

CASE NO.:
Appeal (crl.) 64 of 2006

PETITIONER:
Anil Kumar @ Pintu

RESPONDENT:
State of Bihar (Now State of Jharkhand)

DATE OF JUDGMENT: 01/04/2008

BENCH:
B.N. AGRAWAL & G.S. SINGHVI

JUDGMENT:
JUDGMENT
O R D E R
CRIMINAL APPEAL NO.64 OF 2006
With Criminal Appeal No.130 of 2007

Appellant Nazir was convicted by the Trial Court under Section 302 of the Indian Penal Code, 1860 [hereinafter referred to as 'I.P.C.'] and sentenced to undergo imprisonment for life. He was further convicted under Section 148 I.P.C. and sentenced to undergo rigorous imprisonment for a period of two years. Appellant Anil Kumar @ Pintu along with Niraj Kumar, Dhiraj Kumar and Anand Kumar was convicted under Section 302/149 I.P.C. and sentenced to undergo imprisonment for life. They were further convicted under Section 147 I.P.C. and sentenced to undergo rigorous imprisonment for a period of one year. The sentences, however, were ordered to run concurrently. On appeals being preferred, the High Court confirmed the convictions and sentences. Against the order of the High Court, accused Niraj Kumar, Dhiraj Kumar and Anand Kumar did not move this
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Court by filing any special leave petition whereas the present appeals have been filed by appellants, Anil Kumar @ Pintu and Nazir.

In support of its case, the prosecution has relied upon two dying declarations; one is said to have been made before Surendra Prasad Singh (P.W.12) and another before Madan Prasad Singh (P.W.13). One dying declaration is an oral one which is said to have been made before Surendra Prasad Singh (P.W.12) and the another one is said to have been recorded by Madan Prasad Singh (P.W.13), which has been marked as 'Exhibit 5'. So far as dying declarations are concerned, the Trial Court has refused to place reliance thereupon after giving cogent reasons for the same. The reasoning of the Trial Court, in our view, cannot be said to be perverse but we are of the view that the view taken by it was a reasonable one.

The other evidence is the statement of Sushil Kumar Pathak (P.W.6). The accused persons were not known to this witness. He has disclosed their names for the first time in the Sessions Court. No test identification parade was conducted. It is well-settled that in cases where accused is not known to the witness, ordinarily, the identification of an accused for the first time in court should be corroborated by previous identification in the test identification parade. We do not find any extraordinary reason for accepting the evidence of the witness on the question of identification of the accused persons for the first time in court. This being the position, it is not possible to place reliance on the evidence of P.W.6.

Last evidence is the statement of Dilip Kumar Dubey (P.W.10), who is nobody else than the informant and brother in-law of the deceased. This witness, in a prior incident of the same very day, filed a 'Sanha' [Exhibit 'A'] wherein he categorically stated that none of the accused persons was
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known to him. This witness has stated, in his evidence, that the accused persons against whom 'Sanha' [Exhibit 'A'] was filed had committed the present crime. He merely says, in his cross-examination, that his brother in-law, i.e., the deceased, told him the names of the accused persons. It has nowhere been stated that his brother in-law made a statement before this witness that the accused persons had committed the present crime. So far as this witness is concerned, as the accused persons are not known to him, it is not possible to place reliance upon his identification in court.

For the foregoing reasons, we are of the view that the prosecution has failed to prove its case beyond reasonable doubt and the High Court was not justified in confirming the convictions of the accused persons. It appears that accused Niraj Kumar, Dhiraj Kumar and Anand Kumar did not file any appeal before this Court but in view of our finding that the prosecution has failed to prove its case beyond reasonable doubt, we are of the view that benefit of doubt should be given not only to the appellants, Anil Kuarm @ Pintu and Nazir but also to these three accused persons as well. Accordingly, the criminal appeals are allowed, convictions and sentences of the appellants herein and accused Niraj Kumar, Dhiraj Kumar and Anand Kumar are set aside and they are acquitted of all the charges. Let all the aforesaid five accused persons be released forthwith from custody, if they are not required in connection with any other case.