

State of Bihar

Vs

Bishwanth Rai

(G.T. Nanavati, S.P. Kurdukar JJ)

03.09.1997

JUDGMENT

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NANAVATI, J.

1. These three appeals, first two by the State of Bihar and the other by injured witness Ramesh Prasad Thakur and Shanti Devi widow of deceased, Bacha Thakur, are directed against the judgment and order of acquittal dated 4th September, 1985 passed by the Patna High Court in Criminal appeal Nos. 506 and 569 of 1981.
2. As many as 16 accused were tried for the murder of Bacha Thakur and for causing injuries to Ram Prasad Thakur and Chandra Mohan Thakur. The trial court acquitted accused Nos. 13 to 16. It held that the other accused had formed an unlawful assembly and in prosecution of their common object, caused the death of Bacha Thakur. Ram Chandra Singh, one of the respondents in these appeals was convicted under Section 302 IPC and others were convicted under Section 302 read with Section 149 IPC. They were also convicted under Section 323 read with Section 149 IPC. Accused Nos. 2 to 12 challenged their conviction and sentence by preferring Criminal Appeal No. 506 of 1981 and Ram Chandra Singh did so by preferring a separate appeal, viz., Criminal Appeal No. 5569 of 1981 in the Patna High Court. Both the appeals were heard together and disposed of by a common judgment. The High Court allowed both the appeals and acquitted the accused.
3. The State feeling aggrieved applied for special leave of this court to appeal against all the 12 accused who were convicted by the trial court but acquitted by the High Court. This court, however, granted leave to appeal against accused No. 1 only. Injured witness, Ramesh Prasad Thakur and Shanti Devi, widow of deceased Bacha Thakur have filed Criminal Appeal No. 393 of 1986, with leave of this court against the acquittal of accused No. 1, Ram Chandra Singh only.
4. In order to prove its case, the prosecution had examined 8 eye-witnesses. The trial court found them reliable but though their evidence was consistent, on reappreciation of the entire evidence, the High Court considered it unsafe to rely upon their evidence. It held that: (i) their evidence is not consistent with the medical evidence regarding the injury caused to the deceased; (ii) all eye-witnesses belong to village Patahi which is at a distance of 3 kms. From Muzaffarpur town where the incident took place and their explanation for their presence near the place of occurrence is not convincing; (iii) the fard-bayan though stated to have been recorded at 11.30 p.m. was possibly not recorded till 2.00 on the next day; and (iv) the eye-witnesses have suppressed the real manner in which the incident took place as they have failed to explain how a serious injury was received by one of the accused, Ram Nath Prasad Gupta. The learned counsel for the appellants challenged the finding recorded by the High Court that the fard-bayan of injured witness, Ramesh Prasad Singh

was not recorded till 2.00 p.m. on the next day, as incorrect. On scrutiny of the evidence of Ram Jiwan Singh (PW-13), Sub-Inspector of Police who had recorded the fard- bayan, the Deputy Superintendent of Police (PW-16) and the Superintendent of Police (DW-1) and also the Injury Certificate (Exh.4) of Ramesh Prasad Thakur and the fard-bayan (Exh.A) of accused, Ram Nath Gupta @ Mohan Prasad Gupta, we find that the fard-bayan of injured witness, Ramesh Prasad Thakur was really recorded at about 11.30 p.m. on 24.5.1977. The fard-bayan which was recorded between 8.00 a.m. and 2.00 p.m. on 25.5.1977 was really of accused, Ram Nath. The finding recorded by the High Court is thus clearly wrong. However, we find no substance in the other contentions raised by the learned counsel for the appellants. It was submitted that the evidence of eye-witnesses being consistent, ought to have been accepted by the High Court. What the High Court has pointed out is that though the evidence of the eye-witnesses appears to be consistent inter-se, is not consistent with the medical evidence and that creates a doubt regarding the real manner in which the incident had taken place. Even though the eye- witnesses have deposed that two shots were fired by accused Ram Chandra Singh and both had caused injuries to the deceased, the evidence of the doctor is that they were possibly caused by only one shot. All the eye-witnesses have stated that accused Ram Chandra Singh had fired two shots from his revolver from a distance of about 6 to 9 feet. The medical evidence shows that there was blackening around the wounds. This circumstance indicated that in all probability, the injuries were caused to the deceased with a different type of weapon. As regards the injuries of PW-4 Chandra Mohan, the eye-witnesses have stated that they were caused by three of the accused with pharsas and lathis but the medical evidence discloses that he had not received a single injury which could have been caused by a pharsa. Realising this inconsistency, all the witnesses have made an identical improvement in their evidence by stating that he was assaulted by the accused Chandresh Rai with back portion of his pharsa. Thus they have made a deliberate attempt to change their version to make it consistent with the medical evidence. Moreover, as rightly observed by the High Court, all the eye-witnesses are residents of village Patahi and they belong to the rival political party. So also, as rightly submitted by the learned counsel for the respondents, if a mob of as many as 60 to 100 people had attacked the deceased and the persons with him, then others could not have escaped unhurt and the two injured would have received more injuries. The two injured had received three injuries each but they were minor injuries. None of them was caused by a weapon with a sharp edge.

5. The High Court after taking into consideration all these aspects found it unsafe to rely upon the evidence of eye- witnesses. Once it found that the eye-witnesses had not given the correct account of the manner in which the incident had taken place, the High Court was justified in discarding their evidence even though it was otherwise consistent. The learned counsel of the appellants could not point out any infirmity in the other findings recorded by the High Court.

6. We, therefore, see no reason to interfere with the order of acquittal passed by the High Court and accordingly dismiss these appeals. Bail bonds are ordered to be cancelled.