is a partition deed. After evaluating the evidence, available on record, as stated above, the learned court below has thus come to the conclusion with regard to the prosecution establishing the guilt of the accused-Appellants facing trial, except of the offence coming under the purview of Section 201 I.P.C. It is against this judgment of conviction and sentence so passed that the accused-Appellants have preferred this Criminal Appeal challenging the findings of the impugned judgment.

4. Learned Counsel appearing on behalf of the accused-Appellant has submitted that the impugned judgment of conviction and sentence so passed is bad in law as well as in facts. All the witnesses so examined can well be said to be interested witnesses and except P.W. 1, all others are on the point of occurrence and the members of the same family and since there was also enmity going on between the members of the prosecution side with that of the accused-Appellants relating to a piece of land said to have been purchased by the members of the prosecution side from the ancestor of the accused-Appellants, the evidence, particularly of P.Ws. 2, 6, 8 and 9, cannot be said to be wholly reliable, the benefit of which should have been given to the accused-Appellants. By referring to the evidence of P.W. 5, it is also pointed out that the same belies the presence of P.W. 1 at the place of occurrence. The manner of occurrence, so put forward, it is also pointed out, can well be said to be unbelievable and the graphic description so given by the P.Ws. relating to the accused-Appellants approaching variously armed and assaulting Satya Narayan Jha alias Sona Jha can well be said to be concocted story so put forward whereas as per the defence version so put that Satya Narayan Jha alias Sona Jha, since deceased, having illicit connection with Paddu Mahto's wife, his house also being near the place of occurrence and it was because of the neighbour carrying annoyance that on the said morning Satya Narayan Jha alias Sona Jha was caught by the neighbour of Paddu Mahto and being assaulted, he breathed his last and that the accused-Appellants had absolutely nothing to do with the occurrence and they had not, in any way, assembled or committed any offence coming under the purview of Section 302 read with Section 34 or even committing any offence coming u/s 148 I.P.C. It is also pointed out that true it is that the litigation was going on between the parties but the prosecution had utterly failed to indicate the immediate cause of annoyance which, as alleged, led to such occurrence and that being the position, even the genesis of the offence so committed is also not brought on record. The investigation so conducted which resulted in the submission of the chargesheet in the instant case can also be said to be tainted and the earliest version relating to the occurrence is also so suppressed and delay in examination of the witnesses, particularly of P.Ws. 2 and 6, though being examined next day, had thus given ample opportunity in the hands of the

prosecution side as to twist the matter to their advantage as a result of which parrot like statement thus comes from the mouth of the witnesses cited as eye witnesses relating to the manner of occurrence, which thus would not have been relied upon. In support of his this contention, learned Counsel for the Appellants has referred to, paragraphs 8 and 9 of the evidence of P.W. 1, paragraph 1 of P.W. 2 also paragraph 1 of P.W. 7 with that of the evidence of P.W. 8. The said house of one of the accused Baso Mahto from where the dead body was located was the abandoned house and no person was, residing therein and in that background on no account the accused-Appellants can be said to be responsible being, In any way, dragging the dead body of Satya Narayan Jha alias Sona Jha to the said house abandoning the same, and fleeing away and it also finds supports when the Investigating Officer while examining the place of occurrence had not found any dragging mark on the ground leading to the house of accused Baso Mahto from the alleged place of occurrence. As regards 164 Code of Criminal procedure statement of Jhaksu Mehra and Bachu Mehra so recorded by P.W. 3, Bachu Mehra got tendered in course of trial. Statement of Jhaksu Mehra (P.W. 8) u/s 164 of the Code is recorded on 3.10.77, the date of occurrence being 23.8.77 and in his cross-examination at paragraph 4, in course of trial, Jhaksu Mehra, figuring as P.W. 8, is very specific in stating that prior to his giving statement u/s 164 of the Code, he had not revealed anything about the occurrence to any one. That being the position, it is pointed out that the evidence of P.W. 8 on no account can be said to be reliable. With regard to P.W. 11 Bachoo Mehra whose 164 Cr. P.C. statement was also recorded on the same day, that can also not be said to be trustworthy because of the reasons best known to the prosecution, he being tendered when brought forward as a prosecution witness. In all fairness it is pointed out on behalf of the accused Appellants that Satya Narayan Jha alias Sona Jha was done to death and his dead body was so located in the house of Baso Mahto is not disputed but the point that as far as these accused-Appellants are concerned, they were not the perpetrator rather it was because of the deceased having some illicit connection with the wife of the Paddu Mahto of the same village, being agitated that villagers brutally assaulted him as a result of which he died and in the abandoned house of. Baso Mahto his dead body was also thrown by some other person. As claimed that the investigation of this case so done was tainted and perfunctory and that original information so coming was so suppressed which could have been the basis for the acquittal of the accused-Appellants, learned Counsel for the Appellants claimed herself fortified by referring two of the reported cases and they are Sevi and Another Vs. State of Tamil Nadu and Another, with that of Bahal Singh Vs. The State of Haryana, . It is, in this background, pointed out that if the witnesses are partisan eye witnesses and there is suppression of the original information so received relating to the occurrence, in such circumstance it would be dangerous as to hold the accused persons guilty of committing the offence and the learned court below has thus erred in relying upon the evidence of such partisan witnesses and not even digging into the fact with regard to the suppression of first hand information so received relating to a cognizable offence.

