

Bansropan Singh and Others

Vs

State of Bihar

Criminal Appeal No. 9 of 1976

(E.S. Venkataramiah R.B. Misra JJ)

06.01.1983

JUDGMENT

VENKATARAMIAH, J.-

1. This is an appeal by special leave against the judgment and order dated August 112, 1975 of the High Court of Patna in Criminal Appeal No. 419 of 1969.
2. The facts of the case are set out in detail in the judgments of the High Court and of the Sessions Court but the few facts which are necessary for the purpose of this appeal are these : The investigation in this case commenced with the receipt of information lodged by Basudeo Kuer (PW 2) with the police stating that at about 11 a.m. on March 7, 1967 while he (PW 2), Jugal Kuer (PW 8), Ram Dhari Kuer (PW 3) and Sukhdeo (deceased) were sitting near the dera of Vias Kuer (PW 9) situated within the jurisdiction of Brahampur Police Station, Sub-Division Buxar, District Shahabad seven persons belonging to village Gayghat, Police Station Brahma pur namely Bansropan Singh (A 1) Bramha Singh (A 7), Lakshmi Narain Singh (A 4), Raghunath Singh (A 9), Radhakishun Singh (A 3), Jhakkar Singh alias Sita Ram Singh (A 2) and Jaigovind Mahto (A 8) came towards them variously armed and attacked them and as a consequence of the said attack Basudeo Kuer (PW 2), Ramdhari Kuer (PW 3), Gulzar Kuer (PW 4) and Jugal Kuer (PW 8) suffered injuries and Sukhdeo Kuer died. After the completion of the investigation the police filed a charge-sheet against the above seven persons who were alleged to have attacked the prosecution witnesses and the deceased and three others namely Surajnath Singh (A 5) and Sham Bihari Singh (A 6) and one Sheo Pujan Singh for offences punishable under Sections 147, 148, 379, 302/149, 307, 324 and 323, IPC. All the accused except Sheo Pujan Singh were committed too take the trial before the Second Additional Sessions Judge, Shahabad. The learned Sessions Judge at the conclusion of the trial held that Lakshmi Narain Singh (A 4) was guilty of offences punishable under Sections 148 and 302, IPC and Radhakishun Singh (A 3), Raghunath Singh (a 9), Bramha Singh (A 7), Jhakkar Singh alias Sita Ram Singh (A 2), Jaigovind Mahto (A 8) and Bansropan Singh (A 1) were guilty of an offence punishable under Section 302/149, IPC and certain other offences. Lakshmi Narain Singh (A 4) was sentenced to imprisonment for life for the offence punishable under Section 302, IPC and each of the other accused referred to above was sentenced to imprisonment for life for the offence punishable under Sections 302/149, IPC. No separate sentences were, however, imposed in any of the said accused regarding the other offences for which they stood convicted. Surajnath Singh (A 5) and Shyam Bihari Singh (A 6) were acquitted of all the charges. Against the judgment of the learned Sessions Judge all the seven accused who were convicted by him filed an appeal before the High Court. The State Government filed an appeal against the acquittal of Surajnath Singh (A 5) and Shyam Bihari Singh (A 6). Both the appeals were heard together by the High Court. The High Court confirmed the conviction of Lakshmi Narain Singh (A 4) under Section 302, IPC and the

sentence of imprisonment for life imposed on him. IT, however, altered the conviction of others from one under Section 302/1439, IPC to Sections 326/149, IPC and each one of them was sentenced to undergo rigorous imprisonment for a period of five years. The conviction of the said accused persons under the other provisions was, however, set aside. The appeal filed by the State Government against Surajnath Singh (a 5) and Shyam Bihari Singh (a 6) was dismissed by the High Court. The seven accused who were convicted by the High Court have filed this appeal.

3. We have been taken through the record of the case by the learned counsel for the parties. Basudeo Kuer (PW 2), as mentioned earlier, was the person who lodged the complaint with the police. He had his land in the vicinity of the dera of Vikas Kuer (PW 9). In his evidence before the court he substantially supported the allegations contained in the first information given by him. He was himself an injured witness. Ramdhari Kuer (PW 3), Gulzar Kuer (PW 4) and Jugal Kuer (PW 8) who were also injured witnesses have stated before the court that they were attacked by a mob of persons including the seven accused who are appellants before us. These witnesses have been believed by the Sessions Court as well as the High Court. Dr. M. A. Haque (PW 11) who examined the injuries of these injured witnesses has given evidence about the injuries that they had sustained at the time of the incident. Dr. M. N. Mishra (PW 13) who held the post-mortem examination of the dead body of the deceased Sukhdeo Kuer was of the opinion that injury 2 on the dead body namely a punctured wound with a clear cut margin 3" 3/4" going into the left pleural cavity and abdominal cavity in between the 7th and 8th ribs on the left side was sufficient in the ordinary course of nature to cause the death of the deceased : that the death of the deceased was due to that injury and that the said injury could have been caused by a bhala. PWs 3 and 8 have stated in their evidence that Lakshmi Singh (A 4) had inflicted the said injury with a bhala on the deceased. Their evidence has been believed by both the learned Sessions Judge and the High Court. While the learned Sessions Judge was of the view that the common object of the seven accused who were convicted and were, therefore, constructively liable for the offence punishable under Section 302/145, the High Court on an appreciation of the evidence of the prosecution witnesses was of the view that the common object of the accused in question was to commit an offence punishable under Section 326, IPC. It accordingly convicted six of them who had not actually inflicted the fatal blow on the deceased for an offence punishable under Section 326/149, IPC. It, however, actually inflicted the fatal injury with a entire material against the appellants herein in the light of the arguments addressed before us we do not find that any other view is possible in the circumstances of the case. There is no reason to reject the evidence of the witnesses relied on by the High Court.

4. The conviction of Lakshmi Narain Singh (A 4) under Section 302, IPC and the sentence of imprisonment for life imposed on him have, therefore, to be confirmed. His appeal is, therefore, dismissed.

5. As regards the other six accused who have been convicted by the High Court under Sections 326/149, IPC, we hold that there is no ground to interfere with their conviction. The High Court had sentenced each of these accused to undergo rigorous imprisonment for a period of five years. Each of them had undergone a little more than two years and six months of rigorous imprisonment before they were enlarged on bail by this Court on September 7, 1976 and they are on bail since that date. Having regard to the circumstances of this case and the period of more than six years which has lapsed from the date on which they were enlarged on bail, we feel that it would meet the ends of justice if the sentence imposed on each of them is reduced to the sentence already undergone by them. This appeal succeeds only to this limited extent.

6. Lakshmi Narain Singh (A 4) who is on bail is directed to surrender and to undergo the

punishment of imprisonment for life imposed on him. The bail-bonds of the other appellants are cancelled.

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