

CASE NO.:
Writ Petition (crl.) 1621 of 2005

PETITIONER:
Ramjee Rai & Ors

RESPONDENT:
State of Bihar

DATE OF JUDGMENT: 24/08/2006

BENCH:
S.B. Sinha & Dalveer Bhandari

JUDGMENT:
J U D G M E N T
S.B. SINHA, J.

The Appellants herein with Bharat Rai and Ganeshi Rai (since deceased) were prosecuted for commission of the offence of causing intentional death to one Baijnath Singh and disappearance of his dead body.

A First Information Report was lodged by Rajnath Singh (PW-3), brother of Baijnath Singh (deceased) alleging that on 21.8.1980 at about 4 in the afternoon he along with him was at their plot of land situated by the side of a Dhab in the north of village Dudhiyan where they had gone for cutting Masuria Crops. The Appellants together with Bharat Rai and Ganeshi Rai, variously armed, took them forcibly on a boat to the Dhab letting the boat moving freely. After the boat had proceeded some distance, they started assaulting the deceased. He, however, finding an opportunity in this behalf jumped from the boat and started swimming towards the higher ground, shouting and crying for help. Baijnath Singh died as a result of the assault and his dead body was carried away in their boat. It was stated that the occurrence had been seen by Satyanand Singh (PW-1), Kameshwar Singh (PW-2) and Pancham Singh (PW-5). It was alleged that in view of the flood conditions as also due to night fall, the report could not be lodged in the night. As regards motive for commission of the said offence, the informant alleged that the deceased had a piece of land near the house of the accused and they repeatedly used to pluck the maize and cut away the Masuria crop grown on that land as a result whereof the parties had been quarreling with each other. Allegedly, Baijnath Singh had also apprehended the accused cutting away his Masuria crop wherefor he had abused them in retaliation. The accused persons are said to be belonging to one family and they had been indulging in commission of theft and dacoity. The murder of Baijnath Singh was said to have committed in retaliation of the said incident. In the First Information Report, two accused were said to be carrying country made pistols while the rest were armed with gandasas, lathies and spears. The dead body was recovered after five days, i.e., 26.8.1980. The dead body was first seen by the Chowkidar (PW-4) of the village. He reported to the informant thereabout. He came and also identified the dead body. All the accused persons were convicted for commission of an offence under Section 302/34 read with Section 201 of the Indian Penal Code and sentenced to undergo imprisonment for life under Section 302/34 and five years rigorous imprisonment under Section 201 of the Indian Penal Code by a judgment and order dated 31.7.1987. An appeal preferred thereagainst by the accused has been dismissed by the High Court by the impugned judgment.

Mr. P.S. Mishra, learned senior counsel appearing on behalf of the Appellants, submitted that the learned Sessions Judge as also the High

Court committed a serious error in holding that the dead body had been identified to be that of the deceased. According to the learned counsel, keeping in view the post mortem report which clearly showed that only bones were visible, it could not have been identified and in that view of the matter the prosecution case cannot be said to have been proved.

It was further submitted that some of the independent witnesses who could throw light on the prosecution case had deliberately been withheld by the prosecution as a result whereof the Appellants suffered grave prejudice. Non-examination of independent and uninterested witnesses by the prosecution, having regard to the fact of the case, Mr. Mishra would submit, was imperative. Reliance in this behalf has been placed on Sahaj Ram and Others v. The State of U.P. [(1973) 1 SCC 490] and Habeeb Mohammad v. The State of Hyderabad 1954 SCR 475].

The High Court, it was urged, committed a serious error in passing the impugned judgment insofar as it failed to take into consideration the fact that the deceased was having criminal background and, thus, could have been done to death by others. The Appellants, it was contended, have been implicated because of the enmity. Inconsistency in depositions of PWs, it was submitted, had also not been taken into consideration by the courts below. It also argued that the Trial Court as also the High Court ought to have considered individual overt acts on the part of each of the Appellants.

Ms. Kirti Sinha, learned counsel appearing on behalf of the State, on the other hand, submitted that the learned Sessions Judge and the High Court rightly convicted the Appellants herein in view of the evidence of the eye witnesses to the occurrence, viz., PWs. 1, 2, 3 and 5.

