

Baleshwar Mandal

Vs

State of Bihar

(M.M.Punchhi, V.N.Khare JJ)

08.08.1997

JUDGMENT

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V.N.KHARE. J.

1. By this appeal, the appellants, who have been found guilty for the offence under Section 302 read with Section 34 of the Indian Penal Code, question the correctness of the judgment rendered by the High Court of Patna, dismissing their appeals and upholding the judgment of the additional Sessions Judge, Bhagalpur in Sessions Trial Case No. 333 of 1982.

2. The prosecution case which has given rise to this appeal is, that on December 3, 1981 at about 2.30 p.m. one Rudan Mandal (PW.11), while getting his work done in his field heard the cry of his nephew Natheshwar Mandal which was coming from the field of one Ekbal Mandal situation to the west on his field. On hearing the cry, Rudan Mandal ran towards that direction raising alarm. When Rudan Mandal arrived near the place of occurrence he witnessed the accused Dasrath Mandal and Baleshwar Mandal assaulting the deceased Natheshwar Mandal with 'Dabiya' and 'Kulhari', respectively. On alarm being raised, the villagers from neighborhood arrived and thereafter both the accused managed to escape from the place of occurrence towards north. Further case was that Kashi Mandal (PW 1), Tarni Mandal (PW.4), Kailash Mandal (PW.2), Tetar Mandal (PW.10) and Bididi Mandal (PW.3) saw the accused cutting the deceased - Natheshwar Mandal died and accused fleeing away after they were being Identified. I.Rajnadan Singh (PW.15) arrived at the place of occurrence at about 4.30 p.m. when he recorded the Fardbayan of PW.11 - Rudan Mandal. The investigating Officer seized the blood stained clothes and earths of place of occurrence and prepared the inquest report and site plan and thereafter recorded the statements of witnesses. The Fardbayan was sent to the Police Station through special messenger and on the basis of Fardbayan, the First Information Report was lodged next day.

3. The Court of Session having found both the accused have committed murder of Natheshwar Mandal, sentenced them for imprisonment of life. The appeal preferred by the appellants was dismissed by the High Court.

4. In this appeal, it was urged on behalf of the appellants that due to the serious lapses on the part of the Investigating Officer (PW.15) in not sending the blood stained clothes and earths seized from the place of occurrence for chemical examination, inasmuch as in not noting down the time of examination of the witnesses in the dairy and further non- examining the appellants, the trial of the appellants was vitiated and the appellant resulting in conviction of appellants was vitiated and the appeal is to be allowed only on this ground.

5. Under Section 172 Cr. P.C. read with Rule 164 of Bihar Police Manual dealing with the investigation, an Investigating Officer investigating a crime is under obligation to record all the day to day proceedings and information in his case diary, and also record the time at which the information was received and the place visited by him, besides the preparation of site plan and other documents. The Investigating Officer is also required to send blood stained clothes and earth seized from the place of occurrence for chemical examination. Failure on the part of the Investigating Officer to comply with the provisions of Section 172 Cr.P.C is a serious lapse on his part resulting in diminishing the value and credibility of his investigation. In this case the Investigating Officer neither entered the time of recording of the statements of the witnesses in the Diary nor did he send the blood stained clothes and earth seized from the place of occurrence for examination by a serologist. The High Court also adversely commented upon the lapses on the part of the Investigating Officer in not complying with the provisions of Code of Criminal Procedure. We, therefore, take it that, in fact, there was serious lapse on the part of the Investigation Officer in not observing the mandate of Section 172 Cr. P.C while investigating the case which has given rise to this appeal. But the question that arises for consideration is, has any prejudice been caused to the accused in the trial by non-observance of rule by the Investigating Officer? The Evidence on record before the Sessions Court and the Appellate Court does not show that due to the lapse on the part of the Investigating Officer in not sending the blood stained Clothes and earth seized from the place of occurrence for chemical examination further not noting down the time of recording the statement of the witnesses in the Diary has resulted in any prejudice to the defence of the accused. In the present case, the place of occurrence and the identity of the deceased are not disputed. Further, the testimony of the eye witnesses which is consistent and does not suffer from infirmity, was believed by both the courts code to the court below. Once the eye witnesses are believed and the courts come to the conclusion that the testimony of the eye witnesses is trustworthy, the lapse on the part of the Investigating Officer in not observing the provisions of Section 172 Cr.P.C. unless some prejudice is shown to have been caused to the accused, will not affect the finding of guilt recorded by the court. Neither before the High Court nor before this Court, it was pointed out in what manner the accused was prejudiced by non- observance of the provisions of Section 172 Cr.P.C. and the rules framed in this regard. We are, therefore, of opinion that judgments of Court below do not suffer on account of omission on the part of Investigating Officer in not sending the earth seized from the place of occurrence for Chemical examination or in not entering the time of recording the statements of witnesses in the Diary.

6. It was then urged that there was a considerable delay in lodging the F.I.R. and the same having not been explained shows that the accused persons had been falsely implicated. In the present case, the occurrence took place at 2.30 p.m. on 3.12.81 and Fardbayan of PW.11, Rudan Mandal was recorded at about 4.30 p.m. at the place of occurrence - just two hours after the occurrence took place. The Fardbayan gave complete and full account of the occurrence and the role of the accused in committing the crime. It has come in the evidence that the Investigating Officer reached Khairpur Bahiyar along with police force at 4.30 p.m. where he recorded the Fardbayan of the informant-Rudan Mandal (PW.11) in the presence of the two eye witnesses (Ex.5). The Investigating Officer thereafter prepared the inquest report and the statements of the witnesses till 10.30 p.m. and the Fardbayan was sent to Naugachis Police Station for registration through a special messenger. The content of the F.I.R. were exactly the same as in the Fardbayan. There was no discrepancy between the Fardbayan and the F.I.R. The very fact that the occurrence took place at 2.30 p.m. on 3-12-81 and the fardbayan recorded at 4.30 p.m. itself shows the promptness on the part of the prosecution in setting the criminal law in motion. Therefore, the contention of the appellants that there was a delay in lodging the F.I.R which makes the prosecution story unbelievable has to be rejected.

7. Lastly, it was urged that in the inquest report, prepared by the Investigating Officer after the Fardbayan was record, the names of the accused persons were not mentioned therein and, as such, it shows that the time when the inquest report was prepared it was not known as to who were the accused persons and the Fardbayan was drawn up later on at the instance of the prosecution witnesses in which the accused were falsely implicated. This argument was neither raised during the trial nor before the High Court. The inquest report prepared by the Investigating Officer finds place in the paper book at page 47. This inquest report indicates the injuries found on the dead body of the deceased duly witnessed by two witnesses. There is no column in the said inquest report against which the Investigating Officer is required to mention the names of accused. It may be the said report is not a complete document. It is, therefore, not safe to entertain this argument in this appeal specially when no such argument was advanced during the trial or before the High Court. We accordingly refrain ourselves from going into this question raised for the first time in this appeal.

8. For the foregoing reasons, we do not find any merit in this appeal. The appeal is accordingly dismissed.