

Shambhoo Missir and Another

Vs

State of Bihar

With

Sarabjit Chamar and Another

Vs

State of Bihar

Criminal Appeal Nos. 133 and 150 of 1979

(Kuldip Singh, Smt. M. S. Fathima Beevi, P. B. Sawant JJ)

24.07.1990

JUDGMENT

P. B. SAWANT, J. -

1. These are two appeals filed by two different sets of accused who were arraigned as offenders for the incident which took place on August 19, 1967. The prosecution case is that at about 8 a.m. on August 19, 1967, one Dhanushdhari Missir (PW 1) who is the informant in the case, left his house along with his father, Rajendra Missir to harvest the crop, his father had engaged some labourers and the crop was, according to him, harvested till about 10 a.m. on that day. At about that hour, his father Rajendra started from the land to return home for his meals and the informant followed his after a little while. On the way home, the informant heard his father's cry "Jan Bachao", and on hearing it he ran towards his father and saw that accused, Shambhoo Missir and Munib Tikulihar (appellants in Appeal No. 133 of 1979) assaulting his father with garasa, and Sarabjit Chamar and Paltan Kurmi (appellants in Appeal No. 150 of 1979) with sticks. Rajendra fell down and thereafter Shambhoo, Munib and Paltan caught hold of his hands and legs and Sarabjit chopped off his nose with a hasua. Hearing the shouts and cries, several persons arrived and the accused fled away. According to the prosecution further, the assault took place on the western flank of the kutchra road running north to south and adjacent to the sugarcane field of the informant. The prosecution case further is that Rajendra named the four accused persons as his assailants to whoever came near him at that time without their questioning him about it. Thereafter, Mukti Missir (PW 12) who is also the son of Rajendra and the brother of the informant and who had also seen the incident, went to the village and brought a cot on which Rajendra was taken to his house. From there, he was taken to Bettiah Hospital on a tyre-cart. On their way to the hospital, at a place called Parsauni about three miles from the place of the incident, Rajendra was placed on a truck for being taken to the hospital. But on the way, he breathed his last. The dead body was taken to the hospital and from there the Sub-Inspector of Police, Bettiah (PW 14) was informed about it. He came to the hospital and recorded the statement of the informant at about 4.30 p.m. He also held inquest. It appears that since the incident had taken place within the jurisdiction of Bagaha Police Station, the Sub-Inspector of that police station (PW 15) also reached the hospital on getting information and took over the

investigation at about 6.10 p.m. from PW 14.

2. On these facts, the four appellants before us were charge-sheeted. The trial court disbelieved the prosecution case against the accused and acquitted them. Against the said acquittal, the State preferred an appeal and the High Court allowed the appeal and convicted Shambhoo and Munib, i.e. appellants in Appeal No. 133 of 1979 for the offence under Section 302 read with Section 34 IPC, and sentenced them to imprisonment for life. The High Court also convicted Sarabjit and Paltan (appellants in Appeal No. 150 of 1979) for the offence under Section 304 Part II read with Section 34 IPC and sentenced them to undergo rigorous imprisonment for seven years each. The High Court further convicted Sarabjit for offence under Section 326 IPC and sentenced him to undergo rigorous imprisonment for five years. His sentence was directed to run concurrently. It is aggrieved by this order of conviction passed by the High Court that the four accused have preferred these two appeals. It appears that during the pendency of these appeals the appellant Munib in Appeal No. 133 of 1979 and the appellant Sarabjit in Appeal No. 150 of 1979 died. The present appeals are pursued by the surviving appellants in each case.

3. At the instance of both the parties, we went through the entire evidence on record and the judgments of both the trial court as well as the High Court. We find that the trial court had given cogent reasons to acquit the accused, and the High Court has interfered with the said order without substantial reasons. The High Court has also failed to deal effectively with the grounds which impelled the trial court to disbelieve the prosecution evidence against the accused.

