

# SUPREME COURT OF INDIA

Sumesh Lal

Vs.

State of Bihar

CrI.A.Nos.181-182 of 2000

(N. Santosh Hegde and Doraiswamy Raju JJ.)

04.02.2002

## JUDGEMENT

### **Santosh Hegde, J.:-**

1. The appellants in these two appeals were accused Nos. 1, 2 and 5 in the Court of VI Additional Sessions Judge, at Sasaram in Sessions Trial No. 356 of 1991. Originally, along with the appellants, two other persons were charged for an offence under S. 396 and 436, IPC as also under S. 27 of the Arms Act, and all the said accused persons were sentenced to life imprisonment under S. 396, IPC, for 10 years under S. 436 read with 34, IPC and for 5 years under S. 27 of the Arms Act, and the sentences were directed to run concurrently. During the course of the trial, learned Sessions Judge felt that there was sufficient material to try 3 other persons, namely, Brij Lal, Parash Singh and Hari Shankar Singh, accordingly invoking the provisions of S. 319 of the Cr. P.C. They were also directed to face trial under the abovesaid charges. The prosecution case in brief is that on the intervening night of 27th and 28th May, 1990, the appellants along with other named accused persons and some others barged into the house of Kapil Muni Singh with an intention of causing dacoity and in the said process, caused the death of Kapil Muni Singh and his son Sheo Mandir Singh by assaulting them and ultimately setting fire to the Dalan in which the deceased were sleeping. On receiving a message of the crime, the Investigating Officer, Narendra Paswan, PW-7, who was then the Sub-Inspector of Police in the Police Station, Kargahar, came to the spot and recorded the complaint made by Urmila Devi, wife of deceased Sheo Mandir Singh at about 3.30 or 4 in the morning of 28-5-1990 which is marked as Ex. 1 and thereafter proceeded to hold the spot Mahazar. In Ex. 1, the names of A-1 to A-5 were specifically mentioned while others' names were not mentioned. After investigation, as stated above, a charge-sheet as against A-1 to A-5 was filed for the offences already referred to hereinabove and thereafter the Court on its own invoking the power under S. 319 included A-6 to A-8 as the persons against whom there was material to make them face trial. The prosecution during the course of trial, has relied upon the evidence of PW-6, wife of the deceased Sheo Mandir Singh as the sole eye-witness to the incident while it relied upon PW-1, Devender Singh, the brother of the deceased Kapil Muni Singh and Ram Charitra Paswan, PW-5 among others as corroborating witnesses. After considering the evidence on record, the trial Court placing

reliance on the evidence of PW-6 convicted A-1 to A-5 of the offences stated above and acquitted A-6 to A-8. In this process, though the trial Court relied upon the evidence of PW-1, Deoraj Singh and Ram Charitra Paswan in regard to the involvement of A-1 to A-5 did not accept the same evidence in regard to A-6 to A-8. It also relied on the fact that some of the accused persons were absconding and accordingly based its conviction. The appeal filed against the said judgment by the convicted accused persons came to be dismissed by the High Court of Judicature at Patna in Criminal Appeal No. 335/94 confirming the conviction and sentence imposed on these accused.

2. From amongst the 5 convicted accused persons, only 3 of them have chosen to prefer appeal; they are A-1 Bal Keshwar Lal, A-4 Jiut Lal (who are appellants in Cri. A. No. 182/2000) and A-5 Sumesh Lal (who is appellant in Cri. A. No. 181/2000).

3. We have heard Mr. Abhay Prakash Sahay; learned counsel for appellant in Cri. A. No. 181/2000 and Ms. Minakshi Vij, learned counsel appearing as an amicus curiae in Cri. A. No.182/2000. It was contended on behalf of the appellants that the Courts below erred in placing reliance on the evidence led on behalf of the prosecution inasmuch as the incident in question had occurred in the dead of night without there being any light to identify the assailants and the appellants as well as the other convicted accused persons being the neighbours of Kapil Muni Singh, the deceased, and who were not on good terms, were falsely implicated in the murder because of some ill-will between them. It was also stated that on the very same day, there was a dacoity in the village which took place not only in the house of the deceased but also in the house of the convicted accused persons and the prosecution witnesses though have not witnessed the incident in question have falsely implicated almost all members of the family though some of the accused persons were not even residing in the same village. It is also contended that there is material to show that PW-6 could not have identified the accused persons and that she admittedly being a person who is mentally disabled, could not have identified these assailants either at the time of the incident or at the time of the trial and on her own could not have given the evidence without she being tutored to say so. It is also contended that the first information report reached the Court only on 29-5-1990 i.e. nearly a day and a half after the incident and that there has been no explanation whatsoever in regard to this delay. It was further contended that the superiors of PW-7 had initiated departmental proceedings against him on the ground that he had not conducted proper investigation in this case, therefore, the Courts below could not have placed any reliance on the prosecution case to base a conviction.