The learned Trial Judge in his judgment inter alia held:

- (i) The injuries inflicted on the body of the deceased were homicidal in nature.
- (ii) The prosecution has been able to show that the dead body of Baijnath Singh had been identified.
- (iii) Although PW-3 was inimically disposed of towards the accused, it cannot be said that he had falsely implicated the Appellants.
- (iv) The prosecution has assigned sufficient reasons for non-examination of the witnesses named in the chargesheet.
- (v) Evidences adduced on behalf of the prosecution witnesses being consistent, the prosecution case has been proved.

The High Court in its judgment opined:

- (i) The prosecution has brought on records sufficient evidences to prove that the assailants had arrived on a boat, assaulted the deceased and carried away his dead body.
- (ii) The prosecution witnesses being closely associated with the deceased, it was not difficult for them to identify the corpse.
- (iii) Ocular evidences being consistent in nature, the prosecution has been able to prove the charges as against the Appellants.

PW-3 is the informant. The First Information Report was lodged at the earliest possible opportunity. The informant categorically stated that he not only saw the deceased being assaulted, he at the first opportunity jumped from the boat, swam across the Dhab and somehow escaped from the clutches of the Appellants. He categorically stated that he had gone to Akilpur, which was an out-post but the Officer-Incharge was not present there thence. He thereafter returned to his house and in the next morning came to the Danapur Police Station on a boat.

It is not in dispute that the dead body of Baijnath Singh was first seen by Ganga Paswan, who was a chowkidar. He was also resident of

same village. He knew the deceased from his childhood. He categorically stated that the deceased, on his right hand side of the forehead had patch of grey hair. A one paisa coin was also tied against his waist. He had thick mustache and same resembled with that of Baijnath Singh. He identified the dead body seeing his face and other features. The dead body was found in a field of maize situate in Mauza Banwarichak. It was at a distance of about 1.5 kms. from the place of occurrence. According to him, river Ganges flows at a distance of 3 kms. South from that field and about 20 kms. from the West of the said field. From the place where the dead body was found, river Ganges flows at a distance of 1.5 miles East. The place has been completely surrounded by the said river. According to him, crops had also been sown in the field.

The dead body was also noticed by Ram Swarup Singh. The informant (PW-3) was informed thereabout. He also went to the spot and identified the dead body as that of his brother. The police authorities were also informed in regard thereto.

Another witness who was examined by the prosecution was Satyanand Singh (PW-1). He was also an eye-witness. He was sitting on a Machan. He not only named the accused persons having assaulted Baijnath Singh, but also stated that he had seen the informant escaping from the clutches of the accused.

PW-2 another eye-witness is Kameshwar Singh. He was also in his maize field at the time of occurrence. He corroborated the statements of PWs 1 and 3. He is again an eye-witness. He also identified the dead body. In his deposition, he stated:

"I told the police that I was in my field on the date of incident. I saw Baijnath Singh, Rajnath Singh in their field before the coming of the accused. There was sickle in their hand at that time. At the time when Rajnath Singh jumped from the boat there was nothing in his hand. The field of Rajnath Singh in Dhudhiya village is at a distance of 2-4-10 Laggi from the Basti."

He also stated that despite cries nobody from the village came in view of the water. They have gone to their respective fields by wading through risen water.

One Pancham Singh was examined as PW-5. He also was an eye-witness. He testified having seen Baijnath Singh was being assaulted. According to him, as the deceased stopped shouting, he realized that he was no more.

The learned Sessions Judge had placed implicit reliance on the testimonies of these witnesses opining:

"Therefore, in view of the discussions made above, I find that all the eye-witnesses are quite competent and reliable and their evidence coupled with the evidence of Doctor (PW.6) and I.O. (PW.7) fully establishes that on the alleged date all the accused persons armed with lathi, Bhala, Gandasa, pistol came on boat, in the field of the informant and forcibly picked up the informant and Baijnath Singh on boat, and then went towards Dhab and assaulted Baijnath Singh with their respective weapons, causing his death."