It is also submitted that the statement of the material prosecution witnesses were not so recorded u/s 161 of the Code by the Investigating Officer at the earliest moment such as P.Ws. 2 and 6, very much available, claiming themselves to be eye witnesses, rather got examined the next day. Such conduct of the Investigating Officer also, in the instant case, has made the prosecution case doubtful and in support of her this contention the learned Counsel representing the accused-Appellants has banked upon a reported case Ganesh Bhavan Patel and Another Vs. State of Maharashtra, . Non-examination of independent witnesses, it is also pointed out, has made the prosecution case doubtful and in support of her this contention learned Counsel for the Appellants has referred to a reported case Awadhesh and Anr Vs. State of Madhya Pradesh, . Lastly by referring to another reported case Shankarlal Gyarasilal Dixit Vs. State of Maharashtra, it is pointed out that since in the instant case no positive motive was attributed against the accused-Appellants as to take the law in their hands by committing murder, as alleged, at that moment for which there was no occasion, this also weakens the prosecution case and this part was also not looked into by the learned court below while passing the judgment of conviction and sentence and in this context reference is made to paragraph 33 of the reported case Shankarlal Gyarasilal Dixit Vs. State of Maharashtra, . The evidence, it is pointed out, is to be seen in its totality and by not doing so, in the background of the facts and circumstance so discussed, it is thus submitted that it is a fit case in which the accused-Appellants rather be acquitted and thus it is lastly prayed that the impugned judgment of conviction and sentence so passed require interference which be set aside and the accused-Appellants be rather acquitted.

5. Learned Addl. P.P., on the other hand, has submitted that there is nothing wrong in the impugned judgment of conviction and sentence so passed and since the present Criminal Appeal so preferred has got no leg to stand, the same rather be dismissed. Enmity is very much admitted and it is because of the accused-Appellants carrying vengeance, finding opportunity in a pre-planned manner locating the first informant moving along with his cousin Satya Narayan Jha alias Sona Jha passing through their village on way home, such act was so committed and Satya Narayan Jha alias Sona Jha got brutally assaulted finding full support in the evidence of Medical Officer so examined i.e. P.W. 10 who has also proved the post mortem report and the occurrence was not only seen by the first informant accompanying his cousin Satya Narayan Jha alias Sona Jha, since deceased, at the moment rather the passers by could also see the occurrence and in this connection in detail reference is made to the relevant paragraph of the evidence of P.Ws. 1, 2, 6 and 8. Because of the occurrence so taking place by the side of the path of nearby the house of the accused-Appellants, other persons passing through the said road (Pagdandi) at the moment had the occasion to see real assault inflicted upon Satya Narayan Jha alias Sona Jha and there is consistency in their statement on the point of assault and they have also well stood the test of cross-examination. The Medical Officer conducting post

