

Rajendra Rai and Others

Vs

The State of Bihar and Another

Criminal Appeal No. 156 of 1970

(H. R. Khanna, Y. V. Chandrachudha JJ)

19.08.1974

JUDGMENT

KHANNA, J. -

1. The nine appellants, Rajendra Rai (28), Baleshwar Rai (19), Dhupa Rai (20), Ramlakhan Rai (60), Ramanand Rai (65), Judagi Rai (18), Dhuli Rai (32), Dhorha Rai (25) and Krishna Rai (22) were tried along with three others Jadu Rai (17), Ramanand Rai (23) and Jitan Rai (60) in the Court of learned Additional Sessions Judge Patna and were acquitted. On appeal filed by the State of Bihar and revision petition filed by Harnandan Singh, the Patna High Court set aside the acquittal of the nine appellants and convicted them for offences under Section 302 read with Section 149 Indian Penal Code for the murder of Palaknath Singh (28) and sentenced each of them to undergo imprisonment for life. Conviction was also recorded against the appellants for other offences but it is not necessary to set out their details. Acquittal of Jitan Rai, Ramanandan Rai and Jadu Rai was affirmed. The nine appellants thereafter came up in appeal to this Court by special leave.

2. The nine appellants as well as Palaknath Singh deceased belonged to village Lahiyarehak in district Patna. Out of the appellants, Rajendra Rai and Baleshwar Rai are brothers, being sons of Ramanand Rai accused. The prosecution case is that Harnandan Singh (PW 17), who is the father of Palaknath Singh deceased, had enmity with the accused since 1948 when a dacoity was committed in Harnandan Singh's house. Ramanand Rai and Jitan accused were prosecuted in connection with that dacoity. The relations between the parties also got strained when a contest took place for the post of Mukhia between Nankhkoo Singh (PW 20), father of Harnandan Singh on one side and Rambhaju Singh on the other. In that election Rajendra Rai and Baleshwar Rai accused acted as the agents of Rambhaju Singh. A day before the present occurrence some bundles of paddy were stolen from the Khalihan (thrashing ground) of Ramanand Rai accused. Ramanand though that the above theft had taken place at the instance of Nankhkoo Singh.

3. On January 14, 1966 at about noon time, it is stated, Bhola Singh (PW 5) was working in his onion field when he saw the nine appellants coming from the village abadi to the field of Harnandan Singh PW. Out of the nine appellants, Dhupa Rai and Rajendra Rai were armed with garasas, while Ramlakhan and Baleshwar had bhalas. The rest of the five appellants were armed with lathis. Rajendra and Baleshwar then began to uproot Khesari crop from the field of Harnandan Singh. When Bhola Singh protested, Ramanand accused replied as to why he did not protest when Nankhkoo got Ramanand's paddy stolen. Ramanand also asked Bhola Singh to send Nankhkoo. Bhola Singh then went to the Dalan of Nankhkoo and found besides others Palaknath deceased and Sudheshwar (PW 13), sons of Harnandan Singh, present there, Bhola Singh's told them about the uprooting of Khesari crop from Harnandan Singh's field by the appellants. Palaknath then ran

towards the Khesari field, while Sudheshwar went to inform his father Harnandan Singh who was present in his Khalihan along with Mohd. Shamim (PW 1), Haidar (PW 8) and Ekram (CW 1). Harnandan Singh was at that time getting paddy thrashed in the Khalihan. Bhola Singh then took water from his house and accompanied by Kedarnath Singh (PW 11) and Ramdeo Singh (PW 14), proceeded towards the Khesari field of Harnandan Singh. Harnandan Singh on being told by his son Sudheshwar that the appellants were uprooting Khesari from his field proceeded towards that field. Harnandan Singh met Palaknath near his orchard on the way to Khesari field. When they arrived near the field, they found Rajendra and Baleshwar uprooting Khesari crop, while the other appellants were sitting near the edge of the field. When Harnandan Singh and Palaknath reached the field of Isa Mian close to their Khesari field, the appellants shouted that Palaknath and Harnandan Singh should not be spared. Harnandan Singh and Palaknath then ran back towards the village abadi but they were overtaken by the appellants near a well. Rajendra Rai accused then gave a garasa blow on the head of Palaknath deceased, as a result of which the deceased fell down. This was followed by further blows to the deceased by Dhupa accused with his garasa and Baleshwar and Ramlakhan accused with their bhalas. Harnandan Singh PW was given lathi blow by Ramanand, Judagi Rai and Krishna Rai. Baldeo Singh (PW 16) was then handed over a gun by Nankhkoo Singh (80), father of Harnandan Singh, with a view to scare away the appellants. The said gun was, however, snatched from the hand of Baldeo Singh when he arrived near the place of occurrence by Baleshwar accused. On seeing Nankhkoo Singh the accused party ran towards him with a view to assault him. When Kedarnath Singh (PW 11) and Ramdeo Singh (PW 14) protested, Baleshwar and Ramlakhan accused them injuries with their bhalas, Rajendra accused then gave kicks on the head of Palaknath, as a result of which the brain matter came out of the head. The accused then ran away. In the meantime, Harnandan Singh ran to police station Phulwari Sharif, at a distance of three miles from the place of occurrence, and lodged there report Ex-3 at 1.30 p.m. Sub-Inspector Nand Kishore Singh (PW 22), who recorded the first information report, noticed several injuries on the person of Harnandan Singh. Harnandan Singh was accordingly got examined from Dr. Chaudhary at 4 p.m.

