

Dinanath Singh and Others

Vs

State of Bihar

Criminal Appeal No. 97 of 1974

(Syed M. Fazal Ali, A. D. Koshal JJ)

18.01.1980

JUDGMENT

FAZAL ALI, J. –

1. This appeal under Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act is directed against a judgment of the Patna High Court convicting all the five appellants under Section 302/34 and sentencing them to imprisonment for life. The Sessions Judge acquitted all the accused of the charges framed against them. The State filed an appeal before the High Court in which the High Court reversed the order of acquittal passed by the Sessions Judge and convicted the appellant as indicated above. We have been taken through the judgment of the High Court, Session Judge and also the relevant evidence in the case. We are clearly of the opinion after perusing the evidence in the case. We are clearly of the opinion after perusing the evidence that this was not a fit case in which the High Court ought to have interfered with the order of acquittal passed by the Sessions Judge. It is now well settled by long course of decisions of this Court that Where the view taken by the trial Court in acquitting the accused is reasonably possible, even if the High Court were to take a different view on the evidence, that is no ground for reversing the order of acquittal. In the instant case after going through the evidence we feel that the view taken by the Sessions Judge was not only a reasonably possible view but the only reasonable view which could be taken on the evidence produced by the prosecution.

2. According to the prosecution on December 12, 1965 at about 11.30 a.m. the accused persons had a scuffle with the deceased in Lallan Hotel and at the exhortation of accused 3 and 4 Bhagwati Pandey gave a knife injury to the deceased which resulted in his death. Immediately thereafter some of the accused were found running away but could not be apprehended. The solitary eyewitness, who has been examined by the prosecution to prove the actual assault, is PW 10 Bhagwan Singh. To begin with, the evidence of this witness suffers from several infirmities. In the first place the witness was examined by the police as late as December 25, 1965 that is to say 13 days after the occurrence. Far from giving any reasonable explanation for the delay in his examination by the police, the witness admits that although the investigating officers or other police constables were searching for him, he kept himself concealed due to fear for 12 days. The witness does not at all state in his evidence that either at the time of occurrence or sometime later any of the accused gave threat to the witness not to depose against them. Thus the theory of fear appears to be clearly an afterthought. Other witnesses were declared hostile as they appeared to have been gained over as alleged by the prosecution, as a result of which the sheet-anchor of the prosecution was the solitary testimony of PW 10.

3. Mr. Shambhu Prasad Singh, Senior Advocate for the respondent submitted that the evidence of

PW 4 and PW 15. PW 3 undoubtedly says that he found some persons running away and name of Rajnath and Bhagwati Pandey was taken. He, however, admits in para 10 of his evidence that Shri Bhagwan Singh PW 10 had told him at Mahadeva Mor, i.e. the place of occurrence, that the scuffle took place between Rajnath and Vidyadhar Chaubey and Rajnath caught Vidyadhar Chaubey from the front. Thereafter Bhagwati Pandey took out a chhura from his waist and stabbed the deceased. Bhagwan Singh PW 10 however has made no such statement in his evidence. He never claims to have made any such statement to PW 3. Thus PW 3 seems to be more loyal than the king in attributing a statement to Bhagwati Singh which in fact was never made to him, and thus if PW 10 is to be believed then evidence of PW 3 is hearsay and therefore, inadmissible. Similarly PW 4 in his evidence, has admitted that he did not know the deceased but he new Rabindra Bihari Pandey. He merely says that Sri Bhagwan Singh told him at the place of occurrence that Bhagwati Pandey stabbed Vidyadhar Chaubey and Rajnath was holding the deceased while Bhagwati Pandey stabbed him. This also is a false statement because PW 10 does not say that he mentioned this fact to PW 4. On the other hand it appears from the evidence of PW 10 that in spite of the fact that a number of persons assembled at the spot, including an advocate, the supposed eyewitness PW 10 did not disclose the names of the assailants of the deceased to any one of them. In view of this infirmity the trial Court was fully justified in not placing reliance on the solitary eyewitness who concealed himself for 13 days after the occurrence. Reliance was placed by Mr. Singh on the fact that there was some defect in investigation as a result of which PW 10 could not have been examined earlier. Even if there was any defect or lacuna in the investigation, the prosecution cannot get any benefit of the same. Moreover PW 10 himself clearly admits that there was no lapse on the part of the police at all because the police were trying to search him but he concealed himself and did not allow himself to be examined by the police. Taking the totality of the circumstances we are not impressed with the evidence of PW 10. If the evidence of PW 10, the alliterate eyewitness is excluded from consideration than the evidence of other witnesses showing that some of the accused were running away, by itself does not prove participation of the accused in the murderous assault on the deceased. The High Court seems to have reappraised the evidence and accepted the evidence of PW 10 but has tried to consider the effect of the infirmities indicated above.

4. For these reason, therefore, we are satisfied that the learned Sessions Judge in acquitting the appellants took a very reasonable view and the high Court was in error in disturbing the judgment of the trial Court. The appeal is accordingly allowed the conviction and sentence passed on the appellants are set aside and they are acquitted of the charges framed against them. The appellants now be discharged from their bail bonds.

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