mortem had found the injuries on the person of the deceased and has also opined that the injuries so detailed punctured and incised wounds could have been caused by Chhura and Tangi and it was the cumulative effect of the injuries so sustained as a result of which the person breathed his last which was sufficient to cause the death in the ordinary course of nature. On the point of occurrence, it is further pointed out that P.W. 1 at paragraph 1 is very specific in giving the details of the manner of assault being also so given by another eye witness P.W. 2 in paragraph 1 of his evidence also naming the witnesses cited by him to be present at the spot. P.Ws. 6 and 8 in their evidence, so recorded in course of trial, have also given the details of the manner of occurrence with that of the witnesses so present at the place of occurrence could have an opportunity to see the occurrence as detailed in paragraph 1 of their evidence so recorded, P.W. 9, the first informant of this case has fully supported the prosecution case. It is argued that the defence version with regard to the deceased having illicit connection with the wife of Paddu Mahto has rightly been not relied upon by the learned court below because no material to that effect was so produced on behalf of the defence even in their statement u/s 313 of the Code. It is also submitted that, as claimed from the Appellants side, there was no suppression of information relating to the occurrence so taking place. In this connection it is submitted that true it is that after the occurrence Purnanand Jha (not examined) and Badri Narayan Jha (P.W. 6) were requested as to inform the police relating to the occurrence taking place but by going through the evidence of P.W. 2 at paragraph 13, P.W. 6 at paragraph 10, P.W. 13 at paragraph 2 and P.W. 9 at paragraph 2, it will transpire that as a matter of fact Purnanand Jha and Badri Narain Jha did not go to the police station after reaching Deoghar rather they informed the Samdhi of the deceased Dawarika Nath Mishra about the occurrence and since Dawarika Nath Mishra has not been examined in this case it has also not come in light as to whether he did go to the police station or not. On the other hand by going through the evidence of the I.O. of this case i.e. P.W. 13 it will transpire that on 23.8.77 he had arrived at the Deoghar Police Station at 9.40 A.M. The Inspector of Police, Deoghar simply informed him with regard to the murder of the nephew of Mukhiya of Ojha Jamua taking place and on getting information he proceeded to the place of occurrence arriving there at about 10 A.M. where the written report of P.W. 9 was so received and the Investigation was so started. In that light the learned Addl. P.P. has thus submitted that there was no suppression of any information relating to the occurrence taking place and such plea taken by the defence side is based on surmises and conjectures. It is pointed out by the learned Counsel for the Appellants that the witnesses so examined were chance witnesses and, therefore, their evidence should not have been relied upon. Controverting this argument so advanced, the learned Addl. P.P. submitted that since the occurrence had taken place by the side of the road, those witnesses on no account be said to be chance witnesses because in such circumstance their presence can well be said to be natural as claimed by them passing through the road and getting an opportunity to see the occurrence taking place from nearby. The learned Addl. P.P. has also submitted that though some of

