

SUPREME COURT OF INDIA

Pramod Mahto

Vs.

State of Bihar

(N S Hegde and B P Singh JJ.)

31.07.2002

ORDER

1. The appellant herein and two others namely Bechan Paswan and Bibhakar Mahto were charged for offence punishable under Section 302/34 IPC for having committed murder of Devendra Mahto on 17th May 1984 at-about 7.30 p.m. in village called Rasulpur.
2. Since Bibhakar Mahto was minor his trial was separated and it is on record that he was subsequently acquitted from the charge against him. Learned 7th additional sessions judge, Monger who tried the case of the appellant and Bechan Paswan, found both of them guilty of the offence charged against them and convicted the appellant under Section 302 and sentenced him to undergo life imprisonment. He also convicted the said Bechan Paswan under Section 302 read with Section 34 and sentenced him to undergo life imprisonment. In appeal the High Court allowed the appeal of Bechan Paswan and acquitted him of the charge while the appellant was found guilty of the offence charged against him and the sentence was affirmed. It is against the judgment of the High Court, the appellant is before us.
3. Mr. Gaurav Aggarwal, learned counsel appearing for the appellant submitted that the evidence of eye witnesses PWs 1, 2 and 5 is wholly artificial and could not be relied on. He also submitted that from the material on record it is clear that at the time of incident it was dark and there was no light at the place of incident. Therefore, the identification allegedly made by the said eye witnesses also cannot be relied upon. He further submitted the names of P.Ws. 1 and 5 do not find place in FIR and there is also inordinate delay in recording the statement of the witness. On these basis he argued that their evidence should be rejected.
4. We have heard the learned counsel for the appellant and also Mr. Saket Singh, learned counsel for the state and we have gone through the judgments of the courts below and also the records of the case. Having perused the same, we are of the considered opinion that the courts below have rightly appreciated the material on record and have found the appellant guilty therefore we find no reason whatsoever to interfere with the findings of the two courts below.
5. Mr. Gaurav Aggarwal, then relying upon the judgment of this Court in State of U.P. and Another v. Jaggo alias Jagdish and Ors., , submitted that since the prosecution has failed to

examine the owner of the shop Mansoor Alam who if examined would have unfolded truly the facts leading to the death of Devender, an adverse inference should be drawn against the prosecution for his non-examination. But we see from the records that so far as Mansoor Alam is concerned, though his previous statement was recorded, he was not available to be examined in the court. Even though non-bailable warrant was issued at the instance of the appellant for production of the said Mansoor Alam but the said warrants could not be executed. We also notice the facts that no suggestion has been made to the investigating officer that he has deliberately not got the execution of non-bailable warrant so as to prevent the witness from appearing in the court. In these circumstances we do not agree with the learned counsel on this point so as to draw any adverse inference for the non-examination of this person. Learned counsel relying on the said case of Jaggo (supra) as also another case of the judgment of this Court in Ganesh Bhavan Patil and Another v. State of Maharashtra, submitted that non-mentioning of the names of PWs 1 and 5 in the FIR and delay in examining the said witnesses makes the presence of these eye witnesses doubtful. It is seen from the complaint that it does not contain the names of the eye witnesses apart from PW2. But then complaint refers to other unnamed witness as being present. That apart it is also seen from the records that the investigation in this case started only on the mid day of 18th and it is only in the course of investigation the IO came to know that PWs 1 and 5 are also eye witnesses. In these circumstances, we cannot draw any adverse inference merely because the names of PWs 1 and 5 are not mentioned in the FIR or on the fact that their statements were recorded belatedly.

6. For these reasons we find no merit in this appeal. The appeal fails and is accordingly dismissed.