4. After recording the first information report, Sub-Inspector Nand Kishore Singh went to the place of occurrence and arrived there at 4.15 p.m. The dead-body of Palaknath was found lying there. The head was found broken and brain matter was found lying at a distance of one foot from the head. The Sub-Inspector prepared the inquest report and sent the dead body to the mortuary at Patna where post-mortem examination on the body was performed by Dr. Kamleshwar Singh at 12.30 p.m. on January 15, 1966. Kedarnath Singh and Ramdeo Singh were got examined from Dr. Chaudhary on the evening of January 14 and the morning of January 17, respectively. The accused were arrested on January 16 and 17, 1966.

5. Mohd. Shamim (PW 1), Bhola Singh (PW 5), Kedarnath Singh (PW 11), Ramdeo Singh (PW 14) and Harnandan Singh (PW 17) as well as Ekram, who was examined as court witness, gave eyewitness account of the occurrence. Haidar (PW 8), Sudheshwar (PW 13), Anup Singh (PW 15), Ram, Naresh Singh (PW 19) and Nankhkoo Singh (PW 20) who were also supposed to be eyewitnesses of the occurrence, were tendered for cross-examination.

6. The accused in their statements under Section 342 the Code of Criminal Procedure denied the prosecution allegation against them. A written statement was field on their behalf the purport of which was that on the morning of January 14, 1966 at 9.30 a.m. Rambaran was thrashing paddy in his Khalihan near the orchard of Harnandan Singh PW. Palaknath deceased then came there and gave slaps and fist blow to Rambaran. Rambaran and Palaknath then exchanged blows. Kedarnath Singh PW came there with a gun and, in an attempt to shoot Rambaran, he accidentally fired at Palaknath and thus killed him. Subsequently there was a commotion in the village and stray assaults

were made on Harnandan Singh, Ramdeo Singh and Kedarnath PWs. Defence evidence was produced in support of the above version of the accused. Dr. J. B. Mukherji was also examined for defence as an expert medical witness.

7. The learned Additional Sessions Judge did not place much reliance upon the prosecution evidence as in his view it was not consistent with the medical evidence. The prosecution version was also found to be otherwise not very convincing. Defence evidence too was rejected but the rejection of the defence evidence was held to be not very material as the prosecution case had to be proved independently. In the result the accused were acquitted.

8. On appeal the High Court found the reasons given by the trial Court in acquitting the appellants to be wholly untenable. The High Court accordingly accepted the appeal and convicted the appellants as mentioned earlier.

9. It is the common case of the parties that Palaknath Singh was killed at the place of occurrence on January 14, 1966. Dr. Kamleshwar Singh who performed post-mortem examination on the dead body of the deceased found the following injuries :

1. Incised wound on the left temporal and frontal regions 6" x cranial cavity.
2. Incised wound on the mid-line of the vertex on the parietal and frontal bones 3 1/2 ins. x cranial cavity.
3. Incised wound on the frontal region extending right to left 5 ins. x cranial cavity. Both parietal and frontal bones were out with several pieces.
4. Incised wound three in number (1) 2 1/2 in. x 3/4 in., (2) 2 ins. x 1/2 in. 1/2 in. (3) 2 ins. x 2 1/2 ins. x 1/2 in. were present on the occipital region. Cranial bones namely parietal, frontal and occipital and the left temporal were cut and fractured with multiple small pieces.

At the site of injury No. 3, the cranial cavity was found wide open in an area of 6 in. x 6 in. Brain matter was found to have drained out of the cranial cavity. The injuries, in the opinion of the doctor, could be caused by garasa and the sharp edges of a bhala. Death, in the opinion of the doctor, was due to shock and hemorrhage as a result of the above injuries.

