

Gurja Bedia and Others

Vs

State of Bihar

Criminal Appeal No. 96 of 1979

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

01.08.1990

JUDGMENT

FATHIMA BEEVI, J.-

1. This appeal by special leave is directed against the judgment and order dated November 9, 1977 of the High Court of Patna where by conviction and sentences of the appellants for the offences under Sections 302, 394 and 34, IPC have been confirmed.
2. The three appellants are brothers. The deceased, Bigna Bedia, lived with his wife Sohagia Bedia and sons in village Karmatola. The incident happened on the night of September 5/6, 1968. Bigna was sleeping along with his son Jhalku in the verandah while Sohagia was sleeping along with Malku on cot. At about midnight, the intruders entered the house by cutting the tatti and attacked Sohagia and her husband. Bigna Bedia sustained fatal injuries and died instantaneously. Sohagia was injured. The intruders took away the utensils and two she-goats kept at one end of the verandah. Jiwan Bedia, the brother of the deceased, on being informed by Jhalku and Lalku about the incident reached the house and after making enquiries, he lodged the first information report at the police station at about 10.00 a. m. in the next morning. The crime was registered against unidentified persons. In the course of the investigation these appellants were arrested and were finally charge-sheeted.
3. There had been ill-feeling between the appellants on the one hand and the deceased and his wife on the other, though the appellants are the sons of the elder sister of Sohagia. The prosecution case is that on account of enmity, the three appellants committed the crime. Sohagia claimed to be an eyewitness. According to this witness, the three appellants were armed. Gurja had a tangi, Birja had a lathi and Mukund had a pharsa. On entering the house Gurja and Birja dealt blows on Sohagia with the weapons they had. She got injured and cried. On hearing the alarm, the deceased was awakened from sleep and when he was trying to get up, all the three appellants left her and killed her husband. PW 14 asserted that Gurja had been flashing a torch and that she had identified all the three appellants. She also stated that she became unconscious and regained consciousness only the next day when the police arrived at the scene. According to the prosecution, PW 14 is the only eyewitness. Lalku and Jhalku who ran to the house of PW 1 had not seen the assailants. The trial court accepted the testimony of PW 14 corroborated by the medical evidence and other circumstances as the basis for the conviction. The High Court agreed with the trial court in holding that the prosecution has succeeded to bring home the guilt of all the appellants.
4. The learned counsel for the appellants urged before us that the testimony of PW 14 suffers from serious infirmities casting reasonable doubt as to the identity of the assailants and the conviction is

therefore unwarranted. The circumstances relied on by the learned counsel is that in the first information report the identity of the accused had not been revealed. It is argued that if PW 14 had identified the assailants, it would have been possible for PW 1 to disclose the identity of the accused at the time the first information report was lodged and the circumstances are such that the statements of PW 14 are inspired and the prosecution has introduced the theory of unconsciousness of PW 14 only in an attempt to explain away the lacuna. To appreciate this contention, it is necessary to scrutinise the first information report in detail. PW 1, Jiwan Bedia, is the full brother of the deceased. He has been residing in village Jawabera which is at a distance of about half a kilometer from Karmatola. Lalku and Jhalku reached his house at about midnight and raised hulla that some thieves had entered their house and killed their father and were also killing their mother. On hearing this, PW 1 got up and went to village Jawabera where he informed his gotias about the incident. Then taking Sawna Bedia, Jhopra Bedia and others along with him he went to the house of Bigna Bedia. There he did not find any thief. On entering the house, he found Bigna Bedia lying dead with bleeding injuries on his head and legs. The wife of Bigna Bedia was also injured with a cut injury on her face. He learnt there from the wife and both the sons of Bigna that 5 or 6 persons had entered the house by cutting the tatti and had inflicted injuries on Bigna and his wife with tangi, bhujali etc. and they also removed the lock and peg and took away utensils and two she-goats from the house. PW 1 then went to the villagers of Karmatola and told them about this incident. PW 1 also contacted the Mukhia of the village Hindebilli and others before going to the police station. PW 1 in narrating the incident in the fard-i-byan stated that he learnt from the wife and sons of the deceased that 5 or 6 persons had entered the house and committed the crime and details could be furnished by the widow and the sons of the deceased.

5. PW 1, no doubt, in cross-examination supported the version of PW 14 that Sohagia was lying unconscious when he reached the house at night and she narrated the incident after regaining consciousness the next day when the police reached there.

6. The statement of PW 1 at the earliest point of time belies the truth of what he has deposed before the court. He had been categorical that he made enquiries with the wife and sons of the deceased before proceeding to the police station and asserted that 5 or 6 unknown persons had committed the crime. It clearly indicates that an attempt had been made by the prosecution to introduce the case of unconsciousness of PW 14 to explain the infirmity. It may be that PW 14 on account of the shock could not have been so eloquent and depressed, but PW 1 had been in the house the whole night and he had contacted all the concerned persons and also made enquiries. The statement in Ex. P-6 that details would be given by the wife and sons who were present in the house also affirms that he could not gather any useful information regarding the identity of the assailants. The courts below have failed to appreciate the evidence of PW 14 in the correct perspective in the light of the clinching evidence in the case. The circumstance that the identity of the assailants was unknown until the police arrived at the scene is clear indication that PW 14 or her children had not identified the assailants at the time of the occurrence. It could be that on account of enmity and ill-will their suspicion has turned against these appellants and inspired by that suspicion, the investigation had been misdirected.

7. We do not therefore consider it safe to sustain the conviction when there is reasonable doubt regarding the participation of the appellants. The benefit of doubt must necessarily go to the appellants.

8. In the result, the appeal is allowed. The convictions and sentences are set aside. The bail bonds shall stand cancelled.

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