The High Court also in its impugned judgment discussed the evidence of the eye-witnesses and held:

"We are unable to accept the submission and on a careful examination of the written report and the depositions of all the witnesses, including the informant, P.W.3, we find no inconsistency in those statements. In the written report, it is stated that while the informant and his brother Baijnath Singh were cutting Masuriya crop on their plot of land, the accused arrived with variously armed and threatening them with their arms, they forcibly took him and his brother to the Dhab on a boat. We are unable to read to statement in the written report to mean that the accused had come to the land, where the informant was there with his brother, on foot and they took them along on foot upto Dhab where they boarded the boat that was waiting there. The statement in the written report on a careful reading plainly means that the accused arrived there on a boat and forcibly picked up the informant and his brother on it and took them in the direction of the Dhab. We, thus, find no inconsistency, much less, any contradiction in the prosecution story as stated in the written report and as deposed before the court by the witnesses."

In regard to the identification of the dead body, the learned Sessions Judge held that the dead body was that of Baijnath Singh which had duly been proved by PWs 3 and 4.

We may at this juncture notice the medical evidence.

Dr. Sheonandan Barunwal, who examined himself as PW-6, proved the post mortem report. The dead body before him had been identified as that of Baijnath Singh by the constable, Rajnath Singh and the Chowkidar. The age of the deceased was said to be 35 years. The clothes were having a ganji, dhoti and a small chadar. The body was in a decomposed condition. Rigor mortis was absent. The body had three cut wounds. It was categorically stated that the hairs of scalp were intact. The post mortem report does not suggest that there was no mark on face or identification marks were totally absent. In his opinion, the death might have been due to amputation of hands. He categorically stated that the dead body was thrown in water and the soft parts were eaten away by the fish. According to him, it was difficult to assess the period past since death. But, according to him, it may be approximately 10 days.

The Appellants did not even suggest that the deceased did not have the special features whereabout PW-4 made categorical statement. His age at the time of death had also not been disputed. The Investigating Officer Ram Naresh Shukla (PW-7) also stated in categorical terms that the entire flesh below the stomach had been eaten away by the animals and the dead body had been identified by Chowkidar Ram Swarup Singh and Raghunandan Paswan, Ganga Paswan and Kameshwar Singh of Banwarichak stating that the same was that of Baijnath Singh. Even the age of the deceased was not disputed.

It is now a trite law that corpus delicti need not be proved. Discovery of the dead body is a rule of caution and not of law. In the event, there exists strong circumstantial evidence, a judgment of conviction can be recorded even in absence of the dead body. [See Rama

Nand and Others v. State of Himachal Pradesh, (1981) 1 SCC 511].

In Ram Gulam Chaudhary and Others v. State of Bihar [(2001) 8 SCC 311], this Court noticed the decision in Rama Nand (supra) and opined:

"There can be no dispute with the proposition of law set out above. As is set out in the various authorities (referred to above), it is not at all necessary for a conviction for murder that the corpus delicti be found. Undoubtedly, in the absence of the corpus delicti there must be direct or circumstantial evidence leading to the inescapable conclusion that the person has died and that the accused are the persons who had committed the murder\005"

What was, therefore, necessary for the courts below to arrive at a finding of guilt as against the Appellants in regard to their involvement in the crime. It is not a case where the dead body could not be identified. There had been sufficient materials placed by the prosecution to bring home the said fact.

So far as submission of Mr. Mishra that some independent witnesses have not been examined is concerned, from the records it may be noticed that it would appear that the public prosecutor categorically stated before the learned Sessions Judge that some of the witnesses were inimically disposed of towards the informant. The Appellants have not brought on record any material to show that the aforementioned stand taken by the prosecution was not correct. It is true that ordinarily the prosecution should examine all witnesses whose names have been disclosed in the chargesheet; but, then the same cannot be said to be a rule having universal application. Each case has to be considered on its own facts.

It is now well-settled that what is necessary for proving the prosecution case is not the quantity but quality of the evidence. The court cannot overlook the changes in the value system in the society. When an offence is committed in a village owing to land dispute, the independent witnesses may not come forward.