the witnesses are relations but simply by their becoming related to the first informant in itself would not make their evidence not believable because the testimony of the eye witnesses who are natural witnesses of the occurrence and whom one would expect to have seen the occurrence cannot be doubted only because they happened to be related to the first informant of the case. Witnesses being relations of the victim would not by itself detract the evidentiary value of such witnesses when they were most likely persons to be present at the place of incident. In support of his these contentions, learned Addl. P.P. has also banked upon a reported case State of U.P. Vs. Brahma Das, and in this connection particularly reference is made to its paragraphs 4 to 6 and in that background referring to the present case it is submitted that evidence of the material prosecution witnesses thus cannot be seen with unnecessarily suspicious approach and by taking the evidence available on record as a whole it will transpire that the prosecution had succeeded to bring home the charges so levelled against the accused-Appellants and the manipulated defence story based on conjectures and surmises was rightly not believed by the learned court below as the defence has miserably failed to bring any oral and documentary evidence with regard to the deceased having any illicit connection with the wife of Paddu Mahto. Lastly it is pointed out on behalf of the State that it is not only that the occurrence had taken place near the house of the accused-Appellants and in such circumstance the accused-Appellants being in an advantageous position but admittedly the recovery of the dead body of Satya Narayan Jha alias Sona Jha is also from one of the house of the accused person i.e. Baso Mahto who also figured as accused against whom overt acts were attributed but who died after the occurrence prior to facing the trial. In such circumstance it is submitted that onus was thus heavily upon the defence side as to give satisfactory explanation with regard to the recovery of the dead body of Satya Narayan Jha alias Sona Jha from the house of Baso Mahto and no satisfactory explanation comes on this point. The I.O. it is pointed out had also seen blood stained mark and trail of blood from the place of occurrence towards the direction where the house of Baso Mahto accused was situated which also supports the prosecution case and over and above the evidence of the eye witnesses i.e. P.Ws. 1, 2, 6, 8 and 9 they can safely be said to be trustworthy which has rightly been relied upon and which in the present case also finds full corroboration with that of the evidence of P.W. 10 the Medical Officer and P.W. 13 the Investigating Officer, Under the circumstance, hence the prayer of the medical officer P.W. 10 and the Investigating Officer P.W. 13. By simply saying that some of the witnesses being chance witnesses or related to the deceased by itself would not be a ground as rightly argued by the learned Addl. P.P. as to disbelieve their testimony when there is reason to believe that the main point of the prosecution story is established up to the hilt by the prosecution and it cannot be rejected because of the want of the veracity on some of the minor points. The accused-Appellants at the same time, in the instant case, have failed to offer a reasonable explanation of their conduct and there is element of truth in the prosecution story with regard to the murder being committed in furtherance of their common intention

and there was meeting of mind among the accused-Appellants prior to inflicting brutal injuries on the person of the cousin of the first informant namely Satya Narayan Jha alias Sona Jha. This has come in evidence that prior to assault being showered on the person of Satya Narayan Jha alias Sona Jha there was no talk between the informant or his cousin Sona Jha with that of the accused-Appellants rather just after sighting Satya Narayan Jha alias Sona Jha, accused-Appellants inflicted injuries fatal in nature which supports the prosecution version with regard to meeting of the ingredients of Section 34 IPC in course of committing the offence by intentionally causing the death of Satya Narayan Jha alias Sona Jha. There is no conflict between the medical evidence and the oral testimony of the material prosecution witnesses as thoroughly detailed above, the evidence in defence has not rebutted the case of the prosecution and in such circumstance, the evidence adduced on behalf of the prosecution in the instant case cannot be said to be discrepant and they are found free from any blemish. Since the occurrence took place just by the side of the road, passersby cannot be said to be chance witnesses rather their presence in such circumstance can also be termed to be natural.

8. Taking into consideration the broad facts of the case and the evidence on record so available oral and documentary as a whole it transpires that the learned court below was thus perfectly justified in holding that the accused-Appellants had committed the offence and the said murder was so committed by them In furtherance of their common intention, it transpires that the accused-Appellants are also convicted u/s 302 read with Section 149 I.P.C. Since the accused-Appellants are convicted u/s 302 read with Section 34 IPC and the ingredients of Section 34 IPC has been met with and proved in course of trial, it would be redundant as to convict the accused-Appellants also u/s 302/149 IPC. In that light, their conviction u/s 302/149 IPC stands set aside. Over and above, being convicted u/s 302/34 IPC they are also convicted u/s 148 IPC though no separate sentence is awarded to them. The same stands affirmed. Furthermore, conviction and sentence so passed against the accused-Appellants u/s 302 read with Section 34 IPC also stand affirmed. With this modification as detailed above, finding no merit in this Criminal Appeal, the same stands dismissed.

9. Since the accused-Appellants were given the privilege of bail by this Court on 21.5.87 after admitting the Criminal Appeal and they are on bail, their bail bonds stand cancelled. All the accused-Appellants are directed to surrender forthwith to meet the sentence so imposed by learned court below affirmed by this Court for committing the offence coming under the purview of Sections 148 and 302 read with Section 34 IPC.

The matter stands accordingly disposed of.

Ashok Kumar Verma, J.

10. I agree.