10. The case of the prosecution is that the injuries to Palaknath were caused by the appellants in the circumstances mentioned above. To substantiate the above allegation, the prosecution examined Mohd. Shamim (PW 1), Bholu Singh (PW 5), Kedarnath Singh (PW 11), Ramdeo Singh (PW 14), Baldeo Singh (PW 16) and Harnandan Singh (PW 17) as eyewitnesses of the occurrence and they supported the prosecution case as given above. Ekram who was also alleged to be an eyewitness of the occurrence was not examined by the prosecution. He was however, examined as court witness. Ekram too gave evidence in support of the prosecution case. The High Court discussed the evidence of these witnesses at great length and found that though they were not disinterested and belonged to the party of Harnandan Singh PW who was inimical to the accused, their evidence was reliable and could be acted upon. After having been taken through the material on record, we find no sufficient ground to disagree with the appraisal of the evidence of the eyewitnesses by the High Court. Harnandan Singh, Kedarnath Singh and Ramdeo Singh had injuries on their persons and as such there can hardly be any manner of doubt regarding their presence at the scene of occurrence. According to Dr. Chaudhary, Harnandan Singh had seven injuries caused with blunt weapon on his

person. One of those injuries was grievous Kedarnath Singh had two incised wounds on his person, while Ramdeo Singh had one incised wound and one punctured wound on his person. These three witnesses as well as the other eyewitnesses gave a substantially consistent version of the occurrence and there appears to be no particular reason as to why their evidence be not accepted.

11. The version of the accused that Palaknath Singh died as a result of an accidental shot by Kedarnath Singh can plainly be not accepted in view of the fact that a number of incised wounds were found on the head of the deceased. Dr. Kamleshwar Singh's evidence is unequivocal on the point that the injuries which were found on the body of the deceased could not have been caused by gun shot. We see no cogent reason to reject this part of the evidence of the doctor. Great stress has been laid by Mr. Mukherji on behalf of the appellants that the brain matter was found at a distance of one foot from the body of the deceased. It is urged that the injuries with garasa and bhala could not have resulted in the formation of a cavity in the skull and the draining out of a portion of the brain matter. So far as this aspect is concerned, we find that the evidence of the eyewitnesses shows that after Palaknath Singh deceased had been given garasa and bhala blows by Rajendra Rai, Dhupa Rai Baleshwar Rai and Ramlakhan Rai and while the deceased was lying down on the ground, Rajendra Rai gave kicks on the head of the deceased as a result of which the brain matter came out. It would thus appear that the brain matter came out of the head after it had been battered by a number of garasa and bhala blows and kicks were given on the head. There seems to be nothing improbable in that. The learned Additional Sessions Judge in rejecting the prosecution version was of the view that garasa and bhala blows by themselves could not have resulted in the draining out of the brain matter. In doing so, he overlooked the fact that after garasa and bhala blows had been given on the head of the deceased, Rajendra Rai gave kicks to the head. The High Court gave convincing reasons to show that the view taken by the trial Court in this respect was clearly unreasonable. We find no cogent ground to disagree with the High Court.

12. It is well-settled that in an appeal under Section 417 of the Code of Criminal Procedure against acquittal, the High Court has full power to review at large the evidence on which the order of acquittal was founded and to reach the conclusion that upon the evidence the order of acquittal should be reversed. No limitation should be placed upon that power unless it be found expressly stated in the Code, but in exercising the power conferred by the Code and before reaching its conclusion upon fact the High Court should give proper weight and consideration to such matters as (1) the view of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any real disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. The High Court should also take into account the reasons given by Court below in support of its order of acquittal and must express its reasons in the judgment which lead in to hold that the acquittal is not justified. Further, if two conclusions can be based upon the evidence on record, the High Court should not disturb the finding of acquittal recorded by the trial Court. After having been taken through the judgments of the trial Judge and the High Court, we find that the learned Judges of the High Court have kept the above principles in view. They have not only cogently repelled the grounds given by the trial Judge in arriving at the conclusion of acquittal but have also shown that the view taken by him was clearly unreasonable. The High Court in the circumstances was fully justified in reversing the judgment of acquittal.

13. So far as Dhuli Rai and Dhorha Rai accused are concerned, we find that no injury was attributed to these two accused in the first information report and it was not stated that they had assaulted any one. As the evidence has been found to be of a partisan nature and no injury or act of assault was

attributed to these two accused, in our opinion, the case against them is not free from reasonable doubt. They would be consequently entitled to the benefit thereof. As regards the remaining seven accused, we find no sufficient reason to interfere with the judgment of the High Court. The appeal in respect of Rajendra Rai, Baleshwar Rai, Dhupa Rai, Ramlakhan Rai, Ramanand Rai, Judagi Rai and Krishna Rai is accordingly dismissed. The appeal is, however, accepted in respect of Dhuli Rai and Dhorha Rai. Their conviction is set aside and they are acquitted.

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