In Sheelam Ramesh and Another v. State of A.P. [(1999) 8 SCC 369], this Court opined:

"\005Courts are concerned with quality and not with quantity of evidence and in a criminal trial, conviction can be based on the sole evidence of a witness if it inspires confidence."

Yet again in Pohlu v. State of Haryana [(2005) 10 SCC 196], this Court opined:

"\005It is true that it is not necessary for the prosecution to multiply witnesses, if it prefers to rely upon the evidence of the eyewitnesses examined by it, which it considers sufficient to prove the case of the prosecution. However, the intrinsic worth of the testimony of the witnesses examined by the prosecution has to be assessed by the court. If their evidence appears to be truthful, reliable and acceptable, the mere fact that some other witnesses have not been examined, will not

adversely affect the case of the prosecution\005"

In Balram Singh v. State of Punjab, [(2003) 11 SCC 286], this Court opined:

"The appellants' contention that the prosecution has relied only on interested evidence of PWs 1 and 2 and has not examined the other independent witnesses who were present or for that matter the non-examination of another son of the deceased by the name of Jasbir Singh should give rise to an adverse inference, cannot also be accepted because so far as Jasbir Singh is concerned, though there is some material on record to show that he was examined by a doctor on the night of the incident, there is no material to show that he was actually involved in this fight. His name is not mentioned in the FIR also, therefore if the prosecution has thought it not necessary to examine this witness, we do not think an adverse inference could be drawn on the basis of this non-examination of the said Jasbir Singh. This view of ours also holds good in regard to the so-called other independent witnesses who were present at the time of the incident since in a family feud like this it is rare that an independent witness would come forward to give evidence."

Yet again in State of U.P. v. Anil Singh [1988 Supp SCC 686], it was observed:

"Of late this Court has been receiving a large number of appeals against acquittals and in the great majority of cases, the prosecution version is rejected either for want of corroboration by independent witnesses, or for some falsehood stated or embroidery added by witnesses. In some cases, the entire prosecution case is doubted for not examining all witnesses to the occurrence. We have recently pointed out the indifferent attitude of the public in the investigation of crimes. The public are generally reluctant to come forward to depose before the court. It is, therefore, not correct to reject the prosecution version only on the ground that all witnesses to the occurrence have not been examined. Nor it is proper to reject the case for want of corroboration by independent witnesses if the case made out is otherwise true and acceptable."

In Habeeb Mohammad (supra), whereupon Mr. Mishra has placed strong reliance, this Court stated that prosecution was not bound to call all available witnesses irrespective of consideration of number of reliability, witnesses essential to the unfolding of the narrative on which the prosecution was based must be called by the prosecution, whether in the result the effect of their testimony is against the case of the prosecution.

However, in that case the Appellant there was a Subedar. The allegation against him was that he ordered the police to fire. The Deputy Commissioner of Police who had accompanied the Appellant and had witnessed the occurrence had not been examined by the prosecution. It

was in that fact situation held that the prosecution should have examined the said witness. It was held that the Appellant was considerably prejudiced by the omission on the part of the prosecution to examine the said officer and other officers in the circumstances of the said case and the conviction of the Appellant merely based on the testimony of the police jamedar cannot be said to have been arrived at after a fair trial, particularly, when no satisfactory explanation has been given or even attempted for this omission.

In Sahaj Ram (supra) again, relied by Mr. Mishra, there was a group rivalry. In that case, the Court found serious mistakes committed by the Sessions Judge as also the High Court in appreciating evidence. Keeping in view the peculiar nature of the case and having regard to the fact that there had been group rivalry, it was opined:

"\005As pointed out by this Court in Habeeb Mohammed v. State of Hyderabad though the prosecution is not bound to call all available witnesses irrespective of considerations of number or reliability, witnesses essential to the unfolding of the narrative on which the prosecution is based must be called by the prosecution, whether in the result the effect of their testimony is for or against the case of the prosecution. This Court approved the decision of the Judicial Committee in Stephen Seneviratne v. King laying down a similar proposition. In this case the first information report clearly states that Shitabi, CW 1, was an employee of the deceased and he was with his master at the time of the incident. He has also given information about the incident to PW 1 and others. Whatever justification there may have been for not examining Ram Prasad, the prosecution, in our opinion, was not justified in keeping back Shitabi\005"