4. The substance of the prosecution case is that the deceased Rajendra died as a result of the assault in question at about 3 p.m. on the very day of the incident. However, on the basis of the medical evidence, the defence has succeeded in establishing that he had died soon after he left his house at 8 a.m. Dr. Shambhoo Sharan (PW 13) who performed the post-mortem examination of the dead body, has stated both in his report as well as in his deposition, that there was 8 ounces of undigested food in the stomach of the deceased. If as alleged by the prosecution the death had occurred at 3 p.m., no such undigested food would have been found in the stomach at that hour when the food was taken by the deceased before 8 a.m. If this is so, then the whole case of the prosecution must crumble. For this will establish beyond doubt that Rajendra had died very soon after 8 a.m. and none of the so called eye-witnesses had seen the assault on Rajendra. The said fact will also demolish the entire version of the three dying declarations made by the deceased to various prosecution witnesses at three different places. The non-explanation by the prosecution of the undigested food therefore casts serious adverse reflections on the entire investigation in the present case. Unfortunately, the High Court has failed to deal with this very important aspect of the evidence on record which has been highlighted by the trial court. It also strengthens the defence version that the accused have been involved in the present case by the obliging witnesses and unfair investigation.

5. The trial court in addition, has relied on other circumstances to negative the prosecution case. It has pointed out material contradictions in the prosecution evidence which falsifies the prosecution version even otherwise. In the first instance, it is pointed out that there is no evidence on record that the villagers had at that time started harvesting and the deceased's land was harvested on that day either wholly or partly. If that is so, then the entire version of the prosecution that the deceased accompanied by his son, the informant, had gone for harvesting to his field is gravely in doubt. This will also throw doubt on the prosecution story that the informant had accompanied the deceased to the field as alleged and that the deceased had engaged about 7 to 8 labourers for harvesting, on that day. In fact, Mukti Missir (PW 12) the other son of the deceased and the brother of the informant has admitted in his deposition that he did not know till the day he was examined in the court, about

the number of the labourers who were engaged or their names except that of one Jwahir Chamar. Nor could the informant himself give the names of the labourers except that of the said Jwahir. Secondly, it is pointed out by the trial court that Jwahir Chamar (PW 7) could also give the names only of two of the labourers and females but not of others. Thirdly, the Investigating Officer also did not testify to the fact that the deceased's field was harvested on the day of the occurrence. Fourthly, the version of the prosecution that the deceased had made dying declarations at three places, namely, in the field, at his house and at Parsauni and named the accused although nobody asked him about it sounds strange enough. Fifthly, the testimony of the informant himself is far from being above suspicion inasmuch as although it is his case that he had seen the actual assault and at that time there were other witnesses present to witness it, it has come out in his evidence that he did not know from where the other witnesses had come, and that he had no talk with them after the incident. The trial court has successfully shown that the evidence of the other prosecution witnesses - the so called eye-witnesses, namely, PWs 3, 4, 9, 11 and 12 was inconsistent and thoroughly unsatisfactory and they could not have seen the incident. The trial court has given convincing reasons to show that their testimony was false. The trial court has further emphasised the fact that actually there was a dispute between the deceased and one Harbans Missir, as a result of which Harbans Missir had filed a criminal case against the informant and his brother. There was also a criminal case filed against them by their uncle Pardyuman. It was admitted by constable (PW 16) that because of the dispute between the deceased and the said Harbans Missir two constables were deputed to the village for maintaining peace. The Assistant Sub-Inspector (PW 5) has also admitted that because of the dispute between the deceased and Pardyuman, a constable was deputed to maintain peace 20 days prior to the present occurrence. This shows that the deceased had many enemies at the time of the incident. Lastly, the trial court has pointed out that all the prosecution witnesses were interested in the deceased. PWs 1 and 12 were sons of the deceased while PWs 3, 4 and 11 belonged to the party of the prosecution till the deceased were taken to Bettiah hospital. Prosecution witnesses 3 and 4 were arraigned in a proceeding under Section 17 of the Criminal Procedure Code along with the other members of the prosecution party.

6. The High Court did not deal with any of these circumstances pointed out by the trial court and has given no reasons to negative them or to show as to how they were either improper, unjustified or unreasonable. We are, therefore, of the view that the High Court has interfered with the order of acquittal passed by the trial court not only for no substantial reasons but also by ignoring material infirmities in the prosecution case. Hence, we allow the appeals and set aside the order of the High Court convicting and sentencing the accused in both the appeals.

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