4. We have perused the judgments of the Courts below and heard the learned counsel. Assuming for argument's sake that the evidence of all other prosecution witnesses who support the prosecution case, is doubtful in view of the contradictions found in their evidence, in our opinion, if the evidence of PW-6 is acceptable as competent and truthful, there is no need to look for any other evidence to prove the guilt of the convicted accused persons. The challenge to PW-6's evidence was considered by the learned Sessions Judge who in the course of his evidence, stated that she has identified these 5 convicted accused persons clearly both in the complaint as well as in her evidence before the Court. She had stated that the said 5 accused persons with fire-arms, namely, Katta and pistol along with

some other unknown criminals, about 10 in numbers, raided her house and set the Dalan ablaze in which her father-in-law and husband were sleeping and they were charred to death. She stated in her examination that she could identify the accused persons in view of the flames of fire that were glowing pursuant to burning of Dalan. She had also stated that when her father-in-law asked her for some water before he died, she was prevented from doing so by the accused persons by sarcastically stating that they would rather urinate in his mouth. She had also stated that there was earlier misunderstanding between the convicted accused persons and her family due to the former entertaining criminals in their house. Learned Judge has noted in the course of his judgment that though searching cross-examination was made of this witness, nothing was pointed out to falsify her evidence. He has also discarded the defence charge that the witness was in any way shaky during the course of her examination. Certain trivial discrepancies in her evidence like the existence of enmity between her family and the family of the convicted accused was rightly ignored by the trial Court by holding that they are not material contradictions. He noted the fact that PW-6 had admitted in her evidence that one or two months after the incident in question that she did lose her mental balance but she was treated at the hospital at Ranchi. In this background the learned Sessions Judge chose to place reliance on her evidence. The High Court has concurred with this conclusion of the learned Sessions Judge. Before us the learned counsel appearing for the appellants also challenged her evidence on the ground that she was a person of unstable mind, admittedly having suffered certain mental illness, hence, her evidence could not be accepted. We are unable to accept this argument. It is possible that having seen the gruesome incident in which she lost her husband and father-in-law, she could have suffered a shock which might have given rise to certain psychological problems and this could have happened only after the incident in question but after that it has come in evidence that after she was treated in the hospital, she was relieved of any such problem. Having perused the evidence both in-chief as well as in cross, we have no hesitation in accepting the finding of the learned Sessions Judge that she was competent to give evidence in the Court and that her evidence is trustworthy enough to be relied upon and in spite of the lengthy cross-examination, nothing material to discard her evidence has been made out. The next ground of attack on the evidence of PW-6 is that she could not have identified the accused persons in the dead of night but then it is seen from her evidence that she had known these accused persons, they being her neighbours, and she had seen their faces in the light of burning flames of Dalan as also she had heard them when she was prevented from providing water to her father-in-law. Therefore, there was every opportunity for PW-6 to identify at least those accused whom she had named in her complaint. The inconsistencies pointed out in her examination are, in our opinion, and as pointed out by the learned Sessions Judge are trivial and are not so grave or substantial as to create any doubt in our minds to discard her evidence.

5. Having come to the conclusion that the evidence of PW-6 is reliable and trustworthy and having taken note of the fact that the learned Sessions Judge who had an opportunity of seeing the witness in the box and who chose to accept her evidence which was confirmed by the High Court, we do not find any reasons to reject the same. In our opinion, it is not necessary for us to go into any other material produced by the prosecution to confirm this conviction and sentence since we are in unison with the courts below that the evidence of

PW-6 is trustworthy-to be relied upon - which is sufficient to dismiss these appeals. Accordingly, these appeals fails and the same are hereby dismissed.

Appeal dismissed.