In Lakshmi and Others v. State of U.P. [(2002) 7 SCC 198], this Court opined:

"Undoubtedly, the identification of the body, cause of death and recovery of weapon with which the injury may have been inflicted on the deceased are some of the important factors to be established by the prosecution in an ordinary given case to bring home the charge of offence under Section 302 IPC. This, however, is not an inflexible rule. It cannot be held as a general and broad proposition of law that where these aspects are not established, it would be fatal to the case of the prosecution and in all cases and eventualities, it ought to result in the acquittal of those who may be charged with the offence of murder. It would depend on the facts and circumstances of each case. A charge of murder may stand established against an accused even in the absence of identification of the body and cause of the death."

In the instant case, however, some of the witnesses examined by the prosecution are independent. The evidence of all the witnesses are more or less consistent. Nothing has been pointed out to discredit their testimonies. The learned Sessions Judge as also the High Court, therefore, cannot be said to have committed any mistake in relying upon the testimonies of the said witnesses.

A contention was raised that autopsy surgeon opined that the death must have taken place 10 days prior to the post mortem examination and in that view of the matter the prosecution case should be disbelieved. The murder allegedly took place on a boat. The dead body was thrown in the water. It remained under water for more than five days. Rigor mortis was absent and the body was fully decomposed. The soft tissues of some of the parts of the body had been eaten away by fish.

Medical science has not achieved such perfection so as to enable a medical practitioner to categorically state in regard to the exact time of death. In a case of this nature, it was difficult to pinpoint the exact time of death. The autopsy surgeon told about the approximate time lag between the date of post mortem examination and the likely date of death. He did not explain the basis for arriving at his opinion.

This Court on a number of occasions noticed that it may not be possible for a doctor to pinpoint the exact time of death.

In Ramreddy Rajeshkhanna Reddy and Anr. v. State of Andhra Pradesh [(2006) 3 SCALE 452], this Court observed:

"In this case, the time of actual offence having regard to the different statements made by different witnesses may assume some importance as one of the grounds whereupon the High Court has based its judgment of conviction is the time of death of the deceased on the basis of the opinion rendered by Dr. P. Venkateshvarlu (P.W.13).

In Modi's Medical Jurisprudence, 22nd edition, as regard duration of rigor mortis, it is stated:

"Average
Minimum
Maximum

Hours
Minutes
Hours
Minutes
Hours
Minutes
Duration
of rigor
mortis

19
12
3
0
40
0"

It was, therefore, extremely difficult to purport the exact time of death of the deceased, more so when no sufficient reason was assigned in the post-mortem report."

Submission of Mr. Mishra is also to the effect that the learned Sessions Judge had not discussed about the individual overt acts of the Appellants. The prosecution witnesses categorically stated about the whole incident. The occurrence took place on a boat. Out of two persons forcibly taken on the boat, PW-3 could escape. There were fourteen accused persons. They had inflicted injuries upon him. Post mortem suggests that sharp cutting weapons had been used. Two accused

persons, as noticed hereinbefore, were held to be possessed of some cutting weapons. The Appellants came in a group. Some of them started assaulting the deceased with weapons in their hands. In a case of this nature, it was well nigh impossible for the first informant to pinpoint the exact overt acts committed by each of the accused persons individually.

Section 34 of the Indian Penal Code, therefore, is clearly attracted in a case of this nature.

In a recent judgment in *Bishna Alias Bhiswadeb Mahato and Others v. State of W.B.* [(2005) 12 SCC 657], the law has been stated in the following terms:

"For the purpose of attracting Section 149 and/or 34 IPC, a specific overt act on the part of the accused is not necessary. He may wait and watch and the inaction on the part of an accused may some time go a long way to hold that he shared a common object with others."

For the reasons aforementioned, we are of the opinion that no case has been made out for interference with the impugned judgment. The appeal is dismissed.